

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

UNITED STATES TELECOM
ASSOCIATION, et al.,

Petitioners,

v.

FEDERAL COMMUNICATIONS
COMMISSION and UNITED STATES OF
AMERICA,

Respondents.

Case No. 15-1063 (Lead)

*Consolidated with Nos.
15-1078, 15-1086, 15-1090,
15-1091, 15-1092, 15-1095,
15-1099, 15-1117, 15-1128*

**PETITIONER NATIONAL CABLE & TELECOMMUNICATIONS
ASSOCIATION'S STATEMENT OF ISSUES TO BE RAISED**

Pursuant to the Court's Order of April 14, 2015, petitioner National Cable & Telecommunications Association (No. 15-1090) respectfully submits this nonbinding statement of issues to be raised in this case, which concerns review of an order of respondent Federal Communications Commission ("FCC") captioned Report and Order on Remand, Declaratory Ruling, and Order, Protecting and Promoting the Open Internet, GN Docket No. 14-28, FCC 15-24, 80 Fed. Reg. 19,738 (rel. Mar. 12, 2015; published Apr. 13, 2015) (the "Order"):

1. Whether the Order's declaratory ruling reclassifying broadband Internet access service as a "telecommunications service" subject to Title II of the Communications Act of 1934, Act of June 19, 1934, ch. 652, 48 Stat. 1066, codified at 47 U.S.C. § 151 *et seq.*, contravenes the text, structure, and purpose of the Communications Act and controlling precedent of the Supreme Court and this

Court, *see NCTA v. Brand X Internet Servs.*, 545 U.S. 967 (2005); *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014), and is arbitrary and capricious and therefore violates the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2)(A).

2. Whether the Order’s interpretation of general provisions of Title II of the Communications Act, including Sections 201 and 202, to permit regulation regarding subjects addressed by more specific provisions of Title II, violates the Communications Act and is arbitrary and capricious in violation of the APA.

3. Whether the Order’s refusal to forbear from numerous additional provisions of Title II of the Communications Act that impose unjustified burdens on broadband providers violates the Communications Act and is arbitrary and capricious in violation of the APA.

4. Whether the specific rules the FCC adopted, including but not limited to its “Standard for Internet Conduct,” exceed the agency’s authority, are arbitrary and capricious in violation of the APA, or are otherwise contrary to law.

5. Whether the FCC adopted the Order in violation of the APA’s procedural requirements, *see* 5 U.S.C. § 553, by failing to provide notice and an opportunity to comment on critical features of the Order that the FCC ultimately adopted, including among others the scope and basis of reclassification, treatment of interconnection, the “Standard of Internet Conduct,” and the scope and justification of forbearance from various provisions of Title II.

Dated: May 14, 2015

Respectfully submitted,

Rick C. Chessen
Neal M. Goldberg
Michael S. Schooler
NATIONAL CABLE &
TELECOMMUNICATIONS
ASSOCIATION
25 Massachusetts Avenue, N.W.
Suite 100
Washington, D.C. 20001
(202) 222-2445

/s/ Miguel A. Estrada
Miguel A. Estrada
Counsel of Record
Theodore B. Olson
Jonathan C. Bond
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500

Matthew A. Brill
Matthew T. Murchison
Jonathan Y. Ellis
LATHAM & WATKINS LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004
(202) 637-2200

Counsel for Petitioner National Cable & Telecommunications Association

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of May, 2015, I electronically filed the foregoing Statement Of Issues To Be Raised with the Clerk of the Court for the U.S. Court of Appeals for the D.C. Circuit using the CM/ECF system. Service was accomplished by the CM/ECF system on the following counsel for respondents, who are registered CM/ECF users:

David Morris Gossett
Jacob M. Lewis
Richard Kiser Welch
James M. Carr
Federal Communications
Commission
Office of General Counsel
Room 8-A741
445 12th Street, S.W.
Washington, D.C. 20554
(202) 418-1700
david.gossett@fcc.gov
jacob.lewis@fcc.gov
richard.welch@fcc.gov
james.carr@fcc.gov

*Counsel for Respondent Federal
Communications Commission*

Robert J. Wiggers
Nickolai Gilford Levin
Kristen Ceara Limarzi
United States Department of Justice
Antitrust Division, Appellate Section
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2460
robert.wiggers@usdoj.gov
nickolai.levin@usdoj.gov
kristen.limarzi@usdoj.gov

*Counsel for Respondent United States
of America*

/s/ Miguel A. Estrada

Miguel A. Estrada

GIBSON, DUNN & CRUTCHER LLP

1050 Connecticut Avenue, N.W.

Washington, D.C. 20036

(202) 955-8500

mestrada@gibsondunn.com

*Counsel for Petitioner National Cable
& Telecommunications Association*