

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

STATE OF OKLAHOMA, et al., )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 FEDERAL COMMUNICATIONS )  
 COMMISSION, et al., )  
 )  
 Respondents. )  
 \_\_\_\_\_ )

Case No. 16-1057  
 (Consolidated with No. 15-1461)

**INDIANA SHERIFFS’ ASSOCIATION, MARION COUNTY SHERIFF’S  
 OFFICE, and LAKE COUNTY SHERIFF’S DEPARTMENT  
 MOTION FOR LEAVE TO INTERVENE IN SUPPORT OF PETITIONERS**

Pursuant to 28 U.S.C. § 2348, 47 U.S.C. § 402, Federal Rule of Appellate Procedure 15(d), and Circuit Rule 15(b), the Indiana Sheriffs’ Association (“ISA”), Marion County Sheriff’s Office, and Lake County Sheriff’s Department (collectively “Indiana County Representative Sheriffs”) respectfully move this Court for leave to intervene in support of Petitioner State of Oklahoma, Sheriff John Whetsel, and the Oklahoma Sheriffs’ Association (collectively, “Oklahoma”) in the above captioned matter and in all other cases that are later consolidated with it.

This case will review the Federal Communications Commission’s final agency action, *In re Rates for Interstate Inmate Calling Services, Second Report*

*and Order and Third Further Notice of Proposed Rulemaking, Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, FCC 12-167 (Nov. 5, 2015) (the “Order”), which Oklahoma filed with its petition. Oklahoma filed the petition for review of the Order on January 25, 2016.

The Order prescribes regulations under which Inmate Calling Service (“ICS”) providers offer services to inmates in jails and prisons throughout the country. Specifically, the Order sets a single per minute rate cap for inmate telephone calls. The Order does not distinguish between the administrative and operational differences between and amongst jails and prisons. Rather, it takes a “one-size-fits-all” approach, imposing the maximum per-minute rate caps on prisons and jails alike. The Order affects jails in prisons, including those in Indiana, in a variety of ways.

All Indiana jails will be financially impacted by the Order at varying levels, and the Indiana County Representative Sheriffs provide a sample of this impact in the State of Indiana. Sheriff John Layton is the Sheriff in Marion County Indiana. The jails in Marion County are considered large jails and hold two thousand five hundred (2,500) inmates. The estimated fiscal financial impact of the Order on the Marion County jails is \$1,600,000. Sheriff John Buncich is the Sheriff in Lake County Indiana. The jail in Lake County is impacted similarly.

ISA, in turn, has standing to pursue this suit on behalf of its members because (1) its members would otherwise have standing to sue in their own right; (2) the interests that the ISA seeks to protect in this suit are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *See Human Soc'y of United States v. Hodel*, 840 F.2d 45, 53 (D.C. Cir. 1988). The ISA is a non-profit educational and service organization comprised of the 92 Indiana county sheriffs, their deputies, and other law abiding citizens throughout the State of Indiana. The ISA was formed for the purpose of providing assistance to sheriffs, their deputies, and other department personnel, thereby enabling them to improve the delivery of law enforcement services to the citizens of Indiana. ISA members, such as Sheriff Layton and Sheriff Buncich, use ICS to provide and manage inmate calling privileges in county jails throughout the State of Indiana and have standing to sue in their own right. ISA members' interests offering effective ICS services is germane to ISA's purpose of helping its member improve the delivery of law enforcement services. There is no requirement that individual members participate in this lawsuit.

The Order will make it nearly impossible for ICS providers to recover the costs for providing the service, especially in small county jails. ICS providers, therefore, may be unwilling or unable to install the latest security technology at

some county jails, endangering public safety for the local communities the sheriffs have sworn to protect.

In addition, the FCC has ignored the considerable costs to jails for providing inmate calling privileges, including personnel costs for escorting inmates as well as time spent accessing recorded calls. The inability to recover these costs may require some smaller jails to discontinue inmate calling privileges altogether.

ICS provides a large part of Indiana jail commissary funding, and the Order eliminates many of these discretionary items for Indiana Sheriffs' Offices and inmates. *See* Ind. Code § 36-8-10-21. Indiana county commissioners and councils will not likely make up the difference from the county general fund. The depletion of commissary funds will result in less services to inmates.

The Order also ignores that some states, including Indiana, have self regulated calling rates for larger jails. Under Indiana law, our large county jails are subjected to the same telecommunications standards as our state department of corrections. *See* Ind. Code § 5-22-23-6. The Order impinges on Indiana's right to police county ICS.

The ISA, through its members, and the Indiana County Representative Sheriffs are entitled to intervene in this action as of right. *See* 28 U.S.C. § 2348. The ISA members as shown through the Indiana County Representative Sheriffs are adversely affected by the Order, and the injury would be redressed by the relief

requested by Oklahoma in this action. This Motion for Leave to Intervene is filed within 30 days of Oklahoma's petition and is therefore timely. *See* Fed. R. App. P. 15(d); *Roane v. Leonhart*, 741 F.3d 147, 151 (D.C. Cir. 2014). Furthermore, the ISA and the Indiana County Representative Sheriffs request that their Motion for Leave to Intervene be treated as a motion "to intervene in all cases before this court involving the same agency action or order, including later filed cases . . . ." *See* D.C. Cir. R. 15(b).

For the foregoing reasons, the ISA and the Indiana County Representative Sheriffs respectfully request that this Motion for Leave to Intervene be granted.

Dated: February 24, 2016

Respectfully submitted,

/s/ Karla L. Palmer

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**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/ Karla L. Palmer

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