

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.

**APPEAL FROM THE U.S. DISTRICT COURT FOR THE DISTRICT
OF MINNESOTA**

No. 15-cv-3935 (SRN/KMM)

**BRIEF OF AARP AND AARP FOUNDATION AS AMICI CURIAE
IN SUPPORT OF DEFENDANTS-APPELLANTS NANCY LANGE,
IN HER OFFICIAL CAPACITY AS CHAIR OF THE MINNESOTA
PUBLIC UTILITY COMMISSION, ET AL.**

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CORPORATE DISLCOSURE STATEMENT

The Internal Revenue Service has determined that AARP is organized and operated exclusively for the promotion of social welfare pursuant to Section 501(c)(4) of the Internal Revenue Code and is exempt from income tax. The Internal Revenue Service has determined that AARP Foundation is organized and operated exclusively for charitable purposes pursuant to Section 501(c)(3) of the Internal Revenue Code and is exempt from income tax. AARP and AARP Foundation are also organized and operated as nonprofit corporations under the District of Columbia Nonprofit Corporation Act.

Other legal entitites related to AARP and AARP Foundation include AARP Servcies, Inc. and Legal Counsel for the Elderly. Neither AARP nor AARP Foundation has a parent corporation, nor has either issued shares or securities.

Dated: September 5, 2017

/s/ Julie Nepveu
Julie Nepveu

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STATEMENT OF INTEREST¹

AARP is a nonprofit, nonpartisan organization dedicated to fulfilling the needs and representing the interests of people age fifty and older. AARP's charitable affiliate, AARP Foundation, creates and advances effective solutions that help low-income individuals fifty and older secure the essentials. AARP and AARP Foundation also fight practices that threaten the financial security and well-being of older people. This mission has led AARP and AARP Foundation protect the interests of older consumers in accessing high quality, reliable, and affordable telecommunications and utility service nationwide. In addition to submitting policy comments to state and federal regulatory agencies and intervening as a party in state utility proceedings, AARP and AARP Foundation participate as amici curiae in state and federal courts nationwide in order to protect the interests of older people.

This appeal raises questions of significant importance to amici and AARP members regarding the framework for regulatory oversight of intrastate phone service providers. Amici have a strong interest in ensuring that older people have access to high quality, reliable, affordable telecommunication service, which is a

¹ Pursuant to Fed. R. App. P. 29(c)(5), amici state that no party's counsel authored this brief either in whole or in part, and further, that no party or party's counsel, or any person or entity other than AARP or AARP Foundation, AARP's members, and their counsel, contributed money intended to fund preparing or submitting this brief. The parties have consented to the filing of this brief.

basic necessity of daily life. Amici’s interest is threatened by the district court holding, which interprets the Telecommunications Act of 1996 to categorically preempt states from regulating any aspect of interconnected Voice over Internet Protocol (VoIP) service. The decision eliminates state oversight of telecommunication providers, which is crucial to protect the interests of amici and older telecommunications consumers.

Amici’s participation in this case will assist this Court to understand older people’s critical need for universal access to reliable, affordable phone service and the crucial protection that state regulatory oversight provides. Preemption of state regulation over interconnected VoIP services increases the risk that phone service will not be available, affordable, or reliable, which could have potentially devastating consequences for the nation’s most vulnerable older people, especially those who rely on phone service for their health, safety, and even their lives. Amici urge this Court to reverse the district court decision.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Universal access to reliable, affordable phone service is a basic necessity for full participation in society that Congress has long sought to promote and protect. *See* Communications Act of 1934 (Act), Pub. L. No. 416, § 201(a) (1934) (codified at 47 U.S.C. §§ 151, et seq.) (creating the Federal Communications Commission (FCC) expressly “to make available, so far as possible, to all . . . without

discrimination . . . adequate facilities at reasonable charges, for the purpose . . . of promoting safety of life and property through the use of wire and radio communication . . .”). Access to reliable, affordable telecommunications services has “become crucial to full participation in our society and economy . . .” *In the Matter of Federal State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8942, ¶11 (F.C.C. May 8, 1997). Telecommunications are essential because they enable full participation in economic, social, and civic activities and provide the ability to make arrangements to meet other essential needs, including for transportation and healthcare. Telephone service is also the primary means by which older people maintain their social and family connections. *See* Erin Pinkus & Jennifer Sauer, *AARP National Survey of Residents 40+: Summaries of Opinions on Telecommunications Issues* (May 2013), <http://bit.ly/1Nm5tJA>.

Conversely, unreliable or unaffordable telecommunications can isolate older people, jeopardizing their health, safety, and well-being. This is a particularly serious concern for older people who may have high risk of heart failure, stroke, or falls and rely on access to emergency services, such as 911, or who use devices such as pacemakers, health monitors, and security systems to protect their health and safety. Unreliable phone service could delay or prevent older people from obtaining life-saving emergency services, with potentially devastating consequences.

Amici concur with the legal arguments advanced by the Minnesota Public Utility Commission (MN PUC) that the court's decision is contrary to the statutory language, binding precedent, and the FCC's own interpretation of the Act. The Telecommunications Act of 1996 does not categorically preempt the MN PUC's authority to exercise its traditional police powers over intrastate interconnected Voice over Internet Protocol (VoIP) phone service.

Importantly, Congress has never authorized the Federal Communications Commission to regulate interstate telecommunications and cannot fill a state's important role to regulate on behalf of the states. The entire telecommunications industry inevitably will transition to use VoIP and other IP-enabled network technology, consistent with Congressional goals to encourage innovation and competition. Eliminating state regulation over VoIP would, therefore, create an enormous and rapidly expanding regulatory sink hole that would undermine the important universal access goals that the Communications Act was enacted to accomplish.

Examples of important state regulatory oversight necessary to further universal service goals, which Congress did not displace in seeking to encourage a competitive telecommunications marketplace, include:

- requiring automatic bill adjustments for outages that last longer than 24 hours;

- ensuring service quality during a provider’s migration of customers from wireline to IP-enabled technology;
- establishing time limits within which orders for new phone service must be provided or repairs must be made;
- prioritizing completion of service requests for people with disabilities or for people who use a medical alert system;
- ensuring that universal service funds are sufficient to ensure quality of service issues in rural and other high cost areas;
- providing customer education and assistance regarding the necessity of maintaining battery backup capability necessary to use phone service, especially to reach 911 emergency services during power outages;
- collecting fees necessary to cover the cost of providing Telephone Relay Service equipment that is accessible to people with disabilities; and
- ensuring that consumers do not lose the ability to call people who use other telecommunication providers simply because two carriers may have a dispute

State utility commissions continue to serve an essential role in enforcing service quality and outage standards and otherwise protecting consumers from harmful marketplace practices. The district court’s holding—preempting consumer protection and other non-economic practices of telecommunication providers—eliminates all consumer protection and jeopardizes the health, safety and well-being of the most vulnerable members of society, including low-income older people, who may be economically and socially isolated as a result.

Respectfully, this Court should hold that the Minnesota Public Utility Commission's (MN PUC) jurisdiction to regulate interconnected VoIP services is not preempted and reverse the decision of the district court.

ARGUMENT

I. UNIVERSAL ACCESS TO RELIABLE, HIGH QUALITY, AFFORDABLE PHONE SERVICE IS ESSENTIAL FOR THE HEALTH, SAFETY, AND WELL-BEING OF OLDER PEOPLE.

Access to telecommunications services is indisputably essential to arranging daily activities, conducting business, and otherwise fully participating in society. Older people, in particular, rely on the telephone to maintain social connections; they are more likely than any other age group to depend on the telephone to connect to their family members and friends, caregivers, and to meet their most basic needs. *See* Pinkus et al., *supra*. Similarly, older people who do not drive rely heavily on telephone service to arrange transportation to the doctor or hospital, the bank, grocery shopping, and civic, religious, and recreational activities. Because of older people's heavy reliance on phone service, poor quality, unreliable or unaffordable phone service can isolate older people by preventing or limiting their ability to make and maintain these essential connections.

A. Older People Are More Likely To Use Life-Saving Devices And Services That Cannot Function Properly Without High-Quality, Reliable Phone Service.

Uninterrupted access to reliable, affordable phone service is essential for older people, many of whom rely disproportionately on life-saving devices and services that were originally designed to operate over traditional analogue landlines, including 911 emergency services, home security systems, pacemakers, and health monitoring devices. Tragically, such low-tech but life saving devices and services do not operate as reliably over wireless or IP technology. *See* Minnesota Commerce Department, <https://mn.gov/commerce/consumers/your-phone/> (warning consumers that “[s]ome VoIP providers may have limitations to their 911 service, may need backup power to keep service going during power outages Certain equipment may also be incompatible with VoIP services, such as fax machines, some security systems and specialized telephone equipment, so ask questions about the differences before selecting your service.”). The health, safety and well-being of older people are threatened as a result.

Worse, whereas a traditional copper landline is capable of transmitting power necessary to operate the phone service, service transmitted via IP-enabled landline technology typically is unable to transmit the electricity necessary for phones and other devices to operate. This makes IP technology potentially unavailable during a power outage (as well as any technology service outage)

unless the customer provides and maintains its own backup source of power, such as a battery.

Unless backup power is available during a weather emergency or other power outage, emergency services and first responders may be beyond reach, delayed, or unable to respond at all. *See* David Wallis, *Why You Shouldn't Drop Your Landline Just Yet: Cellular and Internet-based phone service can delay first responders*, AARP (Nov. 4, 2013), <http://www.aarp.org/home-family/personal-technology/info-11-2013/dont-drop-your-landline.html> (Dec. 5, 2014). The risk of death from delayed response times may be greater for older people, in light of their generally higher overall risk of heart attack, stroke, or falls that may necessitate a need for emergency services. *Id.*

Pacemakers and medical alert personal devices (e.g., LifeAlert) also function more reliably over landline service. In part, this is because they are sometimes linked to 911 services through the landline. But it is also because the signals they transmit are susceptible to becoming garbled and useless if the quality transmission service is poor or intermittent. *See id.* Signals transmitted over traditionally regulated landlines usually do not present such transmission quality concerns. *See id.* Home security systems, similarly, cannot transmit signals reliably over poor quality IP or wireless service.

While such devices are not themselves part of the telecommunications network, the FCC nevertheless recognizes that “[t]he value of communications networks derives in significant part from the ability of customers to use these networks as inputs for a wide range of productive activities,” and “[a]n important factor in this analysis is the extent to which the functionality [at issue] traditionally has been relied upon by the community.” *In re Ensuring Customer Premises Equip. Backup Power for Continuity of Communs. et al.*, 29 FCC Rcd 14968, 15015-15017, ¶¶ 115-116 (F.C.C. Nov. 25, 2014).

These and other consumer protection concerns make continued state regulatory oversight of quality and reliability essential to protect older people from unintended, but potentially life threatening consequences of failing to recognize and support the important role that state regulators have in transitioning to a technologically advanced telecommunications system. Such concerns are clearly separate and distinct from those relating to encouraging competition that Congress sought to advance by reducing undue economic regulation.

B. Older People, Many Of Whom Have Low Incomes, Are At Disproportionate Risk Of Isolation And Devastating Health Consequences Because High Costs Can Push Phone Service Beyond Their Reach.

Cost is a paramount concern that limits access to even the most basic phone service, especially for older people living on low and fixed incomes. Basic local phone service rates have increased substantially for both regulated and unregulated

providers, making service increasingly unaffordable for people with the lower incomes.

One factor that may make the cost of phone service inaccessible, contrary to the universal service goals of the Act, is that consumers may not have the option of purchasing only the basic phone service that they want, need, or can afford.

Regulated and unregulated carriers alike increasingly deliver telecommunication services over IP-enabled networks *only* as bundled service along with other high speed data capabilities. While the benefits of access to highspeed data are undeniable, it is also true that transitioning to such services will substantially increase the cost that many older people must pay to access basic phone service even if they do not want and do not use the added capabilities of the advanced services.

State regulation to protect access to basic phone service is particularly important for older people—particularly those over age 76—who are more likely than people in other age groups to prefer stand-alone, wireline basic phone service. *See* Stephen Blumberg, et al., *Wireless Substitution: State-level Estimates From the National Health Interview Survey, 2012*, 9, Nat’l Health Stats Rpt. No. 70 (Dec. 18, 2013), <http://1.usa.gov/1fcw6g0>. The same is true for many Minnesota residents who risk losing essential access to affordable reliable service if states are unable to protect them.

Low-income consumers, in particular, may be denied access to essential phone service that is offered only as part of a bundle. Low-income assistance programs funded through universal service fund fees typically provide people who earn less than 135 or 150 percent of the federal poverty level only \$9.25 per month for phone service that can average over \$150.00 per month where the services are bundled. Even this paltry level of assistance is jeopardized under the district court's holding. Such assistance will likely become even scarcer as telecommunications carriers continue to upgrade their networks to incorporate VoIP technology. Like Charter, many are likely to demand to be exempted from all state regulation, including state law obligations to collect universal service fund fees from subscribers. *See MN PUC Op. Br. at 13, App. 108.*

Access to basic phone service provided over IP-enabled network is also increasingly unaffordable because customers must pay for installation and use of special equipment, such as a set top box, smart phone, or router, which is necessary to access all or any portion of a bundled digital service. Such equipment may be proprietary or "locked," making it incompatible competing service provider offerings. Moreover, such equipment may need to be upgraded regularly, at additional cost, to keep pace with the rapidly evolving technology and to respond to increasingly widespread cyber security threats. High equipment and installation costs, which may also be coupled with early termination fees and other contractual

penalties, can also make it prohibitively expensive for consumers to switch to competing providers, whether or not they are dissatisfied with the quality, reliability or cost of their service.

Under the district court’s holding, states will have no ability to address anticompetitive or unfair practices that effectively limit affordability and access to basic phone service. In that event, telecommunication service providers will have no incentive to improve service so they can better compete based on quality, reliability, and affordability. And in order to compete currently regulated carriers will have every incentive to upgrade their services to enable VoIP and similarly escape from their service and quality obligations.

II. PREEMPTION OF STATE AUTHORITY TO PROTECT CONSUMERS INTERFERES WITH PROVIDING UNIVERSAL ACCESS TO HIGH-QUALITY, RELIABLE, AND AFFORDABLE TELEPHONE SERVICE.

A. Preemption Of State Regulation Undermines The Goal Of Providing Universal Access To Reliable Affordable Service.

The district court decision—holding that state regulation of interconnected VoIP service is categorically preempted—improperly interprets the importance Congress placed on promoting competition, without considering the overall regulatory scheme Congress established when it enacted the Telecommunications Act of 1996, Pub. L. No. 104-104, §601(c), 110 Stat. 56 (1996). Specifically, Congress established a competitive regulatory framework for computer-enhanced

telecommunications services as a means to more efficiently achieve the long-established goal of ensuring universal access to reliable, affordable service. *See In the Matter of Federal-State Joint Board on Universal Service*, 13 FCC Rcd 11501, 11548, ¶ 98 (F.C.C. April 10, 1998) (finding “[i]t is critical, however, to make sure that our interpretation of the statute, to the extent legally possible, will continue to sustain universal service in the future,” and, explaining that, “if such providers are exempt from universal service contribution requirements, users and carriers will have an incentive to modify networks to shift traffic to Internet protocol and thereby avoid paying into the universal service fund . . . [which] could increase the burden on the more limited set of companies still required to contribute. Such a scenario, if allowed to manifest itself, could well undermine universal service.”). Unless reversed, the decision will eliminate essential state law protection necessary to ensure that consumers have universal access to high-quality, reliable, and affordable phone service and may, as the FCC has recognized, disproportionately threaten the health, safety and welfare of older people. *See In the Matter of IP-Enabled Services*, 19 FCC Rcd 4863, 4886-87, ¶ 36 (F.C.C. 2004) (focusing “primarily on ways to distinguish services that might be viewed as replacements for traditional voice telephony (and which thus raise social policy concerns relating to emergency services, law enforcement, access by individuals with disabilities,

consumer protection, universal service, and so forth) from other services (which do not appear to raise these same regulatory questions to the same extent”).

The decision also undermines the goal of promoting competition expressly “regardless of the facilities used.” *See* 47 U.S.C. § 153(53) (defining “telecommunications service”); *see also In the Matter of Federal-State Joint Board on Universal Service* 13 FCC Rcd 11552 ¶ 105 (holding “[c]ompanies that are in the business of offering basic interstate telecommunications functionality to end users are ‘telecommunications carriers,’ and therefore are covered under the relevant provisions of sections 251 and 254 of the Act. These rules apply regardless of the underlying technology those service providers employ, and regardless of the applications that ride on top of their services.”). The court’s holding that the carrier’s use of VoIP technology to offer phone service dictates whether it is subject to any regulation undermines competition by giving a competitive advantage based on the technology used and eliminates the ability to ensure that telecommunications are available to all at just and reasonable rates. Pursuant to the Telecommunications Act of 1996, all telephone networks will inevitably be upgraded and will utilize VoIP and other IP technology. As a result, the court’s broad holding will ultimately apply even to carriers regulated under Title II of the Act. Congress did not intend to eliminate the means to ensure “that common carriers provide service at just and reasonable prices, and subject to just

and reasonable practices, classifications, and regulations; [and] that they make no unjust or unreasonable discrimination[.]” *Id.* at 11512 ¶ 22.

Further, in declaring that federal and state regulators should not disadvantage new entrants into the telecommunications markets by favoring a particular technology over another, Congress did not intend to provide a competitive advantage to VoIP service providers. Congressional recognition in the Telecommunications Act of 1996 that the regulatory structure applicable to monopolistic telecommunications providers should not be applied to a technologically evolving and increasingly competitive telecommunications environment does not—and should not be construed to—alter fundamental preemption doctrine that preserves application of generally applicable state laws that protect the public’s interests.

B. Congress Did Not Preempt State Authority To Protect Consumers Through The Exercise Of Traditional Police Powers.

The goals that Congress sought to further through the Telecommunications Act of 1996 did not purport to address state exercise of traditional police powers over business entities operating within the states. Such an expansive interpretation of the scope of preemption authorized by the Act cannot be squared with the FCC’s Orders holding that Congress sought only to preempt economic regulation that presented barriers to entry into the market of competitive carriers. The district court decision should be reversed because jurisdiction over intrastate

telecommunication involves the quintessential exercise of state police powers to protect consumers. Indeed, this Court recognized that “the regulation of utilities is one of the most important of the functions traditionally associated with the police power of the States.” *Sprint Communs. Co., L.P. v. Jacobs*, 690 F.3d 864, 868 (8th Cir. 2012) (*Sprint I*) (order affirming *Younger absention rev’d, sub nom. Sprint Communs. Co., Inc. v. Jacobs*, 134 S. Ct. 584 (2013) and issue preclusion, *Sprint Communs. Co., L.P. v. Jacobs*, 798 F.3d 705 (8th Cir. 2015) (*Sprint II*) (quoting *Ark. Elec. Coop. Corp. v. Ark. Pub. Serv. Comm’n*, 461 U.S. 375, 377 (1983))).

In *Sprint III*, this Court “concluded that §215(g) preserved state authority to regulate” [obligation relating to compensation for the intrastate] traffic exchanged . . . and that federal law did not preempt the Board’s authority to regulate the nonnomadic, intrastate long-distance VoIP calls at issue in this case.” *Sprint Communs. Co., L.P. v. Lozier*, 860 F.3d 1052 (8th Cir. 2017) (*Sprint III*), *reh’g denied by, reh’g, en banc, denied by Sprint Communs. Co., L.P. v. Jacobs*, No. 16-1417, 2017 U.S. App. LEXIS 14208 (8th Cir. Iowa, Aug. 2, 2017). Congress explicitly preserved state authority when it enacted the Telecommunications Act of 1996, providing that “[t]his Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.” Telecommunications Act of 1996, Pub. L. 104-104, § 601(c)(1), 110 Stat. 56. In fact, Congress explicitly

preserved state authority over intrastate matters, including consumer protections. *See* 47 U.S.C. § 152(b) (except as provided in specified provisions, “nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier, . . .”).

The FCC has long affirmed that regulation of rates and market entry applicable in the context of regulating monopoly telecommunications carriers is distinct from, and appropriately subject to, regulations tailored to address the different goals and circumstances they present. *See, e.g., In the Matter of IP-Enabled Services*, 19 FCC Rcd 4868, ¶ 5 (“fencing off IP platforms from economic regulation traditionally applied to legacy telecommunications services would not put them beyond the reach of regulations designed to promote public safety and consumer protection (such as E911) or other important public policy concerns.”).

The FCC has also recognized that states continue to have an important regulatory role in protecting consumers’ universal access to affordable phone service. *See In the Matter of Lifeline and Link Up Reform and Modernization; Lifeline and Link Up; Federal-State Joint Board on Universal Service; Advancing Broadband Availability Through Digital Literacy Training*, 27 FCC Rcd 6678,

6660, ¶ 5 (F.C.C. Feb. 6, 2012) (“Ensuring the availability of communications services for low-income households has long been a partnership among, and a significant priority for, the Commission, the states, and the private sector.”).

Preemption of state authority to regulate regarding intrastate consumer protection and service issues creates a dangerous regulatory void. It preempts important consumer protection over intrastate matters that the FCC has no authority to regulate. *See, e.g., In the Matter of Implementation of Section 621(a)(1) of the Cable Communs. Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, 30 FCC Rcd 810, 820, ¶ 2 (F.C.C. Jan. 21, 2015) (“The Commission also finds that it cannot preempt state or local customer service rules exceeding Commission standards.); *In the Matter of National Association of Regulatory Utility Commissioners Petition for Clarification or Declaratory Ruling That No FCC Order or Rule Limits State Authority to Collect Broadband Data*, 25 FCC Rcd 5051 (F.C.C. April 26, 2010) (performing a conflict preemption analysis and concluding that states had not been preempted by the Commission from collecting broadband data). Moreover, the FCC has rejected arguments that state regulation of VoIP services is categorically preempted merely because it is not explicitly required. *See In the Matter of Universal Service Contribution Methodology; Petition of Nebraska Public Service, Commission and Kansas Corporation Commission for Declaratory Ruling or, in*

the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues,, 25 FCC Rcd. 15651, 15661 n.63 (F.C.C. Nov. 5, 2010) (“The express obligation of telecommunications carriers under section 254(f) to support state universal service programs does not limit state authority to extend contribution requirements on interconnected VoIP providers, regardless of their classification, so long as such requirements do not *conflict with federal rules and policies.*”).

Regardless of the technology employed or the framework through which communications are regulated, states have legitimate interests in protecting older people and others who may be at significant risk of harm from lack of access to reliable affordable phone service.

Charter declared that the practices underlying this appeal would clearly violate important state laws that were enacted to protect consumers from harmful practices of telecommunications carriers that have become commonplace in the competitive marketplace. Increased price competition is not a guarantee of fair practices in the marketplace. *See Sprint III*. For example, in response to widespread consumer complaints, Minnesota enacted prohibitions and remedies for slamming (“[switching] long distance or local service provider . . . to another company without [a customer’s] knowledge or permission”) and cramming (“allowing third-party companies to place charges on the bill for unrelated services

or merchandise . . . [t]hat are often buried in the fine print of a phone bill.”). *See* Office of Minnesota Attorney General, <https://www.ag.state.mn.us/Consumer/Utilities/Phone.asp>. Such protection deemed essential by the state to protect consumers.

While Congress hoped that price competition would serve as a reasonable substitute for price regulations, Congress did not intend to it to replace state laws that address fair practices in the marketplace. Preempting enforcement of state law that unquestionably would apply to regulated telecommunications providers and competitors who do not use VoIP protocol is contrary to Congress’s technology-neutral-policy choice and undermines the overarching goal of providing universal access to reliable, affordable telecommunications. *See In the Matter of Universal Services*, 25 FCC Rcd 15660, ¶ 22 (“We do not believe that those policies are best advanced by giving one class of providers an unjustified regulatory advantage over its competitors; indeed, that is one reason that the Commission extended federal universal service requirements to interconnected VoIP . . . [and] similar considerations justify our conclusion not to preempt states from imposing universal service contribution requirements that are competitively neutral.”).

CONCLUSION

For the reasons states above, this Court should hold that VoIP services are not categorically exempt from regulation, reverse the decision of the district court, and remand the case for further proceedings.

Dated: September 5, 2017

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because the brief contains 4,375 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and 32(a)(6), respectively, because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14-point font.

This brief complies with the 8th Circuit Rule 28A(h)(2) because it was scanned for viruses with the most recent version of Symatec Endpoint Protection (last updated June 30, 2016) and, according to the program, is free of viruses.

Dated: September 5, 2017

/s/ Julie Nepveu
Julie Nepveu

CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2017, I electronically filed the foregoing with the Clerk of the United States Court of Appeals for the Eighth Circuit using the appellate CM/ECF system. I certify that all participants in the case registered with the CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Julie Nepveu
Julie Nepveu