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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

PACIFIC BELL TELEPHONE COMPANY d/b/a AT&T CALIFORNIA, Plaintiffs, **v.** **JOHN REYNOLDS, in his official capacity as President of the California Public Utilities Commission; DARCIE L. HOUK, KAREN DOUGLAS, MATTHEW BAKER, and CHRISTINE HARADA, in their official capacities as Commissioners of the California Public Utilities Commission; ROB BONTA, in his official capacity as Attorney General of the State of California,** Defendants.	3:26-cv-03148-LL-JAC **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS** Hearing Date: September 3, 2026 Dept: Courtroom 14B Judge: Hon. Linda Lopez Trial Date: Not Set Action Filed: May 20, 2026 **PER CHAMBERS RULES, NO ORAL ARGUMENT UNLESS SEPARATELY ORDERED BY THE COURT**

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INTRODUCTION

This lawsuit should be dismissed with prejudice because Plaintiff Pacific Bell Telephone Company d/b/a AT&T California ("AT&T") lacks standing for its lawsuit and cannot state a plausible preemption claim.

AT&T does not have standing to bring this challenge. The California Public Utilities Commission ("CPUC") requires Carriers of Last Resort ("COLR") like AT&T to provide "basic service" within their service area, a defined term that refers to a minimum level of telephone service that meets a set of nine criteria, such as free access to 911 services and discounted rates to eligible low-income households. These COLR rules—as this Court found when denying AT&T's motion for preliminary injunction—"are designed to apply on a ***technology-neutral*** basis to all forms of communications technology" (emphasis added). As a result, AT&T has failed to plausibly allege that its desire to grandfather the service offered over its copper wire facilities would result in a violation of the COLR requirements to provide basic service. To the contrary: if AT&T grandfathers the service offered over its copper wire facilities and continues to offer basic service through another technological means, there would be no violation of the law or the regulations in the first place. This Court consequently lacks subject matter jurisdiction to adjudicate AT&T's preemption challenge.

But even if the Court were to reach the merits, there can be no preemption as a matter of law because there is no conflict between the ***technology-neutral*** COLR rules and the Federal Communications Commission's ("FCC") Network Modernization Order ("NMO"), which grants carriers authority to grandfather services offered over ***copper wire facilities***. Again, this Court has already found that, since 2012, AT&T has been "free to provide basic services with something other than copper wire." The authority granted by the NMO, by contrast, is explicitly technology-specific: it grants carriers blanket authority to grandfather "legacy voice services" that are "provisioned over copper wire." There is no conflict between the two; simply put, as long as AT&T complies with the "basic service" rules, it is free to grandfather the service offered over its copper wire facilities ***today***. As a result, there can be no plausible preemption claim here.

Both for lack of jurisdiction and because AT&T's preemption claim lacks merit, this Court should dismiss AT&T's Complaint with prejudice.

BACKGROUND

I. The Federal Communications Act

Congress enacted the Communications Act of 1934 (the "Act"), 48 Stat. 1064, as amended, 47 U.S.C. § 151, *et seq.*, at a time when the "appropriate division between federal and state regulatory power was a dominating controversy." *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 372 (1986). Consequently, the Act deliberately sets out "a *dual* regulatory system." *Id.* at 370; *see Glob. Tel*Link v. FCC*, 866 F.3d 397, 402 (D.C. Cir. 2017). It charges the FCC with regulating "*inter*state and foreign commerce in wire and radio communication," 47 U.S.C. § 151 (emphasis added), while expressly carving out from the FCC's jurisdiction "practices, services, facilities, or regulations for or in connection with *intra*state communication service," 47 U.S.C. § 152(b) (emphasis added)—preserving the latter for state regulation. *See La. Pub. Serv. Comm'n*, 476 U.S. at 370; *People of State of Cal. v. FCC*, 905 F.2d 1217, 1241 (9th Cir. 1990) ("[T]he language Congress chose reserved to the states expansive authority to regulate intrastate telecommunications").

Central to AT&T's allegations in this lawsuit, Section 214(a) of the Act provides that any carrier seeking to "discontinue, reduce, or impair service to a community" must first obtain from the FCC a certificate that the "public convenience and necessity" would not "be adversely affected" by the proposed action. 47 U.S.C. § 214(a). When the FCC receives such an application, it must notify "the Governor of each State in which" the proposed action would occur and provide those notified with an opportunity to be heard. *Id.* § 214(b). If the FCC issues the certificate, then "the carrier may, without securing approval other than such certificate," proceed with the proposed action consistent with any terms and conditions imposed. *Id.* § 214(c).

II. CALIFORNIA'S COLR RULES

The California Legislature has declared a state policy of ensuring the "affordability and widespread availability of high-quality telecommunications services to all Californians." Cal. Pub. Util. Code § 709(a). Consistent with this policy, CPUC has promulgated regulations designed to promote "Universal Service"—the "concept that basic service should be available to virtually everyone in California at affordable rates." Ex. A , App'x B at 3.[1] Ensuring that "basic service" is available throughout California is an "essential consumer protection[]." Ex. B at 12.

CPUC ensures basic service is universally available across California via its COLR rules. *See* Ex. A at App'x B at 1. Pursuant to these rules, every area of the State has at least one designated COLR, and that COLR must offer minimum "basic service" to everyone within the COLR's specified service area. Ex. B, App'x C, at 1. In return, COLRs uniquely have access to a state subsidy for serving residential customers in high-cost areas. *Id.* "A designated COLR may opt out of its obligations" to provide basic service throughout its designated area "by advice letter," unless it is the only COLR remaining in that area. *Id.* App'x C, at 2. If the latter is the case, the carrier must petition CPUC for permission to withdraw as the COLR, and "continue to act as the COLR until the application is granted or a new COLR has been designated." *Id.* The COLR rules thus safeguard access to telecommunications services for Californians living in areas that are less profitable for carriers to serve, such as rural or low-income communities, where market forces are insufficient to guarantee the availability of reliable, affordable service.

[1] All Exhibits are attached to Defendants' Request for Judicial Notice. Citations to these exhibits reference each document's original pagination.

"Basic service" is "the minimum level of service" that meets "those communications needs essential for participation in modern society." *Id.* at 12. CPUC last updated the requirements for "basic service" in 2012; those requirements consist of the following nine elements: (1) "the ability to place and receive voice-grade calls over all distances"; (2) free access to 911 services; (3) access to directory services; (4) specified billing options, including California LifeLine rates, for eligible customers; (5) access to 800 and 8YY toll-free services; (6) access to telephone relay service as provided in Public Utility Code Section 2881; (7) access to customer service information about Universal LifeLine Telephone Service; (8) "one-time free blocking for … information services and one-time free billing adjustments" for unauthorized or mistaken changes, and (9) "access to operator services." *Id.* App'x A, at 1–5; *id.* at 25.

Consistent with the Legislature's policy of "encourag[ing] the ubiquitous availability of a wide choice of state-of-the-art services," Cal. Pub. Util. Code § 709(c), these "elements are designed to apply on a technology-neutral basis," Ex. B at 2. They apply regardless of the "communications technology that may be utilized," whether it be "wireline, wireless, … Voice over Internet Protocol ("VoIP") or any other future technology." *Id.* at 2–3. Indeed, when CPUC updated the definition of basic service in 2012, it did so expressly "to promote competition by technological neutrality while preserving the essential consumer protections." *Id.* at 5. Accordingly, the "definition focuses on meeting the end-user customer's service needs rather than the specific technology used to provide it." *Id.* at 12–13.

As the basic service elements are technology-neutral, they do not require carriers to maintain copper wire facilities. *See* Ex. C at 23. Indeed, CPUC previously issued a decision declining to require carriers to seek CPUC approval before retiring copper wire facilities in favor of fiber facilities as long as consumers were offered a comparable substitute service over fiber. *See* Ex. D at 1–2. In doing so, CPUC reiterated its commitment to fostering "the development and deployment of new technologies." *Id.* at 26; *see* Cal. Pub. Util. Code § 709(c).

Further, CPUC maintains an optional process (the "advice letter" process) for utilities to request relief from a particular basic service requirement, or to secure advanced authorization to satisfy the requirement in a new way. *See* Ex. G, Telecomms. Industry Rule 7.3. For example, Verizon requested permission to offer electronic access to residential white pages directories rather than always mailing a physical copy, and CPUC approved that request. *See* Ex. H.

AT&T has been a COLR since 1996. *See* Ex. A, App'x B at 10 (Rule 6.D.1), 20 (Attachment A). In 2023, AT&T petitioned CPUC to release it from its COLR obligations in certain areas. *See* Ex. C at 3. AT&T argued that CPUC should grant its application even "without a new designated COLR in place." *Id.* at 12. CPUC denied the application, in the absence of a viable replacement, noting that the purpose of the COLR rules "is to ensure that there is a public utility which is obligated to serve all customers that request service in its service area." *Id.* at 15. In so doing, CPUC noted AT&T's tactic—the same one that is employed here—of "paint[ing] the picture that [CPUC]'s COLR [r]ules require AT&T to retain outdated copper-based landline facilities that are expensive to maintain, or that AT&T needs [CPUC] approval in order to be able to retire copper facilities and instead[] invest in more modern technologies." *Id.* at 22. And CPUC clarified, again, that it "does not have rules preventing AT&T from retiring copper facilities" or "investing in [] other facilities/technologies to improve its network." *Id.* at 23. Indeed, in 2023, AT&T invested over $150 million in its fiber deployment projects in California. *Id.*

III. THE FCC'S NETWORK MODERNIZATION ORDER

On March 27, 2026, the FCC issued its *Network Modernization Order* ("NMO"). *See* Ex. E. As relevant here, the NMO "grant[s] blanket section 214(a) authority for carriers to grandfather legacy voice services … provisioned over copper wire." *Id.* ¶ 6; *see id.* ¶¶ 60–66. "Legacy voice service" is defined as "the transmission of voice communications, usually over copper wires, using circuit-switched technology known as 'time-division multiplexing' (TDM)." *Id.* ¶ 107. This blanket authorization allows carriers to stop offering such service to new customers without applying individually to the FCC for permission to do so, as otherwise would be required by Section 214(a). *Id.* ¶ 60.

IV. The Present Lawsuit

On May 20, 2026, approximately two months after the FCC issued the NMO, AT&T petitioned the FCC for permission to discontinue its provision of what it calls "plain old telephone service," or "POTS"[2] to existing customers. Compl. ¶ 42 n.2. And on that same date it filed the present lawsuit.

The Complaint lodges a single count, Compl. ¶¶ 66–92, seeking a declaration of preemption and an order enjoining the CPUC Commissioners and Attorney General Bonta from "commencing any enforcement action against AT&T based on AT&T's grandfathering of POTS or from taking any action that interferes with, either directly or indirectly, AT&T's grandfathering of POTS." *Id.* Prayer for Relief. AT&T argues that the COLR rules are expressly preempted under Section 214(c) of the Act because they "erect impermissible procedural barriers and substantively prohibit AT&T from grandfathering POTS," *id.* ¶ 79, even though "AT&T has obtained FCC authorization to grandfather California POTS via the blanket authority granted in the NMO," *id.* ¶ 75. It also argues that the COLR rules are impliedly preempted because their "practical effect … is to frustrate the federal goal of network modernization." *Id.* ¶ 87; *see id.* ¶¶ 91–91. The Complaint repeatedly asserts that the COLR rules compel AT&T to provide service over a copper wire network without ever identifying any particular provision of the COLR

[2] "POTS," or "plain old telephone service" is not a statutory or regulatory term. AT&T appears to use the term to reference service offered via copper wire interchangeably with service that satisfies the COLR requirements. That conflates a critical distinction, as the COLR rules are technology-neutral. *See supra* at 4–5.

rules that require AT&T to do so. *See*, *e.g.*, *id.* ¶¶ 4, 11–12, 15, 17, 20–21, 31, 52, 62, 65, 78–79, 86–88, 90–92.

One week after filing the Complaint, AT&T moved for a preliminary injunction. ECF No. 10. On July 16, 2026, the Court held a hearing and issued a ruling from the bench denying the motion. ECF No. 46. The Court held that AT&T failed to meet the irreparable injury and public interest factors required for preliminary injunctions as set out in *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). ECF No. 47 ("Tr.") at 21:2–4, 22–23. In particular, the Court explained that AT&T has been "free to provide basic services with something other than copper wire" under the CPUC rules since 2012, when those rules were made "technology-neutral." Tr. at 23:7–11. As the Court articulated:

> The 2012 revisions state that the adopted basic service elements are designed to apply on a technology-neutral basis to all forms of communications technology[] that may be utilized including wireline, wireless, and voice over internet protocol or any other future technology that may be used in the provision of … telephone services.

Tr. at 23:11–17. The Court characterized any harm to AT&T as "self-inflicted," and it found that enjoining the COLR rules would disserve the public interest by "[r]emoving the only viable phone service option for some people," such as those who rely on it due to "financial or geographic necessity." Tr. at 22:16–23:21.

Defendants now move to dismiss the Complaint.

LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(1), a complaint must be dismissed for lack of subject matter jurisdiction if, "[a]ccepting the plaintiff's allegations as true," they are not "sufficient as a legal matter to invoke the court's jurisdiction." *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014). A complaint must also be dismissed under Rule 12(b)(1) if a defendant contests the factual basis for jurisdiction, and the plaintiff then fails to prove "by a preponderance of the evidence that each of the requirements for subject-matter jurisdiction has been met." *Id.*

Under Federal Rule of Civil Procedure 12(b)(6), a complaint must be dismissed if it fails to "state a claim to relief that is plausible on its face." *Hikma Pharms. USA Inc. v. Amarin Pharma, Inc.*, 608 U.S. __, 146 S. Ct. 1391, 1399 (2026) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). To meet this standard, the complaint must "plead facts that, if true, 'allo[w] the court to draw the reasonable inference that the defendant is liable.'" *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). When ruling on a Rule 12(b)(6) motion to dismiss, "a court accepts as true a plaintiff's well-pleaded factual allegations and construes all factual inferences in the light most favorable to the plaintiff," but "is not required to accept as true legal conclusions couched as factual allegations." *Detwiler v. Mid-Columbia Med. Ctr.*, 156 F.4th 886, 893 (9th Cir. 2025).

ARGUMENT

I. THIS LAWSUIT HAS FATAL STANDING AND RIPENESS DEFECTS

AT&T seeks declaratory relief and to enjoin CPUC from enforcing all of the COLR rules against it "to the extent that they purport to impede AT&T's ability to grandfather POTS immediately and without further regulatory approval." Compl. Prayer for Relief (i). But such relief is based on AT&T's postulation that if it stops offering service over its copper wire facilities to new customers, CPUC or the Attorney General will find it in violation of CPUC's COLR requirements and take enforcement action. Yet AT&T has not plausibly alleged that its desired grandfathering of the service would violate CPUC's technology-neutral COLR rules. Accordingly, AT&T lacks standing and/or ripeness to bring this action.

The Constitution limits judicial power to "resolving actual cases or controversies." *S.D. Cnty. Credit Union v. Citizens Equity First Credit Union*, 65 F.4th 1012, 1022–23 (9th Cir. 2023) (citing *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337 (2016); U.S. Const. Art. III, § 2). AT&T must establish all three elements of standing: (1) an "injury in fact" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical" that is (2) "causal[ly] connect[ed]" and "fairly traceable" to "the conduct complained of" and "not the result of the independent action of some third party not before the court" and (3) "likely as opposed to merely speculative," such that "the injury will be redressed by a favorable decision." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (cleaned up). Additionally, a case is not ripe for review if it "rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Flaxman v. Ferguson*, 151 F.4th 1178, 1184 (9th Cir. 2025) (citation omitted).

Especially in the context of pre-enforcement challenges like this one, "[c]onstitutional ripeness … coincides squarely with standing's injury in fact prong and can be characterized as standing on a timeline." *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1122 (9th Cir. 2009) (internal quotations and citation omitted). Here, the inquiry is:

> (1) whether the plaintiffs have articulated a concrete plan to violate the law in question, (2) whether the prosecuting authorities have communicated a specific warning or threat to initiate proceedings, and (3) the history of past prosecution or enforcement under the challenged statute.

Flaxman, 151 F.4th at 1185 (quoting *Twitter, Inc. v. Paxton*, 56 F.4th 1170, 1174 (9th Cir. 2022)). AT&T has not plausibly alleged any of these factors.

A. AT&T Has Not Plausibly Alleged How Its Plan to Grandfather the Service Offered Over Its Copper Wire Facilities Would Violate the COLR Rules

As this Court has already found, "since 2012[,] when [] CPUC updated the requirements for [] basic telephone service so that it was ***technology-neutral*** instead of being based on wireline technology, AT&T [has been] free to provide basic services with something other than copper wire." Tr. 23:7–11 (emphasis added); *see id.* 7:11–15 ("The 2012 revisions state that the adopted basic service elements are designed to apply on a technology-neutral basis to all forms of communications technology[] that may be utilized including wireline, wireless, and [VoIP] or any other future technology."). Unsurprisingly, then, AT&T does not point to a single provision in California's COLR rules that actually prevents it from grandfathering the service offered over its copper wire facilities. Nor could it: as long as it continues to provide basic service through some technological means, even if not via copper wire, there would be no violation.

The COLR rules—which AT&T treats as an indivisible monolith—are simply a set of regulations that define minimal standards for the telephone service that Californians can expect to receive. Ex. B, App'x C. Instead of specific factual allegations, AT&T's Complaint is rife with legal conclusions and conclusory statements about how the "COLR regime" forces it to maintain copper wires. *See*, *e.g.*, Compl. ¶ 52 ("California's still-unreformed COLR regime forces AT&T to continue to spend massive resources on a legacy network…"). That is simply not true. The COLR rules do no such thing: as CPUC makes clear in numerous orders cited in the Complaint itself, its rules are technology-neutral.

As described *supra* at 4–5, CPUC's revision of the definition of "basic service" in 2012 was specifically "designed to apply on a technology-neutral basis." Ex. B at 2. The rules' text does not prescribe any particular technology to meet those requirements. As a result, as long as AT&T complies with its COLR obligations, there is no violation if it chooses to use a technology different from its copper wire facilities to do so. For instance, the first element of basic service requires that customers have the "ability to place and receive voice-grade calls over all distances utilizing the public switched telephone network or its successor network." *Id.*, App'x A at 1. This definition was set forth as part of the 2012 update to the COLR rules, and it replaced prior language that was tied to the specifics of "wireline network architecture" and did "not reflect how other technologies may offer two-way voice service." *Id.* at 19. The 2012 update specifically discussed how a wireless provider would meet this element. If AT&T were to cease offering service over its copper wire facilities to new customers, and offer, say, its AT&T Phone – Advanced ("AP-A") service instead (*see* Compl. ¶

42), this change alone would not constitute a violation of this basic service requirement, as long as customers continue to have service that meets all the COLR requirements, including the "ability to place and receive voice-grade calls over all distances." Ex. B, App'x A at 1. AT&T does not allege that it is unable to meet the COLR requirements using other technology. Indeed AT&T has represented to the contrary, stating that it ***already*** provides basic service via a technology other than copper wire—in this case, fiber—for approximately 5,600 residential basic service customers. Tr. 6:21–7:16.

Therefore, it is ***not*** the case that AT&T's desired grandfathering of copper wire facilities would be, by definition, incompatible with the COLR rules. And AT&T's conclusory statements otherwise may not be taken as true. *Iqbal*, 556 U.S., at 678 ("[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions."); *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012) (complaint "must contain sufficient factual matter to 'state a claim to relief that is plausible on its face.'" (quoting *Twombly*, 550 U.S. at 555, 570)). Accordingly, AT&T has failed to articulate a concrete plan to violate the COLR rules or demonstrate that grandfathering copper wire, on its own, would constitute a violation of the COLR rules. *See Flaxman*, 151 F.4th at 1185. This is sufficient to dismiss AT&T's challenge for want of jurisdiction.

B. AT&T Has Not Plausibly Alleged That Grandfathering the Service Offered Over Its Copper Wire Facilities Is Likely, on Its Own, to Prompt an Enforcement Action

AT&T also fails to plausibly demonstrate that that CPUC or the Attorney General are likely to undertake enforcement action merely for its proposed grandfathering of the service offered over its copper wire facilities. AT&T does not allege that the CPUC or the Attorney General have communicated a specific warning or threat to initiate enforcement proceedings against it, nor does it set forth a history of prosecution or enforcement under similar circumstances. In fact, nothing in the Complaint plausibly alleges that an enforcement action against AT&T is imminent simply because of its intent to grandfather the service offered over its copper wire facilities. AT&T has made clear that it wants to cease using its copper wire facilities and replace them with another technology, likely AP-A. It can do so, as long as it intends to continue to offer basic service through AP-A.[3]

None of the Complaint's fact-based allegations plausibly support a contrary inference. AT&T speculates that CPUC would not be "willing to permit AT&T to substitute for [its copper wire facilities] a superior service like mobile wireless or [AP-A], which relies on AT&T's wireless network," because "CPUC views services that rely on wireless as a second-class offering." Compl. ¶ 78; *see id.* ¶ 51. But all that AT&T offers as support for this conjecture is a CPUC staff proposal observing that wireless offerings then under consideration did not satisfy the basic service requirements because they suffered from coverage gaps and did not always offer relay services for individuals with disabilities. *See id.*; *see* Ex. F. This is unpersuasive to demonstrate the likelihood of an enforcement action. Like all administrative agencies, CPUC speaks through its orders, not through staff proposals. *See*, *e.g.*, *Bangor Gas Co., LLC v. H.Q. Energy Servs. (U.S.) Inc.*, 695 F.3d 181, 190 (1st Cir. 2012) ("Parties cannot rely on non-binding opinions from FERC staff because the Commission speaks through its orders.") (cleaned up); *MD/DC/DE Broadcasters Ass'n v. FCC*, 253 F.3d 732, 735 (D.C. Cir. 2001) ("The Federal Communications Commission is a collegial body [that] speaks through its orders, not through counsel's filings.").[4]

[3] It is unclear whether AT&T wants or intends to stop providing basic service altogether, whether via copper wire, wireless, or other technology; the Complaint is devoid of fact-based allegations demonstrating that AT&T is unable or unwilling to meet the COLR requirements for basic service. But, to the extent AT&T intends ***not*** to offer basic service, there can be no plausible claim for preemption, because the NMO on which AT&T relies for its preemption claim pertains only to the grandfathering of services "provisioned over copper wire." Ex. E ¶ 6. The NMO does not address the elements of basic service that the COLR rules govern, such as access to 911 services or telephone relay services. *See infra* at 22.

[4] In any event, as explicitly clarified during the hearing on the preliminary

(continued…)

At the hearing on its motion for a preliminary injunction, AT&T also asserted that the COLR rules effectively require it to spend money on maintaining copper wires because they require "things like operator services and white pages" that can only be satisfied through use of copper wire facilities. Tr. 5:14. Leaving aside AT&T's lack of support or even specific allegations for such a claim, in discussing and revising the elements of basic service in 2012, CPUC expressly and repeatedly noted how a wireless provider, specifically, could satisfy them. *See*, *e.g.*, Ex. B at 21 (as to the first element, "[w]e recognize that there are many factors that may impact a ***wireless customer's*** ability to make and receive calls. … These limitations, however, would not necessarily prevent a basic service customer from receiving a voice-grade connection from the customer's residence to the public switched telephone network or its successor network."); *id.* at 22 (as to the second element, clarifying "[its] applicability … to providers utilizing ***wireless*** or other alternative technologies); *id.* at 25 (as to the third element, "[CPUC] has taken steps … to facilitate the offering of Lifeline by ***wireless*** and other nontraditional providers …"); *id.* at 32, 36 (as to the fourth element, "[w]e elaborate on the manner in which these options may be offered in view of differences between wireline and ***wireless service*** … if a wireless carrier offers basic service, the wireless carrier has an obligation to provide its customers with the option to receive a free published directory"); *id.* at 40 (as to the seventh element, "[a]s the Lifeline program is revised to encourage wireless providers to participate, such providers will be required to provide free access to the above-referenced information.") (emphases added). CPUC could not have been any clearer: any technology, including wireless technology, may be used by a COLR to provide basic service.

Again, AT&T does not allege that it is not capable of satisfying the COLR rules with a different technology. To the contrary: it represents that it has done so

injunction motion, it is ***not*** CPUC's position that "a wireless provider could never satisfy the COLR rules." Tr. 16:15–16.

before. Tr. 6:21–7:16. Yet the Complaint contains no allegations of any enforcement action taken against AT&T, even though AT&T represents that it uses fiber instead of copper in some instances. *See id.* There is not even an allegation that this decision to use fiber instead of copper required some prior approval from CPUC—because such prior approval is ***not*** required. *See* Ex. D at 1–2.[5]

The closest AT&T gets to addressing either of the two remaining elements for a pre-enforcement challenge is by describing CPUC's rejection of AT&T's 2023 application to abandon its COLR obligations. Compl. ¶ 49. But this was not a request to stop providing basic service using copper wire; it was a request to be "relieve[d] it of its COLR obligations in much of its service territory," without providing any replacement. *See* Ex. C at 6–7. Releasing AT&T from all of its COLR obligations without a substitute would have put Californians' access to telecommunications, particularly in rural areas, in immediate jeopardy. *Id.* Moreover, the decision from CPUC says nothing about the likelihood of an enforcement action were AT&T to provide basic service via a technology other than copper wire, which is what matters here.

Therefore, AT&T has failed to allege that it is likely to be subject to enforcement action merely for grandfathering the service offered over its copper wire facilities. As a result, and on top of AT&T's failure to allege a concrete plan to violate the law, this Court lacks jurisdiction over this suit.

C. In the Alternative, AT&T's Alleged Economic Losses Do Not Confer Standing

To the extent AT&T seeks to establish standing by alleging simply that it has suffered an "injury in fact" in spending money to maintain its copper wire facilities, Compl. ¶¶ 1, 9, 33, 91, that is insufficient for standing. AT&T has only incurred this alleged economic harm ***because*** it (erroneously) believes that the COLR rules require it to maintain copper wire facilities. *See*, *e.g.*, *id.* ¶¶ 46, 52, 91. But as

[5] *See* Tr. 8:23–9:11.

explained above, the COLR rules for basic service are technology-neutral, and thus AT&T is free to retire its copper wire facilities and move to another technology.

In any event, the economic harm AT&T alleges would not meet the standard for an "injury in fact" anyway because—as this Court has already found—that harm is "self-inflicted." Tr. 22:24. As the Court explained, AT&T has been "free to provide basic services with something other than copper wire" since 2012. Tr. 23:7–11. As a result, any costs AT&T has allegedly incurred in maintaining its copper wire facilities when it did not have to do so are of its own making. Such "self-inflicted harm doesn't satisfy the basic requirements for standing" because it "does not amount to an 'injury' cognizable under Article III." *Nat'l Family Planning and Reproductive Health Ass'n, Inc. v. Gonzales*, 468 F.3d 826, 831 (D.C. Cir. 2006). And even if it did, such injury "would not be fairly traceable to the defendant's challenged conduct," because it is not CPUC that is compelling AT&T to maintain its copper wire facilities. *Id*. To the contrary: AT&T "has within its grasp an easy means for alleviating" such alleged harm: namely, for example, using whatever technology it desires to meet its obligations under the COLR rules for basic service. *Id.*

II. THE COLR RULES ARE NOT PREEMPTED

Even if this Court has jurisdiction, AT&T's claim that the COLR rules are preempted by the NMO is implausible as a matter of law.

There are "three different types of preemption—'conflict,' 'express,' and 'field' … but all of them work in the same way: Congress enacts a law that imposes restrictions or confers rights on private actors; a state law confers rights or imposes restrictions that conflict with the federal law; and therefore the federal law takes precedence and the state law is preempted." *Murphy v. NCAA*, 584 U.S. 453, 477 (2018) (internal citations omitted); *see* Tr. 21:15–21.

There is no such state law to preempt here in the first place. The FCC granted permission for carriers to grandfather services "***provisioned over copper wire***." Ex.

E ¶ 60 (emphasis added). Contrary to AT&T's representations, the COLR rules do not "conflict" with the NMO, because they do not require AT&T to continue providing service over copper wire facilities to new customers. *See*, *e.g.*, Compl. ¶¶ 12, 15, 63, 89–90. As explained above, the COLR rules are explicitly technology-neutral. *See supra* pp. 4–5. This Court, too, has already found that AT&T is "free to provide basic services with something other than copper wire," and has been since 2012. Tr. 23:7–11; *see also id.* 18:22–19:7 ("California's saying we don't disagree … it doesn't have to be copper wire, you can replace it with whatever type of technology so long as these basic services … are provided … [I]t ***doesn't seem*** … ***that we necessarily have a conflict*** that necessitates a ruling from the Court") (emphasis added). As the NMO and COLR rules can co-exist without any conflict, the question of the former preempting the latter does not apply. This ends the matter. *In re World Auxiliary Power Co.*, 303 F.3d 1120, 1131 (9th Cir. 2002) ("There is no conflict between the statutory provisions: the Copyright Act doesn't speak to security interests in unregistered copyrights, the U.C.C. does.").

Should the Court reach a preemption analysis, however, AT&T still fails to state a plausible claim.

A. Section 214(c) of the Communications Act Nowhere Expressly Preempts the COLR Rules

AT&T's argument that Section 214(c) of the Communications Act expressly preempts the COLR rules has no foundation in text or case law. Section 214(c) contains no reference to preemption or conflicting state regulations whatsoever—in marked contrast to other provisions of the Act. Thus, because Section 214(c)'s text does not clearly manifest an intent to preempt any state regulation, AT&T's express preemption argument fails.

"[E]xpress preemption" occurs "when Congress 'expressly commands that state law on the particular subject is displaced.'" *King v. Navy Fed. Credit Union*, 148 F.4th 628, 632 (9th Cir. 2025) (citation omitted). To "expressly preempt state law" Congress must "enact[] a clear statement to that effect." *Am. Apparel & Footwear Ass'n, Inc. v. Baden*, 107 F.4th 934, 939 (9th Cir. 2024) (internal quotation and citation omitted). After all, courts do not assume a federal enactment supersedes "the historic police powers of the States … unless that was the clear and manifest purpose of Congress." *Ass'n des Éleveurs de Canards et d'Oies du Quebec v. Becerra*, 870 F.3d 1140, 1146 (9th Cir. 2017) (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)). Thus, "when the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily 'accept the reading that disfavors preemption.'" *Id.* (quoting *Altria Grp., Inc. v. Good*, 555 U.S. 70, 77 (2008)). For the same reason, when a federal law contains an unambiguous express preemption provision, courts imply a congressional intent not "to preempt matters *beyond* the reach of that provision." *Baden*, 107 F.4th at 943 (internal quotations and citations omitted); *see Metrophones Telecomms., Inc. v. Glob. Crossing Telecomms., Inc.*, 423 F.3d 1056, 1072 (9th Cir. 2005) (same).

Section 214(c) lacks a "clear statement" that it displaces any state regulation, let alone the COLR rules at issue here. *Baden*, 107 F.4th at 939. Indeed, Section 214(c) contains no mention of preemption or state regulatory authority at all. The section generally sets out a process for carriers to obtain FCC approval for operating transmission lines or discontinuing service. *See supra* at 2–3. Subsection (c) provides that, once a certificate is obtained from the FCC certifying that the proposed action is consistent with "the public convenience and necessity," then "the carrier may, without securing approval other than such certificate," proceed with the proposed action. 47 U.S.C. § 214(c). That provision is best read as clarifying that no *federal* authorization is required beyond that certificate. The provision precludes, for example, the argument that the FCC's internal appeals process must be exhausted before a carrier who has obtained a certificate may proceed with the transmission line construction that the certificate authorized. *See Cablevision of Tex. III, L.P. v. Okla. W. Tel. Co.*, 993 F.2d 208, 210 (10th Cir. 1993). But the provision is silent as to otherwise valid legal restrictions imposed by *States* that may impact the carrier's ability to proceed lawfully with the proposed action. That silence belies any claim of express preemption.

AT&T's contrary reading—that Section 214(c)'s plain text precludes *any* other legal restriction from being imposed on the carrier in connection with the proposed action once a certificate from the FCC has been obtained—is not plausible. Under AT&T's absolutist interpretation, a carrier who has received an FCC certificate pursuant to Section 214(c) authorizing the carrier to construct a new transmission line could proceed with that construction without securing *any* other approvals from *any* other entity—such as permits or zoning approvals ordinarily required by States and localities for businesses to engage in construction activities within their borders. Nothing in the language of Section 214(c) suggests Congress intended comprehensively to override otherwise applicable state or local regulations in this way—particularly those enacted pursuant to "the historic police powers of the States." *Becerra*, 870 F.3d at 1146. To the contrary, the Act deliberately sets out "a *dual* regulatory system," *La. Pub. Service Comm'n*, 476 U.S. at 360, one that "reserve[s] to the states expansive authority to regulate intrastate telecommunications," *California*, 905 F.2d at 1241.

Not only that, but where Congress *did* intend to preempt state regulation elsewhere in the Act, it unambiguously provided so. For instance, Section 253 of the Act states that "[n]o State or local statute or regulation … may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(a). Subsection (d) explicitly states: "If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), *the Commission shall preempt* the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency." *Id.* § 253(d) (emphasis added). Other examples abound. *See*, *e.g.*, *id.* § 332(c)(3) (prohibiting "State or local government" authority to "regulate the entry of or the rates charged by any commercial mobile service or any private mobile service"); *id.* § 152(a) ("Preemption.—A provider of direct-to-home satellite service shall be exempt from … any tax or fee imposed by any local taxing jurisdiction on direct-to-home satellite service.").

The existence of these unambiguous, express preemption provisions, coupled with the explicit preservation of state regulatory authority in 47 U.S.C. § 152(b), strongly suggests the congressional inference ***not*** "to preempt matters *beyond* the reach" of those unmistakable preemption provisions. *Baden*, 107 F.4th at 943; *see Metrophones Telecomms.*, 423 F.3d at 1072; *Glob. Tel*Link*, 866 F.3d at 403. As the Supreme Court has instructed, "where Congress has indicated its awareness of the operation of state law in a field of federal interest, and has nonetheless decided to stand by both concepts and to tolerate whatever tension there [is] between them," "[t]he case for federal pre-emption is particularly weak." *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 166–67 (1989); *see Wyeth v. Levine*, 555 U.S. 555, 574 (2009) (same).

Further demonstrating a lack of express preemption is the fact that Section 214(c) explicitly *preserves* a role for States in the FCC's certification process. *Cf.* Compl. ¶ 73. The Act confers upon impacted state governors the right to be notified and heard in connection with a carrier's application for a Section 214 certificate, *see* 47 U.S.C. § 214(b), and it expressly states that States may sue to enjoin Section 214 violations, *see id.* § 214(c). Thus, there is no ground to infer that Section 214 *disempowers* States from prosecuting violations of their own consumer protection regulations within their borders, merely because the carrier committed the violation in the course of carrying out an action for which it received a Section 214 certificate. Moreover, were that strained reasoning correct, the fact that Section 214 provides the Department of Defense with notice and hearing rights in connection with a carrier's application for an FCC certificate would, absurdly, preclude the Department from enforcing a services contract with the carrier governing its construction and operations plans after the carrier had obtained the FCC certificate. *Cf. Hawaiian Tel. Co. v. FCC*, 589 F.2d 647, 651 (D.C. Cir. 1978) (describing carrier's application for Section 214 certificate in order to fulfill services contract with Department of Defense). The far more natural reading is that Congress preserved a role for States (as well as federal entities such as the Department of Defense) in Section 214 because it considered their input in the certification process valuable and in recognition of their authority to regulate in this field, not because it wished to constrain their enforcement of independently applicable regulations or contractual requirements.

B. There Is No Implied Preemption Because the COLR Rules Do Not Conflict with Grandfathering Service Offered Over Copper Wire Facilities

AT&T also fails to plausibly allege the application of its two theories of implied preemption: "conflict preemption" and "impossibility preemption." In the context of an "[i]mplied preemption analysis," courts must avoid conducting a "freewheeling judicial inquiry into whether a state statute is in tension with federal objectives." *Chamber of Com. v. Whiting*, 563 U.S. 582, 607 (2011). Yet, that is exactly what AT&T asks this Court to do.

At the outset, based on the above, there is no preemption issue at play here. But even if there were any doubt about that, the presumption against preemption requires the Court to protect California's police power. Any preemption analysis must "start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Wyeth*, 555 U.S. at 565. "[I]t is a state's historic police power—not preemption—that [courts] must assume, unless clearly superseded by federal statute." *California*, 921 F.3d at 887 (citation omitted). Once triggered, the presumption against preemption applies "even if the law 'touch[es] on' an area of significant federal presence." *Nwauzor v. GEO Grp., Inc.*, 127 F.4th 750, 768 (9th Cir. 2025).

This presumption applies here. The COLR regulations constitute a classic exercise of state police power to protect consumers. *See Durnford v. MusclePharm Corp.*, 907 F.3d 595, 601 (9th Cir. 2018) ("[c]onsumer protection" laws "fall[] well within" the States' "traditional … police power" such that the "presumption against preemption applies"). Plaintiffs have failed to overcome this presumption and establish that the "clear and manifest purpose of Congress" was to prevent the States from enacting regulations that protect Californians' access to basic, safe, and reliable telephone service.

1. There Is No Conflict Preemption Because the COLR Rules Do Not Prevent AT&T from Modernizing

The COLR regulations do not pose an obstacle to the "accomplishment and execution of the full purposes and objectives of Congress." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000).

When analyzing claims of conflict preemption, the Ninth Circuit "analyze[s] the specific sections of the law to see if any actual conflict exist[s]." *L.A. Unified Sch. Dist. v. S&W Atlas Iron & Metal Co.*, 506 F. Supp. 3d 1018, 1029–30 (C.D. Cal. 2020). As discussed above, AT&T fails to allege how ***any*** COLR rule actually prevents it from grandfathering the service offered over its copper wire facilities. Failure to "engage[] at this specific level and … show[] a specific conflict" precludes AT&T's claim. *Id.* at 1029–30.

Nor would such an allegation be plausible: as discussed *supra* at 15–16, the COLR regulations do not conflict with the NMO. *Cf. Ishikawa v. Delta Airlines, Inc.*, 343 F.3d 1129, 1132 (9th Cir.), *opinion amended on denial of reh'g*, 350 F.3d 915 (9th Cir. 2003) ("If state law is not inconsistent, it cannot be impossible to comply with, and it cannot obstruct implementation of federal law"). To the extent

AT&T intends ***not*** to offer basic service,[6] however, that is outside the scope of this lawsuit, because it is outside of the bounds of the NMO. The NMO does not purport to preempt all service requirements made by states (nor could it for intrastate requirements, *see infra* at 22–25); it merely permits carriers to grandfather the service offered over their copper wire facilities. Ex. E ¶ 60. No COLR rule requires copper wire; therefore, there is no conflict.

2. The Impossibility Exception to Section 2 of the Communications Act Does Not Apply Because the Intrastate and Interstate Services Provided Through Copper Wire Facilities Can Be Separated

Even if the Court finds that California's technology-neutral COLR rules do prevent AT&T from grandfathering its copper wire facilities, the COLR rules are still not impliedly preempted by the NMO. That is because AT&T may grandfather the interstate component of the service offered through its copper wire facilities and continue to offer the intrastate component to new customers.

Congress set up the "system of dual state and federal regulation over telephone service" in the Act by depriving the FCC of any jurisdiction over intrastate communications. *La. Pub. Service Comm'n*, 476 U.S. at 360. The Supreme Court has therefore only permitted preemption under Section 2 of the Communications Act where the FCC acts with respect to interstate services or where it is "not possible to separate the interstate and intrastate components of the asserted FCC regulation." *Id.* at 357; *see* 47 U.S.C. §§ 151, 152(b) (confirming that the FCC's jurisdiction is confined to *inter*state communications). The COLR rules do not fall under this "impossibility" exception and are therefore not preempted.

AT&T alleges that its "interstate and intrastate aspect of POTS are practically inseparable" because its copper is used for both. Compl. ¶ 85. But AT&T has ***not***

[6] Again, it is unclear whether AT&T wants or intends to stop providing basic service altogether, whether via copper wire, wireless, or other technology. As stated above, the Complaint is devoid of fact-based allegations demonstrating that AT&T is unable or unwilling to meet the COLR requirements for basic service through any technology. *See supra* note 3.

alleged that there is anything stopping it from only using its copper lines for intrastate service and grandfathering the interstate service. Indeed, AT&T describes how in "POTS's heyday," customers used one carrier for long distance and one carrier for local distance even though "both services relied on the same infrastructure of copper wires and exchanges." *Id.* ¶ 36. Although AT&T alleges the "model effectively disappeared" because carriers now offer both services and most customers do not have separate subscriptions, AT&T never alleges that it ***cannot*** provide just one today. *Id.* ¶ 37. And the fact that both services relied on the same copper infrastructure back then, when "States regulated purely in-state local calls," *and* today, *id.* ¶ 36, means that Congress did not view the use of the same copper lines as an impediment to its vision of dual regulation.

WWC Holding Co. v. Sopkin is instructive. There, a carrier applied to the Colorado Public Utilities Commission to receive federal subsidies through the federal "eligible telecommunications carrier" ("ETC") designation. 488 F.3d 1262, 1268 (10th Cir. 2007); *see* 47 U.S.C. § 214. The state Commission granted the application, but it required the carrier to comply "with state-specific consumer protection and operational standards." *Id.* at 1269. The district court found that "because [the carrier] bundled its intrastate and interstate services, the PUC's conditions of ETC designation amounted to 'interstate regulation' that was preempted by the [] Act." *Id.* at 1271. Reversing, the Tenth Circuit held that "nothing in the Act expressly preempts a state from exercising [] authority to regulate carriers providing intrastate services or to designate such carriers as ETCs simply on the basis that the requirements or ETC designation conditions being imposed would affect some phone calls that ***originate and terminate in different states***." *Id.* (emphasis added). "Nor does the Act limit a state's jurisdiction over a telecommunications carrier merely because the carrier offers interstate and intrastate services in 'bundles' to individual consumers." *Id.* The same conclusion applies here: merely because AT&T chooses to bundle its interstate and intrastate services does not render them inseparable as a matter of law, and does not deprive California of jurisdiction over the intrastate service.

In *Minnesota Public Utilities Commission*—a decision on which AT&T relies, Compl. ¶¶ 18, 83—the telecommunications at issue were "VoIP-to-landline or landline-to-VoIP communications, known as 'interconnected VoIP service,'" for which "the geographic location of the VoIP part of the call could be anywhere in the universe the VoIP customer obtains broadband access to the Internet." 483 F.3d 570, 574–75 (8th Cir. 2007). The Eighth Circuit therefore upheld the FCC's determination that "it was impractical or impossible to separate the intrastate components of VoIP service from its interstate components." *Id.* at 579. But none of that rationale applies to the landline telephones at issue here, as to which the Court in fact held: "[t]he end-to-end geographic locations of traditional landline-to-landline telephone communications are readily known, so it is easy to determine whether a particular phone call is intrastate or interstate in nature." *Id.* at 578.

AT&T also cites a pair of distinguishable Fourth Circuit cases from 50 years ago. Compl. ¶ 84. These cases dealt with regulations regarding physical equipment, specifically, the "interconnection of customer-provided equipment to the customer's individual subscriber station and line." *N. Carolina Utils. Comm'n v. FCC* (*NCUC I*), 537 F.2d 787, 790 (4th Cir. 1976) (sustaining the FCC's declaratory ruling that it had authority over the terms and conditions); *N. Carolina Utils. Comm'n v. FCC*, 552 F.2d 1036 (4th Cir. 1977) (same). As a result, whether it was "feasible" "to limit the use of such equipment to either interstate or intrastate transmissions" mattered, because it was impossible to physically comply with both of the conflicting regulations. *NCUC I*, 537 F.2d at 791. Here, there are no allegations plausibly demonstrating that it is impossible to separate intrastate and interstate services so as to grandfather the interstate service provided over copper wire facilities, while still using it for intrastate service.

If this Court were to hold that California's COLR rules are subject to impossibility preemption, it would collapse the distinction between interstate and intrastate telephone service altogether. Nothing would constitute "intrastate telephone service" anymore. This would fly in the face of the dual regulatory system that Congress intentionally created when it first enacted the Communications Act, and cannot be its intended result. *La. Pub. Serv. Comm'n*, 476 U.S. at 360.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court grant this Motion to Dismiss.

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