

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

In the Matter of)	
)	
Safeguarding and Securing the Open Internet)	WC Docket No. 23-320
)	
Restoring Internet Freedom)	WC Docket No. 17-108
)	

ORDER DENYING STAY PETITION

Adopted: June 7, 2024

Released: June 7, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On May 31, 2024, USTelecom – The Broadband Association, NCTA – The Internet & Television Association, CTIA – The Wireless Association, the Wireless Internet Service Providers Association, ACA Connects – America’s Communications Association, the Florida Internet & Television Association, MCTA – The Missouri Internet & Television Association, the Ohio Cable Telecommunications Association, the Ohio Telecom Association, and the Texas Cable Association (together, Petitioners) filed a petition for the Federal Communications Commission (Commission) to stay the *Declaratory Ruling, Order, Report and Order, and Order on Reconsideration (2024 Open Internet Order or Order)* in the above-captioned proceedings pending judicial review.¹ For the reasons discussed below, we deny Petitioners’ stay request.

II. BACKGROUND

2. The Commission’s *2024 Open Internet Order* classifies broadband Internet access service (BIAS) as a telecommunications service under Title II of the Communications Act of 1934 (the Act), finding that such classification represents the best reading of the text of the Act, accords with Commission and court precedent, and is justified under the Commission’s longstanding authority to classify services subject to its jurisdiction.² As the *Order* explains, this classification decision is

¹ *Safeguarding and Securing the Open Internet; Restoring Internet Freedom*, WC Docket Nos. 23-320 and 17-108, Declaratory Ruling, Order, Report and Order, and Order on Reconsideration, FCC 24-52 (rel. May 7, 2024) (*2024 Open Internet Order*); see Joint Petition for Stay of USTelecom – The Broadband Association, NCTA – The Internet & Television Association, CTIA – The Wireless Association, Wireless Internet Service Providers Association, ACA Connects – America’s Communications Association, Florida Internet & Television Association, MCTA – The Missouri Internet & Television Association, Ohio Cable Telecommunications Association, Ohio Telecom Association, and Texas Cable Association, WC Docket Nos. 23-320 and 17-108 (filed May 31, 2024) (Industry Stay Petition).

² See *2024 Open Internet Order* at para. 25. In adopting this classification, the Commission’s action is consistent with the framework previously adopted in 2015 and upheld in full by the D.C. Circuit, see *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5603 (2015) (*2015 Open Internet Order*), aff’d *U.S. Telecom Ass’n v. FCC*, 825 F.3d 674 (D.C. Cir. 2016), reh’g denied, 855 F.3d 381 (D.C. Cir. 2017), cert. denied, *Berninger v. FCC*, 139 S. Ct. 453 (2018) (*USTA*), but subsequently abandoned in 2018, see *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311 (2018), aff’d in part and remanded in part, *Mozilla Corp. v. FCC*, 940 F.3d 1 (D.C. Cir.

(continued....)

supported by the Commission’s statutory obligations and policy objectives as the expert agency for communications services, including the need to safeguard the open Internet, defend national security, promote cybersecurity, advance public safety, monitor network resiliency and reliability, protect consumer privacy and data security, support consumer access to BIAS, and improve disability access.³ The *Order* also reinstates the classification of mobile BIAS as a commercial mobile service.⁴ The *Order* establishes broad, tailored forbearance under section 10 of the Act—including no rate regulation, no tariffing, no unbundling of last-mile facilities, and no cost-accounting rules—in the Commission’s application of Title II to BIAS providers, while maintaining certain authority to account for the changing national security landscape, which together ensure that the regulatory environment protects consumers and achieves other important public interest responsibilities while not unnecessarily stifling investment and innovation.⁵ The *Order* reestablishes a national regulatory approach to protect the open Internet by restoring straightforward, clear rules that prohibit BIAS providers from engaging in blocking, throttling, or paid or affiliated prioritization arrangements.⁶ It also reinstates a general conduct standard that prohibits unreasonable interference or unreasonable disadvantage to consumers or edge providers, as well as enhancements to the transparency rule and a multi-faceted enforcement framework comprised of advisory opinions, enforcement advisories, Commission-initiated investigations, and informal and formal complaints.⁷ The *Order* partially grants and otherwise dismisses as moot several petitions for reconsideration filed in response to the *RIF Remand Order*. The Commission adopted the *Order* on April 25, 2024. A summary of the *Order* was published in the Federal Register on May 22, 2024; it will go into effect (in relevant part) on July 22, 2024.⁸

3. On May 31, 2024, Petitioners filed a petition requesting that the Commission stay the effectiveness of the *Order* pending judicial review. Petitioners principally argue that they are likely to prevail on the merits that the *Order* is unlawful under both the major-questions doctrine and ordinary principles of statutory interpretation.⁹ Petitioners also claim that the *Order* will impose significant, unrecoverable costs once it goes into effect.¹⁰ They assert that the balance of the harms and the public interest support a stay because “[t]he record does not suggest that the rules imposed by the Order are necessary to address significant present or near-term harms to the public,” and that “the public would benefit from stability in the regulatory treatment of the broadband industry pending final determination of the Order’s legality.”¹¹ Petitioners “request that the Commission rule on this stay petition by June 7, 2024, to give [them] time to seek a stay in the court of appeals, if necessary, and to give the court of appeals time to adjudicate the stay before the Order takes effect.”¹²

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2019), *on remand*, 35 FCC Rcd 12328 (2020) (*RIF Remand Order*), *pet. for review pending*, No. 21-1016 (D.C. Cir. filed Jan. 14, 2021).

³ See *2024 Open Internet Order* at para. 27.

⁴ See *id.* at para. 214.

⁵ See *id.* at para. 6.

⁶ See *id.* at para. 443.

⁷ See *id.* at paras. 443, 581.

⁸ See *Safeguarding and Securing the Open Internet; Restoring Internet Freedom*, 89 Fed. Reg. 45404 (May 22, 2024).

⁹ Industry Stay Petition at 2.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 2-3.

¹² *Id.* at 1.

III. DISCUSSION

4. To qualify for the extraordinary remedy of a stay, a petitioner must show that (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm absent the grant of preliminary relief; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest would favor grant of the stay.¹³ A stay is an “intrusion into the ordinary processes of administration and judicial review,” . . . and accordingly “is not a matter of right, even if irreparable injury might otherwise result” to the movant.¹⁴ The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.¹⁵ Petitioners have failed to meet that burden.

A. Petitioners Have Not Shown They Are Likely to Prevail on the Merits

5. To show likelihood of success on the merits, a petitioner must make a “strong showing” that they are likely to succeed;¹⁶ a “mere possibility of relief” is insufficient.¹⁷ As the D.C. Circuit has recognized, “[w]ithout such a substantial indication of probable success, there would be no justification for . . . intrusion into the ordinary processes of administration and judicial review.”¹⁸ Petitioners principally assert that they will prevail on the merits because the Commission’s classification of BIAS as a Title II telecommunications service is a major question and because, they contend, the Commission lacks clear congressional authorization for its reclassification.¹⁹ But in support of these arguments, Petitioners merely repeat arguments that were already addressed in the *Order* without refuting the *Order*’s conclusions.

6. To begin with, Petitioners jump to challenging the Commission’s classification decision under the major-questions doctrine without addressing the *Order*’s lengthy explanation for why the Commission’s understanding of broadband Internet access service as a “telecommunications service,” not an “information service,” reflects the best reading of the text, structure, and context of those statutory terms.²⁰ Because the *Order* simply follows the best reading of the statute, the major-questions doctrine should not “come[] into play in this context at all.”²¹

7. For the reasons the Commission described in the *Order*, Petitioners’ arguments for why the Commission’s classification decision should be analyzed under the major-questions doctrine are not persuasive.²² In arguing that Title II classification “would ‘bring about an enormous and transformative expansion’ in the Commission’s ‘regulatory authority,’”²³ Petitioners ignore that “BIAS providers have previously been regulated under Title II,” including from 2015 to 2018, as well as the scope of

¹³ See *LightSquared Technical Working Group Report*, Order Denying Motion for Stay, IB Docket No. 11-109, 36 FCC Rcd 1262, 1266, para. 8 (2021) (*Ligado Stay Denial Order*) (citing *Nken v. Holder*, 556 U.S. 418, 425-26 (2009)).

¹⁴ *Nken*, 556 U.S. at 427 (internal citations omitted).

¹⁵ *Ligado Stay Denial Order*, 36 FCC Rcd at 1266, para. 8.

¹⁶ *Nken*, 556 U.S. at 426 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

¹⁷ *Nken*, 556 U.S. at 434 (internal citations omitted).

¹⁸ *VA Petroleum Jobbers Ass’n v. Federal Power Comm’n*, 259 F.2d 921, 925 (D.C. Cir. 1958) (*VA Petroleum Jobbers*).

¹⁹ Industry Stay Petition at 6.

²⁰ See 2024 *Open Internet Order* at Section III.B.

²¹ *Id.* at para. 253; see also *id.* at paras. 252-264 (explaining further why the major-questions doctrine is not implicated here).

²² See *id.* at paras. 257-64.

²³ Industry Stay Petition at 6 (quoting *Utility Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014)).

forbearance adopted in the *Order*.²⁴ Likewise, Petitioners' characterization of the economic and political significance of the Commission's action as "staggering" is exaggerated because they make general statements about the economic value of the broadband industry, the importance of the Internet, and political debates about Commission authority, rather than specific claims about the effect of the *Order*.²⁵ Petitioners also repeat previous arguments regarding the Commission's post-1996 Act treatment of "Internet access services"²⁶ without addressing the *Order*'s extensive discussion of Commission and court precedent that contradicts that argument.²⁷ Finally, Petitioners' claim that the *Order* "strays into areas well outside the Commission's 'comparative expertise'"²⁸ because it takes account of national security considerations while ignoring not only that "the proper regulatory classification of broadband falls squarely within the Commission's wheelhouse,"²⁹ but also that the Commission has "statutory responsibilities to safeguard national security and law enforcement," as courts have repeatedly recognized.³⁰

8. Even if a court were to analyze the *Order* under the major-questions doctrine, moreover, the Commission explained why its authority to classify and regulate broadband is, nonetheless, sufficiently clear.³¹ As the *Order* shows, the Commission has a long history of classifying broadband services and those classification decisions have been consistently upheld in court.³² Petitioners fail to refute the *Order*'s explanations, and they do not make a compelling case that BIAS is best classified as an information service.³³ Contrary to Petitioners' contention,³⁴ the Commission's forbearance action does not undermine its classification decision. As the *Order* explains, "broad forbearance where justified by the statutory criteria . . . is entirely compatible with the overall legal framework Congress enacted in the 1996 Act,"³⁵ and Title II classification with a highly similar forbearance framework has already been once upheld as a valid exercise of authority by the D.C. Circuit.³⁶ Likewise, the *Order*'s treatment of mobile BIAS also does not support Petitioners' claim that BIAS is best classified as an information service.³⁷ That argument relies on the contention that mobile BIAS is not interconnected with the "public switched

²⁴ See *2024 Open Internet Order* at paras. 18, 257, 384.

²⁵ See Industry Stay Petition at 7 (citing *Biden v. Nebraska*, 143 S. Ct. 2355, 2373 (2023) and several of Petitioners comments in the record); *2024 Open Internet Order* at para. 257.

²⁶ Industry Stay Petition at 7.

²⁷ See *2024 Open Internet Order* at Section III.C; see also *id.* at paras. 255, 259 (explaining further why Petitioners' invocation of the major-questions doctrine on this basis is unpersuasive).

²⁸ Industry Stay Petition at 7.

²⁹ *2024 Open Internet Order* at para. 260; see *id.* at paras. 238-242, 261.

³⁰ *2024 Open Internet Order* at para. 31 & n.73; see, e.g., *Huawei Techs. USA, Inc. v. FCC*, 2 F.4th 421, 439-40, 443 (5th Cir. 2021); *Hikvision USA, Inc. v. FCC*, 97 F.4th 938, 948 (D.C. Cir. 2024); *Pac. Networks Corp. v. FCC*, 77 F.4th 1160, 1164 (D.C. Cir. 2023).

³¹ See *2024 Open Internet Order* at para. 264; see also *id.* at Section III.B.

³² See *2024 Open Internet Order* at Section III.C.2 (showing that the Commission's broadband service classification decisions have been upheld in *National Cable & Telecommunications Ass'n et al. v. Brand X Internet Services*, 545 U.S. 967 (2005), *USTA*, 825 F.3d 674, and *Mozilla Corp. v. FCC*, 940 F.3d 1 (D.C. Cir. 2019)); see also *id.* at para. 18.

³³ See Industry Stay Petition at 8-9.

³⁴ Industry Stay Petition at 9.

³⁵ *2024 Open Internet Order* at para. 319.

³⁶ See *id.* at para. 18.

³⁷ Industry Stay Petition at 9.

network,”³⁸ ignoring that the Commission has the authority to define that term, as it did in the *Order*, to reflect the current technological landscape.³⁹ Finally, Petitioners’ argument that “other statutes enacted around the time of the 1996 Act demonstrate that Congress viewed Internet access service as an information service” fails to grapple with the Commission’s contrary determination in the *Order*.⁴⁰

9. Petitioners thus have failed to establish that their challenges to the *Order* are likely to succeed on the merits.

B. Petitioners Have Failed to Show They Will Suffer Irreparable Harm

10. Petitioners likewise fail to demonstrate that they would suffer imminent and irreparable harm without a stay. To establish irreparable harm, a petitioner must show that it will suffer injury that is “‘both certain and great,’ ‘actual and not theoretical,’ ‘beyond remediation,’ and ‘of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm.’”⁴¹ In doing so, the petitioner must present actual evidence to “substantiate [its] claim” of injury.⁴² “‘Bare allegations of what is likely to occur are of no value’ under this factor, because we ‘must decide whether the harm will *in fact* occur.’”⁴³ Petitioners have not met their burden to make and substantiate these showings.

11. Petitioners allege that they will be harmed if the *Order* is allowed to take effect while litigation is pending. But Petitioners offer only conclusory assertions that their members “will be forced to delay or forgo valuable new services, incur prohibitive compliance costs, and pay more to obtain capital,”⁴⁴ without any concrete evidence to substantiate that claim, let alone evidence showing that such harm is certain and great, actual and not theoretical, beyond remediation, and—of particular importance—imminent. Indeed, they do not identify in a specific and concrete way any present or imminent practices they will be forced to cease when the *Order* takes effect. Absent such evidence, Petitioners’ claims are entirely speculative and conclusory. Likewise, though Petitioners include a perfunctory assertion that great and irreparable harm is evident from the period when they were subject to the substantially similar framework in the *2015 Open Internet Order*,⁴⁵ they fail to present any cogent evidence that such harm occurred. On the contrary, the *Order* addressed and debunked claims that the *2015 Open Internet Order* harmed BIAS providers or the Internet ecosystem.⁴⁶

12. Petitioners’ prognostications about irreparable harm are also undermined by other factual realities. For instance, although Petitioners assert that their members will forgo some (unspecified) value-creating offerings because the general conduct rule’s case-by-case adjudication is vague,⁴⁷ they fail to acknowledge that the current regulatory regime likewise subjects them to case-by-case scrutiny under the antitrust and consumer protection oversight of the Federal Trade Commission, Department of Justice, and

³⁸ Industry Stay Petition at 9.

³⁹ See *2024 Open Internet Order* at paras. 216-24.

⁴⁰ Industry Stay Petition at 10; see *2024 Open Internet Order* at paras. 248-49.

⁴¹ *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015) (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006)); see *Ligado Stay Denial Order*, 36 FCC Rcd at 1267, para. 10.

⁴² *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985).

⁴³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Order, CC Docket No. 96-98, 11 FCC Rcd 11754, 11757, para. 8 (1996) (quoting *Wis. Gas*, 758 F.2d at 674).

⁴⁴ Industry Stay Petition at 10.

⁴⁵ Industry Stay Petition at 10.

⁴⁶ See *2024 Open Internet Order* at Sections III.H and V.H.

⁴⁷ Industry Stay Petition at 11.

state attorneys general,⁴⁸ or that they are already subject to similar obligations under state net-neutrality laws.⁴⁹ BIAS providers also were subject to the Commission’s case-by-case oversight during the periods that the *2010 Open Internet Order* and *2015 Open Internet Order* were in effect,⁵⁰ yet—as noted above—they have not shown that those periods proved disruptive. Petitioners’ argument also discounts that, to the extent that an entity is able to demonstrate a positive use case and the costs associated with a ban on such practices, the Commission may waive its rule prohibiting paid or affiliated prioritization.⁵¹

13. For similar reasons, we are not persuaded that Petitioners’ members will incur “compliance costs that are qualitatively and quantitatively different from those associated with typical regulation.”⁵² The regulatory regime adopted in the *Order* is not atypical. Beyond the fact that a number of telecommunications carriers have been subject to Title II of the Act, BIAS providers have been largely subject to standards consistent with the bright-line conduct rules adopted in the *Order* since 2005 and have twice been subject to oversight akin to the general conduct rule and the type of enforcement framework adopted in the *Order*.⁵³ Furthermore, the Commission expressed its predictive judgment that any “compliance costs are likely to be small and are outweighed by the benefits of reclassification that have been identified in [its] analysis,” explained the basis for this view, and noted its intent to assess incremental compliance costs, if any, as a part of any new rules that it might adopt.⁵⁴ Finally, as the *Order* notes, its broad forbearance from Title II provisions will mitigate costs and burdens on BIAS providers.⁵⁵

14. Nor are we persuaded that a stay is warranted due to “higher capital costs.”⁵⁶ To the extent petitioners contend that “the threat of future regulation” will “make it harder for the industry to raise capital,”⁵⁷ grant of a temporary stay pending review would provide them with no relief, as the possibility of the *Order* being upheld and the rules taking effect will persist through the completion of judicial review. And insofar as petitioners are concerned with possible future actions *not* taken in this *Order*, such concerns are wholly speculative, and any future actions would first have to undergo an appropriate administrative process and be subject to judicial review.⁵⁸

⁴⁸ See *2024 Open Internet Order* at paras. 23, 487-89, 640.

⁴⁹ See, e.g., *ACA Connects v. Bonta*, 24 F.4th 1233 (9th Cir. 2022) (upholding California’s state net-neutrality law).

⁵⁰ Under the *2010 Open Internet Order*, all fixed BIAS providers were subject to a case-by-case prohibition on “unreasonable discrimination.” See *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Notice of Proposed Rulemaking, 29 FCC Rcd 5561, 5600-01 paras. 113-14 & n.236 (2014) (demonstrating that the prohibition against unreasonable discrimination was in effect for two years from its implementation until the D.C. Circuit’s holding in the *Verizon* decision).

⁵¹ See *2024 Open Internet Order* at paras. 502-10 (adopting a rule prohibiting paid or affiliated prioritization but noting that the Commission “may waive the ban . . . if the petitioner demonstrates that the practice would provide some significant public interest benefit and would not harm the open nature of the Internet”); *id.* at para. 644 (“[W]hile we recognize that there may also be positive use cases of paid prioritization and some costs associated with a ban on such practices, we find that such positive use cases may be addressed through the waiver rule we adopt.”).

⁵² Industry Stay Petition at 12.

⁵³ See *2024 Open Internet Order* at Section II.

⁵⁴ See *id.* at paras. 638-40.

⁵⁵ See *id.* at para. 641.

⁵⁶ Industry Stay Petition at 13.

⁵⁷ Industry Stay Petition at 13.

⁵⁸ Cf. *2024 Open Internet Order* at para. 641 (observing in response to speculation about “regulatory creep” that “any changes to this framework or future rules the Commission considers adopting under the Title II framework

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15. For the foregoing reasons, we conclude that the Petitioners have failed to demonstrate any imminent, actual irreparable harm resulting from the *Order*.

C. Petitioners Have Not Shown that A Stay Is In the Public Interest and Would Not Harm Other Parties

16. Staying the *Order* is not in the public interest, as a stay would inhibit or delay the Commission's ability to fulfill policy obligations and objectives necessary to protect consumers.

17. Petitioners' primary argument that granting a stay would benefit the public interest is that "[p]ausing the *Order* would ensure that ISPs continue to invest in network improvement and offer innovative new programs that benefit consumers, rather than divert those efforts toward compliance or forgo such offerings altogether."⁵⁹ But that contention rests on Petitioners' unsubstantiated claims that BIAS providers will in fact be deterred from executing their (unspecified) investment and development plans and that allowing the *Order* to take effect will cause them to incur compliance costs.

18. By contrast, granting a stay would be contrary to the public interest because it would delay and otherwise inhibit the Commission's ability to protect consumers. A stay would stall the application of rules designed to ensure that all consumers across the country receive the same open Internet protections. A stay would also deprive consumers of privacy protections under section 222 of the Act and would deprive broadband-only providers of important statutory protections under sections 224, 253, and 332 of the Act for pole attachments and other infrastructure essential for reliable, timely, and affordable deployment of broadband service.⁶⁰ Additionally, a stay would risk hindering the Commission's ability to pursue other policy obligations and objectives that will benefit consumers, particularly those related to national security and public safety.⁶¹ These and other efforts may need to be shelved or modified if the requested stay were granted.

19. Petitioners also suggest that the Commission should grant a stay to maintain the status quo on the basis that this will provide stability pending judicial review.⁶² But absent the required showings both of likelihood of success and of irreparable harm, bare appeals to preservation of the status quo are not sufficient ground for granting a stay, or else all agency regulatory action would qualify for such extraordinary relief.⁶³ Petitioners also have not shown that allowing the *Order* to go into effect will actually destabilize the status quo. As the *Order* explains, "in the period since Congress enacted the 1996 Act, the Commission's treatment of broadband service has wavered between Title II and Title I and

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would be subject to notice and comment and an analysis of the record, including any purported costs, prior to adoption").

⁵⁹ Industry Stay Petition at 13.

⁶⁰ See 2024 *Open Internet Order* at paras. 68, 70-82.

⁶¹ See *id.* at paras. 30-66, 451-63. For instance, the Commission recently adopted a Notice of Proposed Rulemaking that proposes provisions applicable to BIAS providers designed to improve the security of the Border Gateway Protocol routing. See *Reporting on Border Gateway Protocol Risk Mitigation Progress; Secure Internet Routing*, PS Docket Nos. 24-146 and 22-90, Notice of Proposed Rulemaking, FCC 24-62, at para. 3 (rel. June 7, 2024). The Commission is also considering whether BIAS providers should be required to report in the Network Outage Reporting System (NORS) and Disaster Information Reporting System (DIRS), which may be particularly important as the country enters hurricane season. See *Resilient Networks; Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket Nos. 21-346 and 15-80; ET Docket No. 04-35, Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 24-5, at para. 5 (rel. Jan. 26, 2024).

⁶² See Industry Stay Petition at 5, 13-14.

⁶³ Cf. *Ligado Stay Denial Order*, 36 FCC Rcd at 1271 para. 18 ("[W]ithout such a substantial indication of probable success, there would be no justification for . . . intrusion into the ordinary processes of administration and judicial review." (quoting *VA Petroleum Jobbers*, 259 F.2d at 925)).

remained unsettled.”⁶⁴ And “even during much of the Title I era, the Commission repeatedly sought to enforce policies that closely resemble the open Internet rules” the *Order* adopts.⁶⁵ Petitioners gesture at new potential initiatives without providing detail about what they are and how the *Order* could contravene those initiatives. Thus, allowing the *Order* to go into effect pending litigation will not destabilize the status quo; it is consistent with the status quo.

20. Because a stay stands to hinder the Commission from fulfilling its policy goals and responsibilities, a stay would also harm other parties.⁶⁶ Petitioners argue that consumers would not be harmed by a stay because, they say, they currently do not block, throttle, or discriminate among lawful content (even though, in the same filing, they argue the *Order* would hinder unspecified future initiatives they wish to take apparently in violation of the rules).⁶⁷ But the *Order* described at length how its decisions advanced various important policies that serve the public interest.⁶⁸ To highlight some examples, if the open Internet rules do not go into effect, consumers will be harmed if they purchase services from a BIAS provider that does not in fact already follow the full scope of the open Internet rules, and such conduct may also cause harm to edge providers. Petitioners also altogether ignore other harms to parties outside the scope of the open Internet rules. For instance, consumers will be harmed by the delay in receiving the Commission’s affirmative privacy protections, and broadband-only providers will be harmed by the delay in restoration of their pole attachment rights and deployment protections.

21. For all these reasons, we find that Petitioners have not shown that a stay is in the public interest and would not harm other parties.

IV. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(i), 4(j), 5, 201, 202, and 303(r) and of the Communications Act of 1934, as amended, and the authority contained in section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 154(i)-(j), 155, 201, 202, 303(r), 1302, and the authority delegated pursuant to sections 0.91 and 0.291 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, this Order Denying Stay Petition in WC Docket Nos. 23-320 and 17-108 IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

⁶⁴ 2024 *Open Internet Order* at para. 255. Evidence of ongoing uncertainty is apparent, for example, from the unresolved nature of the *RIF* proceeding, as the *RIF Remand Order* has been subject to petitions for review that remain pending before the D.C. Circuit and had also been subject to unresolved petitions for reconsideration until their resolution in the *Order*. *Id.* at para. 685.

⁶⁵ *Id.* at para. 255.

⁶⁶ See *Nken*, 556 U.S. at 435 (“[T]he traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest. These factors merge when the Government is the opposing party.”).

⁶⁷ Industry Stay Petition at 11, 14.

⁶⁸ See, e.g., 2024 *Open Internet Order* at Sections III.A and V.A.