

No. 24A_____

IN THE
SUPREME COURT OF THE UNITED STATES

NEW YORK STATE TELECOMMUNICATIONS ASSOCIATION, INC., CTIA – THE WIRELESS
ASSOCIATION, ACA CONNECTS – AMERICA’S COMMUNICATIONS ASSOCIATION,
USTELECOM – THE BROADBAND ASSOCIATION, NTCA – THE RURAL BROADBAND
ASSOCIATION, AND SATELLITE BROADCASTING AND COMMUNICATIONS ASSOCIATION,
ON BEHALF OF THEIR RESPECTIVE MEMBERS,
Applicants,

v.

LETITIA A. JAMES, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF NEW YORK,
Respondent.

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH
TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**

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July 11, 2024

PARTIES TO THE PROCEEDINGS BELOW

Applicants New York State Telecommunications Association, Inc., CTIA – The Wireless Association, ACA Connects – America’s Communications Association, USTelecom – The Broadband Association, NTCA – The Rural Broadband Association, and Satellite Broadcasting and Communications Association, on behalf of their respective members, were the plaintiffs in the district court and the appellees in the court of appeals.

Respondent Letitia A. James, in her official capacity as Attorney General of New York, was the defendant in the district court and the appellant in the court of appeals.

RULE 29.6 STATEMENTS

Pursuant to this Court’s Rule 29.6, applicants New York State Telecommunications Association, Inc., CTIA – The Wireless Association, ACA Connects – America’s Communications Association, USTelecom – The Broadband Association, NTCA – The Rural Broadband Association, and Satellite Broadcasting and Communications Association, on behalf of their respective members, state the following:

ACA Connects – America’s Communications Association. ACA Connects – America’s Communications Association (“ACA Connects”) states that it has no parent corporation, and no persons, associations of persons, firms, partnerships, limited liability companies, joint ventures, corporations, or any similar entities have a 10 percent or greater ownership interest in ACA Connects.

CTIA – The Wireless Association. CTIA – The Wireless Association (“CTIA”) states that it has no parent corporation, and no persons, associations of persons, firms, partnerships, limited liability companies, joint ventures, corporations, or any similar entities have a 10 percent or greater ownership interest in CTIA.

New York State Telecommunications Association, Inc. New York State Telecommunications Association, Inc. (“NYSTA”) states that it has no parent corporation, and no persons, associations of persons, firms, partnerships, limited liability companies, joint ventures, corporations, or any similar entities have a 10 percent or greater ownership interest in NYSTA.

NTCA – The Rural Broadband Association. National Telecommunications Cooperative Association d/b/a NTCA – The Rural Broadband Association (“NTCA”) states that it has no parent corporation, and no persons, associations of persons, firms, partnerships, limited liability companies, joint ventures, corporations, or any similar entities have a 10 percent or greater ownership interest in NTCA.

Satellite Broadcasting and Communications Association. Satellite Broadcasting and Communications Association discloses that no publicly held corporation owns 10 percent or more of its stock.

USTelecom – The Broadband Association. USTelecom – The Broadband Association (“USTelecom”) states that it has no parent corporation, and no persons, associations of persons, firms, partnerships, limited liability companies, joint ventures, corporations, or any similar entities have a 10 percent or greater ownership interest in USTelecom.

RELATED CASES

New York State Telecomms. Ass'n, Inc., et al. v. James, 544 F. Supp. 3d 269 (E.D.N.Y. June 11, 2021) (No. 2:21-cv-2389 (DRH) (AKT))

New York State Telecomms. Ass'n, Inc., et al. v. James, No. 2:21-cv-2389 (DRH) (AKT), ECF No. 34 (E.D.N.Y. Aug. 10, 2021) (district court's amended judgment)

New York State Telecomms. Ass'n, Inc., et al. v. James, 2021 WL 4472666 (2d Cir. Aug. 25, 2021) (No. 21-1603) (withdrawing initial appeal)

New York State Telecomms. Ass'n, Inc., et al. v. James, 101 F.4th 135 (2d Cir. Apr. 26, 2024) (No. 21-1975)

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH
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UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**

To the Honorable Sonia Sotomayor, Associate Justice of the United States Supreme Court and Circuit Justice for the Second Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.3 of the Rules of this Court, applicants New York State Telecommunications Association, Inc., CTIA – The Wireless Association, ACA Connects – America’s Communications Association, USTelecom – The Broadband Association, NTCA – The Rural Broadband Association, and Satellite Broadcasting and Communications Association respectfully request a 60-day extension of time, up to and including September 23, 2024, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

The court of appeals entered its judgment and issued an opinion on April 26, 2024. The court of appeals’ opinion (reported at 101 F.4th 135) is attached hereto as Exhibit A. The memorandum and order of the district court (reported at 544 F. Supp. 3d 269) is attached hereto as Exhibit B. The district court’s amended judgment is attached hereto as Exhibit C. The petition would be due on July 25, 2024, and this application is made at least 10 days before that date. This Court’s jurisdiction would be invoked under 28 U.S.C. § 1254(1).

1. This case presents important questions about whether federal law preempts States from regulating the rates for broadband internet access and other interstate information services. Applicants — trade associations with members

that provide broadband in New York — seek review of the Second Circuit’s ruling dissolving a district court injunction and allowing New York to set a maximum price for consumer broadband. New York enacted that law in 2021, capping the price low-income consumers pay for broadband at \$15 and marking the first time a government has ever attempted to regulate broadband rates. A split panel of the Second Circuit held (over the dissent of Judge Sullivan) that, while federal law forbids the Federal Communications Commission (“FCC”) from subjecting interstate information services to common-carrier regulation, including rate regulation, federal law leaves States free to regulate the rates for those same interstate services.

2. The Second Circuit majority erred because both field and conflict preemption prevent States from regulating broadband prices. In the Communications Act of 1934, Congress asserted exclusive federal control over all interstate communications services. This federal control applies to services Congress treated as common-carrier services and to those it protected from such treatment, such as interstate information services. States cannot engage in rate regulation within that field. The Second Circuit recognized that the Communications Act’s comprehensive regulation of common carriers is field preemptive, *see* 47 U.S.C. §§ 201-203, but wrongly concluded that the absence of similar provisions for interstate information services left the field open for States to regulate the rates of such services.

The Second Circuit majority also found that conflict preemption did not bar enforcement of New York’s law. But under the Telecommunications Act of 1996, telecommunications carriers are to be “treated as a common carrier under this

chapter *only* to the extent that [they are] engaged in providing telecommunications services.” 47 U.S.C. § 153(51). Thus, Congress allowed the FCC to impose common-carrier regulation only on telecommunications services, and not on information services like broadband.* For Congress’s decision to be given effect, the Act must prohibit States — no different from the FCC — from imposing rate regulation. *See Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Bd. of Mississippi*, 474 U.S. 409, 422 (1986); *Northwest Cent. Pipeline Corp. v. State Corp. Comm’n*, 489 U.S. 493, 507 n.8 (1989). Accordingly, New York’s law directly conflicts with Congress’s express prohibition on the FCC subjecting interstate information services such as broadband to common-carrier treatment.

3. The 60-day extension to file a certiorari petition is necessary because undersigned counsel needs the additional time to prepare the petition and appendix in light of other, previously engaged matters in this and other courts, including: (1) a motion to dismiss a third-party complaint in *In re Maui Fire Cases*, S.P. No. 2CSP-23-0000057 (2d Cir. Ct. Haw.), filed on June 26, 2024 and currently set for hearing on August 9, 2024; (2) a mediation statement due before the Federal Communications Commission on July 12, 2024 for a mediation scheduled for August 9, 2024; (3) an *amicus* brief in *Wisconsin Bell, Inc. v. U.S. ex rel. Heath*, No. 23-1127,

* After the Second Circuit ruled, the FCC released an order reclassifying broadband as a common-carrier telecommunications service. *See generally* Declaratory Ruling, Order, Report and Order, and Order on Reconsideration, *Safeguarding and Securing the Open Internet*, WC Docket Nos. 23-230 & 17-108, FCC 24-52 (rel. May 7, 2024), <https://bit.ly/4aexF00>. A motion to stay that order, which is otherwise set to take effect on July 22, 2024, is pending in the Sixth Circuit. *See In re: MCP No. 185 Open Internet Rule (FCC 24-52)*, Nos. 24-7000 et al. (6th Cir.).

currently due August 8, 2024; and (4) an opposition to the petitions for a writ of certiorari in *Nuclear Regulatory Commission v. Texas*, No. 23-1300, and *Interim Storage Partners, LLC v. Texas*, No. 23-1312, currently due on August 21, 2024.

For all these reasons, there is good cause for a 60-day extension of time, up to and including September 23, 2024, within which to file a certiorari petition in this case to review the judgment of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,



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