

FEB 22 2018

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

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FOR DISTRICT OF COLUMBIA CIRCUIT
FILED FEB 22 2018
CLERK

MOZILLA CORPORATION,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION
and UNITED STATES OF AMERICA,

Respondents.

18-1051

Case No. 18-_____

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. The new regulations in the Order were published in the Federal Register on February 22, 2018. *See* 83 Fed. Reg. 7852.

Mozilla filed a protective petition for review of the Order on January 16, 2018, out of abundance of caution. Protective Petition for Review at 2, *Mozilla Corp. v. FCC*, No. 18-1014 (D.C. Cir. Jan. 16, 2018) (“Protective Pet.”). That

filing was intended to ensure that Mozilla could participate in a judicial lottery if the FCC chose to forward any petition to the Judicial Panel on Multidistrict Litigation, as the FCC had done with petitions for review of the 2015 Open Internet Order. *Id.* at 2-3. The FCC filed to dismiss Mozilla's and other petitioners' protective petitions and represented that it did not forward those petitions to the Judicial Panel on Multidistrict Litigation. Motion to Dismiss for Lack of Jurisdiction at 9-10, *Mozilla Corp. v. FCC*, No. 18-1014 (D.C. Cir. Feb. 9, 2018). Further, it noted that petitioners would be free to file petitions for review after publication in the Federal Register of the summary of the Order. *Id.* at 12. Subsequently, Petitioners and Respondents filed with this Court a joint stipulation of voluntary dismissal of those petitions. *See Joint Stipulation of Voluntary Dismissal, Mozilla Corp. v. FCC*, No. 18-1014 (D.C. Cir. Feb. 16, 2018).

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 that 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 violates federal law, including, but not limited to, the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.*, as amended, and the Telecommunications Act of 1996, and FCC regulations promulgated thereunder; abdicates the FCC's statutory mandates; is arbitrary, capricious, and an abuse of discretion within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*; and is otherwise contrary to law.

Mozilla, which participated in the proceeding below, is aggrieved by the Order. Mozilla respectfully requests that this Court hold unlawful, vacate, enjoin, and set aside the Order, and that it provide additional relief as may be appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M.C. Erickson', with a long horizontal stroke extending to the right.

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Dated: February 22, 2018

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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CERTIFICATE OF SERVICE

I, Georgios Leris, hereby certify that on February 22, 2018, I caused a copy of the foregoing 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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