

JAN 10 2018

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

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CLERK

State of New York, State of California, State of
Connecticut, State of Delaware, State of
Hawaii, State of Illinois, State of Iowa,
Commonwealth of Kentucky, State of Maine,
State of Maryland, Commonwealth of
Massachusetts, State of Minnesota, State of
Mississippi, State of New Mexico, State of
North Carolina, State of Oregon,
Commonwealth of Pennsylvania, State of
Rhode Island, State of Vermont,
Commonwealth of Virginia, State of
Washington, and the District of Columbia

Petitioners,

v.

Federal Communications Commission, and
United States of America,

Respondents.

18-1013
Case No. 17-_____

PROTECTIVE PETITION FOR REVIEW

Pursuant to Federal Rule of Appellate Procedure 15, Circuit Rule 15,
5 U.S.C. § 706, 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342(1) and 2344, the
States of New York, California, Connecticut, Delaware, Hawaii, Illinois,
Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Mississippi,
New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island,
Vermont, Virginia, Washington, and the District of Columbia (State
Petitioners) petition this Court for review of the order of the Federal
Communications Commission (FCC) captioned *Restoring Internet Freedom*,

Declaratory Ruling, Report and Order, and Order, WC Docket No. 17-108, FCC 17-166 (released on Jan. 4, 2018) (“Order”). A copy of the full text of the Order is attached as Exhibit 1.

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

State Petitioners seek a determination by this Court that the Order is arbitrary, capricious, and an abuse of discretion within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*; violates federal law, including, but not limited to, the Constitution, the Communications Act of 1934, as amended, and FCC regulations promulgated thereunder; conflicts with the notice-and-comment rulemaking requirements of 5 U.S.C. § 553; and is otherwise contrary to law.

State Petitioners are filing this protective petition for review out of an abundance of caution and to preserve the right to be included in the judicial lottery procedure under 28 U.S.C. § 2112(a). Although State Petitioners believe that the Order, including the Declaratory Ruling that is part of the Order, should be deemed final on the date that it is published in the Federal Register, *see* Order ¶ 359, 47 C.F.R. §§ 1.13 and 1.4(b)(1), State Petitioners recognize the possibility that the Order may be construed to be final on the date that it was issued and wish to be included in the judicial lottery, should it be held prematurely.

Accordingly, to the extent that this protective petition for review is timely filed, State Petitioners respectfully request that this Court hold unlawful, vacate, enjoin, and set aside the Order, and that it provide such additional relief as may be appropriate.

Dated: January 16, 2018

Respectfully Submitted,

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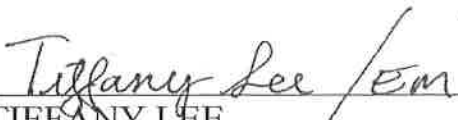
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