

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 07-1356

September Term, 2008

FILED ON: OCTOBER 23, 2008

NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION,
PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA,
RESPONDENTS

VERIZON,
INTERVENOR

On Petition for Review of an Order
of the Federal Communications Commission

Before: GINSBURG, TATEL and BROWN, *Circuit Judges*.

J U D G M E N T

This petition for review was considered on the record from the Federal Communications Commission as well as the briefs and oral arguments of counsel. The Court has accorded full consideration to the issues, which occasion no need for a published opinion. *See* D.C. CIR. RULE 36(b). It is

ORDERED and **ADJUDGED** that the petition for review is hereby denied. The decision of the Commission that cable wiring located behind sheet rock “would likely be physically inaccessible” was not “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.” 5 U.S.C. § 706(2)(A). A “*de novo* reweighing of the evidence . . . is not proper when reviewing agency action under an arbitrary and capricious test.” *American Horse Protection Ass’n v. Yeutter*, 917 F.2d 594, 598 (D.C. Cir. 1990). The Commission “examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or petition for hearing en banc. *See* FED. R. APP. P. 41(b); D.C. CIR. RULE 41.

PER CURIAM

FOR THE COURT:
Mark J. Langer, Clerk

BY:
MaryAnne Lister
Deputy Clerk