

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

NATIONAL RELIGIOUS)	
BROADCASTERS and AMERICAN)	
FAMILY ASSOCIATION,)	
)	No. 24-_____
Petitioners,)	
)	FCC Order 24-18
v.)	MB Docket No. 98-204
)	
FEDERAL COMMUNICATIONS)	
COMMISSION and UNITED)	
STATES OF AMERICA,)	
)	
Respondents.)	

PETITION FOR REVIEW

Pursuant to 5 U.S.C. § 706, 28 U.S.C. § 2341 *et seq.*, 47 U.S.C. § 402, and Federal Rule of Appellate Procedure 15(a), the National Religious Broadcasters and the American Family Association (collectively, “Petitioners”), hereby petition this Court for review of the U.S. Federal Communications Commission’s (“FCC”) *Fourth Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking* (“Order”), MB Docket No. 98-204, FCC 24-18 (rel. Feb. 22, 2024). A copy of the Order is attached as Exhibit A.

This Petition is timely. With limited exceptions not applicable here,

“[a]ny proceeding to enjoin, set aside, annul, or suspend any order of the Commission ... shall be brought as provided by and in the manner prescribed in chapter 158 of title 28” of the U.S. Code. 47 U.S.C. § 402(a). Chapter 158 of title 28 in turn provides that “[a]ny party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order in the court of appeals wherein venue lies.” 28 U.S.C. § 2344. The relevant aspects of the Order – specifically, the *Fourth Report and Order* and *Order on Reconsideration* – were entered in the Federal Register less than 60 days ago on May 3, 2024. See *Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies*, 89 Fed. Reg. 36705 (May 3, 2024). A copy of the entry is attached as Exhibit B. To date, no court has addressed the validity of the Order.

Jurisdiction is proper because Petitioners are adversely affected by the Order, which can be challenged in a U.S. Court of Appeals under 28 U.S.C. § 2342 and 47 U.S.C. § 402. Venue is also proper because Petitioner American Family Association (Tupelo, Mississippi) has its principal office in this Circuit. See 28 U.S.C. § 2343.

Petitioners seek review of the Order on the grounds that it exceeds the FCC’s statutory authority, and violates the Constitution and other federal

laws, including because:

- (1) the FCC lacked statutory authority to issue the Order under 47 U.S.C. § 334, or any other law, and it is ultra vires;
- (2) the Order violates the equal protection component of the Fifth Amendment and the Free Speech Clause of the First Amendment, and for the same reasons is without lawful authority and ultra vires; and
- (3) the Order is arbitrary and capricious, an abuse of discretion, and otherwise contrary to law.

Petitioners reserve the right to modify, add, or abandon grounds.

Petitioners respectfully request that this Court (1) grant the Petition and hold that the Order is unlawful; (2) vacate, enjoin, and set aside the Order; and (3) provide such other relief as this Court deems appropriate.

Dated: May 3, 2024

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 3, 2024, the foregoing Petition for Review was electronically filed with the U.S. Court of Appeals for the Fifth Circuit using the CM/ECF system.

I further certify that I will timely email a copy of the date-stamped Petition to LitigationNotice@fcc.gov. See 47 C.F.R. § 1.13(a)(1).

I will also cause a copy of the date-stamped Petition to be sent via certified mail to:

U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
45 L Street NE
Washington, DC 20554

Dated: May 3, 2024

Respectfully submitted,

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