

**In the United States Court of Appeals
for the Eighth Circuit**

MINNESOTA TELECOM ALLIANCE, ET AL.,
Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION; UNITED STATES OF AMERICA,
Respondents.

On Petition for Review from the
Federal Communications Commission
(No. 22-69, FCC 23-100)

BRIEF FOR INDUSTRY PETITIONERS

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SUMMARY OF THE CASE AND REQUEST FOR ORAL ARGUMENT

These consolidated petitions challenge a Federal Communications Commission rule implementing Section 60506(b)(1) of the Infrastructure Investment and Jobs Act. Section 60506(b)(1) directs the Commission to issue rules “preventing digital discrimination of access” to broadband internet “based on income level, race, ethnicity, color, religion, or national origin.” The challenged rule interprets “digital discrimination” to mean not only intentional discrimination but also actions with a disparate impact. Disparate-impact liability is rare, and every interpretive clue here confirms that Congress did not intend to impose it. The Commission has nevertheless created the first-ever regime prohibiting business practices that cause a disparate impact “based on income level.” Petitioners here (Industry Petitioners) contend that the rule exceeds the Commission’s statutory authority and that the Order is arbitrary and capricious under the Administrative Procedure Act.

Given the many complex and novel questions presented and the fact that these cases involve two distinct, nonaligned groups of petitioners, Industry Petitioners respectfully request that the Court afford an hour of oral argument time, with the precise division to be determined after the briefing.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eighth Circuit Rule 26.1A, Industry Petitioners make the following disclosures:

ACA Connects – America’s Communications Association has no parent corporation and no publicly held corporation owns 10% or more of its stock, pays 10% or more of its dues, or possesses or exercises 10% or more of the voting control of ACA Connects.

The Broadband Association of Alabama and Mississippi is a non-profit 501(c)(6) organization that has no parent company, and no publicly held company has a 10% or greater ownership interest in the Broadband Association of Alabama and Mississippi.

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