United States Court of Appeals
For The Eighth Circuit
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111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

VOICE (314) 244-2400
FAX (314) 244-2780
www.ca8.uscourts.gov

September 06, 2017

Mr. Justin Harley Perl
MID-MINNESOTA LEGAL ASSISTANCE
300 Kickernick Building
430 First Avenue, N.
Minneapolis, MN 55401-1780

RE: 17-2290 Charter Advanced Services, et al v. Nancy Lange, et al

Dear Counsel:

The amicus curiae brief of Mid-Minnesota Legal Aid was received on 09/05/2017 and filed on 09/06/2017. If you have not already done so, please complete and file an Appearance form. You can access the Appearance Form at www.ca8.uscourts.gov/all-forms.

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Michael E. Gans
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AMT

Enclosure(s)

cc: Mr. David C. Bergmann
Barbara Ann Cherry
Mr. Ronald Elwood
Mr. Steve Gaskins
Mr. David A. Handzo
Jennifer M. Murphy
Julie Nepveu
Mr. Luke Platzer
Mr. James Bradford Ramsay
Mr. William Alvarado Rivera
Mr. Andrew Tweeten
Mr. Adam G. Unikowski

District Court/Agency Case Number(s): 0:15-cv-03935-SRN

No. 17-2290

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Charter Advanced Services (MN), LLC, et al.,

PLAINTIFFS-APPELLEES,

v.

Nancy Lange, in her official capacity as Chair of the Minnesota Public Utilities Commission, et al.,

DEFENDANTS-APPELLANTS.

BRIEF AMICUS CURIAE OF MID-MINNESOTA LEGAL AID IN SUPPORT OF APPELLANTS AND REVERSAL

MID-MINNESOTA LEGAL AID

Justin H. Perl (#0151397)
Ron Elwood (#0349835)
430 First Avenue North, Suite 300
Minneapolis, MN 55401
Telephone: (612) 746-3727
jperl@mylegalaid.org
relwood@mnlsap.org
Attorneys for Amicus Curiae
Mid-Minnesota Legal Aid

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, Amicus Curiae Mid-Minnesota Legal Aid ("MMLA") states that MMLA does not have a parent corporation and that no publicly held company owns 10% or more of the stock of MMLA.

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STATEMENT OF INTEREST

Mid-Minnesota Legal Aid ("MMLA") submits this brief pursuant to FED. R. APP. P. 29(b). The parties to the action have consented to the filing of this brief: MMLA received the consent of Appellants on July 11, 2017, and from the Appellees on July 14, 2017. No party's counsel authored the brief, in whole or in part; and no party or its counsel or other person contributed money intended to fund preparation or submission of this brief, other than the *amicus curiae*.

MMLA, a nonprofit organization, provides civil legal services to low-income clients in 20 counties across central Minnesota. Annually, MMLA provides representation and advice to more than 10,000 low-income households, and reaches tens of thousands more through its online legal information services. A substantial number of clients are elderly, persons of color, have disabilities, or live in rural areas of the state. MMLA's mission is to advocate for the legal rights of disadvantaged people to have safe, healthy, and independent lives in strong communities. To fulfill its role as a voice for the elderly, disabled, and financially challenged, MMLA files this brief because the holding in the case, if affirmed, will have a significantly adverse impact on a vast number of our clients by eviscerating long-held statutory, regulatory, and other legal protections for individuals who rely on nonmobile phone service for their health, safety, and ability to fully participate in commerce and our society.

SUMMARY OF ARGUMENT

Reversal in this case is necessary and proper. The District Court erred in preempting the Minnesota Public Utilities Commission ("MPUC") from regulating Charter Advanced Services (MN), LLC, and its related entities (collectively referred to as "Charter"), a provider of local (intrastate) phone service. Charter uses Fixed Voice over Internet Protocol ("Fixed VoIP") technology to deliver phone calls. No tribunal, save the District Court, has found preemption of state regulation of Fixed VoIP phone service.

The District Court was wrong on several grounds. First, it misread this Court's holding in *Minnesota Pub. Utilities Comm'n. v. F.C.C.*, 483 F.3d 570 (8th Cir. 2007) (referred to by the District Court and herein as "*Vonage III*"). *Vonage III* applies solely to *Nomadic* VoIP service. *Vonage III* at 575 (drawing a "distinction . . . between what is referred to as 'nomadic' VoIP service and 'fixed' VoIP service."). As this Court has found, the preemption argument "fails" when applied to *Fixed* VoIP providers, who remain "'subject to state regulation.'" *Sprint Commc'ns Co. v. Bernsten*, 152 F. Supp. 3d 1144, 1152 (S.D. Iowa 2015) (citing *In the Matter of Universal Serv. Contribution Methodology*, 21 F.C.C. Rcd. 7518, 7519 (2006), *aff'd sub nom. Sprint Commc'ns Co., L.P. v. Lozier*, No. 16-1417, 2017 WL 2693829 (8th Cir. 2017)).

Second, in overruling the MPUC, the District Court failed to "recognize the considered role of state agencies that have accepted Congress' invitation to become crucial partners" in telephone regulation under the "deliberately constructed model of cooperative federalism" established by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("the 1996 Act"). *BellSouth Telecommunications, Inc. v. Sanford*, 494 F.3d 439, 447–49 (4th Cir. 2007) (referring to the 1996 Act). Though federal judicial deference to the MPUC is not required, it is most certainly deserved here because of the substantial technical expertise the agency possesses. The District Court should have exercised the judicial restraint dictated by the *Vonage III* Court, which declined to address the very same question at issue here, because the Federal Communication Commission ("FCC") has not yet ruled on it. *Vonage III* at 579, 582 (holding the matter was "not ripe for review" and deferring to the agency's expertise).

Finally, the District Court failed to examine the dispute through a broader public interest and public policy lens. At its core, this case is about local phone service. Long-standing and still robust law and policy have deemed local phone service to be an "essential service." *See, e.g.*, *Covad Commc'ns Co. v. BellSouth Corp.*, 314 F.3d 1282, 1283 (11th Cir. 2002). Precisely because local phone service is essential, service providers like Charter are – in the immortal and enduringly relevant doctrine of the Supreme Court – "affected with the public interest." *Munn*

v. People of State of Illinois, 94 U.S. 113 (1876). Protection of that public interest must be a paramount consideration when removal of regulatory authority over such an "affected" industry is at issue. To ignore the public interest would do significant harm to hundreds of thousands of Minnesotans who rely on phone service provided through Fixed VoIP service for safety (e.g., 911), consumer protection (e.g., prevention of unwarranted loss of phone service or discriminatory business practices), and universal access to basic telephone service.

ARGUMENT

I. THE MINNESOTA PUBLIC UTILITIES COMMISSION HAS THE POWER TO REGULATE FIXED VOIP LOCAL PHONE SERVICE

A. The District Court Misread *Vonage III*

The District Court misread this Court's holding in *Vonage III*. *Minnesota Pub. Utilities Comm'n.*, 483 F.3d at 570 (8th Cir. 2007). *Vonage III* does not apply to *Fixed* VoIP providers, like Charter. It applies only to *Nomadic* VoIP providers, like Vonage.

The analysis turns on what is commonly referred to as the "impossibility exception." *Vonage III* at 576. As this Court has held, the "dispositive" determination on the issue of whether "state regulation of VoIP services" is preempted is whether it is "impossible or impractical to separate the intrastate components of VoIP service from its interstate components." *Id*. at 576, 578. If impossible, state regulation is preempted; if possible, state regulatory authority remains undisturbed.

Vonage qualified for the impossibility exception because "Vonage's nomadic interconnected VoIP service cannot be separated into interstate and intrastate usage . . . ." *Vonage Holdings Corp. v. Nebraska Pub. Serv. Comm'n*, 564 F.3d 900, 905 (8th Cir. 2009); *see also New Mexico Pub. Regulation Comm'n v. Vonage Holdings Corp.*, 640 F. Supp. 1359, 1367 (D.N.M. 2009) (applying impossibility

exception to preempt state regulation of Vonage's Nomadic VoIP service only). As the *Bernsten* court recently announced, states are preempted from regulation only where intrastate and interstate components cannot "be disentangled." *Bernsten*, 152 F. Supp. 3d at 1146 (citing, *inter alia*, *Louisiana Pub. Serv. Comm'n v. F.C.C.*, 476 U.S. 355, 375, n.4 (1986).

In contrast, Fixed VoIP service providers, like Charter, do not qualify for the impossibility exception and thus are still subject to state regulation because their service "originates from a fixed geographic location" and "the geographic endpoints of its calls may be tracked." *Vonage III* at 578, 583. As this Court noted, "the FCC has . . . indicated VoIP providers who can track the geographic end-points of their calls do not qualify for the preemptive effects of the [FCC's] Vonage order." *Vonage III* at 583 (citing *Universal Serv. Contribution Methodology*, 21 F.C.C. Rcd. at 7546). And, as this Court more recently confirmed, "*Vonage's* reasoning does not apply to providers 'with the ability to track the jurisdictional confines of customer calls.'" *Bernsten*, *supra*, 152 F. Supp. 3d at 1152. In other words, when a provider's interstate and intrastate components are separable, it cannot avail itself of the impossibility exception. Notably, Charter has conceded that the intrastate and interstate jurisdictional components of its Fixed offering can be identified. App. 187: 19-88: 14. Plainly, the District Court went too far when it extended this Court's

holding in *Vonage III* by applying it to Charter's Fixed VoIP.[1] Since state regulation of Charter's service is not subject to preemption, reversal is mandated.

B. The Substantial Technical Expertise of the Minnesota Public Utilities Commission Should Have Been Accorded Judicial Deference

Unquestionably, according to this Court, where the FCC has spoken, deference to its interpretation of the 1996 Act is required. *WWC License, L.L.C. v. Boyle*, 459 F.3d 880, 890 (8th Cir. 2006) (explaining that "in our interpretation of the Act, we owe deference" to the FCC). Similarly, where the 1996 Act's language is ambiguous and the FCC has not ruled, "'an order of a state commission may deserve a measure of respect in view of the commission's experience, expertise, and the role that Congress has given [state commissions] in the [1996 Act].'" *New Cingular Wireless PCS, LLC v. Finley*, 674 F.3d 225, 237 (4th Cir. 2012) (citing *BellSouth Telecommunications*, 494 F.3d at 447-49). The deserved "respect . . . flows from the long-standing principle that "the well-reasoned views of the agencies implementing a statute 'constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance.'" *Id*. (citing *United States v. Mead*, 533 U.S. 218, 227 (2001) and Philip J. Weiser, *Federal Common Law, Cooperative Federalism, and the Enforcement of the Telecom Act*, 76 N.Y.U.

[1] The District Court's decision does not even make mention of the impossibility exemption.

L. REV. 1692, 1732 (2001) ("where the FCC does not mandate a national approach to interpreting and applying the [1996] Act, state agencies are left with considerable flexibility to do so, albeit subject to federal court review").

In *BellSouth Telecommunications*, the Fourth Circuit upheld a North Carolina Utilities Commission ("NCUC") interpretation of the 1996 Act, finding that state commissions have "continuing . . . authority over telecommunications issues . . . ." and "respect is due" when [the commissions] are called upon to apply their expertise and judgment . . . ." *BellSouth Telecommunications*, 494 F.3d at 447–49. As the NCUC did, the MPUC in this case applied its expertise and judgment. And just like the NCUC order, the MPUC's order "resulted from a deliberative notice and comment process; [demonstrated] valid and thorough reasoning, including careful reading and harmonizing of relevant authorities and policies; and align[ed] with the decisions of other state commissions." *Id.*[2]

[2] Indeed, had the District Court accorded the respect deserving of the MPUC decision, it would have aligned with the determinations of regulatory bodies across the country that states are not preempted from regulating Fixed VoIP. *See, e.g.*, *In Re: Inquiry into the Appropriate Scope of Telecommunications Regulation*, 2013 WL 174984 (Iowa Utilities Board, Jan. 11, 2013) (asserting jurisdiction over "nonnomadic VoIP service); *Pub. Utilities Comm'n Investigation into Whether Providers of Time Warner "Digital Phone" Serv. & Comcast "Digital Voice" Serv. Must Obtain Certificate of Pub. Convenience & Necessity to Offer Tel. Serv.*, 2010 WL 4918159 (Maine Public Utilities Commission, Oct. 27, 2010) (finding Time Warner Cable and Comcast's Fixed VoIP phone service to be 'telecommunications services,' and not 'information services,' pursuant to 47 U.S.C. § 153 (2010), and that [state] authority to regulate these services has not been preempted by federal law"); *Petition of Time Warner Cable Info. Serv. (New York), LLC for Modification*

It is uncontroverted that the 1996 Act generally, and the specific statutory definitions at issue here, are ambiguous, and thus entitled to regulatory interpretation. *See, e.g.*, *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 397 (1999) (finding that the 1996 Act is "in many important respects a model of ambiguity or indeed even self-contradiction."); *see also Virgin Islands Tel. Corp. v. F.C.C.*, 198 F.3d 921, 922 (D.C. Cir. 1999) (finding "telecommunications service" to be "an ambiguous . . . term"). Additionally, it is undisputed that the FCC has not yet ruled on whether Fixed VoIP is a telecommunications or information service. *Free Conferencing Corp. v. Comcast Corp.*, No. CV154076FMOPJWX, 2016 WL 7637664, at *3 (C.D. Cal. May 31, 2016) (declaring that the FCC "to date has not classified [Fixed] interconnected VoIP service as a telecommunications service or information service'") (citing *In the Matter of Ip-Enabled Servs.*, 24 F.C.C. Rcd. 6039, 6051, n.21 (2009)). Therefore, just as this Court did in *Vonage III*, the District Court should have found the definitional question of whether a phone service qualifies as information or telecommunications "not ripe for review" until the court

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of Its Existing Eligible Telecommunications Carrier Designation, 2013 WL 1180922, at *1 (New York Public Service Commission, Mar. 18, 2013) (basing its finding that Time Warner is "a provider of telecommunications services" in part on the fact that Time Warner Cable "holds itself out to New York State consumers as a telecommunications provider," just as Charter holds itself out to Minnesota consumers as a telecommunications provider).

is "presented with [an FCC] order preempting state regulation of fixed VoIP service providers." *Vonage III* at 579, 582.

The MPUC asserted jurisdiction over Fixed VoIP. Deference to the MPUC, though not required, is appropriate because a measure of "respect is due" when state commissions "apply their expertise and judgment . . . ." *BellSouth Telecommunications*, 494 F.3d at 447-49. As this Court has acknowledged, current federal law does not restrict the states' authority to regulate the provision of Fixed VoIP service and the conduct of its providers. *Iowa Network Servs., Inc. v. Qwest Corp.*, 363 F.3d 683, 690, 691 (8th Cir. 2004) (concluding that, despite other changes in regulatory authority made by the 1996 Act, "'nothing in [the 1996 Act affects state authority over] classifications, practices, services, facilities, or regulations for or in connection with . . . regulation by a State commission'") (citing 47 U.S.C. § 221(b) (2004)). Given the MPUC's "accumulation of knowledge and experience in telecommunications law and policy, its orders should not be taken lightly." *BellSouth Telecommunications*, 494 F.3d at 448 (citing Philip J. Weiser, *Chevron, Cooperative Federalism, and Telecommunications Reform*, 52 VAND. L. REV. 1, 24–30 (1999) (arguing for considerable deference to state commission decisions under the 1996 Act)).

The District Court should have granted deference to the MPUC's expert technical determination, rather than eliminating the MPUC's jurisdiction over

Charter's phone service. No previous FCC, regulatory, or judicial holding has ever found Fixed VoIP phone providers to be exempt from state regulatory oversight. And this Court need not, and should not, make such a radical finding now.

II. THE PUBLIC INTEREST MUST BE PROTECTED BECAUSE PHONE SERVICE IS ESSENTIAL

A. Telephone Service Is An Essential Service

It is axiomatic that telephone service is essential to consumer health, safety, and welfare. *See, e.g.*, *A.D. Bedell Wholesale Co. v. Philip Morris Inc.*, 263 F.3d 239, 255 (3d Cir. 2001) (finding "local telephone service," among others, to be an essential service); *Babcock Ctr., Inc. v. U.S. ex rel. I.R.S.*, No. CA 3:11-01721-CMC, 2013 WL 1857688, at *6 (D.S.C. May 2, 2013) (finding "telephone service is essential to providing for the health and safety" of persons with disabilities); *S. New England Tel. Co. v. Glob. Naps, Inc.*, 458 F. Supp. 2d 23, 25 (D. Conn. 2006) (finding that telephone companies "deliver . . . essential services"); *Competitive Carriers of the S., Inc. v. Edgar*, No. 4:07CV48-RH/WCS, 2008 WL 4613077, at *4 (N.D. Fla. Oct. 16, 2008) (finding that "[t]he restoration of telephone service following a storm is essential to 'protect the public safety and welfare.'"); *United States v. W. Elec. Co.*, 592 F. Supp. 846, 875 (D.D.C. 1984), *modified on other grounds*, No. CIV.A. 82-0192 (HHG), 1991 WL 193534 (D.D.C. July 30, 1991) (finding telephone service to be "an essential service not only for conducting business but also as a link to the world for the elderly, the poor, the ill, those living

in sparsely settled areas—in brief, everyone."); *Harrisonville Tel. Co. v. Illinois Commerce Comm'n*, 817 N.E.2d 479, 487 (2004) (noting that "the FCC found that telephone service is . . . essential to education, public health, and public safety") (citations omitted.) This is especially true for older Minnesotans and Minnesotans with disabilities, who often rely, in whole or in part, on home phone service. DEPT. OF HEALTH & HUMAN SERVS., WIRELESS SUBSTITUTION: EARLY RELEASE OF ESTIMATES FROM THE NATIONAL HEALTH INTERVIEW SURVEY, JULY-DECEMBER 2016 (2017) (reporting that 76.5% of households aged 65 and older continue to have Fixed VoIP or other home phone service).

The fundamental nature and purpose of a telephone call, regardless of how it is delivered, has never changed, namely, to reach out to loved ones, make social connections, interact with local businesses, obtain essential government services, and access the family doctor and 911. From the consumer's perspective, "the VoIP service offered by Charter is essentially indistinguishable from [the] phone service" offered by other local phone service providers who do not use VoIP technology to deliver calls. *In the Matter of the Complaint by the Minnesota Dep't of Commerce Against the Charter Affiliates Regarding Transfer of Customers*, 2015 WL 4606300 (2015) (July 28, 2015). And since Charter's Fixed VoIP service is subject to regulation, as discussed above, the critical protections provided by the MPUC's regulatory oversight of phone service apply with equal force to Charter. Therefore,

Charter cannot circumvent the regulatory system in place in Minnesota that protects consumer health, safety, and security; fosters social and economic commerce; and ensures phone companies (like Charter) provide reliable, nondiscriminatory service under fair terms and conditions.

B. Universal Service Is A Paramount Regulatory Goal

As the D.C. Circuit has indicated, "Congress has made universal service a fundamental goal of federal telecommunications regulation." *Rural Cellular Ass'n v. F.C.C.*, 588 F.3d 1095, 1098 (D.C. Cir. 2009). This principle, enshrined in the Communications Act of 1934 ("the 1934 Act"), provides that "rapid, efficient" phone service should be made available "to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex." Communications Act of 1934, Pub. L. No. 73–416, 48 Stat. 1064 (1934) (codified at 47 U.S.C. § 151 (2017). Expanded universal service goals added by the 1996 Act include providing phone "'access [in] all regions of the Nation . . . including low-income consumers and those in rural [America] . . . .'" *Id.* (citing 47 U.S.C. § 254(b)(2)-(5) (2016)).[3] States play an essential role under this framework in assuring universal service. *AT&T Commc'ns of S. States, Inc. v. BellSouth*

[3] As one expert observes, "[t]he principle of universal service applies whether users live in rural areas or urban areas. It applies to those with a physical disability that would interfere with communication. It applies to all users irrespective of their level of income." Jodie Griffin, *Universal Service in an All-IP World*, 23 COMMLAW CONSPECTUS 346, 349 (2015).

Telecommunications, Inc., 268 F.3d 1294, 1298 (11th Cir. 2001) (declaring that "states still play a major role in . . . ensur[ing] universal service in intrastate telephone markets); *see also AT&T Corp. v. Pub. Util. Comm'n of Texas,* 252 F. Supp. 2d 347, 349 (W.D. Tex. 2003), *aff'd sub nom. AT&T Corp. v. Pub. Util. Comm'n of Texas*, 373 F.3d 641 (5th Cir. 2004) (pointing to the fact that the 1934 and 1996 Acts established the "the parameters of the states' role in promoting universal service."). It is this very universal service that is the paramount stated goal under Minnesota's telecommunications law. MINN. STAT. § 237.011 (2016) (enumerating as the first of eight state telecommunications goals "supporting universal service").

On March 1, 2013, Charter transferred its more than 100,000 residential telephone service customers to several unregulated affiliates, without the customers' consent. At the same time, Charter ceased making payments to Minnesota's 911, Telephone Assistance Program, and Telecommunications Access Minnesota funds. These funds are used, respectively, to protect public safety by maintaining emergency services, enable low-income Minnesotans to access and maintain telephone service, and provide Minnesotans with disabilities with specialized telephone equipment so they can fully participate in the communications society. It is undisputed that Charter made this move to avoid any MPUC regulation of its local phone service. *Charter Advanced Servs. (MN), LLC v. Lange*, No. 15-CV-3935

(SRN/KMM), 2017 WL 1901414, at *2 (D. Minn. May 8, 2017). And if the District Court's order is upheld, Charter will be allowed to succeed in its endeavor, thus effectively eliminating the method by which the State of Minnesota funds these critical services and depriving hundreds of thousands of Minnesotans of these essential rights and protections. Federal Communications Commission, *Voice Telephone Services Report (State-Level Subscriptions)*, https://www.fcc.gov/voice-telephone-services-report.

C. Unwarranted Deregulation Harms Minnesota's Elderly, Persons with Disabilities, Rural Residents, And Many Other Consumers of Telephone Services

The District Court's ruling confiscates the rights of consumers to obtain universal access to vital phone services. The ruling gives Charter the luxury of simply terminating service to needy Minnesotans, such as those with disabilities and the elderly; in the future, Charter may simply refuse to serve them in the first instance. In addition, the ruling effectively grants Charter *carte blanche* to unilaterally decline any telephone service to those who live in rural parts of the state. Virtually all meaningful consumer protection would be eliminated. Undue price, geographical, and other discrimination would become unrestricted, threatening the availability and maintenance of these indisputably essential services. The once sacred assurance of reliability of phone service would be lost. Protections to ensure a fair marketplace would be jeopardized.

Minnesota now has a statutory scheme in place that protects the public from the above parade of horribles. *See, e.g.*, MINN. R. 7810.2300 (2016) (protection against disconnection without notice); MINN. R. 7810.2000 (2016) (protection against warrantless disconnections); MINN. STAT. § 237.06 (2016) and MINN. R. 7810.2200 (2016) (protection against unreasonable deposits and reconnection fees, respectively); MINN. STAT. § 237.74 (2016) (protection against unduly discriminatory price or terms of service); MINN. STAT. § 237.081 (2016) (protection against "unreasonable, insufficient, inadequate, or unjustly discriminatory businesses practices"); MINN. STAT. §§ 237.16 (2016) and 237.74 (2016) (authority of the MPUC to sanction or remove market participants who engage in anticompetitive behavior or who injure consumers); MINN. STAT. §§ 237.663 (2016) and 237.665 (2016) (protection against billing consumer for unauthorized charges).[4]

[4] These concerns are not merely theoretical. The FCC and the Federal Trade Commission have recently found that AT&T carried out massive "cramming" schemes where, combined, nearly $95 million was returned to more than 2.5 million customers illegally billed for unauthorized charges. *See* Federal Communications Commission, *AT&T to Pay $7.5 Million for Letting Scammers Bill Consumers for Sham 'Directory Assistance' Services*, (Aug. 8, 2016), https://apps.fcc.gov/edocs_public/attachmatch/DOC-340650A1.pdf; Federal Trade Commission, *FTC Providing Over $88 Million in Refunds to AT&T Customers Who Were Subjected to Mobile Cramming*, (Dec. 8, 2016), https://www.ftc.gov/ news-events/press-releases/2016/12/ftc-providing-over-88-million-refunds-att-customers-who-were.

Further, affirmance of the District Court's order would remove important authority of the MPUC to protect public safety through oversight of the 911 system. No longer would companies providing phone service need to demonstrate that they can successfully complete 911 calls. *See* MINN. R. 7811.0550 (2016) and MINN. R. 7812.0550 (2016). No longer could the MPUC take corrective action for providers' failure to comply with 911 requirements.[5] *See* MINN. STAT. § 403.09 (2016).

Should the District Court's ruling stand, no greater harm could befall consumers and no greater violence could be done to universal service principles and the public interest. Extreme judicial restraint should be exercised before dismantling a long-standing and very necessary regulatory structure that supports state oversight of an intrastate phone industry that has never lost its central feature as the provider of an essential service, affected with the public interest. Now is not the time to vitiate all of the above consumer protections by upholding a preemption ruling that violates well-established legal principles.

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[5] VoIP technology has been found to be unreliable as it relates to identifying the location of a 911 caller with an emergency. *See* Federal Communications Commission, *VoIP and 911 Service,* https://www.fcc.gov/consumers/ guides/voip-and-911-service (last visited July 14, 2017) (noting that Fixed VoIP and other VoIP technology "raises challenges" in pinpointing the origin of 911 calls and alerting to other problems associated with connecting to 911 through VoIP technology). Since not expressly preempted, continued state regulatory oversight of this vital service offered by Fixed VoIP providers is essential to ensure the public safety.

CONCLUSION

State regulation of Charter's Fixed VoIP service is not preempted. The judgment of the District Court should be reversed.

Respectfully submitted,

MID-MINNESOTA LEGAL AID

Dated: September 5, 2017

BY: /s/ Justin H. Perl

Justin H. Perl (#0151397)
Ron Elwood (#0349835)
430 First Avenue North, Suite 300
Minneapolis, MN 55401
Telephone: (612) 746-3727
jperl@mylegalaid.org
relwood@mnlsap.org
Attorneys for Amicus Curiae
Mid-Minnesota Legal Aid

CERTIFICATE OF COMPLIANCE
WITH TYPE-VOLUME LIMITATION,
TYPEFACE REQUIREMENTSAND TYPE STYLE REQUIREMENTS
PURSUANT TO FED. R. APP. P. 32(a)(7)(C)

Pursuant to FED. R. APP. P. 32(a)(7)(C), I certify as follows:

1. This Brief of Amicus Curiae Mid-Minnesota Legal Aid In Support Of Appellants and Reversal complies with the type-volume limitation of FED. R. APP. P. 32(a)(7)(B) because this brief contains 5,016 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(B)(iii); and

2. This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016, the word processing system used to prepare the brief, in 14 point font in Times New Roman font.

MID-MINNESOTA LEGAL AID

Dated: September 5, 2017

BY: /s/ Justin H. Perl

Justin H. Perl (#0151397)
Ron Elwood (#0349835)
430 First Avenue North, Suite 300
Minneapolis, MN 55401
Telephone: (612) 746-3727
jperl@mylegalaid.org
relwood@mnlsap.org
Attorneys for Amicus Curiae
Mid-Minnesota Legal Aid

CERTIFICATE OF COMPLIANCE
WITH EIGHTH CIRCUIT RULE 28A(h)

Pursuant to this Court's Rule 28A(h), I hereby certify that the electronic version of this Brief of Amicus Curiae Mid-Minnesota Legal Aid In Support Of Appellants And Reversal has been scanned for viruses and is virus-free.

MID-MINNESOTA LEGAL AID

Dated: September 5, 2017

BY: /s/ Justin H. Perl

Justin H. Perl (#0151397)
Ron Elwood (#0349835)
430 First Avenue North, Suite 300
Minneapolis, MN 55401
Telephone: (612) 746-3727
jperl@mylegalaid.org
relwood@mnlsap.org
Attorneys for Amicus Curiae
Mid-Minnesota Legal Aid

CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2017, I electronically filed the foregoing Brief of Amicus Curiae Mid-Minnesota Legal Aid In Support Of Appellants and Reversal with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system, pursuant to Eighth Circuit Rule 25A.

MID-MINNESOTA LEGAL AID

Dated: September 5, 2017

BY: /s/ Justin H. Perl

Justin H. Perl (#0151397)
Ron Elwood (#0349835)
430 First Avenue North, Suite 300
Minneapolis, MN 55401
Telephone: (612) 746-3727
jperl@mylegalaid.org
relwood@mnlsap.org
Attorneys for Amicus Curiae
Mid-Minnesota Legal Aid