

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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 &
COMMUNICATIONS ASSOCIATION, on
behalf of their respective members,

Plaintiffs,

v.

LETITIA A. JAMES, in her official capacity as
Attorney General of New York,

Defendant.

Case No. 21-cv-2389

**COMPLAINT FOR DECLARATORY JUDGMENT AND
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

Plaintiffs New York State Telecommunications Association, Inc. (“NYSTA”), CTIA – The Wireless Association (“CTIA”), ACA Connects – America’s Communications Association (“ACA Connects”), USTelecom – The Broadband Association (“USTelecom”), NTCA – The Rural Broadband Association (“NTCA”), and Satellite Broadcasting & Communications Association (“SBCA”) (collectively, the “Associations”), bring this suit on behalf of their members for declaratory judgment and preliminary and permanent injunctive relief against Defendant Letitia A. James, in her official capacity as Attorney General of New York, stating as follows:

NATURE OF THE CASE

1. “Today, access [to the Internet] is generally furnished through ‘broadband,’ i.e., high-speed communications technologies.” *Verizon v. FCC*, 740 F.3d 623, 629 (D.C. Cir. 2014). Broadband service “transmits data at much higher speeds” than preexisting technologies, such as dial-up connections provided over local telephone facilities. *NCTA v. Brand X Internet Servs.*, 545 U.S. 967, 975 (2005).

2. Under federal law, broadband Internet access service (“broadband”) is an interstate information service that is subject to a federal regulatory framework, under which a combination of mandatory disclosures, competition, and federal and state enforcement of preexisting laws benefit consumers. The Federal Communications Commission (“FCC”) has consistently — both in 2015 when it regulated broadband as a common-carrier service and in 2018 when it re-established the current, non-common-carrier federal framework — rejected *ex ante* rate regulation for broadband. Indeed, the broadband service that New York seeks to regulate has *never* been subject to rate regulation at the federal or state level.

3. Broadband providers recognize the need to close the “digital divide” and to ensure that broadband is both available and accessible to all Americans, including low-income households. In addition to continuing to build out their networks to reach underserved communities, broadband providers have developed their own, lower-priced offerings specifically designed for low-income households. In addition, broadband providers participate in federal programs that provide subsidies to make broadband more affordable. These include both established programs like Lifeline and the newly created Emergency Broadband Benefit, which takes effect on May 12, 2021. More than 50 broadband providers in New York are making broadband available to low-income households in New York through the Emergency Broadband Benefit. New York recognizes that, as a result of providers’ offerings and these federal

programs, there are already “multiple options” for New Yorkers to purchase “affordable internet plans.” Find Affordable Internet Options in New York State, <https://forward.ny.gov/find-affordable-internet-options-new-york-state> (listing available options throughout the state).

4. New York, however, now seeks to regulate broadband rates. A provision of the recently enacted New York State Fiscal Year 2022 Budget requires wireline, fixed wireless, and satellite broadband providers — no later than June 15, 2021 — to begin offering to qualifying low-income consumers high-speed broadband service at a cost to consumers of \$15 per month or higher-speed broadband service at a cost to consumers of \$20 per month (the “Rate Regulation”).

5. Both an FCC order that the D.C. Circuit upheld and the federal Communications Act preclude New York from regulating broadband rates. The Court should declare that New York’s Rate Regulation is preempted and should permanently enjoin Defendant from enforcing or giving effect to it.¹

6. First, New York’s Rate Regulation conflicts with the FCC’s 2018 decision, which the D.C. Circuit upheld in relevant part, that broadband is an interstate information service that should not be subject to common-carrier regulation. The Rate Regulation conflicts with that decision, as well as the Communications Act, by compelling providers to offer broadband on a common-carrier basis: at state-set rates and terms to all eligible members of the public.

7. Second, New York’s Rate Regulation intrudes into an exclusively federal field. More than a century ago, Congress enacted legislation that occupied the field of interstate communications service and, thereby, precluded states from directly regulating those services. In violation of that long-standing law, the Rate Regulation expressly seeks to set the rates and

¹ The Associations will be filing a Motion for Preliminary Injunction based on the immediate, irreparable harm that the Rate Regulation threatens to impose.

speed of an interstate communications service. No state has ever successfully engaged in such regulation.

8. In short, New York has overstepped its regulatory authority. The Rate Regulation is preempted under both conflict and field preemption principles.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because the Associations' claims arise under the laws of the United States, including the Communications Act, 42 U.S.C. § 1983, and the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, cl. 2. This Court has equitable jurisdiction to enjoin actions by state officials that are preempted by federal law. *See Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326-27 (2015) (citing *Ex parte Young*, 209 U.S. 123, 150-51 (1908)).

10. Because an actual controversy within the Court's jurisdiction exists, this Court may grant declaratory and injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

11. Venue is proper in the Eastern District of New York under 28 U.S.C. § 1391(b)(2), because a substantial part of the events giving rise to the Associations' claims occurred in this district. Several members of the Plaintiff Associations provide services in this district, residents of this district qualify for the mandated reduced costs under the Rate Regulation, and Defendant operates two regional offices in this district.

PARTIES

12. Plaintiff NYSTA is a non-profit association that represents New York's telecommunications industry along with the equipment and service companies that assist them. NYSTA's membership includes telecommunications providers throughout the state, ranging from larger national firms to smaller in-state providers. NYSTA advocates for its members in

New York State government, provides numerous venues for membership interaction, and hosts educational programs regarding issues of importance to its members.

13. Plaintiff CTIA is a non-profit association that represents the wireless communications industry. Members of CTIA include mobile and fixed wireless broadband Internet service providers operating in New York and throughout the country, as well as providers of other wireless services, device manufacturers, and other wireless industry participants.

14. Plaintiff ACA Connects is a non-profit association representing more than 600 small and medium-sized broadband providers around the country. ACA Connects members — including the 16 members that provide service in New York — often operate in smaller markets and rural areas, where they provide communications services, including video and voice, to homes and businesses that are crucial to the economic prosperity of the communities they serve.

15. Plaintiff USTelecom is a non-profit association representing service providers and suppliers for the telecom industry. USTelecom members provide a full array of services, including broadband, voice, data, and video over wireline and wireless networks. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives — providing advanced communications services to both urban and rural markets across the country, including in New York.

16. Plaintiff NTCA is a non-profit association representing nearly 850 independent, community-based telecommunications companies that operate in rural and small-town America, including 17 providers that operate in rural areas of New York. NTCA advocates on behalf of its members in the legislative and regulatory arenas, and it provides training and development; publications and industry events; and an array of employee benefit programs.

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