

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ACA CONNECTS – AMERICA’S
COMMUNICATIONS ASSOCIATION,
FKA American Cable Association;
CTIA – THE WIRELESS
ASSOCIATION; NCTA – THE
INTERNET & TELEVISION
ASSOCIATION; USTELECOM – THE
BROADBAND ASSOCIATION,
Plaintiffs-Appellants,

v.

ROB BONTA, in his official capacity
as Attorney General of California,
Defendant-Appellee.

No. 21-15430

D.C. No.
2:18-cv-02684-
JAM-DB

OPINION

Appeal from the United States District Court
for the Eastern District of California
John A. Mendez, District Judge, Presiding

Argued and Submitted September 14, 2021
San Francisco, California

Filed January 28, 2022

Before: J. Clifford Wallace, Mary M. Schroeder, and
Danielle J. Forrest, Circuit Judges.

Opinion by Judge Schroeder;
Concurrence by Judge Wallace

SUMMARY*

Preliminary Injunction / Preemption

The panel affirmed the district court's order denying plaintiffs' motion for a preliminary injunction against enforcement of the California Internet Consumer Protection and Net Neutrality Act of 2018, or SB-822.

In a 2018 order, the Federal Communications Commission decided to stop treating broadband internet services as "telecommunications services" subject to relatively comprehensive, common-carrier regulation pursuant to Title II of the Communications Act, and to classify them instead under Title I as lightly regulated "information services," which had the result of terminating federal net neutrality rules. A group of industry trade associations representing communications service providers sought an injunction to prevent the California Attorney General from enforcing SB-822, which in essence, codified the rescinded federal net neutrality rules, but limited its application to broadband internet services provided to customers in California. The district court concluded there

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

was no federal preemption because the FCC lacked the requisite regulatory authority.

In *Mozilla Corp. v. F.C.C.*, 940 F.3d 1 (D.C. Cir. 2019), the D.C. Circuit upheld the FCC's 2018 reclassification decision but struck down an accompanying order preempting state net neutrality rules. The panel rejected the service providers' contention that SB-822 nevertheless was preempted because it conflicted with the policy underlying the FCC's reclassification decision and conflicted with the Communications Act and its limitations on federal regulation. The panel also rejected the service providers' contention that SB-822 was preempted because federal law occupies the field of interstate services.

Guided by the D.C. Circuit's decision in *Mozilla*, the panel held that only the invocation of federal regulatory authority can preempt state regulatory authority. The panel held that, by classifying broadband internet services as information services, the FCC no longer had the authority to regulate in the same manner that it did when these services were classified as telecommunications services. The FCC, therefore, could not preempt state action, like SB-822, that protects net neutrality. The panel held that SB-822 did not conflict with the Communications Act itself, which only limits the FCC's regulatory authority. The panel held that the service providers' field preemption argument was foreclosed by case law and various provisions of the Communications Act.

Concurring, Judge Wallace wrote separately to express his concern that in some cases, parties appeal orders granting or denying motions for preliminary injunctions in the misguided belief they can ascertain the views of the appellate

court on the merits of the litigation, and this often leads to unnecessary cost, delay and inefficient use of judicial resources.

COUNSEL

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