

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
DEC 12 2005
RECEIVED

United States Court of Appeals
District of Columbia Circuit

DOCKETING STATEMENT

05-1451

Administrative Agency Review Proceedings
(To be completed by appellant/petitioner)

1. CASE NO. Not yet assigned 2. DATE DOCKETED December 12, 2005

3. CASE NAME (lead parties only) Pacific Northwest Gigapop, et al. v. F.C.C. and U.S.A.

4. TYPE OF CASE: Review Appeal Enforcement Complaint Tax Court

5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? YES NO
If YES, cite statute: _____

6. CASE INFORMATION:

a. Identify agency whose order is to be reviewed: Federal Communications Commission

b. Give agency docket or order number(s): ET Docket No. 04-295

c. Give date(s) of order(s): Adopted: August 5, 2005; Released: September 23, 2005

d. Has a request for rehearing or reconsideration been filed at the agency? YES NO
If so, when was it filed? 11/14/05 By whom? U.S. Telecommunications Assoc. + Texas ISP Assoc.
Has the agency acted? YES NO If so, when? _____

e. Are any other cases involving the same underlying agency order pending in this Court or in any other Court?
YES NO If YES, identify case name(s), docket number(s), and court(s): _____

f. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve *substantially the same issues* as the instant case presents?
YES NO If YES, give case name(s) and number(s) of these cases and identify court/agency: _____

g. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other alternative for dispute resolution? YES NO If so, provide the name of the program and the dates of participation. _____

Signature John M. Devaney Date December 12, 2005
Name of Party (Print) Pacific Northwest Gigapop, et al.
Name of Counsel for Appellant/Petitioner (Print) John M. Devaney Firm Perkins Coie LLP
Address 607 14th St. NW Suite 800
Washington, DC 20005-2011
Phone 202-628-6600 Fax No. 202-434-1690

ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 10 days by letter, with copies to all other parties, specifically referring to the challenged statement. An original and three copies of such letter should be submitted.

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

<p>PACIFIC NORTHWEST GIGAPOP, CORPORATION FOR EDUCATION NETWORK INITIATIVES IN CALIFORNIA, INTERNET2 and NATIONAL LAMBDARAIL</p> <p style="text-align:center">Petitioners,</p> <p style="text-align:center">v.</p> <p>FEDERAL COMMUNICATIONS COMMISSION, and UNITED STATES OF AMERICA,</p> <p style="text-align:center">Respondents.</p>	<p style="text-align:center">Petition for Review</p> <p style="text-align:center">Case No. _____</p>
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CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

Pursuant to Circuit Rule 15(c)(3), Petitioners hereby submit the following Certificate as to Parties, Rulings and Related Cases as required under Circuit Rule 28(a)(1):

I. Parties and Amici

All parties before this court are listed in the caption above. As this case is a Petition for Review of an agency order, there are no prior district court proceedings to speak of.

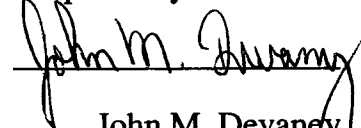
II. Rulings Under Review

The ruling at issue is the Federal Communications Commission's ("FCC") First Report and Order *In the Matter of Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865 (adopted Aug. 5, 2005, released Sept. 23, 2005) (the "Order"). The official citation for the Order in the Federal Register is 70 Fed. Reg. 59664.

III. Related Cases

On the basis of the knowledge and information reasonably available to the Petitioners, there are no related cases pending in any other court. Two motions for reconsideration of the compliance date of the Order were lodged with the FCC on November 14, 2005 by the U.S. Telecommunications Association and the Texas ISP Association.

Respectfully submitted,



John M. Devaney
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ATTORNEY FOR PETITIONERS

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PACIFIC NORTHWEST
GIGAPOP, CORPORATION FOR
EDUCATION NETWORK
INITIATIVES IN CALIFORNIA,
INTERNET2 and
NATIONAL LAMBDA RAIL

Petitioners,

v.

FEDERAL COMMUNICATIONS
COMMISSION, and
UNITED STATES OF AMERICA,

Respondents.

Petition for Review

Case No. 05-1451

PETITION FOR REVIEW

The Pacific Northwest Gigapop, the Corporation for Education Network Initiatives in California, Internet2, and National LambdaRail LLC, by and through its counsel below, hereby petition this Court for review of the Federal Communications Commission's First Report and Order *In the Matter of Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865

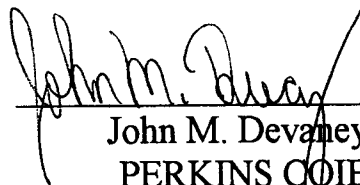
(adopted Aug. 5, 2005, released Sept. 23, 2005)(the "Order"). A copy of the Order is attached.

The court has jurisdiction under Section 402(a) of the Communications Act, as amended, 47 U.S.C. § 402(a), and under sections 2342(1) and 2344 of Title 28. The Order became final and subject to appeal when published in the Federal Register on October 13, 2005, at 70 Fed. Reg. 59664. Venue is proper in this Court pursuant to 28 U.S.C. § 2343. Respondents are proper under Rule 15(a) of the Rules of Appellate Procedure and 28 U.S.C. § 2344.

The Commission has determined, among other things, that facilities-based providers of broadband Internet access and those entities that support connection of private networks to the Internet are "telecommunications carriers" for purposes of the Communications Assistance for Law Enforcement Act, 47 U.S.C. §§ 1001 *et seq.* In so doing, the Commission has exceeded its statutory authority and its finding and conclusions are arbitrary, capricious, unsupported by substantial evidence, and contrary to law.

Petitioners request that this Court vacate the Order and the Final Rules adopted therein and grant such other relief as may be appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John M. Devaney", is written over a horizontal line.

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December 12, 2005

**IN THE
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PACIFIC NORTHWEST
GIGAPOP, CORPORATION FOR
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Petition for Review

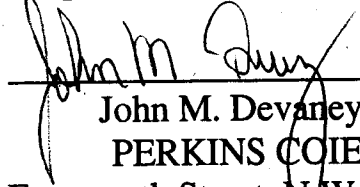
Case No. _____

DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Local Rule 26.1, Petitioners respectfully submit this Disclosure Statement.

Petitioners are nonprofit advanced research and education network services providers to the education and research community. Their members include a broad range of education and research universities and institutes across the Nation. Petitioners have no parent company(ies) or other entities with an ownership interest in them.

Respectfully submitted,



John M. Devaney

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ATTORNEY FOR PETITIONERS

December 12, 2005

CERTIFICATE OF SERVICE

I hereby certify this 12th day of December, 2005, that I served copies of the foregoing **Petition for Review, Docketing Statement and Certificate as to Parties, Rulings and Related Cases** via hand delivery upon the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit. The clerk's office will please forward the aforesaid materials to the Respondents in this matter, the Federal Communications Commission and United States of America.



John K. Roche