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August 17, 2015

Mr. Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
Saint Paul, MN 55101

Re: In the Matter of the Complaint By The Minnesota Department of Commerce (DOC)
Against the Charter Affiliates Regarding Transfer of Customers; MPUC Docket No.
P5615/C-14-383

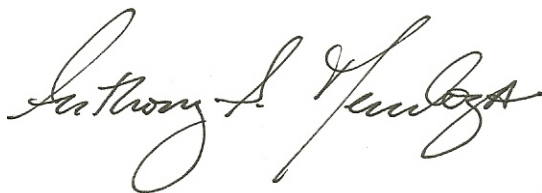
Dear Mr. Wolf:

Enclosed for filing is the Application for Rehearing from Charter Fiberlink CCO, LLC, Charter Fiberlink CC VIII, LLC, Charter Advanced Services (MN), LLC and Charter Advanced Services VIII (MN), LLC to the Order Finding Jurisdiction and Requiring Compliance Filing filed by the Department of Commerce on July 28, 2015.

Please contact me if you have any questions about this filing.

Very truly yours,

MENDOZA LAW OFFICE, LLC



Anthony S. Mendoza

Enc.

cc: Service List

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

In the Matter of the Complaint By The)
Minnesota Department of Commerce)
(DOC) Against the Charter Affiliates) Docket No. P5615/C-14-383
Regarding Transfer of Customers)

CHARTER'S APPLICATION FOR REHEARING

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August 17, 2015

Charter Fiberlink CCO, LLC, Charter Fiberlink CC VIII, LLC (collectively, “Charter Fiberlink”), Charter Advanced Services (MN), LLC and Charter Advanced Services VIII (MN), LLC (collectively, “Charter Advanced Services” and with Charter Fiberlink, collectively referred to hereinafter as “Charter”) hereby file this Application for Rehearing.

BACKGROUND

Charter applies for rehearing of the Commission’s July 28, 2015 order compelling Charter to offer the retail voice service provided by its Charter Advanced affiliates (marketed as Spectrum VoiceTM) subject to the state-law requirements that Minnesota applies to traditional common carriers such as landline telephone providers (hereinafter “Order”).

The Order concerns the regulatory treatment of Charter’s interconnected VoIP service offering in Minnesota. From a customer’s perspective, so-called “Interconnected VoIP services” such as Spectrum VoiceTM are similar to – although, in several respects, superior than – traditional wireline telephone services that have traditionally been subject to such regulation at the state level. Notwithstanding the customer-facing similarity, however, the technological operation of Interconnected VoIP is significantly different from traditional wireline telephone services.

Traditional telephone networks (collectively known as the “public switched telephone network” or “PSTN”) use a technology called “circuit switching,” in which a dedicated pathway is established for the duration of a phone call. In order to route multiple circuit-switched voice calls over the same network, the PSTN uses a decades-old technique called Time Division Multiplexing, or “TDM.” When traditional carriers interconnect their networks to exchange telephone traffic, they do so using the TDM methodology.

By contrast, Spectrum Voice™, like many other voice services offered by broadband providers, is provided via Voice over Internet Protocol (“VoIP”). This means that voice signals are converted into Internet Protocol (“IP”) data packets that can be transmitted over broadband networks. These data packets are in the same protocol as data packets sent over the Internet. Use of IP allows companies that provide broadband Internet connections, such as Charter, to use those same broadband facilities to offer voice services as well, often offering competitive alternatives to traditional landline providers.

To convert voice signals into IP data packets, Spectrum Voice™ subscribers’ handsets are attached to specialized customer premises equipment (“CPE”) inside the subscribers’ premises. After the user speaks into the handset, the CPE formats the electric signals from the handset into IP data packets. The IP data packets are then routed through wiring inside the subscriber’s premises to Charter’s IP network

outside the subscriber's home. When a Spectrum VoiceTM user receives a call, the same process happens in reverse.

Spectrum VoiceTM is an "interconnected" VoIP service, which means that it allows users to engage in two-way voice calling not only with other VoIP users, but also with users of traditional telephone service. *See* 47 U.S.C. § 153(25); 47 C.F.R. § 9.3. To accomplish this, the networks of interconnected VoIP providers must be connected to those of traditional carriers. Because VoIP providers use IP, whereas traditional carriers use TDM, Charter Advanced must convert calls from IP to TDM, and vice versa, in order for it to exchange traffic with traditional networks. This process of transforming information between different data transmission formats is known as "protocol conversion." *See generally Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 968 (2005) ("*Brand X*") (explaining that "protocol conversion" is a service that enables "communicat[ion] between networks that employ[] different data-transmission formats").

In addition to allowing Charter Advanced to offer Spectrum VoiceTM service over broadband connections, the use of IP also enables Charter Advanced to include other advanced communications features as part of the Spectrum VoiceTM service. For instance, Spectrum VoiceTM includes an online web portal that allows

its customers to listen to their voicemails online, view them as text (using integrated voice-to-text recognition software), and attach them to emails.

Prior to 2013, Charter offered interconnected VoIP service in Minnesota through its affiliates Charter Fiberlink CCO, LLC, and Charter Fiberlink CC VIII, LLC (“Charter Fiberlink”). Charter Fiberlink is a state-regulated carrier that provides a number of unrelated communications services in that are subject to Commission regulation (such as wholesale services, enterprise-level services, and access services to other carriers). The Commission’s authority over Charter Fiberlink’s various regulated service offerings is not at issue in this docket.

In March 2013, Charter conducted a reorganization of its voice operations. Among other things, it transferred its retail voice customers from its state-regulated affiliates to affiliates whose sole business is to provide retail voice services. The purpose of this reorganization was to simplify Charter’s customer service operations and to more clearly delineate between its services subject to state regulation (through regulated state carriers such as Charter Fiberlink) and those that are not (through unregulated state affiliates such as Charter Advanced). Because the only service it offers is retail interconnected VoIP, Charter Advanced, unlike Charter Fiberlink, has not sought authorization from the Commission to offer telecommunications services in Minnesota.

On September 26, 2014, the Minnesota Department of Commerce filed a complaint, alleging that the transfer of customers from Charter Fiberlink to Charter Advanced Services had been unlawful under Minnesota Statutes Chapter 237. The Complaint requested that the Commission issue an order directing that Charter's Interconnected VoIP service, known as Spectrum Voice,TM be subjected to all provisions of Minnesota Statutes Chapter 237. In response, Charter raised state-law arguments questioning the applicability of Minnesota's state telecommunications regulations to VoIP services. Charter also argued that any application of state public utility regulations to Spectrum VoiceTM was preempted under federal law.

On July 28, 2015, the Commission issued an "Order finding Jurisdiction and Requiring Compliance Filing." The Order found "that Charter's interconnected VoIP service is a telecommunication service subject to the Commission's authority under Minn. Stat. ch. 237 and related Commission rules." Commission Order at 15. It directed Charter "to file within 30 days a description of how Charter will comply with this order and a draft notice to its customers informing them that Charter provides a regulated telephone service and outlining the customer protections provided by law." *Id.*

Charter now hereby applies for rehearing of the Commission's order. Minn. Stat. § 216B.27.

ARGUMENT

Under Minn. Stat. § 216B.27(2), an application for rehearing “shall set forth specifically the grounds on which the applicant contends the decision is unlawful or unreasonable.” Charter submits that (1) the Commission’s decision is unlawful because federal law preempts the Commission’s exercise of jurisdiction, and (2) the Commission’s decision is unlawful because the Commission lacks jurisdiction under state law over Charter.

I. The Commission Erred In Finding That Federal Law Did Not Preempt The Commission’s Exercise Of Jurisdiction.

As the Commission correctly stated, states may (within certain bounds) regulate intrastate telecommunications services, but state public utility regulation is clearly preempted if the service at issue is an information service. Order at 8; *accord Minnesota PUC v. FCC*, 483 F.3d 570, 580 (8th Cir. 2007) (“*Vonage III*”) (“[A]ny regulation of an information service conflicts with the federal policy of nonregulation”). The Commission erroneously determined that Charter’s Spectrum Voice™, as an Interconnected VoIP service, qualified as a “telecommunications service” under federal telecommunications law.

A. Spectrum Voice™ is an Information Service Because It Offers the Capability to Perform Net Protocol Conversions.

Under the Telecommunications Act, “[t]he term ‘information service’ means the offering of a capability for generating, acquiring, storing, transforming,

processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.” 47 U.S.C. § 153(24). Spectrum Voice™, as an Interconnected VoIP service, qualifies as an “information service” under this definition. When a Spectrum Voice™ subscriber calls a person on the PSTN, Charter Advanced converts the voice data from IP to TDM; likewise, when a Spectrum Voice™ subscriber receives a call from a caller who uses the PSTN, Charter Advanced converts the voice data from TDM to IP. This process constitutes the literal “transforming” and “processing” of information. Indeed, the “transformation” and “processing” of calls from IP to TDM and back is the feature that makes interconnected VoIP attractive to the public; without that feature, Spectrum Voice™ users could not speak to PSTN users and would be limited, like certain software-based online voice applications, to speaking only to subscribers on similar IP platforms. Because interconnected VoIP quite literally “transform[s]” and “process[es]” information, it is an information service under 47 U.S.C. § 153(24).

The FCC’s interpretation of the term “information service” supports this reasoning. In *In re Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, First Report and

Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21,905 (1996) (“*Non-Accounting Safeguards Order*”), modified in part, 12 FCC Rcd 2297 (1997), the FCC concluded that subject to certain exceptions not implicated here, “protocol processing services constitute information services under the 1996 Act.” *Id.* at 21,956 ¶ 104. It concluded that “an end-to-end protocol conversion service that enables an end-user to send information into a network in one protocol and have it exit the network in a different protocol clearly ‘transforms’ user information,” and that “other types of protocol processing services that interpret and react to protocol information associated with the transmission of end-user content clearly ‘process’ such information.” *Id.* Based on that analysis, the FCC held that “both protocol conversion and protocol processing services are information services under the 1996 Act.” *Id.* Applying that analysis to this case, there is no doubt that the IP-to-TDM conversion performed by Spectrum VoiceTM and similar interconnected VoIP services is a “protocol conversion”; indeed, the Supreme Court has characterized “protocol conversion” as the “ability to communicate between networks that employ different data-transmission formats,” which is precisely the purpose of the IP-to-TDM conversion. *Brand X*, 545 U.S. at 968.

B. *Vonage I* Confirms That Charter’s Preemption Argument Is Correct.

In *Vonage Holdings Corp. v. Minn. Pub. Utils. Comm’n*, 290 F. Supp. 2d 993, 999-1001 (D. Minn. 2003) (“*Vonage I*”), the District Court reached the

identical conclusion described above, holding that Vonage’s interconnected VoIP service was an “information service”:

Examining the statutory language of the Communications Act, the Court concludes that the VoIP service provided by Vonage constitutes an information service because it offers the “capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.” 47 U.S.C. § 153(20). The process of transmitting customer calls over the Internet requires Vonage to “act on” the format and protocol of the information. 47 C.F.R. § 64.702(a). For calls originating with one of Vonage's customers, calls in the VoIP format must be transformed into the format of the PSTN before a POTS [Plain Old Telephone Service] user can receive the call. For calls originating from a POTS user, the process of acting on the format and protocol is reversed. The Court concludes that Vonage's activities fit within the definition of information services. Vonage's services are closely tied to the provision of telecommunications services as defined by Congress, the courts and the FCC, but this Court finds that Vonage *uses* telecommunications services, rather than provides them.

290 F. Supp. 2d at 999. That reasoning applies with identical force to Spectrum VoiceTM, which performs the same IP-to-PSTN protocol conversion as Vonage’s service.

The Commission’s Order attempted to distinguish *Vonage* on two grounds. Neither ground, however, has any relevance to *Vonage*’s reasoning.

First, the Order points out that Vonage’s service is nomadic and Charter’s service is facilities-based. Commission Order at 12. It is true that the FCC relied

on Vonage's nomadic nature in *In the Matter of Vonage Holdings Corporation*, 19 FCC Rcd 22404, 22411 (2004) ("*Vonage II*"). But *Vonage II* did not disagree with or purport to reverse *Vonage I*, and *Vonage I* had nothing to do with the fact that Vonage's service was nomadic. Rather, the argument that succeeded in *Vonage I* – that Vonage's service performed a "protocol conversion" – is identical to Charter Advanced's argument here.

Second, the Order states that "unlike Vonage's service, Charter's fixed VoIP offering at issue here does not rely on the Internet as its backbone." Commission Order at 12. This is a factual distinction without any legal significance. The statutory definition of "information service" does not even hint that the classification of a service will turn on whether it uses the public Internet. Although information services often use the Internet (and Charter's VoIP service in fact uses the Internet with respect to its online portal), no FCC decision suggests that use of the public Internet is *necessary* for a service to be an information service. And although the Order asserts that "the District Court's decision turned significantly on the fact that Vonage relied upon the public Internet," *id.*, *Vonage I* does not support that assertion. As explained above, the District Court's decision turned on the fact that voice data was converted from IP to TDM, not on the fact that voice packets were transmitted on the public Internet before that conversion took place. The Order points for that proposition only to the general background statement in

Vonage I that “the backbone of Vonage’s service is the Internet.” *Id.* (quoting *Vonage*, 290 F. Supp. 2d at 997). But the Court made that background statement *prior* to its examination of “the recent history of the regulatory scheme governing the telecommunications industry,” 290 F. Supp. 2d at 997-98, and its application of that regulatory scheme to Vonage’s service, *id.* at 998-1003. And the Court’s application of that regulatory scheme in no way turned on Vonage’s use of the public Internet.

In sum, the features of Vonage’s service that led the District Court to enjoin the Commission’s regulation exist, in identical form, in Spectrum VoiceTM. In *Vonage I*, the Court held that the IP-to-TDM conversion performed by Vonage rendered Vonage’s VoIP service an “information service”; the Commission should grant rehearing and hold that the identical IP-to-TDM conversion performed by Charter Advanced similarly renders Spectrum VoiceTM an “information service.”

C. Every Other Federal Court Has Followed *Vonage I*.

Three other federal courts have held that facilities-based Interconnected VoIP is an information service, and none has held to the contrary.

In *Vonage Holdings Corp. v. N.Y. State Pub. Serv. Comm’n*, No. 04-Civ.-4306 (DFE), 2004 WL 3398572 (S.D.N.Y. July 16, 2004), the Court entered a preliminary injunction barring the New York State Public Service Commission from regulating an interconnected VoIP service provider. The Court relied on

Vonage I. Id. at *1. Next, in *Southwestern Bell Telephone, L.P. v. Missouri Public Service Commission*, 461 F. Supp. 2d 1055 (E.D. Mo. 2006), the Court issued a detailed decision finding Interconnected VoIP to be an information service, relying heavily on *Vonage I*. It explained that under longstanding FCC precedent, “[n]et-protocol conversion is a determinative indicator of whether a service is an enhanced or information service.” *Id.* at 1081-82. It concluded that “IP-PSTN traffic is an information service ... because it involves a net protocol conversion from the digitized packets of the IP protocol to the TDM technology used on the PSTN.” *Id.* at 1082. “The communication originates at the caller's location in IP protocol, undergoes a net change in form and content when it is transformed at the CLEC’s switch into the TDM format recognized by conventional PSTN telephones, and ends at the recipient’s location in TDM ... Without this protocol conversion from IP to TDM, the called party's traditional telephone could not receive the VoIP call.” *Id.* at 1082. And finally, in *Paetec Communications, Inc. v. CommPartners, LLC*, the court similarly concluded that the protocol conversion effectuated by interconnected VoIP services renders them information services. *See* No. 08-Civ.-0397 (JR), 2010 WL 1767193 (D.D.C. Feb. 18, 2010). The court observed that both *Vonage I* and *Southwestern Bell* had “decided that transmissions which include net format conversion from VoIP to TDM are information services,” and held that “[t]heir reasoning is persuasive.” *Id.* at *3.

Neither the FCC nor any court has ever questioned the holding or reasoning of any of these decisions. Moreover, although all were cited in Charter’s briefing in this proceeding, the Order simply mentions them in a footnote without addressing their reasoning. Order at 10 n.33. Thus, the Commission should grant rehearing and follow the path of the federal courts that have considered this question.

D. Interconnected VoIP Does Not Fall Within the “Telecommunications Exception.”

The Order advanced the argument that Interconnected VoIP is not an information service because the protocol conversion is a capability “for the management, control, or operation of a telecommunications system or the management of a telecommunications service,” and thus falls outside the definition of an information service. Order at 12-13. If this were true, it would be true of every interconnected VoIP service, and every published federal case on this question would be wrong. But it is not.

The Order is not writing on a blank slate: the FCC already analyzed the so-called “telecommunications exception” in the same order in which it held that protocol conversion services are information services: the *Non-Accounting Safeguards Order*. There, the FCC identified three instances in which the telecommunications exception would apply: situations “1) involving communications between an end user and the network itself (e.g., for initiation,

routing, and termination of calls) rather than between or among users; 2) in connection with the introduction of a new basic network technology (which requires protocol conversion to maintain compatibility with existing CPE); and 3) involving internetworking (conversions taking place solely within the carrier's network to facilitate provision of a basic network service, that result in no net conversion to the end user).” 12 FCC Rcd at 2298-99.

None of these exceptions applies here. The first section does not apply because the protocol conversion permits communications “between or among users”; it allows a subscriber to Charter’s Interconnected VoIP service, and a subscriber to ordinary telephone service, to communicate. The second exception does not apply here because it applies only to conversions “to maintain compatibility *with existing CPE.*” But interconnected VoIP providers are not converting the call protocols to maintain backwards compatibility with old customer equipment, but rather to bridge different networks of providers utilizing different communications standards. And the third exception applies only to “internetworking” that results in “no net conversion to the end user.” For instance, the FCC has held that if a network uses “IP in the middle” – if a call begins in TDM, is converted to IP “in the middle,” and then is converted back to TDM – the “internetworking” exception applies. *In the Matter of Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services Are Exempt from*

Access Charges, 19 FCC Rcd 7457, 7457-58, 7465 (2004). But Charter Advanced's service is not TDM-to-IP-to-TDM. It is IP-to-TDM. Accordingly, the third exception does not apply. See *PAETEC*, 2010 WL 176193, at *3 & n.3 (distinguishing Interconnected VoIP, which performs a net protocol conversion, from "non-net protocol conversions" in which "a company converts a TDM signal to VoIP and then back to TDM before handing it off").

The Order quotes the *Non-Accounting Safeguards Order's* observation that certain protocol-conversion services that "fall[] within the literal reading' of the information-service definition" might nonetheless be telecommunications services under the telecommunications exception. Commission Order at 13. But it then disregards the *Non-Accounting Safeguards Order's* enumeration of the three types of protocol-conversion services meeting that description. That was error. The *Non-Accounting Safeguards Order* was itself a decision that protocol conversion services are information services, unless falling within the exceptions identified. The Commission's reasoning proves too much: the exception would swallow the rule in the *Non-Accounting Safeguards Order* that "protocol processing services constitute information services under the 1996 Act." *Id.* at 21,956 ¶ 104. The Commission found that "Charter's packet switching and protocol conversion are not the services offered to customers, but are instead technologies or mechanisms used to facilitate the calling or transmission service Charter actually offers to the

public.” Commission Order at 13. But that is *always* true. “Protocol conversion” services are “technologies or mechanisms used to facilitate” the transmission of data. Services do not offer “protocol conversion” just for the sake of converting data into a new protocol; the purpose of “protocol conversion” is to allow two people, using different protocols, to send information to each other. And the *Non-Accounting Safeguards Order* made clear that such services are information services. 13 FCC Rcd at 21956 (“[A]n end-to-end protocol conversion service that enables an end-user to send information into a network in one protocol and have it exit the network in a different protocol clearly “transforms” user information.”). Under the Commission’s reasoning, however, such end-to-end protocol conversions would *never* be information services, because the purpose of the service is to “send information” and the protocol conversion merely “facilitates” the sending of information. That reasoning is contrary to the *Non-Accounting Safeguards Order*.

E. Preemption is Not Reserved For Small Internet Companies.

The Order also stated that “the fundamental policy grounds for exempting protocol-processing services from common-carrier regulation do not apply here” because it was “intended to avoid overburdening small Internet service providers and thereby stifling their ability to offer new, innovative services” and “not intended to protect the interests of large cable companies that choose to offer fixed

voice transmission services over their extensive networks using the most efficient technology available.” Order at 14. But nothing in the Telecommunications Act supports the Order’s view that Congress intended the classification of a service as an “information service” to turn on the size of the provider. Nor is there any evidence that Congress intended to preempt regulation of small companies but not large companies. For example, regulation of cell phone service, the principal competitors to both landline and interconnected VoIP services today, is preempted notwithstanding the fact that many cell phone providers are national carriers with significantly more voice customers than Charter.

As the Eighth Circuit observed in *Vonage III*, the national deregulatory policy for information services is based on the fast-changing and dynamic nature of the marketplace for such service, with which Congress and the FCC did not want regulation by the states to interfere. 483 F.3d at 580. If anything, public utility regulation of interconnected VoIP providers such as Charter Advanced limits their ability to compete with nomadic VoIP providers and wireless providers, neither of whom are forced to structure their operations to conform to varying state public utility regulations across their national footprints.

F. Spectrum VoiceTM is an Information Service Because Its Calling Features Are Inextricably Intertwined With Other Data-Processing Capabilities.

Spectrum VoiceTM is also an information service for the second, independent reason that it includes numerous information service and telecommunications components as part of the same, integrated service.

In *Vonage II*, the FCC strongly implied, albeit without formally deciding, that even if VoIP calling were a telecommunications service standing alone, a service that integrates VoIP calling with other advanced features could constitute a single information service if the VoIP calling and the advanced features were sufficiently intertwined. The FCC noted that Vonage's IP-based service offered several unique capabilities, such as the ability to "forward[] a voicemail via e-mail to a colleague using an Internet-based e-mail service" and to "invok[e] forwarding features." 19 FCC Rcd at 22,420 ¶ 25. *Vonage II* stated that "[t]hese functionalities in all their combinations form an integrated communications service." *Id.*

Nothing in this reasoning turned on Vonage's service being nomadic rather than facilities-based. To the contrary, *Vonage II* noted that such integration was a feature of facilities-based VoIP services as well: "[T]hese integrated capabilities and features are ... inherent features of most, if not all, IP-based services having basic characteristics found in [Vonage's service], including those offered or

planned by facilities-based providers.” *Id.* at 22,420 ¶ 25 n.93 (emphasis added). Notably, this parallel treatment of nomadic and facilities-based VoIP services is consistent with both Congress’s and the FCC’s decision to classify both nomadic and facilities-based VoIP into the same regulatory classification: “Interconnected VoIP.” *See* 47 U.S.C. § 153(25); 47 C.F.R. § 9.3; *see also Southwestern Bell*, 461 F. Supp. 2d at 1082-83 (“[T]he FCC [has] described VoIP as a hybrid service which has both telecommunications and information components and stated that under the Act, such an offering ... falls exclusively within the information service category.”).

The Commission should follow the FCC’s lead in *Vonage II* and hold that Spectrum VoiceTM is a single, integrated information service. Spectrum VoiceTM includes numerous features which are indisputably information services. For instance, Spectrum VoiceTM includes an online portal to the service and web-based functionality that provides voicemail to users as both electronic audio files and as text via voice recognition technology. Information services are constantly evolving in a fast-paced market, which is precisely the reason that Congress established a deregulatory policy that “allow[s] providers of information services to burgeon and flourish in an environment of free give-and-take of the market place without the need for and possible burden of rules, regulations and licensing requirements.” *Vonage III*, 483 F.3d at 580.

The Order does not dispute that advanced features in Spectrum Voice™ are “information services.” Rather, it characterized these services as merely “ancillary services ... that Charter packages with its transmission service.” Commission Order at 13. But the Commission’s position is both mistaken as a factual matter and as a legal matter contrary to *Vonage II*. The advanced and online features of the service are significantly intertwined with the underlying voice calling features; it is precisely the IP nature of the voice calling features that allow those communications to be merged with existing and potential future Internet-based offerings. Just as in *Vonage II*, “[t]hese functionalities in all their combinations form an integrated communications service” which are “inherent features of . . . IP-based services.” 19 FCC Rcd at 22,420 ¶ 25 & n.93.

The FCC’s recent decision in *In the Matter of Protecting and Promoting the Open Internet*, FCC No. 15-24, 2015 WL 1120110 (Mar. 12,2015), relied upon by the Commission’s Order, is not to the contrary. In the *Open Internet* order, the FCC concluded that broadband Internet access is a telecommunications service, thereby vacating a prior ruling in which it had held that the ability to transmit and receive information online was “inextricably intertwined” with various information service features, such as email and spam blocking. *Id.* ¶¶ 376-381. But the *Open Internet* Order did not question the FCC’s underlying rule that a service is an information service when the telecommunications and information service

components are intertwined. It merely decided, as a matter of application, that traditional retail broadband Internet access services no longer meet that requirement because consumers today can readily use third-party services for features such as online security and email that they used to obtain from their Internet Service Provider. *Id.* ¶ 377.

This reasoning does not apply to Interconnected VoIP, where the enhanced abilities of the service above and beyond traditional wireline telephones are constantly evolving and very much part of the service offering. Although the Order asserts that the only thing that Charter is “offering” is the ability to transmit voice calls, it supports that assertion solely with a reference to an advertisement on Charter’s website touting the clarity of its call signal. *Id.* But nothing about Charter’s marketing of the clarity and quality of Spectrum Voice™ for voice calling detracts from the fact that the service also includes additional desirable features that Charter Advanced markets to consumers as part of the same offering. Those features are all plainly part of the same service package and treated as one for purposes of the regulatory classification.

II. The Commission Erred In Finding That It Had Jurisdiction Under State Law Over Charter.

The Commission also erred in concluding that it possesses jurisdiction under state law to regulate Interconnected VoIP. On the state-law issues, Charter

respectfully incorporates by references its arguments in its Answer to the DOC's Complaint, filed on December 18, 2014.

The Commission rejected Charter's arguments based on the following reasoning:

The Legislature has amended Minnesota's telecommunications statute numerous times since its enactment, and in particular, since the passage of the federal Telecommunications Act of 1996. Moreover, the Commission's rules adopted under this statute were promulgated after passage of the Act. Thus, Minnesota's telecommunications regulations are neither antiquated nor irrelevant to the post-Telecom Act environment in which this Commission operates.

Commission Order at 7. Yet Charter's point is not that Minnesota's telecommunications statutes are "antiquated" or "irrelevant," but that they do not apply to Interconnected VoIP. When the Legislature first granted the Commission jurisdiction over telephone service a century ago, the Legislature obviously did not conceive of Interconnected VoIP, and the technological differences between Interconnected VoIP and wireline service preclude any holding that Interconnected VoIP is "telephone service" under Minnesota law. Although the Legislature has amended Minnesota's telecommunication statute over the years, it has never enacted an amendment that would give the Commission jurisdiction over Interconnected VoIP; to the contrary, as explained in Charter's Answer, it has enacted several amendments that presuppose that Interconnected VoIP is *not* a "telephone" or "telecommunications" service under Minnesota law. Thus, even if

the Legislature intends for the Commission to maintain its role as a regulator of wireline service, it has never granted the Commission jurisdiction over Interconnected VoIP. Moreover, the fact that the Commission has recently promulgated its own rules is not dispositive, as the Commission has jurisdiction to issue rules only insofar as such jurisdiction has been granted by the Legislature.

The Commission also cites state law requiring “fair and reasonable competition for local exchange telephone service” and enacting a legislative mandate of competitive neutrality. Commission Order at 8. Yet that state law begs the question presented here, which is whether Interconnected VoIP is in fact “local exchange telephone service” under state law. For the reasons explained in Charter’s Answer, it is not. The Commission appears to argue that Interconnected VoIP is “telephone service” because it offers “dial tone” and “access to the public switched network”; but the same could be said for *any* voice service, including cell phone service, and the Commission does not suggest it has state law authority over such services. Moreover, there is no doubt that Interconnected VoIP will continue to encounter vigorous competition from cell phone, nomadic VoIP, and other providers. Thus, regulation of Interconnected VoIP is unnecessary to combat monopolies or to establish vigorous competition.

CONCLUSION

Charter Advanced respectfully requests that its application for rehearing be granted.

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August 17, 2015

CERTIFICATE OF SERVICE

I, Valerie Mendoza, on behalf of Charter Fiberlink CCO, LLC, Charter Fiberlink CC VII, LLC, Charter Advanced Services (MN), LLC and Charter Advanced Services VIII (MN), LLC hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota:

APPLICATION FOR REHEARING TO THE ORDER FINDING JURISDICTION AND REQUIRING COMPLIANCE FILING

MPUC Docket No: P6716, P5615/C-14-383

Dated this 17th day of August 2015

/s/Valerie Mendoza, Paralegal

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