D.C. CIR.

Irregulators v. FCC

No. No. 19-1085, D.C. Cir. (March 13, 2020)

SUMMARY

Key Topics: Article III standing, FCC jurisdiction, rate-of-return vs. price-cap regulation, jurisdictional separations freeze, injury-in-fact requirement. **Summary:** The D.C. Circuit dismissed a petition challenging the FCC's order extending a freeze on outdated jurisdictional separations accounting rules for telephone companies. The court held that the individual petitioners lacked Article III standing because they failed to show any concrete injury traceable to the order—none purchased service from a rate-of-return carrier directly, and their indirect theories of harm were too speculative. The opinion reaffirms that petitioners must demonstrate a substantial probability of actual, not hypothetical, injury to challenge agency action in federal court.

CASE DETAILS

COURT	D.C. Cir.
WRITING FOR THE COURT	WILLIAMS; ROGERS; KATSAS
JURISDICTION	Federal
DECIDED	March 13, 2020
DOCKET	No. 19-1085
DISPOSITION	dismissed
PROCEDURAL POSTURE	On Petition for Review of Orders of the Federal Communications Commission
STANDARD OF REVIEW	The court did not reach the merits; it addressed standing as a jurisdictional issue under Article III.
PRECEDENTIAL VALUE	published
PARTIES	Irregulators, et al. v. Federal Communications Commission and United States of America

TOPICS

standing · subject matter jurisdiction · administrative law · appellate procedure · constitutional law

PRACTICE AREAS

Administrative Law · Telecommunications Law · Constitutional Law

QUESTIONS PRESENTED

1. Whether the petitioners have Article III standing to challenge the FCC's 2018 Order extending the jurisdictional separations freeze.

KEY QUOTATIONS

> *"We recognize that state commissions may exercise their own state authority to conduct their rate and other regulation as permitted under state law. We emphasize that we do not in this Order preempt any state accounting requirements adopted under state authority. We recognize, as the State Members point out, that section 10(e) [47 U.S.C. § 160(e)] states that '[a] State commission may not continue to apply or enforce any provision of this Act that the Commission has determined to forbear from applying' under section 10. Although states will not have authority to enforce the federal Cost Assignment Rules as they apply to AT&T once this relief is effective, we do not read section 10(e) to prevent states from adopting similar provisions to the extent that they have authority under state law."*

> *"We reject the notion that a novel (and likely preempted) attempt at reforming the cost allocation rules . . . would in any manner be helpful in establishing an appropriate level of MUSF support."*

> *"stacks speculation upon hypothetical upon speculation"*

> *"does not establish an actual or imminent injury"*

> *"The Constitution permits us to rule only on tangible 'Cases' or 'Controversies,' not abstract hypotheticals or requests for advisory opinions."*

FACTUAL BACKGROUND

The Federal Communications Commission (FCC) historically regulated telephone rates using rate-of-return methods, which required complex cost-separation rules (Part 36). In 2001, the FCC froze these rules because they were outdated and burdensome, and extended the freeze multiple times, most recently in the 2018 Order challenged here. The petitioners, six individuals and two organizations, argued that the freeze harmed them by distorting rates and increasing their costs, but they did not purchase service from a rate-of-return carrier or provide evidence of actual harm.

PROCEDURAL HISTORY

Petitioners sought review of the Federal Communications Commission's 2018 Order extending the jurisdictional separations freeze. The court did not reach the merits due to lack of standing.

DISPOSITION

dismissed