View on our website.

GIBSON DUNN

Administrative Law & Regulatory January 3, 2025

Sixth Circuit Strikes Down FCC's "Net Neutrality" Order

Trade association CTIA has successfully challenged the Federal Communications Commission's "net neutrality" rule on behalf of the wireless-communications industry.

The U.S. Court of Appeals for the Sixth Circuit set aside the order in full, agreeing with arguments pressed by CTIA and a broader industry coalition that the FCC lacks statutory authority to impose heavy-handed common-carrier regulations on broadband Internet access service.

In the Communications Act of 1934, as amended, Congress enacted a light-touch regulatory regime for "information services" under Title I, and a much more expansive common-carrier-type regulatory regime for "telecommunications services" under Title II. Similarly, for mobile services, Congress subjected "private mobile services" only to light-touch regulation, while imposing common-carrier-type regulations on "commercial mobile services." For many years, the FCC correctly treated broadband generally, and mobile broadband in particular, as an "information service" and "private mobile service" subject only to light-touch regulation. The FCC briefly departed from that approach in 2015, but quickly restored its original position in 2018; the D.C. Circuit deferred to the FCC's position both times under the doctrine of *Chevron* deference, without resolving which approach reflected the better reading of the statute.

In May 2024, the FCC adopted a new order purporting to resurrect its 2015 approach by classifying broadband as a "telecommunications service" and mobile broadband as a

"commercial mobile service"—thereby subjecting both fixed and mobile broadband to heavy-handed, innovation-stifling regulation designed for common carriers. CTIA and other industry groups challenged the order as unlawful, arguing (among other things) that the FCC's new classification violated the plain text of the Communications Act, and that the Supreme Court's decision overruling *Chevron* meant that the court could not defer to the FCC.

On January 2, 2025, a unanimous panel of the Sixth Circuit set aside the FCC's order in full, agreeing with arguments pressed by CTIA and other industry groups. Looking to the plain language of the statute, the court held that broadband providers "offer only an 'information service' under 47 U.S.C. § 153(24), and therefore, the FCC lacks the statutory authority to impose its desired net-neutrality policies through the 'telecommunications service' provision of the Communications Act, *id.* § 153(51)." The court held that broadband satisfies the statutory definition of an "information service" because it allows users to retrieve and otherwise utilize information via telecommunications, and rejected the FCC's counterarguments. The court went on to hold that the FCC's reclassification of *mobile* broadband as a common-carrier "commercial mobile service" was likewise unlawful under the plain language of the statute, which requires a commercial mobile service to be "interconnected with the public switched network," *i.e.*, the 10-digit telephone network. Because mobile Internet service is not a service interconnected with the phone network, the court agreed with CTIA that mobile broadband "may not be regulated as a common carrier."

The Sixth Circuit's ruling is a significant victory for broadband providers generally and for the wireless-communications industry specifically, and it represents one of the first examples of a court applying the Supreme Court's *Loper Bright* decision to reject an agency's interpretation of a statute and foreclose future reliance on that interpretation. As the court explained, its interpretation of the plain text of federal law brings an end to "the FCC's vacillations" over the appropriate classification of broadband. It thus brings greater stability to the industry and locks in place Title I's light-touch regulatory framework, which fosters a dynamic broadband ecosystem, drives investment and innovation in next-generation networks, and promotes vibrant competition. The decision, *CTIA – The Wireless Ass'n v. FCC*, No. 24-3508 (6th Cir.), is available here.

CTIA was represented by partners Helgi Walker, Jonathan Bond, and Russell Balikian, with associates Max Schulman, Trenton J. Van Oss, and Nathaniel Tisa. This case marks the fourth time that Gibson Dunn partner Helgi Walker has successfully defended industry's position on net neutrality regulation.

Gibson Dunn's lawyers are available to assist with any questions you may have regarding the decision and its impact on the wireless-communications industry. Please contact the Gibson

Dunn lawyer with whom you usually work in the firm's Administrative Law and Regulatory practice group, or the following practice leaders and members:

Eugene Scalia – Washington, D.C. (+1 202.955.8210, escalia@gibsondunn.com)
Helgi C. Walker – Washington, D.C. (+1 202.887.3599, hwalker@gibsondunn.com)
Stuart F. Delery – Washington, D.C. (+1 202.955.8515, sdelery@gibsondunn.com)
Russell Balikian – Washington, D.C. (+1 202.955.8535, rbalikian@gibsondunn.com)
Jonathan C. Bond – Washington, D.C. (+1 202-887-3704, jbond@gibsondunn.com)