

**FILED**

JAN 30 2024

U.S. Court of Appeals  
Eighth Circuit- St. Paul, MN

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

**RECEIVED**

JAN 30 2024

U.S. Court of Appeals  
Eighth Circuit- St. Paul, MN

MINNESOTA TELECOM ALLIANCE,

Petitioner,

v.

FEDERAL COMMUNICATIONS  
COMMISSION; UNITED STATES OF  
AMERICA,

Respondents.

Case No. 24- 1179

**PETITION FOR REVIEW**

Pursuant to 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342(1) and 2344, 5 U.S.C. § 706, and Federal Rule of Appellate Procedure 15(a), Petitioner Minnesota Telecom Alliance (“MTA”) hereby petitions the Court for review of the attached final order of the Federal Communications Commission (“FCC”), captioned *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, Report and Order and Further Notice of Proposed Rulemaking, GN Docket No. 22-69 (rel. Nov. 20, 2023) (“Order”). The Order was published in the Federal Register on January 22, 2024. *See* 89 Fed. Reg. 4,128. A copy of the Order is attached as Exhibit A.

MTA is a trade association that represents 41 rural broadband providers in Minnesota that operate over 70 independent telecom companies and are a mix of cooperatives, family owned, and commercial companies, the vast majority of

which are based in the communities they serve. These members include broadband internet access service providers and other “covered entities” directly regulated by the Order’s new rules. *See* Order, Appendix A (to be codified at 47 C.F.R. § 16.2(d)).

This Court has jurisdiction because MTA participated in proceedings before the FCC on behalf of its members aggrieved by the Order. 28 U.S.C. § 2344. Venue is appropriate in this Court because MTA resides and has its principal office in St. Paul, Minnesota. 28 U.S.C. § 2343.

In the Order, the FCC assumes unprecedented authority to regulate the broadband internet economy. Purporting to implement Congress’s instruction to “facilitate equal access” to broadband under Section 60506 of the Infrastructure Investment and Jobs Act, 47 U.S.C. § 1754(b), the Order for the first time imposes disparate-impact liability on broadband providers and myriad other entities that assist with providing service and have never been subject to FCC jurisdiction. Under its disparate-impact framework, the FCC would empower itself to micromanage a host of legitimate business practices, including network buildout decisions, pricing, promotions, advertising, contract renewal, and customer service. And the FCC would enforce its new regulatory regime with its entire panoply of enforcement tools, including civil penalties.

The Order is contrary to law, arbitrary, capricious, and an abuse of discretion; exceeds the FCC's authority; and otherwise violates the Administrative Procedure Act. *See* 5 U.S.C. § 706. MTA asks that the Court hold the Order unlawful and set it aside.

Respectfully submitted,

/s/ Thomas M. Johnson, Jr.

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Dated: January 30, 2024

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the Minnesota Telecom Alliance states as follows:

The Minnesota Telecom Alliance 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 Minnesota Telecom Alliance.

Respectfully Submitted,

By: /s/ Thomas M. Johnson, Jr.

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## CERTIFICATE OF SERVICE

I, Thomas M. Johnson, Jr., certify that on this 30th day of January, 2024, I caused this Petition to be served on the Circuit Clerk of this Court through the CM/ECF system. I further certify that I will serve a date-stamped copy of the Petition on the following counsel by the manner indicated:

*By Electronic Mail and Certified Mail*

P. Michele Ellison  
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*By Certified Mail*

Merrick B. Garland, Attorney General  
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By: /s/ Thomas M. Johnson, Jr.  
Thomas M. Johnson, Jr.