

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,

**BRAD D. SCHIMEL**  
**Attorney General of Wisconsin**

/s/ Misha Tseytlin  
MISHA TSEYTLIN  
Solicitor General  
State Bar #1102199

DANIEL P. LENNINGTON  
Deputy Solicitor General  
State Bar #1088694  
Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 267-9323  
tseytlinm@doj.state.wi.us  
  
Attorneys for Intervenor  
State of Wisconsin

**LESLIE RUTLEDGE**  
**Attorney General of Arkansas**

/s/ Lee Rudofsky  
LEE RUDOFSKY  
Solicitor General  
State Bar #2015105

Arkansas Attorney General  
323 Center Street, Suite 200  
Little Rock, AR 72201  
(501) 682-8090  
lee.rudofsky@arkansasag.gov  
  
Attorneys for Intervenor  
State of Arkansas

**ADAM PAUL LAXALT**  
**Attorney General of Nevada**

/s/ Lawrence VanDyke  
LAWRENCE VANDYKE  
Solicitor General  
State Bar #13643C

Office of the Nevada Attorney  
General  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1100  
LVanDyke@ag.nv.gov  
  
Attorneys for Intervenor  
State of Nevada

**MARK BRNOVICH**  
**Attorney General of Arizona**

/s/ Dominic E. Draye  
DOMINIC E. DRAYE  
Deputy Solicitor General

1275 West Washington  
Phoenix, AZ 85007  
(602) 542-5025  
dominic.draye@azag.gov  
  
Attorneys for Intervenor  
State of Arizona

**JEFF LANDRY**  
**Attorney General of Louisiana**

/s/ David G. Sanders  
DAVID G. SANDERS

Assistant Attorney General  
State Bar #11696

Louisiana Department of Justice  
P.O. Box 94005  
Baton Rouge, LA 70804-9005  
(225)326-6357  
sandersd@ag.state.la.us

Attorneys for Intervenor  
State of Louisiana

**DEREK SCHMIDT**  
**Attorney General of Kansas**

/s/ Jeffrey A. Chanay  
JEFFREY A. CHANAY  
Chief Deputy Attorney General  
Kansas Bar #12056

Memorial Hall, 3<sup>rd</sup> Floor  
120 SW 10<sup>th</sup> Avenue  
Topeka, KS 66612-1597  
(785) 368-8435 Phone  
jeff.chanay@ag.ks.gov

Attorneys for Intervenor  
State of Kansas

**CHRIS KOSTER**  
**Attorney General of Missouri**

/s/ J. Andrew Hirth  
J. Andrew Hirth  
Deputy General Counsel  
Mo. Bar. No. 57807

P.O. Box 899  
207 W. High Street  
Jefferson City, MO 65102  
Tel: (573) 751-0818  
andy.hirth@ago.mo.gov

Attorneys for Intervenor State of  
Missouri

**GREGORY F. ZOELLER**  
**Attorney General of Indiana**

/s/ Thomas M. Fisher  
THOMAS M. FISHER  
Solicitor General  
State Bar #17949-49

Office of the Indiana Attorney  
General  
302 W. Washington Street  
IGC-South, Fifth Floor  
Indianapolis, Indiana 46204  
(317) 232-6255  
Tom.Fisher@atg.in.gov

Attorneys for Intervenor  
State of Indiana

**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