Written Testimony of

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Before the House Energy & Commerce Committee
Subcommittee on Communications and Technology
"A Legislative Hearing on Four Communications Bills"

January 12, 2016

Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee: My name is Elizabeth Bowles, and I am a past President and current Legislative Committee Chair of WISPA, the Wireless Internet Service Providers Association, which is the trade association for the fixed wireless industry. I am also the President of Aristotle, Inc., a fixed wireless Internet service provider, or WISP, based in Little Rock, Arkansas. I am pleased to be here today as both a spokesperson for a trade association that represents the interests of small businesses as well as the President of a small business that provides broadband service to approximately 800 residential and business subscribers in Central Arkansas, including the greater Little Rock area, as well as small, underserved Arkansas communities such as Sardis, Vilonia, and Shannon Hills.

WISPA represents the interests of more than 800 providers of fixed wireless broadband services that serve customers in every state. Our members primarily use unlicensed spectrum to provide broadband to underserved, rural, and remote areas that are not cost-effective for traditional wireline companies to serve. Our member companies operate in diverse communities like Scott, Arkansas (population 72), Stony Bridge, Ohio (population 411), and LaGrande, Oregon (population 13,074) – and hundreds of other places where service from a WISP may be the only terrestrial means to access the Internet – and we are able to offer broadband by placing transmission equipment on water tanks, granaries, towers, and whatever vertical infrastructure is

available. The vast majority of our members have created and built their networks without the benefit of any Federal subsidies. So – unlicensed spectrum and unsubsidized service to otherwise unserved communities. I guess that makes us unconventional.

Under any definition, nearly all of WISPA's members -- including my company, Aristotle -- are small businesses, "mom and pop" ISPs started by local, community-minded entrepreneurs that saw a need for broadband in their communities. Funded by friends and families, some WISPs may have only a few hundred customers and a handful of employees who "do it all" – climbing towers, marketing, providing customer service. According to the FCC, only 17 broadband Internet access providers serve 93 percent of the population. This means that over 3,000 broadband Internet access providers – whether wireless, cable, or telephone company – serve the remaining seven percent, the seven percent that is hardest to reach. Seven percent of 300 million is 21 million people. This is not an insignificant number, and without providers like my company, these Americans would be left without adequate terrestrial broadband entirely.

WISPA believes in an open Internet under the "light touch" regulatory regime the FCC implemented in 2010. Aristotle has never throttled, nor has my company capped usage or required customers or anyone else to pay to prioritize traffic. We believe the FCC's reclassification of broadband as a Title II service was misguided, as are many of the rules the FCC adopted in its 2015 Order, such as the Internet conduct standard and the enhanced disclosure rules. WISPA joined the lawsuit seeking to overturn the FCC's Order because WISPA is concerned about the effects that the FCC's decision will have on small businesses. These effects include defending against frivolous complaints and class actions, and potentially having our rates regulated.

Indeed, my company is already feeling the impact of the FCC's rules. Projects that were viable investments under the 2010 regulatory regime may no longer provide sufficient returns to justify the investment. Because of the risks and costs imposed by the Order, Aristotle is reassessing its plans to expand our service into unserved areas of rural Arkansas. Before the Order was adopted, it was our intention to triple our customer base by deployment of a redundant fixed wireless network that would cover a three-county area. However, we have pulled back on those plans, scaling back our deployment to three, smaller, communities that abut our existing network. Aristotle is uncomfortable with the risks the FCC's new rules may impose on us and concerned about the expense of complying with those rules.

Small Business Exemption

In the Open Internet Order adopted in February of 2015, the FCC temporarily exempted small broadband providers from the new "enhanced" disclosure requirements. On December 15, 2015 – the day the exemption was set to expire—the FCC extended the exemption for another year. In each case, the FCC defined a small business eligible for the extension as a broadband Internet access service provider with 100,000 or fewer connections. While the FCC's decisions provide short-term relief, the agency failed on two occasions to make the exemption permanent, despite an overwhelming record that showed the following:

First, throughout an extensive (albeit flawed) FCC process that resulted in four million written contributions from the public, the FCC received not a single comment that small ISPs were flaunting the 2010 disclosure rules or that those rules were insufficient to protect consumers. To the contrary, the record showed that small businesses would be forced to pass on the additional costs to consumers—including consumers in rural areas—who are the very people that not only would benefit most from having broadband service in the first place, are also the

least likely to be able to afford that cost. In other words, the FCC failed to consider adequately the costs that will be imposed on consumers, which in turn led to the flawed decision to impose "one size fits all" regulatory burdens on the small broadband providers that serve those consumers. In the absence of evidence of consumer harm at the hands of small ISPs, there is no basis for the FCC to impose new rules.

Second, the FCC failed to analyze properly the impact on small businesses when, as required by the Paperwork Reduction Act, it estimated the burdens its new rules would have on businesses, large and small. The FCC actually wrote:

> small entities may have less of a burden, and larger entities may have more of a burden than the average compliance burden. This is because larger entities serve more customers, are more likely to serve multiple geographic regions, and are not eligible to avail themselves of the temporary exemption from the enhancements granted to smaller providers.

This statement fails to grasp some simple facts. Small ISPs do not have in-house lawyers to review and understand the new disclosure rules, administrative staff to maintain the ongoing compliance, or the means to measure packet loss. Moreover, every dollar spent on unnecessary regulatory compliance is one dollar that is not being spent on new hires, network upgrades, and expansion. It is one thing for a large broadband provider with its army of lawyers to devote time and resources to the new requirements, and quite another for a WISP in West Yellowstone, Montana, to do the same.

Third, the FCC ignored an entirely one-sided record when it granted the one-year extension of the small business exemption rather than making that exemption permanent. The record overwhelmingly supported a permanent exemption, and not a single one of the millions of consumers who wrote to the FCC in the months before the Open Internet Order was adopted wrote in to oppose a permanent exemption.

Fourth, throughout this entire process, the FCC ignored the wisdom of the Small Business Administration and the requirements of the Regulatory Flexibility Act, both of which exist to protect small businesses from burdensome regulation. The record did not support the FCC's actions, so rather than act in accordance with the record, the FCC "punted" – perhaps in the hopes that it could get a record more favorable to the positions it wants to take.

The FCC has had two opportunities to get it right. In the Open Internet Order, it could have relied on comments and letters submitted by WISPA, other trade associations, and hundreds of small broadband providers that asked the FCC to make the exemption permanent, but it did not. Later, in the follow-on proceeding, the FCC could have made the exemption permanent, but it did not – it approved only a one-year extension. If the FCC had followed the record in either instance, we would not be here today asking Congress to step in. Instead, small ISPs face the prospect of more FCC proceedings and continuing uncertainty that divert time and resources away from innovating, investing, and expanding broadband networks to meet the demand of rural and underserved Americans.

When WISPA met with the FCC prior to the enactment of the Open Internet Order, the FCC discounted WISPA's stated concerns about the uncertainly caused by a new regulatory regime and ignored WISPA's plea that small businesses be exempt from the Order. Now, as I sit here today, WISPA has members whose banks have stated point-blank that they will not make a loan until the regulatory uncertainty can be cleared. Other members have cut back or redirected investment funding in order to hire regulatory counsel. Still others have paused expansion plans waiting to see how the changing regulatory landscape will affect them. Regardless of the FCC's opinion, the reality is clear: imposing excessive and unnecessary burdens on small ISPs has dampened the very growth and investment that has made broadband service to rural America

possible. At the end of the day, it will not be the FCC or even the small businesses that pay the ultimate price for the FCC's myopic insistence on this course of action, it will be American consumers who will foot the bill – either in the in the form of increased costs to fund their provider's regulatory compliance burdens or – even worse – in the form of no broadband service at all because those same small ISPs must divert investment in those communities in order to meet their new regulatory burden.

Rate Regulation

WISPA also supports legislation that would prevent the FCC from regulating the rates we charge our subscribers. Under Title II, our charges must be "just and reasonable," and any party can take us to court if they think that we are violating this standard. This is a very scary proposition for small businesses, who simply will not be able to afford to go through the process of defending frivolous complaints or participating in a lengthy judicial process to adjudicate what is "reasonable." The FCC provided no helpful guidance on what evidence it would look to in making a determination of what constitutes "reasonable" rates. While it is somewhat comforting that the FCC does not intend to regulate rates retroactively, who is to say what a Court would do, or what a future FCC might do? And even imposing rate regulation on future activity could have a devastating effect on our ability to fund expansion or, in the worst case, even to stay in business.

In competitive markets where there is more than one broadband provider, the market will determine the reasonableness of rates. That is the essence of a free market economy, the kind that built the Internet. In markets where there may be only a single provider, there are two scenarios: the provider is subsidized by the government, or – as in our case – the barriers to entry are low enough that affordable service can be provided without government assistance. If the

broadband service offered by a WISP or other small ISP is not affordable, or if our customer service is sub-optimal, then we would not stay in business.

Eliminating the prospect of rate regulation will, especially for small ISPs, remove a significant component of regulatory uncertainty, and will help to re-open the door to more extensive innovation and deployment. The "virtuous cycle" exists only if there are broadband providers in it.

Conclusion

In seeking to regulate in the absence of legislation, the FCC lost its way. Congress can right these wrongs by making the small business exemption permanent and by banning broadband rate regulation.

February 19, 2015

The Honorable Thomas Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **GN Docket No. 14-28**
Written Ex Parte Presentation

Dear Chairman Wheeler:

The undersigned fixed wireless Internet service providers ("WISPs") write to express our serious concerns over the impact that certain Open Internet rules would have on small broadband providers, WISPs and the consumers and businesses that we serve. While full details of the Chairman's plan are not known and remain subject to discussion, we believe it is important to make clear our concerns and to recommend exemption for small broadband providers from any new rules the Commission may choose to impose on fixed broadband providers.

WISPs, small cable operators and municipalities provide fixed broadband service in small, rural communities that would otherwise be unserved or underserved. We have been able to enter the market and provide service because, in part, the "light touch" rules the FCC adopted in 2010 did not place extraordinary regulatory burdens on us. Our costs to comply with those rules have been minimal, and we are not aware of any bad behavior that would require an increase in regulatory intrusion into our businesses, an outcome that would likely force us to raise prices, delay deployment expansion, or both. Further, because we lack market power, we have no incentive and no ability to harm edge providers.

We write to echo the call made by small broadband companies and organizations – fixed wireless, cable and municipal-owned providers – seeking exemption from any new regulations. First, outside of any discussion of the FCC's statutory authority, we urge the Commission to exempt small businesses from any new disclosure and reporting obligations it may choose to impose. There is no factual basis for any change in the 2010 rules, and any additional regulations would increase compliance costs and heighten enforcement risk, especially (but not exclusively) under Sections 206 and 207. These are unnecessary obligations that will stifle deployment and chill investment into small broadband providers, those least likely to be able to attract investment capital.

Second, to the extent the Commission reclassifies longstanding "information service" providers as "telecommunications service" providers under Title II – despite the fact that we are not common carriers and notwithstanding serious questions about the legality of such authority – we ask that the Commission forbear from imposing Title II requirements on small broadband providers. In particular, we believe that the combination of the fundamental Title II precepts in Sections 201, 202 and 208, together with the damages and private rights of action provisions of Sections 206 and 207, would establish a federal and, potentially, state regulatory environments

that would, over time, threaten our businesses and jeopardize our continuing ability to provide fixed broadband service to those who would otherwise lack access.

We understand that the Chairman's plan does not propose to regulate the rates of broadband service providers. However, through a private right of action that could lead to damages for violations of Sections 201 and 202 standards that are untested in the broadband arena, substantial uncertainty and potential for the imposition of rate regulation is presented through the adjudicatory process. For example, we do not know what it means to offer service at unjust, unreasonable or unreasonably discriminatory rates (Section 201) or fail to provide service upon reasonable request (Section 202). But perhaps more concerning is that small businesses face the very real prospect that we will be dragged into expensive and time-consuming FCC or judicial proceedings to interpret these standards. The right of litigants, even those that have no case, to obtain damages through settlement or protracted discovery creates a powerful incentive for litigation that small providers can ill afford. And we will no doubt be the targets because we don't have armies of lawyers to fight back.

Third, at a minimum, we believe the Commission should, under any new regulatory environment, adopt enforcement proceedings for small broadband providers that require consumers or edge providers to engage in good faith negotiation for 30 days before they can file a complaint. Based on our experience, we believe we can resolve most disputes through discussion. We can identify and address problems. For example, in some cases, congestion may be the result of multiple users at a consumer's residence and not unlawful blocking or throttling. Or there may be limitations on the capability of the network due to a lack of available spectrum. In short, the Commission's complaint process and judicial relief should be venues of last resort.

We agree with statements in a recent letter signed by 43 municipalities that "[t]he economic harm will flow not from following net neutrality principles, which we do today because we think it is beneficial to all, but from the collateral effects of a change in regulatory status that will trigger consequences beyond the Commission's control and risk serious harm to our ability to fund and deploy broadband without bringing any concrete benefit for consumers or edge providers that the market is not already proving today without the aid of any additional regulation."[1] These same risks apply to privately-funded, non-subsidized WISPs and other small broadband providers that provide vital broadband service today and wish to expand deployment in the future.

The Commission cannot ignore the call for a regulatory regime that takes into account the threats that new rules and Title II will impose on small broadband providers. We urge your careful consideration of these important concerns as you and your fellow Commissioners deliberate in these final days before the scheduled vote.

Pursuant to Section 1.1206 of the Commission's Rules, this letter is being filed electronically via the Electronic Comment Filing System in the above-captioned proceeding.

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[1] Letter from Forty-Three Municipal Broadband Internet Providers to The Honorable Thomas Wheeler, GN Docket Nos. 14-28 and 10-127 (filed Feb. 10, 2015) at 2.

Respectfully submitted,

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September 8, 2015

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Reply Comments*
Protecting and Promoting the Open Internet, GN Docket No. 14-28

Dear Ms. Dortch:

The Office of Advocacy (Advocacy) respectfully submits these comments to the Federal Communications Commission (FCC) regarding the small business exemption from enhanced transparency requirements adopted in the *2015 Open Internet Order.*[1] Advocacy commends the FCC for acknowledging the disproportionate compliance burden that small broadband providers face under the rules, and encourages the FCC to continue to exempt small businesses from the requirements. Advocacy also encourages the FCC to use existing Small Business Administration (SBA) size-standards to determine the appropriate small business threshold for the exemption.

About the Office of Advocacy

Congress established Advocacy under Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is an independent office within the SBA, so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. Part of our role under the RFA is to assist agencies in understanding how regulations may impact small businesses and to ensure that the voice of small businesses is not lost within the regulatory process.[2] Congress crafted the RFA to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or to comply with federal laws.[3] In addition, the RFA's purpose is to address the adverse effect that "differences in the scale and resources of regulated entities" has had on competition in the marketplace.[4]

Background

In a letter to the FCC last year, Advocacy encouraged the FCC to balance its approach to maintaining the Open Internet with its obligations to work diligently to protect and foster

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1 *See Protecting and Promoting the Open Internet,* GN Docket No. 14.28, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, paras. 154-181 (rel. March 13, 2015) (*2015 Open Internet Order).*
2 Regulatory Flexibility Act, Pub. No. 96-354, 94 Stat. 1164 (1980).
3 *Id.,* Findings and Purposes, Sec. 2 (a)(4)-(5), 126 Cong. Rec. S299 (1980).
4 *Id.*, Findings and Purposes, Sec. 4, 126 Cong. Rec. S299 (1980).

competition in the service of broadband. [5] Advocacy noted that consumers benefit from both goals, and encouraged the FCC to engage with small businesses to find a way forward.[6] During the public comment period for the *2015 Open Internet Order,* many stakeholders raised concerns regarding the disproportionate impact that the FCC's proposals would have on small broadband providers. Because of those concerns, the FCC temporarily exempted small broadband providers with 100,000 or fewer broadband connections from certain enhancements of the FCC's existing transparency rules that govern the content and format of disclosures made by providers of broadband Internet access service.[7] The FCC also directed the Consumer and Governmental Affairs Bureau to seek comment on questions regarding continued implementation of the exemption.[8] On June 22, 2015, the Consumer and Governmental Affairs Bureau released a notice seeking comment on the exemption.[9]

Small business stakeholders have submitted comments to the FCC, asking the FCC to maintain the exemption[10] and in some cases expand the exemption to cover additional small broadband providers.[11] They have argued that their compliance with the provisions will yield little consumer benefit, but impose more significant costs than the FCC has estimated.[12] Stakeholders have explained that the rules will have disproportionately larger impacts on small businesses because they will have to develop new systems, software and procedures to capture and analyze the information associated with the regulations.[13] Commenters have also noted that the FCC has not specifically indicated how often providers make the customer disclosures required by the regulations, injecting further uncertainty into the cost of compliance for small entities.[14] Finally, small business stakeholders have raised concerns about the FCC's decision to exempt only providers with fewer than 100,000 subscribers in lieu of using the SBA approved size standard for small telecommunications carriers.[15]

Advocacy's Comments

Advocacy encourages the FCC to continue to exempt small broadband providers from the enhanced transparency requirements set forth in the *2015 Open Internet Order*. Small businesses typically are unable to absorb increased operating costs to the same extent as larger business, and this is one of the chief reasons that the RFA requires agencies to examine alternatives to reduce

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[5] *Ex Parte* letter from the Small Business Administration Office of Advocacy, GN Docket No. 14-28 (filed September 25, 2014).

[6] *Id.*

[7] *Supra* note 1

[8] *See id.*

[9] *Consumer and Governmental Affairs Bureau Seeks Comment on Small Business Exemption from Open Internet Enhanced Transparency Requirements, Public Notice, 30 FCC Rcd. 6409 (2015) (Public Notice).*

[10] *See e.g.* Comments of The United States Telecom Association, GN Docket No. 14-28 (2015); comments of the American Cable Association, GN Docket No. 14-28 (2015); comments of The Small Rural Carriers coalition, GN Docket No. 14-28 (2015); comments of the Rural Broadband Provider Coalition, GN Docket No. 14-28 (2015).

[11] *See* Comments of CTIA-The Wireless Association, GN Docket No. 14-28 (2015); *see also,* Reply Comments of the Wireless Internet Service Providers Association, GN Docket No. 14-28 (2015).

[12] *Supra note 10.*

[13] *See* USTelecom comments, *supra* note 10.

[14] *See id.*

[15] *Supra* note 11.

disproportionate regulatory impacts on small entities.[16] Before requiring small broadband providers to comply with the enhanced transparency requirements in the 2015 Open Internet Order, it should first attempt to mitigate the cost of compliance for small entities and determine whether such costs are justified in light of consumer benefits. The FCC should also follow the SBA procedures for determining the appropriate threshold to use when determining eligibility for the exemption.

Advocacy has concerns that compliance with the enhanced transparency requirements under the *2015 Open Internet Order* is not feasible for small broadband providers, particularly small rural providers, and may ultimately degrade the quality of service that consumers receive from small providers.[17] For many small broadband providers, compliance could divert significant resources away from network development and customer service; this diversion may harm consumers if the regulations do not offer equally significant consumer benefits. Small broadband providers are largely in compliance with the FCC's 2010 transparency and disclosure rules, and it is unclear whether the enhanced requirements set forth in the *2015 Open Internet Order* will provide incremental benefits outweighing the potential harm to consumers served by small providers. Advocacy encourages the FCC to permanently exempt small businesses from its enhanced transparency requirements permanently, unless the cost of small business compliance with the requirements can be mitigated. Advocacy notes that small business stakeholders have expressed their willingness to work with the FCC to reduce such costs.[18]

Advocacy also notes that the size threshold the FCC has applied with regard to the small business exemption from its enhanced transparency requirements is significantly smaller than the existing SBA definition for telecommunications carriers. The FCC is required to obtain approval from the Small Business Administration when it opts to use a small business size standard that is different from SBA's for regulatory enforcement purposes.[19] The FCC has not consulted with SBA or obtained approval to use its alternative threshold. Advocacy recommends that the FCC follow SBA's procedures to determine the appropriate threshold in light of relevant data, and request public comments on that determination. Until the FCC has consulted and obtained approval for an alternative size standard, the FCC should adopt a threshold for the exemption that utilizes existing SBA small business size standards.

Conclusion

Advocacy is pleased to forward the concerns of small broadband providers to the FCC, and applauds the FCC's efforts to provide regulatory flexibility for small businesses. To avoid encumbering small businesses with significantly disproportionate compliance costs, the FCC should exempt small businesses that meet the relevant SBA size standards from compliance with the enhanced transparency requirements under its *2015 Open Internet Order*. The record shows broad support for such a decision.

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16 *Supra* note 2.
17 Small Rural Carriers comments, supra note 10.
18 American Cable Association comments, supra note 10.
19 13 CFR §121.903 (2015); *See also* 15 U.S.C. § 632(a)(2)(c) (2015).

Advocacy looks forward to assisting the FCC in its engagement with small businesses. Please do not hesitate to contact me or Jamie Saloom at 202-205-6533 should you require our office's assistance.

Best regards,

[redacted]

Claudia R. Rodgers
Acting Chief Counsel for Advocacy

[redacted]

Jamie Belcore Saloom
Assistant Chief Counsel for Telecommunications

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Protecting and Promoting the Open Internet	)	GN Docket No. 14-28

To: Chief, Consumer and Governmental Affairs Bureau

REPLY COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

The Wireless Internet Service Providers Association ("WISPA"), pursuant to Sections 1.415 and 1.419 of the Commission's Rules,[1] hereby replies to the initial Comments filed in response to the *Public Notice*[2] released by the Consumer and Governmental Affairs Bureau ("Bureau") regarding the extension of the small business exemption from compliance with new disclosure requirements adopted in the *2015 Order*.[3] The Comments unanimously support a permanent exemption for small businesses, and the Commission therefore should amend Section 8.3 of its rules accordingly. Based on the record, WISPA believes that the Commission should not use 100,000 as the exemption cap, but should instead define a "small business" by relying on a size standard previously used by the Commission and approved by the U.S. Small Business Administration ("SBA").

[1] *See* 47 C.F.R. §§ 1.415 and 1.419.

[2] *Public Notice*, "Consumer and Governmental Affairs Bureau Seeks Comment on Small Business Exemption from Open Internet Enhanced Transparency Requirements," DA 15-731 (rel. June 22, 2015) ("*Public Notice*").

[3] *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015) ("*2015 Order*").

Discussion

It is rare for the record in any Commission proceeding to reflect unanimous support for a regulatory position, but that is the case here – every party that filed Comments addressing the small business exemption urged the Commission to make its temporary exemption permanent.[4]

[4] *See, e.g.*, Comments of The Wireless Internet Service Providers Association, GN Docket No. 14-28 (filed Aug. 5, 2015) ("WISPA Comments") at 2 ("ending the exemption would impose serious and unnecessary costs and burdens on small broadband Internet service providers and their customers"); Comments of The American Cable Association on the Small Business Exemption from Open Internet Enhanced Transparency Requirements, GN Docket No. 14-28 (filed Aug. 5, 2015) ("ACA Comments") at 2 ("enhanced requirements…are sufficiently burdensome for providers with fewer than 100,000 broadband connections to warrant the Bureau making the exemption permanent"); Comments of Alaska Communications Systems, GN Docket No. 14-28 (filed Aug. 5, 2015) at 1 (supporting extension of the small provider exemption, "particularly in areas where there no dominant BIAS provider"); Comments of CTIA—The Wireless Association®, GN Docket No. 14-28 (filed Aug. 5, 2015) at 2 ("CTIA Comments") ("Permanently exempting smaller providers…will more appropriately reduce the regulatory burdens on those entities that will be most significantly affected by enhanced transparency rules"); Comments of the Education and Research Consortium of the Western Carolinas, GN Docket No. 14-28 (filed Aug. 5, 2015) at 4 (urging Commission to maintain an exemption for small providers because "the enhanced disclosure requirements would impose unnecessary and significant burdens and provide little benefit to its customers."); Comments of Gogo Inc., GN Docket No. 14-28 (filed Aug. 5, 2015) at 6 ("Gogo Comments") ("Because the disproportionate impact cannot be overcome in the short term, the Commission should maintain the exemption from these requirements"); Comments of GVNW Consulting, Inc., GN Docket No. 14-28 (filed Aug. 5, 2015) at 1 (exemption "should be preserved as currently included in the Open Internet Order" (citation omitted)); Comments of NTCA—The Rural Broadband Association, GN Docket No. 14-28 (filed Aug. 5, 2015) at iii ("the burden of the enhancements outweighs any potential benefits that may accrue to those whom the reported data of small companies would be directed, and therefore urges the Commission to sustain the exemption and make it permanent"); Comments of The Rural Broadband Provider Coalition, GN Docket No. 14-28 (filed Aug. 5, 2015) at 10 ("RBPC Comments") ("Without a permanent small business exemption, the enhanced transparency rule would require small and rural broadband providers to invest significant money, time, resourced and personnel…toward the development and implementation of costly new programs and systems"); Comments of The Small Rural Carriers, GN Docket No. 14-28 (filed Aug. 5, 2015) at 1(supporting "permanent exemption from the enhanced transparency rules for small businesses, so they may continue to focus on their limited resources on deploying affordable, high quality broadband services in rural areas"); Comments of The United States Telecom Association, GN Docket No. 14-28 (filed Aug. 5, 2015) at 2 ("Commission therefore should extend permanently the small business exemption so that smaller broadband providers are not unduly and unnecessarily burdened."); Comments of The Wireless

And although the Commission touts the millions of commenters that "inform[ed]" its contested decision to adopt "strong, sustainable rules, grounded in multiple sources of our legal authority,"[5] not a single party supports the sunset of the temporary exemption in response to the *Public Notice*. The uncommon, universal support from every major trade association representing broadband providers, coupled with the demonstrable indifference of consumers who apparently do not object, gives the Commission no choice – it must follow the record and make the exemption permanent. The Commission should make this clear by amending the language of Section 8.3 of its rules immediately.

In defining what constitutes a "small provider" eligible for the exemption, no commenter argues that the ceiling should be any lower than the current standard of 100,000 connections.[6] WCAI suggests that the cap be increased to 250,000 connections,[7] and CTIA recommends that the Commission consider an entity to be a "small business" if it meets either of the two metrics already approved by the SBA for small telecommunications carriers – it is a non-dominant

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Communications Association International, GN Docket No. 14-28 (filed Aug. 5, 2015) at 6 ("WCAI Comments") ("small BIAS providers will be forced to expend a substantial amount of time and resources to comply, resources that they either do not have or could be better spent on deploying, maintaining and improving their networks"); Comments of WTC—Advocates for Rural Broadband, GN Docket No. 14-28 (filed Aug. 5, 2015) at 1("WTA requests that the interim small business exemption from the enhanced transparency requirements be made permanent for providers serving 100,000 or fewer broadband connections").

[5] *2015 Order* at 5604.

[6] For example, WISPA, ACA, Gogo, GVNW Consulting, Inc. and the Rural Broadband Provider Coalition agree that the exemption *should at least* include providers that meet the 100,000 or fewer broadband connection threshold. *See* WISPA Comments at 2; ACA Comments at 11; Gogo Comments at 1, 11; GVNW Comments at 1, 6-7; and RBPC Comments at 1.

[7] *See* WCAI Comments at 2, 9.

provider with 1,500 or fewer employees,[8] *or* it has 500,000 or fewer subscribers.[9] WISPA did not object to retaining the existing cap, but now believes that the Commission should use the existing, approved SBA size standards as suggested by CTIA. WISPA thus supports adoption of a standard that would exempt broadband providers serving 500,000 or fewer connections, a standard the Commission previously used to exempt carriers from certain E911 compliance requirements.[10] And, like the existing 100,000 connection cap, the Commission can easily monitor compliance by reviewing the small provider's Form 477 to determine whether it serves 500,000 or fewer connections.[11] WISPA does not oppose CTIA's proposal to exempt providers with 1,500 or fewer employees, so long as providers can alternatively qualify for exemption by serving 500,000 or fewer broadband connections.

WISPA expects that the Commission will obtain the required statutory approval from the SBA before setting the eligibility standard for the permanent exemption. The Bureau has invited SBA participation,[12] but as CTIA notes, the Commission apparently has not complied with the Small Business Act by obtaining approval for an alternate size standard, even one that was

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[8] *See* CTIA Comments at 19 (*citing to* 15 U.S.C. § 632; 13 C.F.R. § 121.201).

[9] *See id*. at 19 (*citing to Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, 17 FCC Rcd 14841, 14847-48 ¶¶ 22-24 (2002).

[10] *See id.* at 19-20 ("The Commission has relied on this definition in the past, including when it found that 'Tier III' carriers merited relief from certain new E911 requirements, and when it exempted such carriers from certain number portability and back-up power requirements" (citations omitted)).

[11] *See* WISPA Comments at 14. WISPA expects that the vast majority of its members will, for the foreseeable future, serve 500,000 or fewer connections.

[12] *See Public Notice* at 3.

previously approved by the SBA in a different proceeding. WISPA agrees that the Commission "should use this opportunity to address that shortcoming."[13]

Conclusion

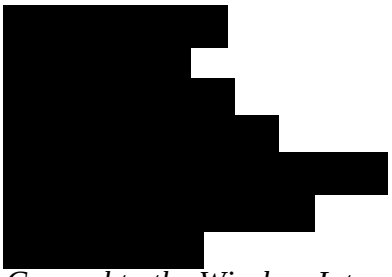
With an uncontroverted record, the Commission must amend Section 8.3 to make permanent the exemption for small provider compliance with the Commission's new and burdensome disclosure obligations. There is also record support to enable providers that meet either of the two SBA metrics to be eligible for the exemption.

Respectfully submitted,

WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

September 9, 2015

By: */s/ Alex Phillips, President*
/s/ Mark Radabaugh, FCC Committee Chair
/s/ Jack Unger, Technical Consultant



Counsel to the Wireless Internet Service Providers Association

[13] CTIA Comments at 21 (citation omitted).

Your submission has been accepted

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Proceeding

Name	Subject
14-28	Protecting and Promoting the Open Internet

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Protecting and Promoting the Open Internet	GN Docket No. 14-28

DECLARATION OF FORBES H. MERCY IN SUPPORT OF MOTION FOR A STAY

1. My name is Forbes H. Mercy, and I am currently President of Washington Broadband, Inc. ("WABB") I have held this position, and have been with WABB for more than 14 years, and an additional eight years introducing our community to the Internet as dial-up. I make this declaration in support of a Motion for a Stay of the FCC's "Open Internet" rules.

2. WABB provides fixed wireless broadband Internet access service to approximately 1,400 retail customers in Yakima County, Washington. Currently, WABB provides that service as an information service that is not subject to regulation under Title II of the Communications Act as a common carrier service, and is considered a small business.

3. I am not a lawyer, but it has been explained to me that, if the FCC's recent Order takes effect, WABB's broadband Internet access service will become subject to common carrier regulation under Title II for the first time, as well as to the FCC's newly announced Internet conduct standard.

4. WABB has no in-house legal department. If the portions of the Order that subject broadband Internet access service to Title II become effective, WABB would need to retain outside counsel in order to determine whether our existing practices with respect to our broadband Internet access service complies with, among other things, the just and reasonable

standards in 47 U.S.C. §§ 201 and 202, the privacy requirements in 47 U.S.C. § 222, and the disability access requirements in 47 U.S.C. §§ 225, 251(a), and 255. Likewise, if the portions of the Order that create the new Internet conduct standard take effect, I would need to hire lawyers to help determine whether WABB's current or future business practices violate the FCC's newly announced standard, which prohibits any practice that "unreasonably interfere[s] with or unreasonably disadvantage[s] our end users' ability to select, access, and use broadband Internet access service of the lawful Internet content, applications, services, or devices of their choice, or any edge providers' ability to make lawful content, applications, services, or devices available to end users." Order ¶ 136.

5. The Order includes a "non-exhaustive list" of seven factors that the FCC will use when implementing that standard on a case-by-case basis, making it especially difficult to determine in advance whether any particular current or potential future practice is likely to pass muster under this standard. *See id.* ¶¶ 138-145. Unlike some of our competitors, WABB has never raised prices, uses only unlimited data plans, and charges cancelation fees that decline as the contract period progresses without early termination fees. I worry that our honest attempt to provide stable pricing and service with a local responsiveness will be undermined by the FCC, which may outlaw certain practices at the expense of customers who cannot afford increases in fees.

6. Furthermore, if the Order takes effect, I understand that any user or edge provider, including some of the world's largest companies, could file a complaint before the FCC or a lawsuit in federal court claiming, potentially as part of a class action, that WABB's practices with respect to its broadband Internet access service violate one of those statutory provisions or the Internet conduct standard. These additional compliance and potential litigation costs are

material to WABB and will stifle our ability to spend money on other priorities, such as expanding and improving service in areas that may have only slow satellite broadband.

7. As I understand it, while the FCC will, for the first time, impose section 222(a) privacy obligations on WABB, the FCC did not adopt specific rules governing how that statute would apply to broadband Internet access services. I further understand the FCC has in the past imposed significant penalties on providers that, in the FCC's view, failed to protect adequately customer information. WABB is committed to protecting its customers' privacy, and has systems in place to do so. If the Order becomes effective, however, WABB will have to spend considerable sums to determine, as best it can, the extent to which its current customer information systems satisfy the requirements of section 222(a) with respect to our broadband services in the absence of specific regulations and, potentially, have to make substantial and costly modification to its systems.

8. I further understand that WABB will be subject, for the first time, to the restrictions found in section 222(c) regarding Customer Proprietary Network Information, or CPNI. As is the case with section 222(a), I understand the FCC made section 222(c) applicable to WABB's broadband Internet access services but did not provide detailed guidance on how those requirements would apply in this context. As a result, WABB will need to engage legal counsel to determine the extent to which its current use of broadband-related CPNI may be prohibited by section 222(c) and will need to determine what systems and operational practices must be put in place to ensure our marketing practices comply with the statute. Given these costs and the uncertainty as to how section 222(c) applies here, WABB will also need to consider deferring use of broadband-related CPNI altogether until the FCC provides sufficient guidance as to the applicable requirements. That alternative, however, eliminates revenues that WABB

currently earns from use of broadband CPNI in marketing other services, such as our interconnected VoIP service, and deprives broadband customers of information regarding a service they may want to purchase.

9. The general uncertainty about how the FCC will exercise the broad authority it has claimed under Title II, including the Internet conduct standard, are also material to WABB's business decisions. It is very difficult to invest in new or innovative products or business plans without knowing whether the FCC will deem aspects of the planned service unlawful.

10. The new costs and uncertainty the Order would impose if Title II provisions and the Internet conduct standard were to apply would have a direct impact on WABB's investment decisions. WABB has aggressively constructed new towers that cover small areas based on a return on investment model of light density return. Because of the compliance costs and enforcement and litigation risks described above, WABB has decided to scale back expansion to new, unserved or underserved areas and focus on more urban/suburban areas where return on investment will be faster and greater. This violates our own promise to serve our entire community, including those areas that are most in need, makes WABB less profitable, deprives those who expected faster Internet, and slows our ability to extend uniform service. In addition, any slow-down of expansion gives unfair advantage to large operators who can afford the potential legal requirements and who will continue to expand into areas where we could have provided service and badly-needed competition.

11. Consumers will be directly harmed by our changed business model. WABB would be unwilling to serve areas that it would otherwise want to serve because we will be forced to sacrifice investment in broadband expansion to new areas for legal and compliance costs. WABB will also be harmed through the lost customers, lost revenue and reduced

customer goodwill that would result from investments that would have been viable but for the Order.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Forbes H. Mercy

April 30, 2015

January 10, 2016

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: GN Docket No. 14-28: Protecting and Promoting the Open Internet

Dear Ms. Dortch:

Aristotle.Net Inc. ("Aristotle"), hereby respectfully requests the Commission to defer any action on new Open Internet rules until it has had an opportunity to assess the impact on small businesses and to give Congress an opportunity to adopt legislation.

Aristotle is the largest WISP in Arkansas and has been in business since 1995, offering Internet access and connectivity – both dial-up and wireless broadband – managed website hosting, domain hosting and email filtering and hosting. Located in the heart of downtown Little Rock, Aristotle has a dedicated staff of 11 people and serves approximately 700 customers in rural communities surrounding Little Rock.

The Open Internet debate at the FCC has focused on large ISPs and large edge providers, which have different views on whether the existing "light-touch" rules adopted in 2010 are sufficient, or whether more heavy-handed, utility-style regulation is necessary. Lost in this discussion is how any new rules would affect small businesses, like mine, that serve consumers in rural areas and/or suburbs where consumers have little or no choice. For example, the options in Arkansas communities such as Scott, East End, Shannon Hills, and Alexander are satellite, dial-up, and Aristotle's fixed wireless broadband while communities such as Otter Creek, Arkansas, only have a very old copper system and have requested that Aristotle bring them broadband Internet service. Because these communities are small, the larger providers have shown little interest in bringing broadband to them. Small business providers such as Aristotle are these communities best hope.

Aristotle uses both licensed and unlicensed spectrum to serve rural Arkansas and does not receive universal service fund support. Aristotle believes in an Open Internet in which lawful content is not blocked, and we do not now nor have we ever received payment for prioritizing a particular content provider's traffic. The FCC should bear these facts in mind as they look to implementing Open Internet

principles. A "one size fits all" regulatory regime is inappropriate, as it would fail to take into account the needs of small Internet providers, especially in the absence of evidence that these small providers are "bad actors" with respect to Open Internet principles and network management. For my small business, the increase in disclosure and reporting obligations would be burdensome, and we are ill-equipped to meet the incumbent risk of enforcement in the event of non-compliance. Increased regulatory obligations will necessarily increase our costs, which costs we have to pass onto our customers. Given the rurality and relative low socio-economic status of our customer base, this will result in injury to those people least able to afford these additional costs.

Ultimately, application of Title II to broadband providers will lead to uncertainty and a chilling of investment and will serve as a barrier to entry into the broadband market. It is unclear what process the FCC will use to forebear from enforcing Title II provisions, and it is unclear which Title II rules will remain at the end of the day. This uncertainty will lead to litigation. Ultimately, Title II will discourage broadband deployment.

Therefore, Aristotle requests that the FCC ensure that small businesses are exempted from any new disclosure and reporting obligations and—should the FCC adopt Title II for broadband providers—that small businesses be exempted from all Title II regulations. The FCC has not completed its due diligence on the impact of Title II or other regulation on small broadband providers, and it should delay any rulemaking until this assessment can be completed.

Sincerely,

[redacted]

L. Elizabeth Bowles
President & Chairman of the Board
Aristotle, Inc.