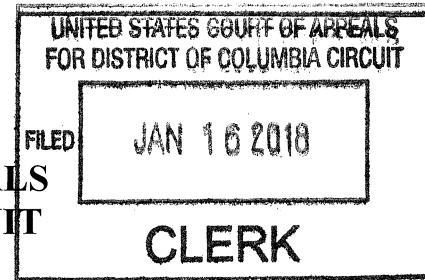


JAN 16 2018

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT



MOZILLA CORPORATION,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION
and UNITED STATES OF AMERICA,

Respondents.

Case No. 18-18-1014

PROTECTIVE PETITION FOR REVIEW

Pursuant to 5 U.S.C. § 706, 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342 and 2344 and Federal Rule of Appellate Procedure 15(a), the Mozilla Corporation (“Mozilla”) hereby petitions this Court for review of the final order of the Federal Communications Commission (“FCC”) captioned in *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, WC Docket No. 17-108, FCC 17-166 (rel. Jan. 4, 2018) (“Order”). Mozilla is providing an electronic copy of the Order on compact disc with this petition.

Venue is proper in this Court pursuant to 28 U.S.C. § 2343.

In the Order, the FCC formally eliminates the rules that the FCC promulgated in 2015 and were upheld by this Court. *See* Protecting and Promoting the Open Internet, *Report and Order On Remand, Declaratory Ruling, and Order*, 30 FCC Rcd. 5601 (2015), *aff’d sub nom. United States Telecom Ass’n v. FCC*,

825 F.3d 674 (D.C. Cir. 2016). In that case, this Court held that the FCC had properly exercised its authority to reclassify broadband Internet access service as a telecommunications service subject to Title II of the Communications Act of 1934 and to promulgate five rules to promote Internet openness. In the Order on review here, the FCC departs from its prior reasoning and precedent, reclassifies broadband Internet access service as an information service subject to Title I of the Communications Act and eliminates the five rules, among other things.

Mozilla seeks review of the Order on the grounds that it is arbitrary and capricious within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706, it abdicates the FCC's statutory mandate, and it is otherwise contrary to law.

Mozilla files this protective petition for review out of abundance of caution. Mozilla, which participated in the proceeding below, is aggrieved by the Order. While the Order is clear on its face that the period for filing review of this Order commences on the date that a summary is published in the Federal Register, Order ¶ 359, prior protective petitions for review of the FCC's open Internet rules have been filed in multiple circuits on similar grounds. *See, e.g.*, Protective Petition for Review of the United States Telecom Association, *USTA v. FCC*, Case No. 15-1063 (D.C. Cir. Mar. 23, 2015); Petition for Review of Alamo Broadband, *Alamo Broadband v. FCC*, Case No. 15-1078 (5th Cir. Mar. 23, 2015). In *USTA*, for example, US Telecom and Alamo filed protective petitions within ten days of

public release of the FCC's final order, but prior to Federal Register publication. The FCC objected to the protective petitions, but it nevertheless forwarded them to the Multidistrict Litigation ("MDL") panel for inclusion in the lottery on March 27, 2015. The MDL panel then held the lottery on March 30, 2015, almost two weeks before Federal Register publication, which occurred on April 13, 2015. *See* Protecting and Promoting the Open Internet, 80 Fed. Reg. 19,738 (Apr. 13, 2015). As a result, any party that failed to file a protective petition was excluded from the lottery. By filing this protective petition, Mozilla seeks to preserve its rights and avoid a result similar to *USTA* with respect to the lottery.

Mozilla respectfully requests that this Court hold unlawful, vacate, enjoin and set aside the Order, and provide additional relief as may be appropriate.

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Dated: January 16, 2018

Respectfully submitted,



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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and this Court's Rule 26.1, the Mozilla Corporation respectfully submits the following corporate disclosure statement. Mozilla Corporation is a subsidiary of the Mozilla Foundation, a non-profit corporation that has not issued shares or debt securities to the public. The Mozilla Foundation does not have any parent companies, subsidiaries, or affiliates that have issued shares or debt securities to the public. The Mozilla Foundation's mission is to ensure an open Internet accessible to all.

Respectfully submitted,



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Dated: January 16, 2018

CERTIFICATE OF SERVICE

I, Georgios Leris, hereby certify that on January 16, 2018, I caused a copy of the foregoing Protective Petition for Review and Corporate Disclosure Statement to be served on the following counsel by the manner indicated:

*By First Class Mail and
Electronic Mail*

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