

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

THE STATE OF TENNESSEE,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION,

and UNITED STATES OF AMERICA,

Respondents.

Case No. 15-_____

PETITION FOR REVIEW

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 Tennessee 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 7-52-60*, 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. *Id.* ¶ 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.

In the *Order*, the FCC preempts Tennessee law pertaining to the operation of municipal electric plants, including the Electric Power Board of Chattanooga, an instrumentality of the City of Chattanooga, created and controlled by the State of Tennessee. In so doing, the FCC has unlawfully inserted itself between the State of Tennessee and the State's own political subdivisions. The State of Tennessee, as a sovereign 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 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 because the State of Tennessee is located within this judicial Circuit.

Accordingly, the State of Tennessee 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,

Herbert H. Slatery III
*Attorney General and Reporter of the
State of Tennessee*

Charles L. Lewis
Deputy Attorney General

By: s/ Joshua S. Turner

Joshua S. Turner*
Megan L. Brown
WILEY REIN LLP
1776 K Street, NW
Washington, DC 20006
TEL: (202) 719-7000
FAX: (202) 719-7049
jturner@wileyrein.com
mbrown@wileyrein.com

**Lead Counsel*

Counsel for the State of Tennessee

Dated: March 20, 2015

CERTIFICATE OF SERVICE

I, Megan L. Brown, hereby certify that on March 20, 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:

Jonathan Sallet
Federal Communications Commission
Office of the General Counsel
Room 8-A741
445 12th Street, S.W.
Washington, DC 20554
Jonathan.Sallet@fcc.gov

*Counsel for the Federal
Communications Commission*

Eric H. Holder, Jr.
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Room 3601
Washington, DC 20530-0001

Catherine G. O'Sullivan
U.S. Department of Justice
Antitrust Division/Appellate Division
950 Pennsylvania Avenue, N.W.
Room 3224
Washington, DC 20530-0001
Catherine.O'Sullivan@usdoj.gov

Counsel for the United States of America

I further certify that on March 20, 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.

s/ Megan L. Brown
Megan L. Brown