

21-1975

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

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,
SATELLITE BROADCASTING AND COMMUNICATIONS ASSOCIATION,
on behalf of their respective members,
Plaintiffs-Appellees,

v.

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

On Appeal from the United States District Court for the
Eastern District of New York, No. 21-cv-2389 (Hon. Denis R. Hurley)

**PLAINTIFFS-APPELLEES’ UNOPPOSED MOTION FOR EXTENSION
OF TIME TO FILE PETITION FOR REHEARING
OR REHEARING *EN BANC***

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May 22, 2024

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UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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MOTION INFORMATION STATEMENT

Docket Number(s): 21-1975

Caption [use short title]

Motion for: extension of time to file petition for rehearing

New York State Telecommunications Association, Inc. v. James

Set forth below precise, complete statement of relief sought:

Plaintiffs-Appellees respectfully request a 14-day extension to and including June 7, 2024, to consider whether to file and to prepare a petition for rehearing or rehearing en banc in this appeal. Any petition is presently due on May 24, 2024 per relief this Court ordered previously.

MOVING PARTY: New York State Telecommunications Association, Inc. OPPOSING PARTY: Letitia A. James in her official capacity as Attorney General of New York

- Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Scott H. Angstreich OPPOSING ATTORNEY: Judith N. Vale

[name of attorney, with firm, address, phone number and e-mail] Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C. Deputy Solicitor General, Office of the New York State Attorney General, State of New York 1615 M Street, N.W., Suite 400; Washington, D.C. 20036 28 Liberty Street New York, New York 10005 sangstreich@kellogghansen.com; (202) 326-7900 judith.vale@ag.ny.gov; (212) 416-8020

Court- Judge/ Agency appealed from: E.D.N.Y. - Judge Hurley

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1): Yes No (explain):

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below? Has this relief been previously sought in this court?

Opposing counsel's position on motion: Unopposed Opposed Don't Know Does opposing counsel intend to file a response: Yes No Don't Know

Requested return date and explanation of emergency:

Is the oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has the appeal argument date been set? Yes No If yes, enter date: Argument was held on January 12, 2023

Signature of Moving Attorney:

Scott Angstreich Date: May 22, 2024

Service: Electronic Other [Attach proof of service]

UNOPPOSED MOTION

Pursuant to Federal Rules of Appellate Procedure 27, 35, and 40, as well as Local Rules 27.1, 35.1, and 40.1, Plaintiffs-Appellees respectfully request an extension of time to June 7, 2024, to file a petition for rehearing and / or rehearing *en banc*. Defendant-Appellant does not oppose this request.

1. On April 26, 2024, this Court issued an opinion for a majority of the panel deciding to reverse the judgment and vacate the permanent injunction the District Court (Hurley, J.) had entered.

2. On April 30, 2024, the Court granted Plaintiffs-Appellees' unopposed motion for an extension of time to and including May 24, 2024, to file a petition for rehearing or rehearing *en banc*. See Fed. R. App. P. 40(a)(1) (allowing 14 days to file petition for rehearing or rehearing *en banc* “[u]nless the time is shortened or extended by order or local rule”).

3. Plaintiffs-Appellees now respectfully request a further two-week extension to file a petition — to June 7, 2024. See *Schulz v. IRS*, 413 F.3d 297, 299 (2d Cir. 2005) (“grant[ing] the motion to extend time in which to file a petition for rehearing *en banc*”). There is good cause to grant the requested extension.

4. Plaintiffs-Appellees and Defendant-Appellant — which does not oppose this Motion — are discussing and anticipate reaching within the next two weeks an agreed-to stipulation regarding the New York law at issue in the above-

captioned appeal that would obviate the need for Plaintiffs-Appellees to file a rehearing petition before this Court.

5. Following diligent and repeated discussions, the parties reached tentative agreement on the outline of this agreed-to stipulation — by which Plaintiffs-Appellees would agree to forgo filing a petition for rehearing or rehearing *en banc* in exchange for certain agreements from Defendant-Appellant — on or around May 22, 2024.

6. The parties expect to reach final agreement as to that agreed-to stipulation before June 7, 2024, but not before May 24, 2024 — the current date by which Plaintiffs-Appellees must file any petition for rehearing or rehearing *en banc*.

7. Defendant-Appellant does not oppose this request.

* * *

For the foregoing reasons, Plaintiffs-Appellees respectfully request that the Court extend the deadline to file any petition for rehearing and / or rehearing *en banc* to June 7, 2024.

Respectfully submitted,

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CTIA – The Wireless Association;
NTCA – The Rural Broadband
Association; and USTelecom –
The Broadband Association*

CERTIFICATE OF SERVICE

On May 22, 2024, the foregoing document was submitted to the Court through the CM/ECF system. All participants in the case are represented by registered CM/ECF users and will be notified of filing electronically by the CM/ECF system.

/s/ Scott H. Angstreich
Scott H. Angstreich

CERTIFICATE OF COMPLIANCE

I certify, pursuant to Federal Rule of Appellate Procedure 32(g), that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding the portions of the brief exempted by Federal Rule of Appellate Procedure 32(f), the brief contains 373 words.

I further certify that this brief complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 32(a)(5) and 32(a)(6) and Local Rule 32.1 because it has been prepared using Microsoft Word 2016 in a proportionally spaced typeface (Times New Roman, 14 point).

/s/ Scott H. Angstreich
Scott H. Angstreich

May 22, 2024