

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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DAN M. LIPSCHULTZ, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE MINNESOTA PUBLIC UTILITIES COMMISSION; JOHN TUMA, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE MINNESOTA PUBLIC UTILITIES COMMISSION; MATTHEW SCHUERGER, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE MINNESOTA PUBLIC UTILITIES COMMISSION; KATIE J. SIEBEN, IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE MINNESOTA PUBLIC UTILITIES COMMISSION,  
*Applicants,*

v.

CHARTER ADVANCED SERVICES (MN), LLC; CHARTER ADVANCED SERVICES, VIII (MN), LLC,  
*Respondents.*

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**APPLICATION FOR AN EXTENSION OF TIME TO FILE  
A PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

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OFFICE OF THE ATTORNEY GENERAL  
State of Minnesota

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COUNSEL OF RECORD FOR APPLICANTS

To the Honorable Justice Neil M. Gorsuch, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eighth Circuit:

**1. Requested Extension:** Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.3 of the Rules of this Court, *Applicant*, the Minnesota Public Utilities Commission (MPUC), respectfully requests a 60-day extension of time, up to and including May 3, 2019, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

**2. Judgment Sought to be Reviewed:** The Court of Appeals entered its 2–1 decision on September 7, 2018 (a copy of the Court’s opinion, *Charter Advanced Services (MN), LLC v. Lange*, 903 F.3d 715 (8th Cir. 2018), is attached as Exhibit A). The MPUC filed a petition for rehearing *en banc*, which was rejected on December 4, 2018. (A copy of the order is included in Exhibit A). Without an extension, the petition for a writ of certiorari is due March 4, 2019.

**3. Rule 13.5 Elements:** As per the requirements of Rule 13.5, this application has been filed 10 days before the March 4, 2019 deadline for filing, this Court’s jurisdiction would be invoked under 28 U.S.C. § 1254(1), a copy of the judgment sought to be reviewed and the order denying rehearing are attached, and a single copy of this pleading has been placed in the mail and sent electronically to the parties. In addition to the MPUC, the other parties are Charter Advanced Services (MN), LLC, and Charter Advanced Services VIII (MN), LLC.

**4. Background:** This case involves the issue of whether an important technological innovation, fixed-location Voice over Internet Protocol (“VoIP”) phone services, should be classified as a “telecommunications service” or an “information service” under the Telecommunications Act of 1996 (“the Act”). Telecommunications services are subject to state regulation, while state regulation of information services is federally preempted. In its

September 7, 2018 opinion, a majority for the Eighth Circuit panel held 2–1 that Charter Advanced’s VoIP service is an “information service,” and thus state regulation is preempted. Judge Grasz dissented and would have held that the VoIP service does not qualify as an information service. The MPUC petitioned for rehearing en banc. On December 4, 2018, the petition for rehearing was denied. Chief Judge Smith would have granted the petition.

5. ***Request:*** MPUC submits that good cause exists for an extension due to recent transitions in both the decision makers and counsel. The term of the former Chair of the MPUC, Nancy Lange, who was a named defendant in this matter, expired on January 7, 2019. The MPUC’s General Counsel has retired, and the new General Counsel has not yet started his appointment. Meanwhile, a new Minnesota Attorney General was sworn in on January 7, 2019. The new Solicitor General for Minnesota, the undersigned counsel, started her appointment on February 19, 2019. In addition, the Assistant Attorney General who argued the case before the Eighth Circuit is no longer with the Attorney General’s Office. (By statute, the Minnesota Office of the Attorney General represents the MPUC in litigation). Given these transitions, and the technical complexity of this telecommunications matter, there is good cause for a 60-day extension.

The MPUC respectfully requests a 60-day extension of time, up to and including May 3, 2019, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

Dated: February 22, 2019

Respectfully submitted,

KEITH ELLISON  
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s/ **Liz Kramer**

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