



Federal Communications Commission
Washington, D.C. 20554

June 17, 2016

Deborah S. Hunt, Clerk
United States Court of Appeals
for the Sixth Circuit
540 Potter Stewart U.S. Courthouse
100 E. Fifth Street
Cincinnati, Ohio 45202-3988

Re: *The State of Tennessee v. FCC*, No. 15-3291 (oral argument held March 17, 2016 before Judges Rogers, White and Hood)

Dear Ms. Hunt,

We write in response to the letter filed yesterday by petitioner the State of Tennessee regarding *United States Telecom Ass’n v. FCC*, 2016 WL 3251234 (D.C. Cir. June 14, 2016).¹ In that case, the D.C. Circuit reiterated its prior holding in *Verizon v. FCC*, 740 F.3d 623, 633 (D.C. Cir. 2014) that Section 706 of the Telecommunications Act of 1996—on which the FCC relied for its action in this case—“vests the Commission ‘with affirmative authority to enact measures encouraging the deployment of broadband infrastructure.’” *USTA* at slip op. 95 (quoting *Verizon*, 740 F.3d at 633). As Tennessee concedes (letter at 1), the *USTA* court rejected the argument that the holding of *Verizon* had been mere dicta. *See* TN Br. 49-50. And contrary to Tennessee’s letter, the *USTA* court did not hold only that Section 706 “may” grant substantive authority or that it reached its conclusion only because it was “bound” by precedent. Rather, it held: “Even if there were any lingering uncertainty about the import of our decision in *Verizon*, we fully adopt here our findings and analysis in *Verizon* concerning the existence and permissible scope of the Commission’s section 706 authority.” *USTA* at slip op. 97.

¹ The decision is available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0614/DOC-339799A1.pdf.

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The D.C. Circuit's analyses of Section 706 in both *Verizon* and *USTA*, while not binding on this Court, are thorough and persuasive. We again urge the Court to reject Tennessee's attempts to create a circuit split on the issue. *See* FCC Br. 27-30.

Respectfully submitted,

/s/ Matthew Dunne

Matthew J. Dunne
Counsel

Cc: Counsel of record via ECF