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PUBLIC UTILITIES - MINNESOTA

Charter Advanced Services (MN), LLC v. Lange

United States Court of Appeals, Eighth Circuit - September 7, 2018 - F.3d - 2018 WL 4260322

Subsidiaries of a national communications company that provided voice over internet protocol (VoIP) services to residential and business customers brought action against chair and members of Minnesota Public Utilities Commission (PUC), seeking declaratory judgment that state regulation of its services was preempted by federal law, and injunctive relief prohibiting defendants from seeking to enforce regulation of its service.

The United States District Court for the District of Minnesota granted summary judgment for subsidiaries. PUC appealed.

The Court of Appeals held that:

- VoIP offerings acted on consumer's information, and therefore were "information service" under Telecommunications Act, warranting preemption of state regulation of that service, and
- Carve-out from definition of "information service" under Telecommunications Act did not apply to VoIP offerings.

Voice over internet protocol (VoIP) offerings acted on consumer's information, and therefore were "information service" under Telecommunications Act, warranting preemption of state regulation of that service, since information entered network as either internet protocol (IP) or time division multiplexing (TDM) and left in another, and system offered "net" protocol conversion, which Federal Communications Commission (FCC) defined as occurring when end-user could send information into network in one protocol and have it exit network in different protocol.

Carve-out from definition of "information service" under Telecommunications Act did not apply to voice over internet protocol (VoIP) offerings, since service was "between or among users," network protocol technology was essential feature of those offerings as ability to call users of legacy telephony services via service was vital selling point for consumers, service was not aimed at providing backwards compatibility for existing customer premises equipment (CPE), but, instead, customers had to receive new CPE, which included multimedia terminal adapter (eMTA) to utilize its services, CPE fell outside carrier's network, eMTA was located outside of carrier's network by definition, and any conversion back into original form of information took place outside of network in eMTA.