

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

American Council on Education

Petitioner,

v.

Federal Communications Commission,

Respondent.

Petition for Review **05-1404**
Case No. _____

PETITION FOR REVIEW

The American Council on Education, by and through its undersigned counsel, petitions this Court for review of the Order of the Federal Communications Commission in the matter captioned: "Communications Assistance for Law Enforcement Act and Broadband Access and Services," ET Docket No. 04-295, RM-10865 (adopted Aug. 5, 2005 and released Sept. 23, 2005). A copy of the *First Report and Order and Further Notice of Proposed Rulemaking* is attached as Attachment A.

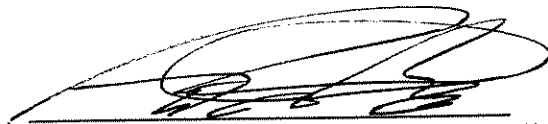
The Court has jurisdiction over this matter under Section 402(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 402(a), and consequently, under 28 U.S.C. §§ 2342(1) and 2344. The Order became final and subject to review upon a publication of a summary of the Order in the Federal Register on October 13, 2005, at 70 Fed. Reg. 59,664. The District of Columbia Circuit is the proper venue under 28 U.S.C. § 2343. The Commission is a proper respondent under Rule 15(a) of the Federal Rules of Appellate Procedure. And the United States is a proper respondent under 28 U.S.C. § 2344.

The American Council on Education was a party to the underlying agency proceedings, and both it and its members are aggrieved by the Order, in which the Commission made findings and conclusions which are arbitrary, capricious, and contrary to law. Among other things, the FCC has unlawfully and arbitrarily determined that facilities-based providers of broadband Internet service are "telecommunications carriers" within the scope of § 102(8)(B)(ii) of the Communications Assistance for Law Enforcement Act, 47 U.S.C. § 1001(8)(B)(ii). *See First Report and Order and Further Notice of Proposed Rulemaking*, at ¶ 1.

The American Council on Education respectfully requests that this Court hold unlawful and set aside this Order of the FCC and grant such further relief as may be deemed just and proper.

The filing fee of \$250 is being paid to the Clerk simultaneously with the filing of this Petition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Maureen Mahoney', is written over a horizontal line.

Maureen Mahoney (D.C. Bar # 343111)
Richard P. Bress (D.C. Bar # 457504)
LATHAM & WATKINS
555 11th Street, NW
Suite 1000
Washington, D.C. 20004
(202) 637-2200

October 24, 2005

Petition for Review
Case No. _____


October 24, 2005

CERTIFICATE OF SERVICE

I, Barry J. Blonien, do hereby certify that on Oct. 24, 2005 I caused copies of the foregoing PETITION FOR REVIEW in the matter of *American Council on Education v. Federal Communications Commission and the United States* and accompanying Rule 26.1 DISCLOSURE STATEMENT to be delivered by hand and by first class mail to the following respondents:

FEDERAL COMMUNICATIONS COMMISSION
Sam Feder, Acting General Counsel
Office of General Counsel
Federal Communications Commission
445 12th Street SW, Room 8-A741
Washington, D.C. 20554

UNITED STATES OF AMERICA
Alberto Gonzales
United States Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Room B-103
Washington, D.C. 20530-0001


Barry J. Blonien