

Rising Star: Gibson Dunn's Russell Balikian

By Christopher Cole

Law360 (August 2, 2024, 2:03 PM EDT) -- Russell Balikian of Gibson Dunn & Crutcher LLP has helped internet service providers navigate a complex legal fight against the Federal Communications Commission's net neutrality rules, earning him a spot among the telecom law practitioners under age 40 honored by Law360 as Rising Stars.

The biggest case of his career:

Balikian sees the FCC case, currently pending in the Sixth Circuit, as certainly "up there, if not the biggest" case he has tackled in terms of economic impact. Balikian is part of a Gibson Dunn team preparing the legal arguments for the mobile trade group CTIA.

Under rules passed in April, the FCC is seeking to impose a new regulatory framework to prevent the deliberate slowing, blocking or paid prioritization of web traffic. CTIA and other industry groups are objecting on statutory and constitutional grounds.

"It affects everyone, it affects ISPs across the country — mobile, wireless and fixed," said Balikian, who was getting his start in telecom law when a Democrat-led FCC first adopted similar rules in 2015, which were later shot down by a Republican commission. "I was just fascinated with it, because it implicates all these important questions about constitutional structure, the First Amendment, statutory authority."

Balikian noted that the Telecommunications Act was enacted in 1996, when the internet was still relatively new.

"You're interacting with a statute that hasn't been updated, key statutory terms that haven't been revised for a while, and so we're having to make arguments based on that statutory text," he said. "That's part of the challenge, explaining all the entire regulatory background [and] why that supports keeping broadband internet access service as an 'information service' that is subject to light-touch regulation, instead of common-carrier type regulation."

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STAR**



Russell Balikian

Gibson Dunn

Age: 37

Home base: Washington

Position: Partner

Law school: Yale Law School

First job after law school:

Law clerk for Judge Diane S. Sykes of the Seventh Circuit

"It's been a fun challenge," he said. "And I think I've learned a lot about the way the internet works and the regulatory history that led to where we are."

His proudest moments as an attorney:

Balikian won a key victory for satellite company SES in June 2023 when a Virginia federal court took its side in a \$421 million contract claim against Intelsat.

SES and Intelsat had partnered to transition out of the prized C-Band spectrum to make way for 5G wireless services, agreeing to split the two companies' proceeds 50/50, but SES filed claims for breach of contract and unjust enrichment after it said Intelsat pulled out and then filed for bankruptcy. SES lost the claims in bankruptcy court, but Balikian led the successful appeal briefing in Virginia's Eastern District.

"If you took a good look at the evidence in that case, and how closely Intelsat and SES had been working together, the bankruptcy court's order didn't tell the whole story," he said. "I think we were able to put together a compelling brief that just played out why the decision below was missing key parts of the evidence."

"We were very proud of that, and it was a team effort," he said.

In another big moment for his career, Balikian helped lead an amicus brief in a U.S. Supreme Court case, *Gonzalez v. Google LLC*, in which the family members and estate of an American victim of the 2015 ISIS attacks in Paris accused social media companies of aiding and abetting the attacks.

The question was whether the Communications Decency Act's Section 230 shield protected online platforms from liability for third-party content that was prioritized or recommended by their algorithms. Balikian helped prepare a brief for Meta, saying the court did not need to reach that question because the case would likely fail on the merits, and the court agreed in May 2023.

"A lot was at stake in that case," he said. "We wanted to make sure that the court had all the information that it needed to make an informed decision."

Balikian said, "Obviously, the facts of that case are tragic, but the legal issue is then what do you do about that," and the court sided with Meta's position. "It was a good example of our firm being creative and drawing on both appellate experience and also technology experience to be able to achieve a good result."

What motivates him:

"We always want to make sure that we're putting our client's best foot forward," he said. "We want to do excellent work."

Balikian said he's driven by advocating for clients on the complex questions of law and separation of powers that often play into FCC cases. "When you're dealing with administrative agencies, you're also dealing with the Constitution, you're dealing with the structure of government — where does decision-making authority lie," Balikian said. On net neutrality, for example, the big question is, "Did Congress really give the FCC this major authority to regulate such a huge swath of the American economy?"

"And I think part of what motivates me in these cases is getting the constitutional balance, to be able to defend the structure of the Constitution of our government, as framers intended it and envisioned it," he said. "I really enjoy being able to feel like I'm doing my part to protect the checks and balances that are in the Constitution."

Why he's a telecom attorney:

When Balikian, a Yale Law School graduate, first got involved in the net neutrality litigation in 2015, he decided that telecommunications law was the way to go.

"It was substantively interesting for me professionally, from all of those constitutional, statutory, factual issues that we were dealing with, but then also just very important for the United States," he said. "We rely on telecommunications every day, to do work, to stay connected with people. So it's a meaningful type of work, where you're producing something that is really fundamental to human existence, to have these connections with other people."

Balikian said that most importantly, his Christian faith drives him every day. "What motivates me ultimately is to honor the Lord."

How he sees the legal industry changing in the next 10 years:

This past high court term gave a preview of where U.S. law is headed, especially administrative law, Balikian said, referring to major changes like the end of Chevron deference to government agencies.

That decision was handed down about two years after the court solidified the major questions doctrine, barring agencies from deciding issues of vast economic and political impact without clear direction from Congress.

"What we're seeing from the Supreme Court is a desire [to] really take seriously the separation of powers in the Constitution," he said. "And so that that means that there are new doctrines, or reinvigorated doctrines, that are coming to the fore, like the major questions doctrine."

"Now, with Chevron deference overruled, there's just going to be a heavy premium on being able to articulate how far did Congress actually go in giving authority to an agency," Balikian said.

"So I think statutory interpretation is going to be really important," he added, and the court's decision puts the onus on Congress to "speak clearly for what it wants to do, and for courts to take seriously their own role in exercising the judicial function."

--As told to Christopher Cole. Editing by Karin Roberts.

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2024 Rising Stars winners after reviewing nearly 1,200 submissions. Attorneys had to be under 40 as of April 30, 2024, to be eligible for this year's award. This interview has been edited and condensed.