

**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.

No. 15-1063 and
consolidated cases

STATEMENT OF ISSUES TO BE RAISED

In accordance with this Court's March 24, 2015 Order, petitioner United States Telecom Association submits this nonbinding statement of issues to be raised in this case.

In the order under review,¹ the Federal Communications Commission ("FCC") reversed decades of precedent and reclassified broadband Internet access services as telecommunications services subject to common carrier regulation under Title II of the Communications Act of 1934; asserted authority for the first time to regulate the terms on which broadband Internet access service providers

¹ Report and Order on Remand, Declaratory Ruling, and Order, *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, FCC 15-24 (rel. Mar. 12, 2015) ("*Order*").

interconnect with other Internet Protocol (“IP”) networks; and adopted a series of prophylactic rules, including an amorphous Internet “conduct standard.”

The issues to be raised are:

1. Whether the FCC’s reclassification of broadband Internet access service as a telecommunications service subject to common carrier regulation under Title II violates the terms of the Communications Act of 1934, as amended, and the First and Fifth Amendments to the U.S. Constitution; or is based on an unreasonable interpretation of the statute, is arbitrary and capricious, or is otherwise contrary to law.

2. Whether the FCC’s assertion of authority over the terms on which broadband Internet access providers interconnect with other IP networks, and its classification of that interconnection as a common carrier telecommunications service under Title II violates the terms of the Communications Act of 1934, as amended, and the First and Fifth Amendments to the U.S. Constitution; or is based on an unreasonable interpretation of the statute, is arbitrary and capricious, or is otherwise contrary to law.

3. Whether the specific rules the FCC adopted, including but not limited to its Internet conduct standard, exceed the agency’s authority, are arbitrary and capricious, or otherwise contrary to law.

4. Whether the FCC, in classifying both broadband Internet access service and IP interconnection as telecommunications services subject to common carrier regulation under Title II, and in adopting specific rules pursuant to its assertions of authority over broadband Internet access service providers, violated the notice and comment provisions of the Administrative Procedure Act.

Respectfully submitted,

/s/ Michael K. Kellogg

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April 23, 2015

CERTIFICATE OF SERVICE

I hereby certify that, on April 23, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ Michael K. Kellogg

Michael K. Kellogg