ORAL ARGUMENT NOT YET SCHEDULED

No. 13-1280 (consolidated with 13-1281, 13-1291, 13-1300, 14-1006)

IN THE
United States Court of Appeals for the District of Columbia Circuit

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SECURUS TECHNOLOGIES, INC., ET AL.,
Petitioners,

and

ARKANSAS DEPARTMENT OF CORRECTIONS, ET AL.,
Intervenors in Support of Petitioners.

v.

FEDERAL COMMUNICATIONS COMMISSION AND
UNITED STATES OF AMERICA.
Respondents.

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

AMICI BRIEF in Support of the Federal Communications Commission on Behalf of Professors Richard H. Frankel, Steven H. Goldblatt, and Alistair E. Newbern, of the Law School Appellate Litigation Clinics at Drexel, Georgetown and Vanderbilt Universities

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CERTIFICATE OF INTERESTED PARTIES, RULINGS, AND RELATED CASES AND CORPORATE DISCLOSURE STATEMENT

1. Parties and Amici

All parties and intervenors appearing in this court are listed in the petitioners' briefs. This *amici* brief is submitted by Professors Richard H. Frankel, Steven H. Goldblatt, and Alistair E. Newbern, of the Law School Appellate Litigation Clinics at Drexel, Georgetown and Vanderbilt Universities. Undersigned counsel understands that two other *amicus curiae* intend to submit briefs in support of the Federal Communications Commission: Asian Americans Advancing Justice *et al.* and Verizon, Inc.

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amici* state that none of them is a publicly-held corporation, issue stock or have a parent corporation. *Amici* provide *pro bono* legal services through law school clinical programs.

2. Rulings Under Review

The ruling at issue is Rates for Interstate Inmate Calling Services, 78 Fed. Reg. 67,956 (Nov. 13, 2013) (to be codified at 47 C.F.R. pt. 64).

3. **Related Cases**

The order on review has not previously been subject of a petition for review in this Court or any other court. Counsel is not aware of any related cases pending before this or any other court.

/s/ Steven H. Goldblatt
Steven H. Goldblatt
Counsel for Amici Curiae

Dated: July 28, 2014

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TABLE OF AUTHORITIES*

Federal Cases

* Authorities chiefly relied upon are marked with asterisks.

Federal Statutes

Federal Regulation

GLOSSARY

ADA	Americans with Disabilities Act of 1990 (codified as amended at 42 U.S.C. § 12101 *et seq.*)
Commission	Federal Communications Commission
Communications Act	Communications Act of 1934 (codified as amended at 47 U.S.C. § 151 *et seq.*)
Corr. Br	Joint Brief for Correctional Facility Petitioners and Supporting Intervenors
FCC Br.	Brief for the Federal Communications Commission
ICS	Inmate Calling Services
Order	Rates for Interstate Inmate Calling Services, 78 Fed. Reg. 67,956 (Nov. 13, 2013) (to be codified at 47 C.F.R. pt. 64)
Rehabilitation Act	Rehabilitation Act of 1973 (codified as amended at 29 U.S.C. § 701 *et seq.*)
RLUIPA	Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc to 2000cc-5

INTEREST OF THE *AMICI CURIAE*[1]

Amici curiae, three law school professors who supervise appellate clinics representing prisoners and immigration detainees housed in state or local prisons and jails, submit this brief in support of the Federal Communications Commission rulemaking under review. Our work on behalf of prisoners and detainees (collectively, prisoners) spans appeals from habeas corpus petitions, civil rights actions, and immigration matters (before the Board of Immigration Appeals and under 8 U.S.C. § 1252).[2] Counsel rely heavily on telephone conversations to consult with these clients. As the Commission found generally, exorbitant inmate calling rates burden communications between counsel and prisoners. *See* Br. for Fed. Commc'n Comm'n ("FCC Br.") at 4-5.

We welcome the Commission ruling as a long-overdue first step towards addressing exorbitant inmate calling rates. Our clinics, like

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[1] A motion for leave to file accompanies this brief as only some parties have consented. No counsel for a party authored any part of this brief or made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici* or their counsel made a monetary contribution to its preparation or submission.

[2] The views in this brief are of the named *amici* and are not necessarily the views of their Universities.

other legal service providers representing prisoners, directly benefit from this relief. The Commission's rulemaking strengthens our ability to provide legal services that are in short supply, yet essential to the quality of justice.

Amici participate because our experience representing prisoners affords a perspective not otherwise before this Court in this case. We participate solely to address the jurisdictional arguments raised by the Correctional Facility Petitioners and Supporting Intervenors ("Correctional Petitioners"), and, particularly, their contention that, by regulating interstate calling rates, the Commission has encroached on their sovereign police powers.[3] *See* Joint Br. for Corr. Facility Pet'rs & Supporting Intervenors ("Corr. Br.") at 22-39. This invocation of sovereignty does not arise in a vacuum, and, in *amici's* view, bears scrutiny against the backdrop of more than a decade of federal and state litigation in which courts denying judicial relief to prisoners, their families, and their counsel have consistently recognized the Commission's authority to address the fairness of Inmate Calling Services ("ICS") rates.

[3] *Amici* fully support the Commission on the merits, but do not brief those issues because they are fully addressed in other briefs.

Specifically, the cases relied on by the Correctional Petitioners, including the Seventh Circuit decision in *Arsberry v. Illinois*, 244 F.3d 558 (7th Cir. 2001), provide essential context for assessing the validity of the Commission's jurisdiction here.

Although these prior decisions reject challenges to prisoner phone charges, they also confirm that review is available from the Commission. As the origins of this rulemaking demonstrate, courts have consistently recognized that the Commission is the proper body to determine whether ICS charges are unfair.[4] The Correctional Petitioners ignore the significance of this body of law and the destabilizing effect upon it that a ruling in their favor on jurisdictional grounds would produce. Denying the Commission authority to remedy unfair ICS rates would conflict with judicial decisions that have explicitly recognized and, in some instances, relied upon such authority as a rationale for denying

[4] This case began as a class action brought by prisoners and their relatives seeking a federal court order that exorbitant charges and unconscionable arrangements between prisons and carriers violated their constitutional rights and various federal and local laws. It was referred to the Commission under the primary jurisdiction doctrine. *See Wright v. Corr. Corp. of America*, No. 00-293, slip op. at 14-15 (D.D.C. Aug. 22, 2001) ("*Wright v. CCA*"); Rates for Interstate Inmate Calling Services, 78 Fed. Reg. 67,956 (Nov. 13, 2013) (to be codified at 47 C.F.R. pt. 64) ("*Order*") ¶¶ 1, 9 (describing the rulemaking petition of Martha Wright).

judicial relief. A holding that Commission jurisdiction does not exist would trigger a whole new round of private due process actions previously dismissed on the ground that the Commission, not the courts in the first instance, provided the process that was due.

Amici also write to provide perspective on the state sovereign interests asserted here and the extent to which those interests delimit Commission jurisdiction. Prisoners routinely raise constitutional and federal statutory claims challenging the boundaries of state and local jailers' authority. These cases recognize the limits of federalism but belie any suggestion that the deference owed to the Correctional Petitioners is nearly as "wide-ranging" as they assert. Corr. Br. at 23. State and local jailers are not only subject to federal judicial review to ensure that prisoners' constitutional rights are honored, they are also subject to congressional and federal agency regulation under federal statutes that derive from Congress' power to regulate state actors under the Spending and Interstate Commerce Clauses.

The degree of deference due must also be considered in context. Although security and police power concerns may hold sway when jailers act *qua* jailers, *see Turner v. Safley*, 482 U.S. 78 (1987), where pris-

on administrators choose to enter the stream of interstate commerce and derive revenue nationally, it is they who are "intrud[ing]" into the Commission's core domain, not the other way around. Corr. Br. at 2. Moreover, the Commission gave due deference here by balancing prison-specific security concerns that affect calling costs in determining just, reasonable, and fair rates. *See* FCC Br. at 7-8, 63. In reviewing whether this balance was properly struck, this Court should reject the Correctional Petitioners' claim to carte blanche or near carte blanche authority.

ARGUMENT

The Commission rule under review seeks to eliminate exorbitant telephone charges for collect and debit calls initiated by inmates in American prisons, jails, and detention facilities. *See* Rates for Interstate Inmate Calling Services, 78 Fed. Reg. 67,956 (Nov. 13, 2013) (to be codified at 47 C.F.R. pt. 64) ("*Order*"). Yet, contrary to Correctional Petitioners' suggestion, the *Order* is far from an overeager attempt by the Commission to thrust itself into correctional policy-making. *See generally* Corr. Br. at 3 ("[T]he commission [has] arrogate[d] to *itself* the policy judgments of how to properly fund [inmate] programs . . . ."). Rather,

the Commission entered the fray only after several States had themselves reformed the egregious practices addressed by the *Order*, *see Order* ¶ 4, and only after the filing of "[t]ens of thousands" of petitions for rulemaking, *id.* ¶ 1, and numerous lawsuits seeking relief from unreasonable ICS rates and practices. In promulgating the *Order*, the Commission hewed closely to its statutory mandate, exercising its core authority in this first step of what will be an ongoing effort to determine reasonable rates for prisoners' interstate telephone calls.

I. THE CORRECTIONAL PETITIONERS' CHALLENGE TO COMMISSION JURSIDICTION IS IN TENSION WITH PRIOR JUDICIAL RULINGS THAT CONSISTENTLY RECOGNIZED THE COMMISSION AS THE APPROPRIATE ENTITY TO PROVIDE RELIEF FROM UNREASONABLE INTERSTATE ICS RATES AND PRACTICES.

For more than a decade before the Commission finally took the action under review here, inmates and their families brought dozens of state and federal lawsuits challenging unreasonable ICS rates and practices. Beyond claims under the Communications Act itself, *see* 47 U.S.C. § 151 *et seq*., these suits sought relief under federal and state antitrust, consumer protection, and unfair practices statutes. *See Holloway v. Magness*, No. 5:07-CV-00088, 2011 WL 204891, at *4 & nn.11-15

(E.D. Ark. Jan. 21, 2011) (collecting cases). Additionally, litigants raised federal constitutional claims under the First Amendment, the Contracts Clause, the Takings Clause, the Equal Protection Clause, and the substantive and procedural components of the Due Process Clause. *See id.* at *4 & nn.17-21.

To be sure, courts reaching the merits in these cases have yet to grant relief. *See Holloway*, 2011 WL 204891, at *4 & n.22. But many federal courts, however, do not reach the merits, and instead express skepticism regarding their institutional competence to decide rate cases in the first instance. Often at the behest of named defendants, *see, e.g., Wright v. Corr. Corp. of America*, No. 00-293, slip op. at 4 n.6 (D.D.C. Aug. 22, 2001) ("*Wright v. CCA*"), courts have invoked the primary jurisdiction doctrine[5] or the filed rate rule[6] in declining to address such

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[5] Courts use the primary jurisdiction doctrine to dismiss a case where the agency is "best suited to make the initial decision on the issues in dispute, even though the district court ha[s] subject matter jurisdiction." *Allnet Commc'n Serv., Inc. v. Nat'l Exch. Carrier Ass'n, Inc.*, 965 F.2d 1118, 1120 (D.C. Cir. 1992).

[6] The "filed rate" doctrine "forbids a court to revise a *** common carrier's filed tariff." *Arsberry*, 244 F.3d at 562; *see also AT&T Co. v. Central Office Tel., Inc.*, 524 U.S. 214, 223 (1998).

claims, instead referring them to the Commission for "resolution of the underlying issues committed to the [Commission]'s expertise," *Trice v. Pub. Comm. Servs.*, No. 4:11-CV-1880-TCM, 2012 WL 551813, at *3 (E.D. Mo. Feb. 19, 2012), as was done here, *see Wright v. CCA*, slip op. at 14-15.

In so doing, courts have explicitly recognized that the Commission possesses both the institutional competence *and the regulatory authority* to determine reasonable interstate ICS rates and practices. Thus, in *Arsberry*, a case relied upon by Correctional Petitioners, Br. at 25, 28, the Seventh Circuit dismissed an equal protection challenge to ICS site commission arrangements on primary jurisdiction grounds, explaining:

> A claim of discriminatory tariffed telephone rates is precisely the kind of claim that *is* within the primary jurisdiction of the telephone regulators. The plaintiffs are asking us to compare the rates on inmate calls with rates on comparable calls of other persons; that is what we cannot do *but the regulatory agencies can*.

244 F.3d at 565 (second emphasis added).

This recognition that the Commission possesses the authority to address unreasonable interstate ICS rates pervades the cases. Courts consistently find that "[r]ate setting and related relief is the bailiwick of the [Commission]," and that plaintiffs' "remedy lies with the [Commis-

sion]." *McGuire v. Ameritech Servs., Inc.*, 253 F. Supp. 2d 988, 1014 (S.D. Ohio 2003); *see also, e.g.*, *Trice*, 2012 WL 551813, at *3; *Daleure v. Kentucky*, 119 F. Supp. 2d 683, 689-90 (W.D. Ky. 2000).

"Significantly," as the district court in *Wright* noted, "the [Commission], in exercising its mandate to regulate the reasonableness of rates . . . can adequately address those issues by prohibiting long-distance carriers from considering commission costs in their cost-basis." Slip op. at 7. This is because Congress has given the Commission "explicit statutory authority to regulate inmate payphone services." *Id.* at 8 (citing 47 U.S.C. § 276(d)); *see also* 47 U.S.C. § 276(b)(1)(A); *Order* ¶ 14.[7]

Correctional Petitioners, however, ignore this long history of judicial decisions confirming that the Commission, *not the federal courts*, is primarily responsible for determining reasonable ICS rates. Far from supporting the proposition that the Commission lacks regulatory au-

[7] The Commission has general authority to regulate *interstate* telephone rates. *Nat'l Ass'n of Regulatory Util. Comm'rs. v. FCC*, 746 F.2d 1492, 1501 (D.C. Cir. 1984) (Commission may invalidate state impediments to interstate communications). The *Order* applies only to *interstate* ICS rates.

thority in this area, or that its jurisdiction is limited because the issue is one committed to state and local policy prerogatives, the case law in this area confirms the propriety of the Commission's actions.

Thus, although the Correctional Petitioners quote *Arsberry* to assert "[t]he decision of how to 'cover the expense of prisons'—'by whatever combination of taxes and user charges' might be deemed best—is not for a federal agency to make, but is instead one for States and localities 'to resolve' for themselves," Br. 28 (quoting *Arsberry*, 244 F.3d at 566), they do so inaccurately. The full quote says something quite different: "By what combination of taxes and user charges the state covers the expense of prisons is hardly an issue for the federal *courts* to resolve." *Arsberry*, 244 F.3d at 564 (emphasis added). *Arsberry* nowhere states, much less holds, that the *Commission* lacks the authority to address issues of unreasonably high rates. Instead, it explicitly notes that such claims are "squarely within the [Commission]'s jurisdiction." *Id.* at 563.

Deferring to the Commission has thus allowed federal courts to avoid the merits of colorable constitutional claims. The assurance of plaintiffs' procedural "due process right to challenge the inmate telephone rates in the regulatory agencies," moreover, has allayed any con-

cerns of procedural due process violations for courts that deny relief outright. *Arsberry*, 244 F.3d at 566. Because parties challenging ICS rates can avail themselves of an administrative mechanism to "avoid[] any injustice," *Daleure*, 119 F. Supp. 2d at 689-90, courts have dismissed lawsuits comforted by the knowledge that injured parties have an alternative forum available. Correctional Petitioners' jurisdictional position, however, effectively deprives injured parties of *any* forum for challenging the fairness of interstate ICS rates. So crabbed a reading of the Commission's jurisdictional reach is not only textually indefensible, it also gives rise to serious constitutional concerns. *Cf. Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 348 (1936) (Brandeis, J., concurring).

In short, Correctional Petitioners advance a constitutionally suspect jurisdictional trap: Courts have concluded that they lack the authority and institutional competence to provide relief without Commission guidance. But Correctional Petitioners contend that the Commission cannot act because its regulation of ICS rates and practices supposedly intrudes on state and local policy prerogatives.

Such absolute or even near-absolute immunity from review is unwarranted and unnecessary to afford Correctional Petitioners the pro-

tections to which they are entitled. Correctional Petitioners, like all others affected by agency decisions, may seek relief from legal errors and arbitrary and capricious rulemaking, including any perceived Commission failure to adequately weigh their security concerns. They exercise that right here. Their Catch-22 jurisdictional argument, however, proves too much, by seeking unfettered—and unreviewable—discretion to control interstate calling rates.

II. CONGRESSIONALLY-AUTHORIZED FEDERAL REGULATION AFFECTING STATE AND LOCAL PRISONS IS NOT THE EXTRAORDINARY INTRUSION PORTRAYED BY THE CORRECTIONAL PETITIONERS.

Because Congress expressly authorized the Commission to decide whether ICS rates are fair, the Correctional Petitioners' contention that the *Order* impermissibly "overrid[es] state and local budgetary judgments," Br. at 29, has it backwards. When state and local governments seek to derive revenue from a channel of interstate commerce regulated by the Commission, it is the state governments that seek to override the Commission's core authority over interstate telephone rates. *See* FCC Br. at 2, 61-62.

Here, Congress has entrusted the Commission to ensure reasonable interstate telephone rates. *See* 47 U.S.C. § 201. And Congress *ex-*

plicitly authorized the Commission to "establish a per call compensation plan to ensure that all payphone service providers," *including ICS providers*, "are fairly compensated for each and every completed intrastate and interstate call." *See* 47 U.S.C. § 276(b)(1)(A), (d). It is thus "faux-federalism" for Correctional Petitioners to assert that the Commission "invades and upends their governmental authority over prison management," Corr. Br. at 1, when the Commission is merely exercising its statutory mandate to regulate ICS rates. *Cf. City of Arlington, Tex. v. FCC*, 133 S. Ct. 1863, 1873 (2013) (rejecting "faux-federalism" argument that Commission overreached when it "assert[ed] jurisdiction over matters of traditional state and local concern," and holding that Congress had "supplant[ed] state authority"). State governments that attempt to draw upon interstate telephone calls as a revenue source enter an area of federal regulation that cannot be trumped by an *ipse dixit* assertion of core police powers. In exercising its congressionally delegated authority, the Commission has no less pre-emptive power than does Congress, and its judgments are subject to judicial review only to determine whether the agency has exceeded its statutory authority or acted arbi-

trarily. *United States v. Shimer*, 367 U.S. 374, 381-382 (1961); *City of New York v. FCC*, 486 U.S. 57, 63 (1988).

Moreover, the Correctional Petitioners' blanket assertion that the *Order* "tramples on . . . legitimate, carefully calibrated choices of state and local law enforcement officials and of state legislatures," Corr. Br. at 27, wrongly suggests that the Commission is treading where federal agencies have no right to tread. In areas more closely tied to day-to-day prison operations than interstate calling, state and local prisons and jails are often subject to regulation by federal courts and federal agencies.

For example, Congress utilized its power under the Spending Clause to enact the Prison Rape Elimination Act, 42 U.S.C. §§ 15601-15609. This statute reduces a state's federal funding for prisons if the state does not comply with nationally prescribed standards for eliminating prison rape, § 15607(e)(2), and further charges the Attorney General with overseeing and reporting on compliance, § 15607(e)(3).

Similarly, Congress constrains state prison practices through the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. §§ 2000cc to 2000cc-5, which prohibits state governments from

imposing a "substantial burden on the religious exercise of a person residing in or confined to an institution" absent a compelling governmental interest and use of the least restrictive means to further that interest, § 2000cc-1(a). Enacted under both the Spending Clause and the Commerce Clause, RLUIPA addresses state and local correctional policies that burden religious exercise with far greater potential to affect "the prerogatives of state and local authorities," Corr. Br. at 21, in running their facilities than the Commission's regulation of carriers' ICS rates. *See* § 2000cc-1(b).

These statutes appropriately weigh federalism concerns by affording due deference to state and local interests. In *Cutter v. Wilkinson*, 544 U.S. 709 (2005), the Court upheld RLUIPA against an Establishment Clause challenge, rejecting the argument that the statute elevated religious concerns above correctional facilities' critical safety and security concerns. *Id.* at 722-23. *Cutter* recognized that "due deference" should be afforded to the expertise of prison and jail administrators in these areas, *id.* at 716, and RLUIPA survived because it "permits safety and security—which are undisputedly compelling state interests—to outweigh an inmate's claim to a religious accommodation," *id.* at 717.

Due deference, however, is not tantamount to abdication of federal jurisdiction. The Commission, in exercising its core authority to ensure reasonable interstate rates, weighed "the legitimate and unique requirements for security and public safety in the provision of [ICS]," *Order* ¶ 8, and security costs factor into reasonable rate calculations, *see* FCC Br. at 33-34 & n.4, 63. Whether such concerns were adequately weighted goes to the merits of the Commission's decision, not to the Commission's jurisdiction.

Nor must a statutory mandate be specifically directed towards local prisons and jails to permit federal regulation. Broadly applicable statutes also suffice. Thus, in enacting the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*, Congress "provide[d] broadly that its mandate extends to '*any* program or activity receiving Federal financial assistance.'" *Kaufman v. Carter*, 952 F. Supp. 520, 527 (W.D. Mich. 1996) (citing 29 U.S.C. § 794). The *Kaufman* Court upheld a federal regulation interpreting this language to include state prisons. It *rejected* an argument echoing that of Correctional Petitioners: that "management of state prisons is a core function of the state sovereign, and is not presumptively subject to federal control." *Id.* at 528.

Similarly, the Supreme Court has held that the broad language of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*, which is applicable to "any department, agency, . . . or other instrumentality of a State . . . or local government," § 12131(1)(B), applies to state prisons. *Pa. Dep't of Corr. v. Yeske*, 524 U.S. 206, 210-12 (1998). Whether Congress "envision[ed] that the ADA would be applied to state prisoners," is ultimately irrelevant, as "the fact that a statute can be applied in situations not expressly anticipated . . . does not demonstrate ambiguity. It demonstrates breadth." *Id.* at 212.

Congress likewise used broad language in the Communications Act, which brooks no exceptions for prisons or other state actors. Thus, even if the Commission did not have *explicit* statutory authority over ICS rates, *see* 47 U.S.C. § 276(b)(1)(A), (d)—which it does—it is also "statutorily charged with handling *all* claims of contesting the reasonableness of telephone rates," *Wright v. CCA*, slip op. at 6 (citing 47 U.S.C. § 201(b)) (emphasis added). As the application of other federal statutes demonstrates, this broad statutory mandate, standing alone, authorizes the ICS rulemaking.

* * *

The Commission is consistently recognized as the appropriate forum to provide much-needed relief by courts that refuse to hear challenges to exorbitant ICS rates. The Correctional Petitioners' jurisdictional argument ignores this precedent. The absolute or near-absolute insulation from federal scrutiny they seek, moreover, is entirely unprecedented, as illustrated by the wealth of federal interventions that affect prison administration in other contexts. Here, the Commission appropriately exercised its congressionally mandated authority to begin the process of providing long-awaited relief.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that the Court confirm the Commission's jurisdiction to regulate ICS rates.

Respectfully submitted,

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Dated: July 28, 2014

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. P. 29(d) because it contains 3,472 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and Circuit Rule 32(a)(1). The *amici* are also in compliance with Circuit Rule 29(d), which generally requires that all *amici* supporting a party file together unless a single filing is impracticable. There are three *amicus* briefs being filed supporting the Commission and in undersigned counsel's view, a combined filing was impossible and therefore not required by the rule. Compliance with Circuit Rule 29(d) is discussed in detail in the motion for leave to file that accompanies this brief.

I further certify that the attached brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 2007 14-point Century Schoolbook font.

Executed this 28th day of July, 2014.

/s/ Steven H. Goldblatt
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system on July 28, 2014.

I certify that all parties in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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