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Office of the Clerk  
United States Court of Appeals for the Sixth Circuit  
540 Potter Stewart U.S. Courthouse  
100 East Fifth Street  
Cincinnati, Ohio 45202

Re: *The State of Tennessee et al. v. The Federal Communications Commission*,  
Case No. 15-3291

Dear Clerk of the Court:

Pursuant to Federal Rule of Appellate Procedure 28(j), Petitioner the State of Tennessee respectfully notifies the Court of the United States Court of Appeals for the District of Columbia Circuit's recent decision in *U.S. Telecom Ass'n v. FCC*, No. 15-1063 (Jun. 14, 2016). In *U.S. Telecom*, the Court upheld the Federal Communications Commission's ("FCC") *Open Internet Order*, holding that the agency acted reasonably in reclassifying broadband Internet access service under Title II of the Communications Act and adopting new open Internet rules.

In reaching its decision, the D.C. Circuit considered whether Section 706 granted the FCC independent rulemaking authority, reexamining its opinion in *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014). *Verizon* found that Section 706 may grant the FCC some independent rulemaking authority. In its briefs, the State of Tennessee asserted that this conclusion was *dicta*. TN Br. at 50. More importantly, the State argued that *Verizon's* conclusion was erroneous because it ignored the illogical results that follow if Section 706 is deemed an independent grant of authority. *Id.* at 50-55.

In *U.S. Telecom*, the D.C. Circuit reexamined its finding in *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014) that Section 706 may grant the agency *some* independent authority, clarified that this conclusion could not be dismissed as *dicta*, and held that it was bound by the *Verizon* result. Op. 94-97. Of course, while *U.S. Telecom* holds that *Verizon's* interpretation of Section 706 controls in the D.C. Circuit, it is not binding on this Court. This Court is free to examine Section 706 for itself and reach its own conclusions. For the reasons set forth in the State's briefs, *Verizon's* analysis of Section 706 is fundamentally flawed; the statute is nothing more than a hortatory policy statement. Further, *Verizon's* own conclusion that Section 706 is ambiguous only reinforces the State's argument that the statute cannot contain the "plain statement" of preemption required here.



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*U.S. Telecom's* relevance to this case is narrow. Beyond clarifying that *Verizon's* finding that Section 706 may grant limited rulemaking authority was not *dicta*, it does not address any of the other issues raised.

Respectfully Submitted,

*/s/ Joshua S. Turner*

Joshua S. Turner  
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**CERTIFICATE OF SERVICE**

I certify that copies of this Letter were served on all parties or their counsel of record through the CM/ECF system to their electronic addresses of record on this 15th day of June, 2016, if they are registered users or, if they are not, by placing a true and correct copy in the United States mail to their address of record:

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/s/ Joshua S. Turner