

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

AMERICAN CABLE ASSOCIATION,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION and UNITED STATES
OF AMERICA,

Respondents.

No. 15-1095 and
consolidated cases

NON-BINDING STATEMENT OF ISSUES TO BE RAISED

Pursuant to this Court’s April 15, 2015 order, petitioner American Cable Association (“ACA”) respectfully submits this non-binding, preliminary statement of issues to be raised in this petition for review.

Departing from decades of precedent, the FCC order under review—the Open Internet Order¹—classifies broadband Internet access service as a “telecommunications service” subject to common carrier regulation under Title II of the Communications Act of 1934, 47 U.S.C. §§201 *et seq.*, as amended. In doing so, the Open Internet Order imposes a host of new standards and regulatory obligations on broadband Internet access service providers, including customer proprie-

¹ Report and Order on Remand, Declaratory Ruling, and Order, *Protecting and Promoting the Open Internet*, GN Dkt. No. 14-28, FCC 15-24 (Mar. 12, 2015). The associated Notice of Proposed Rulemaking is *Protecting and Promoting the Open Internet*, GN Dkt. No. 14-28, FCC 14-61 (May 15, 2014) (the “Notice of

tary network information, access, and service obligations, enhanced transparency requirements, a general “no unreasonable interference/disadvantage” conduct standard, new “Open Internet” rules, and interconnection obligations.

ACA intends to raise the following issues on appeal:

1. Whether the Open Internet Order’s reclassification of broadband Internet access service as a “telecommunications service” under Title II exceeds the Commission’s authority under the Communications Act of 1934; violates the Fifth Amendment of the Constitution; is contrary to any other law; violates the notice-and-comment requirements of the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 551-559; or is arbitrary and capricious, unsupported by substantial evidence, or otherwise inconsistent with reasoned decisionmaking.

2. Whether the Open Internet Order violates the Regulatory Flexibility Act, 5 U.S.C. §§ 601-612, along with the APA, because (among other things):

a. to the extent the associated Notice of Proposed Rulemaking gives notice of the potential for Title II reclassification, it fails to address the impact Title II regulation would have on smaller Internet service providers, including projected reporting, recordkeeping, and compliance requirements, the types of professional skills that would be required, and significant alternatives for small entities;

Proposed Rulemaking”).

b. the Open Internet Order fails to adequately (i) describe or fully identify all of the reporting, recordkeeping, and compliance requirements imposed by the final rule, as well as the professional skills required, or (ii) explain the significant alternatives to more burdensome regulation and why those alternatives were rejected; and

c. the Open Internet Order's regulatory flexibility analysis is arbitrary, capricious, unsupported by substantial evidence, or otherwise inconsistent with reasoned decisionmaking.

3. Whether the FCC's failure to exempt or provide other relief for small Internet service providers from Title II obligations is contrary to the Regulatory Flexibility Act, 5 U.S.C. §§ 601-612; is contrary to any other law; is arbitrary and capricious; is unsupported by substantial evidence; or is otherwise inconsistent with reasoned decisionmaking.

4. Whether the Open Internet Order's "no unreasonable interference/disadvantage" standard or enhanced transparency rules exceed the Commission's authority under the Communications Act of 1934 or any other law; are arbitrary and capricious; are unsupported by substantial evidence; or are otherwise inconsistent with reasoned decisionmaking.

May 15, 2015

Respectfully submitted,

/s/ Jeffrey A. Lamken

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CERTIFICATE OF SERVICE

I, Jeffrey A. Lamken, hereby certify that, on May 15, 2015, I electronically filed the foregoing Non-Binding Statement of Issues To Be Raised with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. Registered CM/ECF users participating in the case will be served by the appellate CM/ECF system.

May 15, 2015

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