No. SJC-13797

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

COURTNEY GILARDI, CHARLIE HERZIG, JUDY HERZIG, MARK MARKHAM, ANGELA MARKHAM, and ELAINE IRELAND,

Plaintiffs-Appellants,

v.

ROBERTA ORSI, BRAD GORDON, KIMBERLY LORING, and DR. JEFFREY LEPPO, in their collective capacity as the PITTSFIELD BOARD OF HEALTH,

Defendants-Appellees.

Appeal from a Final Judgment of the
Superior Court Civil Division for Berkshire County, Case No. 2276-cv-00127

BRIEF FOR AMICUS CURIAE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF AFFIRMANCE OF THE FINAL JUDGMENT FOR APPELLEES

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CORPORATE DISCLOSURE STATEMENT

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STATEMENT OF INTEREST OF AMICUS CURIAE[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Chamber offers an important perspective on the crucial role of preemption in creating and sustaining consistent and nationally uniform markets, including in the telecommunications field. The Chamber's members rely on nationally uniform standards to structure their operations and ensure consistent, reliable, cost-effective coverage for consumers. A patchwork of conflicting state regulatory regimes would frustrate those vital goals. Given this interest, the Chamber routinely files

[1] No counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus curiae, its members, or its counsel made any monetary contribution intended to fund the preparation or submission of this brief. *See* Mass. R. App. P. 17(c)(5). Amicus and its counsel have not represented any of the parties to the present appeal in another proceeding involving similar issues or in any proceeding or legal transaction at issue in the present appeal.

amicus briefs in preemption cases, including those involving the telecommunications industry. *See, e.g.*, *Cohen v. Apple Inc.*, 46 F.4th 1012 (9th Cir. 2022); *N.Y. State Telecomms. Ass'n, Inc. v. James*, 101 F.4th 135 (2d Cir. 2024); *ACA Connects v. Bonta*, 24 F.4th 1233 (9th Cir. 2022).

SUMMARY OF THE ARGUMENT

Federal preemption and a functional telecommunications system go hand in hand. Predictable, nationally uniform rules are critical for reducing costs, spurring innovation, and spreading wireless access. That is why Congress spoke with a single voice when it answered the key question here—"Who decides?"—by empowering the Federal Communications Commission ("FCC") alone to set national standards for wireless telecommunications. For almost 100 years, Congress has charged the FCC with exclusive authority to weigh the risks and benefits of new communications technologies and to craft appropriate regulations reflecting the agency's careful balancing of those considerations. *See* Communications Act of 1934, Pub. L. No. 73-416, 48 Stat. 1064 (1934). That exclusive control extends to radio-frequency ("RF") emissions. Congress, through the Telecommunications Act of 1996 ("TCA"), expressly stripped state and local governments of authority to regulate cell towers based on the purported "environmental effects of radio frequency emissions." 47 U.S.C. § 332(c)(7)(B)(iv). And the FCC has implemented that prerogative by establishing detailed RF standards based on scientific data.

Plaintiffs' appeal runs headlong into those well-established principles. Plaintiffs contend that a single city's board of health can order a wireless-communications facility to cease its operations *even if* that facility fully complies with the FCC's detailed regulations. Indeed, the premise of Plaintiffs' suit is that the Pittsfield Board of Health may regulate RF emissions "even when such emissions [a]re compliant with the standards set by the [FCC]," on the theory that permissible emissions under "the FCC's guidelines are still unreasonably dangerous." Add. 153, 158. That approach is an undisguised attempt to reweigh the considerations the FCC already balanced when it promulgated its RF emissions standards and licensed the cell tower at issue. A local regulator forbidding a company from doing what the FCC itself has approved is a paradigmatic affront to the Supremacy Clause—hence why a bevy of courts across the country has found preemption on indistinguishable facts.

The Superior Court was right to join that chorus of jurists in rejecting the contention that a local board of health can revise and reverse the FCC's decisions. Its well-reasoned opinion zeroed in on the precise problem with Plaintiffs' theory: Their requested relief would prohibit operations that the FCC—the exclusive decisionmaker by Congressional design—chose to permit. If such local second-guessing of the FCC's tailored regulations were permissible, then the nationally uniform standards Congress charged the FCC with devising would be a dead letter. That plain conflict epitomizes obstacle preemption, as the Superior Court ruled.

But this Court can also affirm on the basis of express preemption. As this Court has already recognized, the TCA explicitly overrides any authority that state and local governments otherwise might have to order "modification[s]" to wireless facilities' operations to regulate "the environmental effects of radio frequency emissions." *See* 47 U.S.C. § 332(c)(7)(B)(iv). Plaintiffs have no response to that problem. The TCA's plain text thus prohibits their requested relief.

A reliable, efficient, accessible wireless telecommunications network is crucial to millions of Americans and businesses alike. It is the backbone for both digital and physical commerce, and a pillar of the modern economy. Recognizing this, Congress sought to reduce costs and red tape, promote innovation, and increase coverage through a predictable and nationally uniform regulatory framework, superintended by a single federal agency with the appropriate expertise to weigh costs and benefits in light of the latest scientific evidence. Endorsing Plaintiffs' arguments would produce the patchwork of conflicting regulations that Congress deliberately sought to avoid, impinging on wireless carriers' ability to provide cost-effective, dependable services. The Court should affirm.

ARGUMENT

I. The Federal Government Has Exclusive Authority Over RF Emissions In Telecommunications

A. RF Emissions Fall Within Congress's Exclusive Power To Regulate Interstate Commerce

The basis of Congress's authority to regulate in the telecommunications field is the Commerce Clause, which was designed to ensure uniformity in the channels and instrumentalities of interstate commerce. U.S. Const. art. I, § 8, cl. 3; *see, e.g.*, *Nat'l Broad. Co. v. United States*, 319 U.S. 190, 227 (1943) (sustaining the FCC's licensing function as "a proper exercise of [Congress's] power over commerce"). From their experience with the Articles of Confederation, the Constitution's framers understood that without strong national regulation of uniform commercial standards, the nation's economy would be "fettered, interrupted, and narrowed by a multiplicity of causes." The Federalist No. 11, at 90 (Alexander Hamilton) (Clinton Rossiter ed., 1961). Accordingly, the Constitution forbade the states from "regulat[ing] those phases of the national commerce which, because of the need of national uniformity, demand that their regulation, if any, be prescribed by a single authority." *S. Pac. Co. v. State of Ariz. ex rel. Sullivan*, 325 U.S. 761, 767 (1945).

The telecommunications field fits that description to a tee. "No state lines divide the radio waves," making "national regulation . . . not only appropriate but essential to the efficient use of radio facilities." *Fed. Radio Comm'n v. Nelson Bros.*

Bond & Mortg. Co., 289 U.S. 266, 279 (1933). Shortly after "the first commercial radio broadcast," Congress recognized the need for a nationwide regulator to craft uniform radio standards. *History of Commercial Radio*, FCC, https://tinyurl.com/56vr7kxb. It thus created a new federal agency, the FCC, in the path-breaking Communications Act of 1934 ("'34 Act"). Pub. L. No. 73-416, 48 Stat. 1064 (1934) (codified as amended at 47 U.S.C. § 151 et seq.). Congress directed the FCC "to make available . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges." *Id.* To help the FCC carry out those goals, Congress "endowed [it] with comprehensive powers," *Nat'l Broad. Co.*, 319 U.S. at 217, including authority to "[m]ake such rules and regulations and prescribe such restrictions and conditions" as would be "necessary to carry out the [statutory] provisions." 47 U.S.C. § 303(r); *see also id.* § 154(i) ("The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions.").

B. Congress Delegated Exclusive Regulatory Authority To The FCC

Congress gave the FCC control over radio-emissions standards from the beginning. The '34 Act empowered the FCC to "[r]egulate the kind of [radio] apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein." 47 U.S.C. § 303(e).

The point then, as now, was to ensure nationally uniform standards. As the Supreme Court put it, the FCC must "serve as the single Government agency with unified jurisdiction and regulatory power over all forms of electrical communication, whether by telephone, telegraph, cable, or radio." *United States v. Sw. Cable Co.*, 392 U.S. 157, 167-68 (1968) (internal quotation marks omitted).

Congress further clarified the FCC's authority in the Telecommunications Act of 1996 ("TCA")—the first major overhaul of telecommunications law in more than 60 years. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). The TCA was designed to foster "a pro-competitive" environment through deregulation and "to accelerate rapidly private sector deployment" of new technologies. H.R. Conf. Rep. No. 104–458, reprinted in 1996 U.S.C.C.A.N. at 1.

Uniform, nationwide standards for RF emissions once again were top of mind for Congress. The TCA directed the FCC to "prescribe and make effective rules regarding the environmental effects of radio frequency emissions." Pub. L. No. 104–104, § 704(b), 110 Stat. 56, 152. Congress well understood the possibility that individual states or localities might attempt to establish their own competing standards—a patchwork regime it viewed as antithetical to the TCA's goals. As the House Report explained, "[a] high quality national wireless telecommunications network cannot exist if each of its component[s] must meet different RF standards in each community." H.R. Rep. No. 104–204(I), at 95, reprinted in 1996 U.S.C.C.A.N. at 61-62.

Congress thus carefully and expressly circumscribed state and local authority to regulate RF emissions in the TCA. While the statute includes a savings clause permitting local governments to regulate the "placement, construction, and modification of personal wireless service facilities," *id.* § 332(c)(7)(A), a clause shortly thereafter makes clear that local governments may *not* regulate "the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions." 47 U.S.C. § 332(c)(7)(B)(iv).

Thus, as Congress explained, the general savings clause preserving local authority over certain land-use decisions was "not intended to limit or affect the Commission's general authority over radio telecommunications, including the authority to regulate the . . . operation of radio facilities." H.R. Conf. Rep. No. 104–458, reprinted in 1996 U.S.C.C.A.N. at 209. Rather, as courts have recognized, the TCA expressly safeguarded the FCC's "broad preemption authority" regarding "RF emissions," *Cellular Phone Taskforce v. FCC*, 205 F.3d 82, 95-96 (2d Cir. 2000), making clear that the FCC has "'exclusive authority'" to set the relevant standards, *Bennett v. T-Mobile USA, Inc.*, 597 F. Supp. 2d 1050, 1053 (C.D. Cal. 2008) (citation omitted). *See also* 47 U.S.C §§ 303, 307, 332 (discussing the FCC's authority).

The TCA defines "personal wireless services facilities" as "facilities for the provision of personal wireless services," and "personal wireless services" include

"commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services." 47 U.S.C. § 332(c)(7). This definition of facility indisputably includes cell phone towers. *See Pinney v. Nokia, Inc.*, 402 F.3d 430, 455 (4th Cir. 2005) (concluding that the term "facility" means "a structure or object" "that provides wireless service coverage"); *Eisenstecken v. Tahoe Reg'l Plan. Agency*, 2025 WL 1531678, at *6 (E.D. Cal. May 28, 2025) (explaining that a cell tower is a personal wireless services facility that "fall[s] under the FCC's regulation").

C. The FCC Has Established A Reticulated Scheme For Radio-Frequency Emissions From Cell Towers

The FCC has since deployed its exclusive authority to establish detailed standards concerning RF emissions applicable to cell towers. First in 1996, the FCC established a set of guidelines for evaluating the environmental effects of RF exposure to "protect the public and workers from exposure to potentially harmful RF fields." *Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation*, ET Docket No. 93-62, *Report and Order*, 11 FCC Rcd. 15,123, 15,124 ¶ 1 (1996) ("1996 Order"). Those guidelines were the product of extensive input from both public and private stakeholders. The FCC placed "special emphasis on the recommendations and comments of Federal health and safety agencies." *Id.* ¶ 28. It thus took into consideration the feedback it received from the Environmental Protection

Agency (EPA), Food and Drug Administration (FDA), National Institute for Occupational Safety and Health (NIOSH), and the Occupational Health and Safety Administration (OSHA). *Id.* ¶¶ 15-20. It also benchmarked its emissions standards against those of leading private organizations that study RF emissions, including the American National Standards Institute, the Institute of Electrical and Electronics Engineers, and the National Council on Radiation Protection and Measurements. *Id.* ¶ 28.

The resulting "exposure criteria" the FCC adopted were carefully calibrated to "protect workers and the general public from potentially harmful RF emissions due to FCC-regulated transmitters." 1996 Order ¶ 28. The guidelines provide both "limits for specific absorption rate (SAR, the present metric for highly-localized, close-in exposure at commonly-used frequencies) and maximum permissible exposure (MPE, the measure for more-distant, whole-body exposure and for whole-body exposure at higher frequencies)." *Resolution of Notice of Inquiry, Second Report and Order, Notice of Proposed Rulemaking, and Memorandum Opinion and Order*, 34 FCC Rcd. 11,687, 11,689-90 (2019) ("2019 Order"); *see* 47 C.F.R. § 1.1310 (codifying exposure limits).

The FCC affirmed that 1996 Order most recently in 2019, when it declined to change its existing RF limits. The FCC determined in a 159-page order that "scientifically rigorous data or analysis" do not support "modifications to the current RF

limits." *See* 2019 Order ¶ 10; *accord* RF Safety FAQ, FCC, https://tinyurl.com/yryzp6sv (last accessed Nov. 12, 2025) ("[T]here is no reason to believe that [cell] towers could constitute a potential health hazard to nearby residents or students.").[2]

Once again, the FCC studied the feedback it received from "federal agencies charged with regulating safety and health," including the EPA and FDA, and "well-established international standards." *See* 2019 Order ¶ 2. The FCC reported that "no expert health agency expressed concern about the Commission's RF exposure limits"; rather, those agencies "continue to support the current limits." *Id.* ¶ 10. The FCC explained that it "take[s] [its] duty to protect the public from any potential harm due to RF exposure seriously," and therefore determined that it was "imprudent to revise [the] scientifically accepted recommendations without appropriate evidence supporting such a change." *Id.* ¶ 11.

The FCC has implemented a robust licensing scheme to ensure that licensees comply with these scientifically accepted emissions recommendations. All "appli-

[2] In 2021, the D.C. Circuit remanded the 2019 Order to the FCC on procedural grounds so that it could better explain "its determination that its guidelines adequately protect against harmful effects of exposure to radiofrequency radiation." *Env't Health Tr. v. FCC*, 9 F.4th 893, 914 (D.C. Cir. 2021). The RF standards remain in full force while that remand remains ongoing, underscoring the FCC's exclusive authority to decide the appropriate RF emissions standards.

cants to the Commission for the grant or modification of construction permits, licenses or renewals thereof . . . or any other authorizations for radiofrequency sources must" comply with the limits on RF exposure provided in 47 C.F.R. § 1.1310. 47 C.F.R. § 1.1307(b). Unless "they qualify for an exemption" applicants must "[p]repare an evaluation of human exposure to RF radiation . . . and include in the application a statement confirming compliance with the limits in § 1.1310" or "[p]repare an Environmental Assessment if those RF sources would cause human exposure to levels of RF radiation in excess of the limits in § 1.1310." 47 C.F.R. § 1.1307(b)(1)(i). An Environmental Assessment "shall explain the environmental consequences of the proposal and set forth sufficient analysis for . . . the Commission to reach a determination that the proposal will or will not have a significant environmental effect." 47 C.F.R. § 1.1308(b). The FCC thereby ensures that all cell towers it licenses comply with the RF emissions standards (or qualify for an exemption).

Once a tower has been licensed, the FCC's Spectrum Enforcement Division is charged with "taking enforcement actions involving unauthorized or unlicensed operations . . . and environmental . . . violations involving communications towers." *Spectrum Enforcement Division*, FCC, https://tinyurl.com/5n7en8bw (last accessed Nov. 12, 2025). A consumer can file "a complaint about a company that provides

telecommunications services," and the FCC will investigate based on these complaints, or the FCC may sua sponte determine that an investigation is necessary. *Complaints About Telecommunications Issues*, FCC, https://tinyurl.com/yuxact5a (last accessed Nov. 12, 2025). Each license is granted for "a term of not to exceed 8 years," and must therefore be renewed periodically, at which point the FCC must "fin[d] that public interest, convenience, and necessity would be served" by the renewal. 47 U.S.C. § 307(c).

II. Plaintiffs' Requested Relief Is Preempted Twice Over

The Supremacy Clause of the federal Constitution invalidates any state law that "interferes with or is contrary to federal law." *Free v. Bland*, 369 U.S. 663, 666 (1962) (citing *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 210 (1824)); *see* U.S. Const. art IV, cl. 2. Federal statutes and regulations therefore must prevail whenever state and local laws stand as an obstacle to the achievement of federal aims and whenever those federal laws expressly preempt state and local enactments. *Hillsborough County v. Automated Med. Labs., Inc.*, 471 U.S. 707, 713 (1985). Because Plaintiffs' requested relief—reinstatement of the Board's withdrawn order—plainly does both, the Superior Court's judgment should be affirmed.

A. Plaintiffs' Requested Cease-And-Desist Order Is Preempted Under Longstanding Conflict-Preemption Principles

The Superior Court's finding of obstacle conflict preemption is correct and provides a straightforward basis for affirmance. State laws are preempted "when the

state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Hillman v. Maretta*, 569 U.S. 483, 490 (2013) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). In other words, obstacle preemption is implied and need not be express. *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 884-85 (2000). Obstacle preemption is especially appropriate when a local decisionmaker attempts to reweigh considerations vested with a federal regulator (like the FCC). Courts have long "recognized that many of the responsibilities conferred on federal agencies involve a broad grant of authority to reconcile conflicting policies." *City of New York v. F.C.C.*, 486 U.S. 57, 64 (1988). State law poses an obstacle to federal objectives when it would disturb the balance the federal agency struck between "conflicting policies that were committed to the agency's care by the statute." *Id.*

There is no presumption against preemption applicable here. *Contra* Plaintiffs' Br. 26-28. Courts sometimes put a thumb on the scale in favor of local enactments "within states' historic police powers." *Cohen v. Apple Inc.*, 46 F.4th 1012, 1029 (9th Cir. 2022). But the presumption falls away in industries with a long history of federal regulation. That is especially true both for "the telecommunications industry generally, and RF emissions" in particular, which "have long been regulated by Congress and the [FCC]." *Bennett*, 597 F. Supp. 2d at 1052; *see also Farina v. Nokia*, 578 F. Supp. 2d 740, 756 (E.D. Pa. 2008) ("[R]adio communication has been

the subject of Congressional regulation since its 'earliest days.'"). And in any event, any such presumption would be overcome here given the clear conflict between the FCC's regulations and Plaintiffs' claims. *See Cohen*, 46 F.4th at 1029.

1. Plaintiffs' Requested Relief Is An Obstacle To The FCC's Exclusive Authority To Set Uniform RF Standards

Plaintiffs' requested relief—a show-cause order from the Pittsfield Board of Health as to why a local cell tower should not discontinue its operations—would frustrate the full achievement of Congress's purposes and objectives in the TCA. The premise of Plaintiffs' request—as they freely admit, Plaintiffs' Br. 36—is that the Board could compel a wireless-service provider to modify or cease its operations *even if* the provider is in "[c]ompliance with FCC emission limits" based on the Board's own competing impression that RF emissions are safe only when "significantly lower than the FCC's emission guidelines." *Id.* That request frustrates the FCC's congressionally directed objectives in multiple respects.

First, the requested order is directly contrary to the FCC's studied judgment on the *exact issue* Plaintiffs raise: appropriate levels for RF emissions. Pursuant to Congress's delegation, the FCC explicitly weighed "the need to protect the public and workers from exposure to potentially harmful RF electromagnetic fields and the requirement that the industry be allowed to provide telecommunications services to the public in the most efficient and practical manner possible." *In re Procedures for Reviewing Requests for Relief From State and Local Regulations*, 12 FCC Rcd.

13,494, 13,496 ¶ 2 (1997). And the FCC has reaffirmed that its existing exposure limits are not "outdated or insufficient to protect human safety," and that "scientifically rigorous data or analysis" does *not* support modifying its standards. *See* 2019 Order ¶ 10. The FCC's resulting emissions standards, *see* 47 C.F.R. § 1.1310, represent its determination of the "proper balance" of health and safety with efficient and reliable mobile telecommunications. *Cohen*, 46 F.4th at 1022. Plaintiffs' proposed order, by contrast, is premised on flat disagreement with the FCC's conclusion through the Board's own reweighing of the evidence.

Plaintiffs' attempt to compel the Board to second-guess the decision statutorily vested in the FCC is the precise scenario for obstacle preemption. "When Congress charges an agency with balancing competing objectives, it intends the agency to use its reasoned judgment to weigh the relevant considerations and determine how best to prioritize between these objectives." *Farina v. Nokia*, 625 F.3d 97, 123 (3d Cir. 2010). "By delegating the task of setting RF-emissions levels to the FCC, Congress authorized the federal government—and not local governments—to strike the proper balance between protecting the public from RF-emissions exposure and promoting a robust telecommunications infrastructure." *Robbins v. New Cingular Wireless PCS, LLC*, 854 F.3d 315, 319-20 (6th Cir. 2017). "Allowing state law to impose a different standard permits a re-balancing of those considerations," *Farina*, 625 F.3d at 123, which obstacle preemption is designed to avoid. As the Supreme Court

has explained, "claims under state . . . law" may not be used to upset a "delicate balance of statutory objectives." *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 348 (2001); *accord City of Burbank v. Lockheed Air Terminal Inc.*, 411 U.S. 624, 638-39 (1973) ("uniform and exclusive system of federal regulation" is necessary to achieve "congressional objectives" when statute "requires a delicate balance between safety and efficiency").

That concern applies with particular force in the telecommunications field. "Because the intensity of RF emission levels and the strength and range of cell phone signals are positively correlated, allowing additional state-law restrictions on these levels could impair the efficiency of the wireless market." *Farina*, 625 F.3d at 125-26. Any claims that a local authority should be permitted to revise appropriate RF emissions standards "unquestionably trample upon the FCC's authority to determine the maximum standard for RF emissions." *Farina*, 578 F. Supp. 2d at 769; *accord Cohen*, 46 F.4th at 1031 (holding "that the FCC's regulations under the 1934 Act, setting upper limits on the levels of permitted RF radiation, preempt state laws that impose liability premised on levels of radiation below the limits set by the FCC."). Because Plaintiffs' requested order cannot be squared with Congress's clear objectives in the TCA, it must yield to the FCC's exclusive authority.

This is precisely why other courts have routinely found obstacle preemption in indistinguishable circumstances. *See, e.g.*, *Cohen*, 46 F.4th at 1029 (finding

preemption "because the conflict between the FCC's RF radiation regulations and plaintiffs' state law claims poses a sufficient obstacle to the full accomplishment of the FCC's objectives."); *Robbins*, 854 F.3d at 320 ("Allowing RF-emissions-based tort suits would upset that balance and impair the federal government's ability to promote the TCA's goals."); *Kaspers v. Verizon Wireless Servs., LLC*, 2021 WL 2193992, at *2 (N.D. Ga. Jan. 19, 2021) ("§ 332(c)(7)(B)(iv) entrusts the FCC—not state or local governments—to determine acceptable levels of RF emissions while disallowing state and local governments from supplementing or supplanting the FCC's determinations with their own."); *Walker v. Motorola Mobility LLC*, 670 F. Supp. 3d 387, 401 (W.D. La. 2023) ("[S]tate law claims attacking the safety of the SAR Standard are preempted by federal law."); *Stanley v. Amalithone Realty, Inc.*, 94 A.D.3d 140, 146 (N.Y. Sup. Ct. App. Div. 2012) ("In short, AT & T's cell phone towers are in compliance with FCC regulations and thus not subject to the kind of state regulation that plaintiff seeks.").

Second, Plaintiffs' requested order conflicts with the FCC's exclusive authority to set appropriate RF emissions standards—and thereby would destroy the national uniformity and consistency Congress sought to foster. The FCC's exclusive authority over technical matters, like appropriate RF emissions standards, is well established. *See Head v. N.M. Bd. of Examiners of Optometry*, 374 U.S. 424, 430 n.6 (1963) (FCC's control "over technical matters . . . is clearly exclusive"); *accord*

Farina, 578 F. Supp. 2d at 762 (noting the FCC's "exclusive authority over every technical aspect of radio communication"); *Abraham v. Town of Huntington*, 2018 WL 2304779, at *7 (E.D.N.Y. May 21, 2018) ("Section 303 empowers the FCC to regulate radio broadcasting technology and RF interference exclusively."). The purpose of that exclusivity is to ensure "uniform rules for telecommunications, which, by its very nature, requires consistency among the states." *Bennett*, 597 F. Supp. 2d at 1053; *accord Farina*, 625 F.3d at 126 (because a "wireless network is an inherently national system," "uniformity is an essential element of an efficient wireless network").

Directing the Pittsfield Board of Health—or other local entities—to set their own RF standards would destroy that congressional objective of national consistency. Local jurisdictions could override the FCC's carefully calibrated standards whenever they perceived that those standards are insufficiently protective of public health. Such balkanization would run directly contrary to Congress's intent in enacting the TCA, where it recognized that "[a] high quality national wireless telecommunications network *cannot exist* if each of its component[s] must meet different RF standards in each community." H.R. Rep. No. 104–204(I), at 95, reprinted in 1996 U.S.C.C.A.N. at 61-62 (emphasis added). Indeed, a system where individual localities could override federal regulations would "render the FCC's statutorily

mandated balancing essentially meaningless" and thus would "'stan[d] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Cohen*, 46 F.4th at 1031 (quoting *Beaver v. Tarsadia Hotels*, 816 F.3d 1170, 1179 (9th Cir. 2016)) (alteration in original).

2. Plaintiffs' Arguments Against Obstacle Preemption Fail

Plaintiffs' arguments against obstacle preemption are unavailing. Plaintiffs make much of the idea that this case nominally concerns a single tower and a "specific illness cluster." Plaintiffs' Br. 49 (emphasis deleted). But embracing Plaintiffs' position would open the floodgates for similar localities to enact their own bespoke emissions standards—the very result Congress labored to avoid.

Plaintiffs deride that point as a "'domino' theory," Plaintiffs' Br. 47, and claim this Court rejected it in *Arthur D. Little, Inc. v. Commissioner of Health & Hospitals of Cambridge*, 395 Mass. 535, 547-48 (1985), but that argument is meritless. *Little* concerned a particular locality's attempt to regulate the storage of chemical-warfare agents, not RF emissions. *Id.* at 547. "According to the record" in *Little*, "only one other city ha[d] even considered the problem," there was "no indication" the other city would enact a similar ban, and the Department of Defense "would always be free" to conduct chemical-warfare research "on its military bases." *Id.* at 548. Here, by contrast, cell towers are ubiquitous; localities commonly attempt to regulate RF emissions (as demonstrated by the entire genre of cases deeming those attempts

preempted); patchwork regulations are inherently antithetical to uniform cell coverage; and Congress expressed particular concern about local intermeddling with RF standards, which it described as fundamentally incompatible with "[a] high quality national wireless telecommunications network." H.R. Rep. No. 104–204(I), at 95, reprinted in 1996 U.S.C.C.A.N. at 61-62 (emphasis added). This case thus bears no relationship to *Little*, where there was no evidence that the isolated local regulation at issue would be followed by other jurisdictions, and no evidence that it would frustrate federal objectives in practice.

Nor is it legally relevant (or factually correct) to describe Plaintiffs' request for an order from the Board of Health as a mere "effort to mediate." Plaintiffs' Br. 14 (emphasis deleted). The order Plaintiffs seek is the procedural prerequisite to an order directing the tower to discontinue operations, which is flatly inconsistent with the FCC's authorization for the tower to operate at its current RF-emission levels. *See* Add. 157 n.6. Regardless of how it is characterized, the order runs afoul of the Supremacy Clause. Plaintiffs are asking the Board to accept their premise that the FCC's RF emissions limits are "inadequate to ensure" safety and thereby seek to force the facility to alter its operations "even though they indisputably complied with" the FCC guidelines. *Farina*, 578 F. Supp. 2d at 770. Such a challenge amounts to a "collateral attack on the FCC regulations themselves" and is therefore preempted. *Bennett*, 597 F. Supp. 2d at 1053. *See, e.g.*, *Abraham*, 2018 WL

2304779, at *8 ("[A]s long as there is no factual dispute as to whether RF interference falls within the FCC guidelines, an attempt by the Town to make a determination as to an application or permit based on the risks posed by RF interference would be preempted by federal law.").

Plaintiffs' reliance on *Pinney v. Nokia, Inc.*, 402 F.3d 430 (4th Cir. 2005), a case involving cell phones, is misplaced. *Pinney*'s holding was based on the conclusion that cellphones are not "facilities" under 47 U.S.C. § 332(c)(7)(B)(iv), but it recognized that "Congress has specifically allowed for preemptive national RF radiation standards" as to "facilities." 402 F.3d at 444, 454, 458. Here, the Board's order purports to regulate a cell tower, which indisputably qualifies as a "personal wireless services facilit[y]" under the statute and is thus preempted under *Pinney*. 47 U.S.C. § 332(c)(7)(B)(iv). Plaintiffs acknowledge as much. *See* Plaintiffs' Br. 13 (describing the "Verizon Wireless Cell Tower" as a "wireless facility"). In any event, *Pinney* is an outlier even on its own terms, including because it was decided without the benefit of the FCC's guidance, *Murray v. Motorola, Inc.*, 982 A.2d 764, 778 n.19 (D.C. 2009), and other appellate courts have found preemption as to cellphones, *see, e.g.*, *Cohen*, 46 F.4th at 1024, 1031; *Farina*, 625 F.3d at 104.

Finally, the general savings clauses Plaintiffs briefly mention do not preclude a finding of conflict preemption. *See* Plaintiffs' Br. 34-35. Plaintiffs invoke two provisions suggesting that the TCA was not intended to displace other state laws or

remedies. *See* 47 U.S.C. § 414 ("Nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies."); Pub. L. 104–104, title VI, § 601(c)(1), 110 Stat. 143 (1996) ("This 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").[3] Both of those clauses are general as to the TCA, however, and thus "d[o] not provide strong evidence of the congressional objectives bound up with the regulation of RF emissions." *Farina*, 624 F.3d at 132 n.30. They therefore do not negate the conclusive evidence in the text and legislative history that Congress intended to specifically preclude state regulation of facilities' RF emissions. This Court, like the court in *Farina*, should "decline to read this [savings] provision in a way that limits [its] conflict preemption analysis." *Id.*

In sum, Plaintiffs have failed to provide any basis for this Court to depart from the decisions of numerous other courts that have found preemption in indistinguishable circumstances.

[3] The 1996 savings clause is included as part of the notes to 47 U.S.C. § 152.

B. The Board's Cease-And-Desist Order Is Also Expressly Preempted By The Telecommunications Act Of 1996

This is also a straightforward case under express preemption, which applies when Congress preempts the ability of a state to regulate in certain areas "through express language in a statute." *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 376 (2015). Although the Superior Court relied on obstacle preemption, it is well established that a judgment may be affirmed "on 'any ground apparent on the record that supports the result reached in the [trial] court.'" *Lopes v. Commonwealth*, 442 Mass. 170, 181 (2004) (citations and internal quotation marks omitted); *accord Commonwealth v. Va Meng Joe*, 425 Mass. 99, 102 (1997) ("[I]f the facts found by the judge support an alternative legal theory, a reviewing court is free to rely on an alternative legal theory.").

Section 332 of the TCA contains express language preempting state regulation over RF emissions levels. *See* 47 U.S.C. § 332. At the outset, Section 332(c)(7)(A) provides a threshold reservation of authority for states and localities to regulate "the placement, construction, and modification of personal wireless service facilities." Just below, however, the statute creates a carveout explaining that "[n]o State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities *on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions*." 47 U.S.C.

§ 332(c)(7)(B)(iv) (emphasis added). Congress thus deliberately stripped states and localities of the authority to regulate RF emissions at FCC-compliant facilities. As this Court has already recognized, under this provision, "[t]here may be no [local] regulation of facilities 'on the basis of the environmental effects of radio frequency emissions,' other than as required by the Federal Communications Commission." *Roberts v. Sw. Bell Mobile Sys., Inc.*, 429 Mass. 478, 481-82 (1999) (quoting 47 U.S.C. § 332(c)(7)(B)(iv)).

Congress's word choice shows the extent to which it did not want states or localities to interfere with the operations of personal wireless service facilities. Section 332(c)(7)(B)(iv) does not merely apply to "zoning authorities," *contra* Mass. Safe Tech. Br. 14, but applies to any "State or local government *or instrumentality thereof*," 47 U.S.C. § 332(c)(7)(B)(iv) (emphasis added). The Pittsfield Board of Health plainly is an "instrumentality" of the City of Pittsfield, and thus falls squarely within the statute.

Moreover, Section 332(c)(7)(B)(iv)'s text contains no limitation to "zoning decisions." *Contra* Mass. Safe Tech. Br. 15-16. In addition to prohibiting local regulations on "placement," the provision expressly bars local instrumentalities from ordering a "modification" to a cell tower based on RF emissions. 47 U.S.C. § 332(c)(7)(B)(iv). "'[T]o modify' means to change moderately or in minor fashion." *MCI Telecomms. Corp. v. Am. Tel. & Tel. Co.*, 512 U.S. 218, 225 (1994); *see*

also Biden v. Nebraska, 600 U.S. 477, 495 (2023) ("modify" means "[t]o make somewhat different; to make small changes to") (quoting *Black's Law Dictionary* 1203 (11th ed. 2019)) (alteration in original). Construing "modification" as merely a reference to "placement" (*i.e.*, zoning) decisions would impermissibly render that separately enumerated prohibition "superfluous, void or insignificant," in contravention of "one of the most basic interpretive canons" against superfluity. *Corley v. United States*, 556 U.S. 303, 314 (2009). Rather, by barring "modification of personal wireless service facilities on the basis of the environmental effects of [RF] frequency emissions," Congress explicitly stripped from states and localities the ability to make even "minor" regulatory adjustments to a facility's RF emissions. 47 U.S.C. § 332(c)(7)(B)(iv).

Such express preemption makes sense. Permitting local governments to make *any* changes to a facility's RF emissions when those facilities are indisputably in compliance with FCC regulations would allow states to usurp "the Commission's jurisdiction over technical matters . . . over which federal control is clearly exclusive." *Head*, 374 U.S. at 430 n.6.

Plaintiffs' requested relief falls within the plain terms of this express preemption provision in Section 332(c)(7)(B)(iv). Plaintiffs acknowledge that the Pittsfield tower is a "personal wireless service facility." 47 U.S.C. § 332(c)(7)(B)(iv); *see supra* 31. There is also no dispute that the wireless tower here has complied "with

the Commission's regulations concerning [radio frequency] emissions." 47 U.S.C. § 332(c)(7)(B)(iv). *See* Plaintiffs' Br. at 36 (explaining that the Board's Order found that "[c]ompliance with FCC emission limits does not ensure safety nor protection from all harm."). Indeed, the requested order is premised on evidence "regarding the negative health effects of RF emissions, *even when such emissions were compliant* with the standards set by the Federal Communications Commission ('FCC')." Add. 153 (emphasis added). Thus, any attempt to have the Pittsfield tower cease or change its operations based on the purported "environmental effects" of RF emissions would constitute an impermissible local regulation regarding "modification" of the tower. 47 U.S.C. § 332(c)(7)(B)(iv). By the plain terms of the statute, Plaintiffs' claims are preempted.[4]

Other courts have found express preemption in similar circumstances. *See, e.g.*, *Eisenstecken*, 2025 WL 1531678, at *6; *Firstenberg v. City of Santa Fe, N.M.,* 782 F. Supp. 2d 1262, 1270 (D.N.M. 2011), *vacated on other grounds*, 696 F.3d

[4] As the Superior Court correctly recognized—and as Plaintiffs do not dispute—it is irrelevant that the TCA does not expressly mention the "operation" of cell towers. Add. 156. As the Second Circuit has explained, "the absence of the word 'operation' from subsection (B)(iv)" does not preserve for states the right "to regulate operations of wireless service facilities." *Cellular Phone Taskforce*, 205 F.3d at 96. Directing "modification[s]" to cell towers "on the basis of the environmental effects of [RF] frequency emissions" necessarily encompasses the operations that produce those emissions. A contrary holding would allow states and localities to make an end-run around the statutory scheme.

1018 (10th Cir. 2012). In *Eisenstecken*, the plaintiffs alleged that wireless service facilities, although in compliance with federal regulations, produced harmful RF emissions. *Id.* at *1. The court held that "Congress *expressly preempted* state law regarding the regulation of RF emissions from wireless facilities on the basis of environmental or health risks," barring the claims at issue. *Id.* at *6 (emphasis added). That holding aligns with the broad prohibition in the text of Section 332, which prevents the Board from ordering even a "modification" of the tower's RF emissions. 47 U.S.C. § 332(c)(7)(B)(iv).

The few cases that have rejected express preemption are inapposite. In *Appeal of Freeman*, 975 F. Supp. 570, 574 (D. Vt. 1997), for example, the court stated that the TCA "is silent as to the ability of state or local authorities to regulate with respect to radio frequency interference." But this case concerns RF *emissions*, not interference, and the court noted that the TCA *would* expressly preempt any local attempt to regulate emissions. *Id.* Moreover, the court found implied preemption even as to RF interference. *Id.* *Stanley v. Amalithone Reality, Inc.* merely held that the TCA does not expressly preempt State common-law claims. 94 A.D.3d at 145. The Supreme Court has explained, however, that state law "include[s] common law as well as statutes and regulations." *Cipollone v. Liggett Grp.*, 505 U.S. 504, 522 (1992). Thus, since the statute prohibits states from "regulat[ing] . . . personal wireless service facilities," 47 U.S.C. § 332(c)(7)(B)(iv), this prohibition would preclude claims

based on common-law theories as well. And *Stanley* found conflict preemption in any event. 94 A.D.3d at 145.

Express preemption thus provides yet another basis for affirmance.

C. Properly Enforcing The Preemptive Effect Of Federal Law Is Necessary To Prevent Patchwork Cellular Coverage

Properly enforcing the preemptive effect of federal statutes is crucial to the American economy. Preemption "provide[s] a uniform source of law" upon which businesses may structure their affairs. *Authier v. Ginsberg*, 757 F.2d 796, 802 (6th Cir. 1985). Those clear and uniform federal rules enhance predictability, reduce compliance costs, and spur investment. By contrast, idiosyncratic and shifting local rules increase those compliance costs and create uncertainty that deters businesses from branching out into new technologies and jurisdictions.

Uniform regulations are particularly important in the telecommunications industry, given its inherently national nature. Americans expect to be able to travel throughout the country and have their cell phones work wherever they are in the same way they work at home. A wireless patchwork based upon individual local rules is inimical to that goal. As this Court explained in *Roberts*, interference with cell-tower operations creates undesirable "[c]overage gaps," which "prevent customers from receiving and sending signals" and can result in calls being "disconnected." 429 Mass. at 480. "Such gaps not only inconvenience current customers,

but may also impede the spread of the technology by making it less useful and less attractive to potential customers." *Id.*

Regulation of RF emissions bears squarely on those critical issues. RF emissions levels are directly correlated to cell signal strength and range. *See Farina*, 625 F.3d at 125-26. If Massachusetts—and every other state and locality—could implement different emissions standards for cell towers, the ability to guarantee nationwide functionality would dissipate. A tower in a jurisdiction with lower RF limits would produce different network strength compared to other towers. And cell-tower operators may be less likely to build in jurisdictions with stringent regulations, limiting the telecommunications access of whole swaths of people.

"One of the fundamental contributions of telecommunications is its role in fostering seamless connectivity," John Couper, *The Role of Telecommunications in Modern Business*, 16 Bus. Studies J. 1, 1-3 (2024), which is evidenced by the fact that by the end of 2025, it is expected that just under 5 billion people worldwide will have mobile internet access, Doug Van Dyke, et. al., 2025 *Global Telecommunications Outlook*, Deloitte (Feb. 20, 2025), https://tinyurl.com/366thw4t. In essence, telecommunications are "the lifeblood of modern business," Couper, *The Role of Telecommunications in Modern Business*, *supra*, and a high-quality American wireless system serves as its linchpin.

The existing nationwide mobile network has been made possible by the TCA and the uniform regulatory landscape it enacted. American telecommunications providers have invested over $2.2 trillion since 1996, with investments "[s]urging" after the enactment of the TCA. *2024 Broadband Capex Report*, USTELECOM, https://tinyurl.com/3t4sx74d (last accessed Nov. 12, 2025). The resulting industry investment has allowed for the modernization of the "U.S. networks to meet rising connectivity demands and keep [the] nation at the forefront of the global digital economy." *Id.*

Having a reliable mobile telecommunications system is crucial to our modern "interconnected global economy." Couper, *The Role of Telecommunications in Modern Business*, *supra*. The "mobile ecosystem" is "integral to global commerce and innovation." *How Smartphones Are Powering Global Economic Growth*, Univ. of Scranton (Apr. 29, 2025), https://tinyurl.com/543w86pz. "Globally, mobile technology has emerged as a primary engine of economic growth . . . and [is] profoundly changing daily lives—everywhere." Wolfgang Bock et al., *The Mobile Revolution: How Mobile Technologies Drive a Trillion-Dollar Impact*, BCG (Jan. 15, 2015), https://tinyurl.com/58fbxzuu. The data confirms the industry's outsized importance: the global telecommunications industry had revenues of approximately $1.53 trillion in 2024, and about 19 million jobs "were directly supported by" the global mobile ecosystem in 2023. Van Dyke, *Global Telecommunications Outlook*, *supra*.

Conversely, idiosyncratic state regulations increase compliance costs, reduce telecommunications coverage for American citizens and businesses alike, and ultimately harm the user experience and public safety. "The FCC is charged with fostering the development of an efficient wireless network, 47 U.S.C. § 151, and an essential characteristic of an efficient network is nationwide accessibility and compatibility." *Farina*, 625 F.3d at 105-06. Enabling emissions standards to vary from state to state would "eradicate[e] the uniformity necessary to regulating the wireless network." *Id.* at 126. And a proliferation of challenges to facilities that are compliant with the FCC would "tie up companies whenever they tried to build cell towers, leading to construction delays, increased costs, and ultimately, less public access to affordable cell-phone services." *Robbins*, 854 F.3d at 320. For those reasons, a "patchwork" of protocols would "creat[e] confusion" and "driv[e] up costs for all." *Walker*, 670 F. Supp. 3d at 401.

CONCLUSION

This Court should affirm the judgment of the Superior Court.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that, to the best of my knowledge, this brief complies with the Massachusetts Rules of Appellate Procedure pertaining to the filing of briefs, including Rule 16(a)(13) (addendum), Rule 16(e) (references to the record), Rule 20, and Rule 21.

1. Exclusive of the exempted portions of the brief, as provided in Mass. R. A. P. 20(a)(2)(D), the brief contains 7,039 words.

2. The brief has been prepared in proportionally spaced typeface using Microsoft Word for Office 365, in 14-point Times New Roman font. The undersigned has relied on the word-count feature of this word-processing system in preparing this certificate.

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CERTIFICATE OF SERVICE

I, Douglas S. Brooks, hereby certify, under the penalties of perjury, that on November 12, 2025, I caused a true and accurate copy of the foregoing to be filed and served via the Massachusetts Odyssey File & Serve site, and I served two copies on the following counsel either by first-class mail, pursuant to Mass. R. A. P. 13(c) and 19(d)(1), or by electronic mail with consent of the counsel being served, pursuant to Mass. R. A. P. 13(c):

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