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WLF Calls on Appeals Court to Prevent FCC from Commandeering State Governments

(State of North Carolina v. FCC; State of Tennessee v. FCC)

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—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Former FCC Commissioner Harold Furchtgott-Roth and Washington Legal Foundation today called on the U.S. Court of Appeals for the Sixth Circuit to vacate a Federal Communications Commission (FCC) order commanding North Carolina and Tennessee to permit expanded municipal broadband Internet services—despite their state governments’ decisions not to allow it. In a brief filed in *State of North Carolina v. FCC* and *State of Tennessee v. FCC*, WLF argues that the U.S. Constitution forbids federal government agencies from commandeering a State’s legislative or administrative apparatus for federal purposes.

Like many other States, North Carolina and Tennessee some years ago adopted legislation authorizing cities (and other subordinate units of state government, such as municipal electrical systems) to operate broadband Internet services—but only within limited geographical areas. FCC determined in March that these geographical limitations violated federal policy favoring increased competition in broadband services. In a reversal of the commission’s longstanding legal interpretation of its authority under the Telecommunications Act of 1996, FCC declared invalid the North Carolina and Tennessee statutes restricting expansion, and it told municipal broadband Internet service providers in those States that they were free to expand.

The Furchtgott-Roth and WLF brief argues that well-established state sovereignty principles absolutely prohibit the federal government from, as here, interfering with the relationship between a State and its political subdivisions. At the very least, it argues, FCC may not preempt state laws that set forth how various organs of government are to operate, in the absence of unmistakably clear language from Congress authorizing preemption. Federal law provides no such “clear statement,” Furchtgott-Roth and WLF demonstrate.

Upon filing the brief, WLF issued the following statement by Chief Counsel Richard Samp: “The Constitution protects the right of States to decide whether to engage in commercial activities. FCC overstepped its bounds when it snatched the reins of government from North Carolina and Tennessee and ordered them to permit their municipalities to offer expanded broadband Internet services. Congress is empowered to regulate people, not the several States.”

WLF is a free-market, public-interest law firm and policy center that fights for limited government and federalism by enforcing constitutional limits on federal agency regulations.