

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

GLOBAL TEL\*LINK, *et al.*,

*Petitioners,*

v.

FEDERAL COMMUNICATIONS COMMISSION  
and UNITED STATES OF AMERICA,

*Respondents.*

No. 15-1461 (and  
consolidated cases)

Oral argument set for  
February 6, 2017

**STATE AND LOCAL GOVERNMENT PETITIONERS'  
RESPONSE TO ORDER TO SHOW CAUSE**

The undersigned State and Local Government Petitioners support holding this action and all consolidated and related actions in abeyance pending changes in the leadership at the Federal Communications Commission and an opportunity for the newly-constituted Commission to reconsider the Orders at issue in this case.

As the Court is likely aware, the membership of the Commission has changed in recent days, and further changes are expected soon. The commission of Jessica Rosenworcel, who as a Commissioner voted in favor of the challenged Orders, expired effective January 3, 2017, and although she has been renominated by President Obama,

the Senate has not confirmed her nomination.<sup>1</sup> Meanwhile, Chairman Tom Wheeler, who also voted for the challenged Orders, announced last month that he will resign from the Commission on January 20, 2017.<sup>2</sup> Accordingly, by the end of this week, the majority of the remaining Commissioners voted *against* the challenged Orders, with Commissioners Pai and O’Rielly voting against, and Commissioner Clyburn voting in favor. Even if the Commission has been restored to five Commissioners by the time it has the opportunity to reconsider the challenged Orders, the Commission should have the chance to reconsider the challenged Orders in the first instance.

This Court has the inherent power to stay this litigation to preserve judicial economy and the efficient resolution of cases.<sup>3</sup> When litigation has spanned the transition between presidents from different parties, this Court has in the past placed litigation challenging administrative actions on hold while the new administration and its appointees have the opportunity to reconsider the challenged action,<sup>4</sup> including

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<sup>1</sup> See Harper Neidig and Ali Breland, *Obama renominates former FCC commissioner*, THE HILL (Jan. 4, 2017), available at <http://thehill.com/policy/technology/312743-obama-renominates-former-fcc-commissioner>.

<sup>2</sup> Federal Communications Commission Statement, *Chairman Wheeler Announces His Plans to Step Down* (Dec. 15, 2016), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-342617A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-342617A1.pdf).

<sup>3</sup> See *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936); see also *Dietz v. Bouldin*, 136 S. Ct. 1885, 1888-89 (2016).

<sup>4</sup> See, e.g., *California et al. v. EPA*, No. 08-1178, Doc. #1167136 (D.C. Cir. Feb. 25, 2009) (staying briefing for several months to permit President Obama to reconsider challenged determinations promulgated by EPA under President Bush, which ultimately resulted in the case being voluntarily dismissed); *Mississippi v. EPA*, 744 F.3d

during the present transition.<sup>5</sup> Indeed, holding the instant litigation in abeyance is particularly appropriate because the challenged agency action has been stayed multiple times, meaning that this Court has repeatedly determined that equity favors delaying implementation of the challenged Orders until their validity can be fully and finally established. Because the challenged Orders are likely to be reconsidered and/or rescinded by the Commission, and in the interest of judicial economy, the State and Local Government Petitioners support holding this case in abeyance.

DATED: January 17, 2017

Respectfully submitted,

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1334, 1341 (D.C. Cir. 2013) (granting abeyance motion after President Obama's election to permit agency to review and reconsider previous administration's rule).

<sup>5</sup> See, e.g., *United States House of Representatives v. Burwell*, No. 16-5202, Doc. #1649251 (D.C. Cir. Dec. 5, 2016) (per curiam) (holding in abeyance challenge to implementation of Affordable Care Act).

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**CERTIFICATE OF SERVICE**

I hereby certify that, on January 17, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system, as well as arranged for four paper copies to be hand-delivered to the Clerk of the Court. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

By: s/ Mithun Mansinghani  
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