

No. 15-\_\_\_\_  
 UNITED STATES COURT OF APPEALS  
 FOR THE FOURTH CIRCUIT

STATE OF NORTH CAROLINA,	)	
	)	
Petitioner,	)	
	)	
v.	)	<u>PETITION FOR REVIEW</u>
	)	
FEDERAL COMMUNICATIONS	)	
COMMISSION, and	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondents.	)	

Pursuant to 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342(1) and 2344, and Rule 15(a) of the Federal Rules of Appellate Procedure, the State of North Carolina hereby petitions this Court for review of the final order of the Federal Communications Commission (“FCC” or “Commission”) captioned “*In the Matter of City of Wilson, North Carolina Petition for Preemption of North Carolina General Statute Sections 160A-340 et seq.; The Electric Power Board of Chattanooga, Tennessee Petition for Preemption of a Portion of Tennessee Code Annotated Section 7-5260,*” Memorandum Opinion and Order, FCC 15-25, WC Docket Nos., 14-115 and 14-116 (“Order”). The Order was released on March 12, 2015, and stated that it became effective upon release. (Order, p. 76, ¶185) A copy of the full text of the Order is attached as Exhibit A and is available at [https://apps.fcc.gov/edocs\\_public/index.do?document=332489](https://apps.fcc.gov/edocs_public/index.do?document=332489).

In the Order, the FCC preempts North Carolina's statutory law (N.C.G.S. §160A-340.1 *et seq.*) and provisions of Session Law 2011-84 governing municipal provisioning and operation of broadband communications services. Despite recognition that the State of North Carolina creates and retains control over municipal governments, the FCC unlawfully inserted itself between the State and the State's political subdivisions. North Carolina, as a sovereign State and a party to the proceeding below, is aggrieved and seeks relief on the grounds that the Order:

- (1) is contrary to the United States Constitution;
- (2) is in excess of the Federal Communication Commission's authority;
- (3) is arbitrary, capricious, and an abuse of discretion within the meaning of the Administrative Procedure Act; and
- (4) is otherwise contrary to law.

Venue is proper in this Court pursuant to 28 U.S.C. § 2343. The State of North Carolina acknowledges that the State of Tennessee filed its Petition for Review from the Order in the United States Court of Appeals for the Sixth Circuit on 20 March 2015. (*State of Tennessee v. Federal Communications Commission*, Docket No. 15-3291)

North Carolina respectfully requests that this Court hold unlawful, vacate, enjoin, and set aside the Order, and provide such additional relief as may be appropriate.

Respectfully submitted, this the 11<sup>th</sup> day of May, 2015.

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**CERTIFICATE OF SERVICE**

I, John F. Maddrey, hereby certify that on, May 11, 2015, I filed the foregoing **Petition for Review** via the Court's ECF filing system, and caused one copy of the **Petition for Review** to be delivered by first class mail and electronic mail, where specified, to:

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I further certify that on May 11th, 2015, I caused one copy of the **Petition for Review** be delivered by first class mail to the parties listed below, who participated in the FCC proceeding, consistent with Federal Rule of Appellate Procedure 15(c)(1). The Order is available at:

[https://apps.fcc.gov/edocs\\_public/index.do?document=332489](https://apps.fcc.gov/edocs_public/index.do?document=332489).

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