

NOT YET SCHEDULED FOR ORAL ARGUMENT

No. 15-1461

(Consolidated with Nos. 15-1498, 16-1012, 16-1029, 16-1038, 16-1046, 16-1057)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Global Tel*Link,

Petitioner,

v.

Federal Communications Commission and United States of America,

Respondents.

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

**BRIEF FOR THE STATES OF MINNESOTA, ILLINOIS, MASSACHUSETTS,
NEW MEXICO, NEW YORK, WASHINGTON, AND WASHINGTON D.C., AS
AMICI CURIAE IN SUPPORT OF RESPONDENTS**

LORI SWANSON

*Attorney General**State of Minnesota*

KATHRYN FODNESS

Assistant Attorney General

ANDREW TWEETEN

Assistant Attorney General

445 Minnesota Street, Suite 1100

St. Paul, Minnesota 55155

(651) 757-1028

andrew.tweeten@ag.state.mn.us

Counsel for State of Minnesota

Dated: September 19, 2016

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), *amici* States submit the following Certificate of Parties, Rulings, and Related Cases.

A. Parties and *Amici*.

These cases involve the following parties:

1. Petitioners.

No. 15-1461: Global Tel*Link

No. 15-1498: Securus Technologies, Inc.

No. 16-1012: Centurylink Public Communications, Inc.

No. 16-1029: Telmate, LLC

No. 16-1038: National Association of Regulatory Utility Commissioners

No. 16-1046: Pay Tel Communications, Inc.

No. 16-1057: State of Oklahoma, *ex rel.* Joseph M. Allbaugh, Interim Director of the Oklahoma Department of Corrections; John Whetsel, Sheriff of Oklahoma County, Oklahoma; and The Oklahoma Sheriffs' Association, on behalf of its members

2. Respondents.

All Cases: Federal Communications Commission and United States of America

3. Intervenorors and *Amici Curiae*.

No. 15-1461: Centurylink Public Communications, Inc.; Indiana Sheriff's Association; Lake County Sheriff's Department; and Marion County Sheriff's Office
(Intervenors for Petitioners)

Campaign for Prison Phone Justice; Citizens United for Rehabilitation of Errants; DC Prisoners Project of the Washington Lawyers' Committee for Civil Rights and Urban Affairs; Dedra Emmons; Ulandis Forte; Human Rights Defense Center; Laurie Lamancusa; Jackie Lucas; Darrell Nelson; Earl J. Peoples; Ethel Peoples; Prison Policy Initiative; United Church of Christ, Office of Communication, Inc.; Charles Wade; and Network Communications International Corp.
(Intervenors for Respondents)

State of Minnesota, State of Illinois, State of Massachusetts, State of New Mexico, State of New York, State of Washington, and Washington, D.C.
(*Amici Curiae* in Support of Respondents)*

County of Santa Clara
(*Amicus Curiae* in Support of Respondents)

No. 16-1057: State of Arizona, State of Arkansas, State of Indiana, State of Kansas, State of Louisiana, State of Missouri, State of Nevada, and State of Wisconsin
(Intervenors for Petitioners)

* *Amici* States, as government entities, are exempt from filing a corporate disclosure statement. *See* Fed. R. App. P. 26.1(a).

B. Ruling Under Review.

These consolidated appeals challenge the Federal Communications Commission's Second Report and Order and Third Further Notice of Proposed Rulemaking in the agency's docket concerning rates for interstate inmate calling services. In the Matter of Rates for Interstate Inmate Calling Services, 30 FCC Rcd. 12763, FCC 15-136, WC Dkt. No. 12-375 (Nov. 5, 2015).

C. Related Cases.

The cases consolidated in this action are Nos. 15-1461, 15-1498, 16-1012, 16-1029, 16-1038, 16-1046, 16-1057.

D. Statutes and Regulations.

All applicable statutes and rules are contained in the addendum to the brief for Respondents.

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STATEMENT OF IDENTITY, INTEREST AND AUTHORITY TO FILE

Telephone contact between incarcerated individuals and family, friends, and others helps to establish the support mechanisms necessary for offenders to succeed after their release, promotes public safety, improves outcomes for offenders' children, and assists in the creation of stable families. *Amici* States therefore have a strong interest in ensuring the affordability of telephone calls to incarcerated individuals in their states.

Amici States are authorized to file their brief as *Amici Curiae*, without the consent of the parties or leave of court, pursuant to Federal Rule of Appellate Procedure 29(a).

GLOSSARY OF ABBREVIATIONS

2015 Order: *Rates for Interstate Inmate Calling Services*, 30 FCC Rcd. 12763 (2015), the Order under review

FCC: Federal Communications Commission

MNDOC: Minnesota Department of Corrections

ARGUMENT

At least 95 percent of state prison inmates are eventually released from prison and returned to their communities. Nathan James, *Offender Reentry: Correctional Statistics, Reentry into the Community and Recidivism*, Congressional Research Service, 1 (Jan. 12, 2015).¹ Studies have consistently found that “stronger ties between inmates and families and close friends during incarceration lead to positive post-release outcomes.” Linda G. Bell and Connie S. Cromwell, *Evaluation of a Family Wellness Course for Persons in Prison*, 66 *Journal of Correctional Education*, 45, 46 (2015). Yet, inmates are routinely subject to “prohibitively high charges” for telephone calls, the cost of which far exceed rates charged outside the corrections system. *Rates for Interstate Inmate Calling Services*, Third Report and Order and Second Notice of Proposed Rulemaking, 30 *FCC Rcd.* 12763, 12765 ¶ 1 (2015) (hereinafter “2015 Order”). These costs inhibit strong social bonds and pose a significant burden on “families, friends, clergy, and attorneys to the over 2 million Americans behind bars and 2.7 million children who have at least one parent behind bars[.]” *Id.*

Access to telephones in prisons began in the early 1970s, in response to research that highlighted the rehabilitative value of inmate connections to family

¹ Available at <http://www.bjs.gov/content/pub/pdf/reentry.pdf> (last accessed Sept. 19, 2016) (footnote omitted).

and community and the correlation of these bonds to reduced recidivism. Steven J. Jackson, *Ex-Communication: Competition and Collusion in the U.S. Prison Telephone Industry*, 22 *Critical Studies in Media Communication* 263, 267 (2005). By the mid-1980s, there was “a dramatic rise in prices” for prison telephone calls—“even as consumer rates available elsewhere in the American telecommunications landscape [] plummeted.” *Id.* at 269. The inflated cost of these phone calls was passed along to prisoners and their family members. Comments of Former Attorneys General, FCC WC Docket 12-375 at 2 (filed Jan. 9, 2015). The prison phone system is now a \$1.2 billion-a-year industry. Timothy Williams, *The High Cost of Calling the Imprisoned*, N.Y. Times (March 30, 2015).²

For years, the Federal Communications Commission (“FCC”) received requests for relief from these pricing practices. 2015 Order, 30 FCC Rcd. at 12765 ¶ 1, 12771 ¶ 12. In 2015, the FCC enacted reforms of interstate and intrastate inmate telephone calls. *Id.* at 12765–66 ¶¶ 1–2. In its 2015 Order, the FCC set tiered rate caps for all inmate calling services based on the size and type of a correctional facility. *Id.* at 12775–818 ¶¶ 20–116. The 2015 Order excludes revenue sharing payments to correctional facilities from cost data used to set rate

² Available at <http://www.nytimes.com/2015/03/31/us/steep-costs-of-inmate-phone-calls-are-under-scrutiny.html> (last accessed Sept. 19, 2016).

caps. *Id.* at 12818–38 ¶¶ 117–43. The 2015 Order also bans the myriad fees and service charges used to inflate the cost of inmate calling services, reserving a narrow capped exception for automated payment, live agent, and paper statement fees. *Id.* at 12838–62 ¶¶ 144–96. As a result, the per minute cost for phone calls from state prisons was capped at 11¢ per minute for debit and prepaid calls. *Id.* at 12775–76, ¶ 22. Collect calls from state prisons were initially capped at 14¢ per minute, but would fall over time to 11¢ per minute. *Id.*³

Amici States support the FCC’s 2015 Order because providing telephone services to prison inmates at a reasonable cost is feasible, and it fosters public safety, successful rehabilitation, reduction in recidivism, and improved outcomes for offenders’ children and families.⁴

³ In an August 2016 Order responding to a petition for reconsideration, the FCC increased the interstate and intrastate rate caps “to expressly account for reasonable facility costs related to [inmate calling services].” *Rates for Interstate Inmate Calling Services*, Order on Reconsideration, FCC 16-102, 2016 WL 4212506 at *2 ¶ 3 (Aug. 9, 2016). As a result, the per-minute cost for phone calls from state prisons now will be capped at 13¢ per minute for debit and prepaid calls. *Id.* Likewise, the revised rate for collect calls from state prisons will initially be capped at 16¢ per minute, but will fall over time to 13¢ per minute. *Id.*

⁴ In No. 16-1057 the State of Oklahoma petitions for review of the 2015 Order. The following States have intervened in support of that petition for review: Arizona, Arkansas, Indiana, Kansas, Missouri, Louisiana, Nevada, and Wisconsin.

I. THE FCC’S ORDER PROMOTES POSITIVE FAMILY AND SOCIETAL RELATIONSHIPS, WHICH ARE IMPORTANT TO SUCCESSFUL REHABILITATION OF OFFENDERS.

A. The Cost Of Inmate Calling Is Often Prohibitively High And Inhibits The Ability Of Inmates To Maintain Strong Ties To Support Structures Outside The Prison.

Because most inmates are housed in facilities at least 100 miles from their home, telephone calls remain one of the primary vehicles for families to remain connected during incarceration. Artika Tyner, *et al.*, *Phone Calls Creating Lifelines for Prisoners and Their Families*, 20 *Trinity L. Rev.* 83, 84 (2015). Yet, the cost of calls has long been a barrier to regular contact. 2015 Order, 30 FCC Rcd. at 12765 ¶ 1; *see also* Minnesota Department of Corrections, *The Effects of Visitation on Offender Recidivism*, 2 (Nov. 2011) (“offenders have had an increasingly difficult time maintaining social support networks” and “[m]ailed letters are slow, and phone calls are prohibitively expensive”) (citations omitted).⁵

Some families have paid “outrageous amounts, between \$300 and \$400 a month” to maintain telephone contact. 2015 Order, 30 FCC Rcd. at 12766–67 ¶ 3. Some commenters reported paying nearly \$8 in per-minute charges and ancillary fees just to establish a connection to an incarcerated family member. Campaign

⁵ Available at <http://www.doc.state.mn.us/pages/files/large-files/Publications/11-11MNPrisonVisitationStudy.pdf> (last accessed Sept. 19, 2016).

for Prison Phone Justice, *Ex Parte* Letter, WCB No. 12-375, Attach. at 1 (testimony of Shirley McConnell) (July 7, 2015).

These costs far exceed the cost of telephone services outside of prisons. For example, one large national telecommunications carrier offers home phone customers unlimited local and long-distance calling in the United States for just \$32.99 a month. *See* AT&T Website, follow Shop Tab, Home, Long Distance Plans.⁶ Similarly, “[f]or the price of a single hour-long phone call at 89¢ per minute, you could buy a monthly wireless plan from Verizon that includes unlimited voice calls and text messages, as well as 1 gigabyte of data service.” Joshua Brustein, *Serial’s \$2,500 Phone Bill and the Prison-Calling Racket*, Bloomberg (Dec. 17, 2014).⁷

In addition to the per minute cost, families and prisoners are also subject to “ancillary service charges that greatly raised [the] average per-minute cost of a call.” 2015 Order, 30 FCC Rcd. at 12768 ¶ 7 n.28. These service fees “often add another 40 percent, resulting in phone bills as high as \$500 a month[,]” according to some families. Timothy Williams, *High Cost of Inmates Phone Calls May End*,

⁶ Available at <http://www.att.com/gen/general?pid=11019> (last accessed on Sept. 19, 2016).

⁷ Available at <http://www.bloomberg.com/news/articles/2014-12-17/serial-podcasts-2-500-phone-bill-and-the-prison-pay-phone-racket> (last accessed Sept. 19, 2016).

N.Y. Times (Sept. 30, 2015).⁸ For example, one spouse reported paying a \$6.95 surcharge every time she deposited \$25 into the prison phone account. Williams, *The High Cost of Calling the Imprisoned*, *supra* at 2. Another indicated the prison phone service charged her \$2.49 to process her bill, and \$5 if she wanted pay it over the phone. *Id.* Some providers reportedly charge “prepaid monies from prisoner accounts if for whatever reason the account is ‘inactive’ for a period of time.” Comments of Former Attorneys General, *supra* at 2. The pro bono chief counsel to the Florida NAACP was charged \$56 for a four minute phone call to an inmate. 2015 Order, 30 FCC Rcd. at 12765 ¶1 n.4. The \$14 per minute charge “surpasses the hourly minimum wage in most states and is 31 times the per-minute cost of a call to Antarctica.” *Id.*

These predatory rates have resulted in families using substantial portions of their monthly incomes to maintain telephone contact with their loved ones. *See* Eric Markowitz, *Why Prison Phone Rates Keep Going Up Even Though The FCC Regulated Them*, Int’l Bus. Times (June 30, 2016) (explaining that the cost of prison phone calls is still increasing).⁹ Families have reported going without food to pay phone charges, to ensure family did not “grow apart” and the children can

⁸ Available at http://www.nytimes.com/2015/10/01/us/fcc-seeks-to-limit-and-lower-costs-of-inmates-phone-calls.html?_r=0 (last accessed Sept. 19, 2016).

⁹ Available at <http://www.ibtimes.com/why-prison-phone-rates-keep-going-even-though-fcc-regulated-them-2388200> (last accessed Sept. 19, 2016).

“feel like they still have a father.” 2015 Order, 30 FCC Rcd. at 12767 ¶ 3 (footnote omitted).

One grandmother reported paying \$1,000 a year to talk to her grandson. Tracy Connor, *‘Huge Step’: FCC Slashes Cost of Prison Phone Calls*, NBC News (Oct. 22, 2015).¹⁰ The grandson has said that, “some months she had to choose between paying the phone bill and being able to talk to me and paying for her medication, which she needed to survive.” *Id.* The grandson says those calls were a lifeline that “made it possible for him to transition to life on the outside.” *Id.* “He is now married with a child and working two jobs.” *Id.*

One mother explained that “maintaining a line of communication with her son, who she says suffers from severe anxiety, is necessary to keep up his mental health.” *Id.* She lives on a \$900 monthly disability check and recently reported paying “more than 20 percent of her total monthly income” to maintain telephone contact. *Id.* A spouse says she lives “paycheck to paycheck” and spends “\$150 a month on phone calls to her husband.” Williams, *The High Cost of Calling the Imprisoned*, *supra* at 2. “The cost determines when I can talk to my husband and when my son can read a book to him. It’s detrimental to rehabilitation.” *Id.*

¹⁰ Available at <http://www.nbcnews.com/news/us-news/huge-step-fcc-slashes-costs-prison-phone-calls-n449286> (last accessed on Sept. 19, 2016).

An incarcerated Minnesota father detailed the personal toll of high inmate calling rates in comments excerpted in the FCC Order:

I want to be able to raise my child even if it's over the phone for the time being. I would love to be in her life as much as possible, but it's hard to do so when the phone [price] is steadily climbing higher and higher. I know I'm paying my debt to society for my crime, but I need to stay in contact with family.

2015 Order, 30 FCC Rcd. at 12767 ¶ 3.

In one study, the cost of telephone contact was cited by nearly 40 percent of jail inmates and their family members “as a significant barrier to communication.” Ryan Shanahan and Sandra Villalobos Agudelo, *The Family and Recidivism, American Jails*, 21–22 (Sept./Oct. 2012). In another, 78 percent of Minnesota prisoners reported not having as much telephone contact as they would have desired. Tyner, *Phone Calls Creating Lifelines for Prisoners and Their Families*, *supra* at 4, at 88. Survey participants identified “issues with affording the costs of the phone calls based on their prison wages” and “financial burdens on their families” as reasons for limited telephone contact. *Id.*

B. Maintenance Of Strong Family And Social Support Relationships Promotes Public Safety By Reducing Recidivism And Helping Offenders Transition Back Into Their Communities Upon Release.

There is a significant public interest in reducing recidivism of inmate populations. “With remarkable consistency, studies have shown that family contact during incarceration is associated with lower recidivism rates.” Nancy G.

La Vigne, *et al.*, *Examining the Effect of Incarceration & In-Prison Family Contact on Prisoners' Family Relationships*, 21 *J. of Contemporary Crim. Justice* 314, 316 (2005) (citations omitted); *see also* Bell, *Evaluation of a Family Wellness Course for Persons in Prison*, *supra* at 1, at 46 (“stronger ties between inmates and families and close friends during incarceration lead to positive post-release outcomes.”)

As offenders transition from incarceration to the community, “family members provide both social control and social support, which inhibit criminal activity.” Lorig Charkoudian, *et al.*, *The Role of Family and Pro-Social Relationships in Reducing Recidivism*, *Corrections Today*, 94 (Aug./Sept. 2012). Interpersonal bonds with family and close friends “provide[] offenders opportunities for housing, employment, education and training that they may not be successful in obtaining otherwise.” *Id.*

These ties also result in “decreased recidivism, improved mental health both for prisoners and their family members, and greater likelihood that the family will hold together after reentry.” Bell, *Evaluation of a Family Wellness Course for Persons in Prison*, *supra* at 1. Offenders who maintain “closer family ties, stronger family support, and fewer negative dynamics in relationships with intimate partners are more likely to be employed after release and less likely to use drugs.” *Id.* (citation omitted); *see also* Ken Gosnell, *Fathers Successfully*

Returning Home, Corrections Today, 46 (Apr. 2007) (stating that “people with strong family ties during incarceration have a higher success rate for reentry and job employment and are less likely to repeat crimes and use drugs”).

States have a significant interest in breaking the cycle of recidivism. Reduced recidivism means fewer victims of crime and reduced public expense from incarceration. According to a Pew Center on the States study, during the past two decades, annual state and federal spending on corrections has increased threefold to about \$52 billion. Pew Center on the States, *State of Recidivism*, 5 (April 2011).¹¹ “During that same period, corrections spending doubled as a share of state funding. It now accounts for one of every 14 general fund dollars, and one in every eight state employees works for a corrections agency.” *Id.*

As the FCC explained, “regular family contact” benefits “the public broadly by reducing crime, lessening the need for additional correctional facilities and cutting overall costs to society. . . .” 2015 Order, 30 FCC Rcd. at 12808 ¶ 93. Rate caps “will help ensure that former inmates are not sent home as strangers, which reduces both their chances of returning to prison or jail and the attendant burden on society of housing, feeding, and caring for additional inmates.” *Id.* at 12767 ¶ 4.

¹¹ Available at <http://www.pewtrusts.org/en/research-and-analysis/reports/0001/01/01/state-of-recidivism> (last accessed July 7, 2016).

C. The FCC's Order Also Supports Improved Outcomes For Offenders' Families And Children.

Approximately 2.7 million children under the age of 18 have a parent incarcerated in state or federal prison. *Id.* at 12765 ¶ 1, 12767 ¶ 3. The maintenance of close relationships between offenders and their families is important for the wellbeing of these children. *See Solangel Maldonado, Recidivism and Paternal Engagement*, 40 *Fam. L.Q.* 191, 194–95, 197–98 (2006).

Social science researchers note “that children who share close relationships with their nonresident fathers are less likely to engage in delinquent acts and other antisocial behavior than children without such relationships.” *Id.* at 191. Offenders’ contact with their children during incarceration “is a predictor of released prisoners’ attachment to and involvement with children after release.” La Vigne, *Examining the Effect of Incarceration & In-Prison Family Contact on Prisoners’ Family Relationships*, *supra* at 8, at 328.

The prohibitive cost of telephone calls prevents the maintenance of these important family ties. Roughly two-thirds of respondents in one study “reported that staying in touch with family was difficult, with the most frequently cited barriers to contact being that the prison was located too far away and that telephone calls were too expensive.” *Id.* at 323. Additionally, while incarceration in and of itself introduces financial strain in the care of children, “[l]imited finances may be stretched [even] further by expensive telephone calls.” Nancy G.

La Vigne, *et al.*, *Broken Bonds: Understanding & Addressing the Needs of Children with Incarcerated Parents*, Urban Institute (Feb. 2008).¹²

Providing inmates with affordable telephone services facilitates and supports these important family bonds, for the common benefit of parents, children, and the community. Maldonado, *Recidivism and Paternal Engagement*, *supra* at 11, at 209; *see also* Creasia Finney Hairston, *et al.*, *Family Connections During Imprisonment & Prisoners' Community Reentry*, Jane Addams Center for Social Policy & Research (2004) (advocating for affordable access to telephones in correctional facilities to facilitate family connections, parental roles, and other social relationships).¹³

II. IMPLEMENTATION OF REASONABLE TELEPHONE RATES IS FEASIBLE WITHOUT SACRIFICING FACILITY OR PUBLIC SAFETY.

Implementation of affordable inmate calling telephone rates is feasible. In 2013, the Minnesota Department of Corrections (“MNDOC”) renegotiated its contract with Petitioner Global Tel*Link to meet the rate limits for interstate calls set by the FCC. At that time, MNDOC also established a pilot program with

¹² Available at <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/411616-Broken-Bonds-Understanding-and-Addressing-the-Needs-of-Children-with-Incarcerated-Parents.PDF> (last accessed Sept. 19, 2016).

¹³ Available at http://socialwork.uic.edu/wp-content/uploads/bsk-pdf-manager/familyconnections_130.pdf (last accessed Sept. 19, 2016).

significantly lower flat rates for interstate and intrastate debit calls at two specified facilities. *See* 2015 Order, 30 FCC Rcd. at 12766 ¶ 2, 12774 ¶ 19.

Three years later, under its contract with Petitioner Global Tel*Link, all offenders incarcerated at the MNDOC can make calls at the rate of 5 cents per minute, plus taxes and fees. This amount is less than half of the 11 cents per minute rate cap for prisons established by the FCC's 2015 Order. *See id.* at 12775 ¶ 22. As Minnesota's experience demonstrates, rate reform is possible without sacrificing the security needs of a correctional facility.

MNDOC's experience is not unique. Its success in reducing rates while maintaining public safety and security mirrors the experiences of other states referenced in the FCC's 2013 Order, such as New Mexico and New York. *See Rates for Interstate Inmate Calling Services, Report and Order and Further Notice of Proposed Rulemaking*, 28 FCC Rcd. 14107, 14110 ¶ 4 (2013) (commending states for "show[ing] that rates can be reduced to reasonable, affordable levels without jeopardizing [] security needs"). In the transcript of a workshop held by the FCC, one official from New Mexico testified that "there are no security problems in New Mexico." *Id.* at 14110 ¶ 4 n.16 (citing Tr. of Reforming ICS Rates Workshop at 186-87.)

New York likewise reported success to the FCC after reducing the rates for inmate calls. Letter from Anthony Annucci, Acting Commissioner, N.Y. Dept. of

Corr. & Comm. Supervision, to Gregory Haledjian, Attorney-Advisor, FCC, WC Docket No. 12-375 at 1 (filed July 16, 2013). In a letter to the FCC, the New York Department of Corrections and Community Supervision's Acting Commissioner wrote that lower rates led to more inmates making telephone calls, "helped contribute to family reunification," and curbed "illicit cell phone use by inmates." *Id.* at 2. Ultimately, in New York's experience, the "significant benefits" of reducing inmate calling rates outweighed any operational challenges involved in reducing the rates. *Id.* at 3.

CONCLUSION

Reasonable rates for inmate calling services promote rehabilitation and reintegration of state prison inmates. An affordable telecommunications link between incarcerated persons and their families and societal support structures reduces recidivism and attendant societal and budget costs. The FCC's 2015 Order builds on intrastate inmate calling reforms implemented by many states by capping rates and limiting fees and surcharges. For these reasons, *amici* States respectfully request that the petitions for review be denied and the FCC Rule upheld.

Dated: September 19, 2016

LORI SWANSON
Attorney General
State of Minnesota

/s/ Andrew Tweeten

Andrew Tweeten
Assistant Attorney General

KATHRYN FODNESS
Assistant Attorney General
445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55155
(651) 757-1028

Counsel for State of Minnesota

LISA MADIGAN
Attorney General
State of Illinois
100 W Randolph Street, 12th Floor
Chicago, Illinois 60601

ERIC T. SCHNEIDERMAN
Attorney General
State of New York
120 Broadway, 25th Floor
New York, New York 10271

MAURA HEALEY
Attorney General
Commonwealth of Massachusetts
One Ashburton Place
Boston, Massachusetts 02108

ROBERT W. FERGUSON
Attorney General
State of Washington
1125 Washington Street SE
Olympia, Washington 98504

HECTOR BALDERAS
Attorney General
State of New Mexico
P.O. Drawer 1508
Santa Fe, New Mexico 87504

KARL A. RACINE
Attorney General
District of Columbia
One Judiciary Square
Washington, D.C. 20001

CERTIFICATE OF COMPLIANCE

1. Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), the undersigned hereby certifies that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B)(i).

2. Exclusive of the exempted portions of the brief, as provided in Federal Rule of Appellate Procedure 32(a)(7)(B)(iii) and D.C. Circuit Rule 32(a)(1), the brief contains 3,206 words.

3. The brief has been prepared in proportionally spaced typeface using Microsoft Word 2010 in 14 point Times New Roman font. As permitted by Federal Rule of Appellate Procedure 32(a)(7)(B), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

/s/ Andrew Tweeten

Andrew Tweeten

CERTIFICATE OF SERVICE

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 25(c), I hereby certify that on September 19, 2016 I electronically filed the foregoing Brief for the States of Minnesota, Illinois Massachusetts, New Mexico, New York, Washington, and Washington D.C., as *Amici Curiae* in Support of Respondents with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/EFC system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Andrew Tweeten

Andrew Tweeten