

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

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STATE OF OKLAHOMA, et al.,

Petitioners,

v.

Case No. 16-1057

(Consolidated with Case No. 15-1461)

FEDERAL COMMUNICATIONS  
COMMISSION, et al.,

Respondents.

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**MOTION TO INTERVENE IN SUPPORT OF PETITIONERS**

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The States of Wisconsin, Nevada, Arkansas, Arizona, Louisiana, Missouri, Kansas, and Indiana (“Intervening States”) respectfully move to intervene in support of the Petitioner State of Oklahoma, Sheriff John Whetsel, and the Oklahoma Sheriffs’ Association (collectively referred to as “Oklahoma” in this motion) in Case No. 16-1057, which has been consolidated with Case No. 15-1461.

Intervention is appropriate if the movants are “directly affected by” the agency action and the motion is “timely.” *See Yakima Valley Cablevision, Inc. v. FCC*, 794 F.2d 737, 744–45 (D.C. Cir. 1986). The

Intervening States should be permitted to intervene because they are directly affected by the agency action and the motion is timely.

**I. The Intervening States will be directly affected by the agency action.**

This case will review Respondent Federal Communications Commission's final agency action entitled, *In re Rates for Interstate Inmate Calling Services, Second Report and Order and Third Further Notice of Proposed Rulemaking*, WC Docket No. 12-375, FCC 15-136 (Nov. 5, 2015) ("the Order"). The new regulations adopted in the Order were published in the Federal Register on December 18, 2015. 80 Fed. Reg. 79,136. Oklahoma challenged the Order under 28 U.S.C. § 2342(1), which provides this Court with jurisdiction over the case.

The Intervening States own, operate, maintain, and manage state prisons, each with their own Inmate Calling System ("ICS"). Under the Order, prison ICS will be prohibited from charging more than \$0.11/minute for each call. The Order also restricts certain fees and costs imposed by a prison ICS. The Order applies both to interstate and intrastate calls.

The Intervening States will be directly affected by these new caps and restrictions. Prison ICS typically charge higher rates than

\$0.11/minute because of the unique circumstances presented by prison inmates using the telephone. State prisons incur substantial security-related costs for ICS, including costs incurred in monitoring calls (both recording and reviewing prison calls), costs for escorting prisoners to and from phones, costs for escorting phone repair technicians who need to maintain the system, and costs of continually updating ICS based on new technologies that may pose security risks to prisons. State prisons also incur costs in administering ICS, including the cost of responding to questions about the system from inmates and their families.

The Intervening States' arguments will complement those arguments presented by Oklahoma by highlighting other States' experience with prison ICS, costs associated with ICS, and security-related concerns. The Intervening States will argue that the Order is arbitrary and capricious as it does not consider these costs and does not allow for reasonable cost recoupment by the States. The Intervening States will also argue that the Order is unconstitutional and not authorized by federal law, all in violation of 5 U.S.C. § 706(2)(A)–(B).

**II. The Intervening States' motion is timely.**

A motion to intervene must be timely in order to prevent disruption of litigation and detriment to existing parties. *See Roane v. Leonhart*, 741 F.3d 147, 151 (D.C. Cir. 2014). Oklahoma filed the petition for review on January 25, 2016. This motion was therefore filed within 30 days after the petition, and is timely as permitted by Fed. R. App. Proc. 15(d).

\* \* \* \*

The Intervening States respectfully request that they be allowed to intervene in Case No. 16-1057, which has been consolidated with Case No. 15-1461, in support of Oklahoma.

Dated this 24th day of February, 2016.

Respectfully submitted,

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**CERTIFICATE AS TO PARTIES, AMICI CURIAE,  
AND RELATED CASES**

Under Circuit Rules 27(a)(4) and 28(a)(1)(A), the movants state as follows:

**Parties, Intervenors, and Amici**

**Petitioners:** State of Oklahoma, Sheriff John Whetsel, and the Oklahoma Sheriffs' Association

**Respondents:** Federal Communication Commission and the United States of America.

**Intervenors:** None at this time.

**Amici:** None at this time.

**Related Cases**

The following cases are related and have been consolidated:  
15-1461 (lead case), 15-1498, 16-1012, 16-1029, 16-1038, and 16-1046.

**CERTIFICATE OF SERVICE**

I hereby certify that on February 24, 2016, the foregoing Motion to Intervene in Support of Petitioners was served electronically through CM/ECF system to all registered attorneys in this case number.

/s/ Misha Tseytlin

MISHA TSEYTLIN