BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of Petition of AT&T for Preemption and Declaratory Ruling Regarding California's Carrier of Last Resort and Related Requirements	WC Docket No. 26-125

OPENING COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE CALIFORNIA PUBLIC UTILITIES COMMISSION

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I. INTRODUCTION

On May 20, 2026, AT&T Services, Inc. ("AT&T") filed a petition asserting that California's Carrier of Last Resort ("COLR") regulations hinder AT&T from retiring copper facilities in favor of newer technologies and asking the Commission to declare those regulations preempted.[1] The People of the State of California and the California Public Utilities Commission now file these comments. Even reading AT&T's petition more generously than it warrants, because AT&T has not met the heavy burden of demonstrating that preemption is appropriate, the Commission should deny AT&T's Petition in full.

Moreover, although California's COLR regulations comprise multiple disparate requirements—many of which either have nothing to do with the carrier's facilities or are required as well by federal law—AT&T has not so much as attempted to evaluate those regulations "in their particulars,"[2] casting them instead as a monolith and asking the Commission to preempt them in gross. If it chooses not to dismiss the petition outright, the Commission should at least direct AT&T to amend its petition to make plain why each particular provision of the COLR regulations conflicts with federal law or this Commission's orders.

Finally, the CPUC currently has an open proceeding designed to modernize its COLR regulations. AT&T knows this: along with the California Public Advocates

[1] *Petition of AT&T for Preemption and Declaratory Ruling Regarding California's Carrier of Last Resort and Related Requirements*, WC Dkt. 26-125 (filed May 20, 2026) ("Petition").

[2] *Reducing Barriers to Network Improvements and Serv. Changes*, Report and Order, FCC 26-19, WC Dkt. 25-209, para. 115 (Mar. 27, 2026) ("*Network Modernization Order*")

Office, it recently submitted a joint proposal laying out a Wishlist for new COLR regulations, which the CPUC is actively considering. At a minimum, before it expands its resources and those of the parties, the Commission should defer consideration of AT&T's proposal until after the CPUC issues its new regulations.

II. BACKGROUND

A. California's Carrier of Last Resort Rules

In May 1994, the California legislature mandated that the CPUC "open a proceeding to examine the definition of universal telephone service."[3] Two years later, recognizing the importance of adopting "a uniform definition of basic service so that all residential telephone customers, no matter where they live in California, or what their level of income is, can expect a certain minimum level of service," the CPUC defined "basic service."[4] The definition of basic service was updated in 2012 in CPUC Decision (D.)12-12-038, and the CPUC is now, in Rulemaking (R.) 24-06-012, again updating the definition of basic service and modernizing the COLR rules.

As they stand now, there are nine basic service elements, most with multiple sub-elements, including requirements like free access to 911 and E911 service, free access to toll-free services, and free access to customer information about Lifeline support, service termination, maintenance and repairs, and bill inquiries.[5] In addition to the basic service elements, basic service must be provided consistent with five additional requirements,

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[3] Cal. Assem. Bill. No. 3643, 1994-1995 Reg Sess. (1994).

[4] *Decision Adopting Basic Telephone Service Revisions*, D.12-12-038, at 2 (Cal. P.U.C. Dec. 24, 2012), *available at* https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M039/K603/39603602.PDF.

[5] *Id.* at Appendix A, pp. 2, 5.

such as clearly informing prospective customers of their ability to purchase basic service and not informing customers that anything other than the enumerated basic service elements constitutes basic service in California.[6]

AT&T has been a designated COLR in California since 1996, which means that it is required to provide basic service to customers in its service territory.[7] The definition of basic service and the associated COLR rules are explicitly ***technology-neutral***; it does not matter whether the carrier uses copper wire, wireless, fiber, Voice over Internet Protocol ("VoIP"), or any other type of technology, so long as that service offered meets the standard for basic service.[8]

California does not require carriers to maintain copper facilities. In Decision (D.) 08-11-033, the CPUC deliberated whether it should adopt rules for the retirement of copper loops and related facilities that provide telecommunications services by ILECs such as AT&T California. In that decision, the CPUC found that overly prescriptive rules would "discourage and delay fiber systems from being built in California, contrary to clear state legislative direction to bring affordable and widespread high quality communications services to all Californians" and so "exempt[ed] ILECs from seeking [CPUC] approval . . . of the retirement of copper loops" as long as the ILEC "offer[ed] to

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[6] *Id.* at Appendix A, p. 6.

[7] *Re Universal Service and Compliance with the Mandates of Assembly Bill 3643*, D.96-10-066, 68 CPUC 2d 524, 661, Ordering Paragraph 7.e (Oct. 25, 1996) (ordering California's ILECs to comply with the COLR regulations).

[8] *Decision Adopting Process Governing Retirement by Incumbent Local Exchange Carriers of Copper Loops and Related Facilities Used to Provide Telecommunications Services*, D.08-11-033, at 1-2 (Cal. P.U.C. Nov. 6, 2008), *available at* https://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/93730.PDF.

its retail end-user customer the comparable service over fiber that the customer was previously receiving."[9] Rather, the CPUC adopted notification requirements and rules regarding CLEC requests to purchase copper facilities from the ILECs.[10] However, these streamlined requirements and rules do not include any limitations or restrictions to the ability of communications service providers such as AT&T to retire copper facilities.

The CPUC recently affirmed in D.24-06-024 that it does not have rules preventing AT&T from retiring copper facilities.[11] Nor does the CPUC have rules preventing AT&T from investing in fiber or other facilities or technologies to improve its network.[12] In fact, in May 2026, AT&T made a $19 billion commitment to bring high speed internet to California through the deployment of fiber.[13] AT&T also reported that in Q2-4 2023 it invested over $150 million on fiber deployment projects in California. The CPUC generally approves of AT&T's efforts to modernize its network in California—and, clearly, AT&T is not facing insuperable barriers upgrading its network in California.

In 2023, for the first time, AT&T asked the CPUC to release it from its COLR designation and the associated basic service requirements.[14] Under the existing COLR

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[9] *Id.* at 13-14.

[10] *Id.*

[11] *Decision Dismissing with Prejudice the Application of AT&T California to Withdraw as a Carrier of Last Resort*, D.24-06-024, at 22-23 (Cal. P.U.C. June 25, 2024), *available at* https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M534/K542/534542934.PDF.

[12] *Id.* at 23.

[13] AT&T Makes $19 Billion Commitment to Bring High-Speed Connectivity to California.

[14] *Application of Pacific Bell Telephone Company d/b/a/ AT&T California (U1001C) for Targeted Relief from its Carrier of Last Resort Obligation and Certain Associated Tariff Obligations*, A.23-03-003 (Cal. P.U.C. Mar. 3, 2023) *available at* https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M502/K977/502977267.PDF.

rules, as AT&T was aware, the CPUC could not grant a COLR relinquishment application without finding a replacement carrier to serve as a COLR.[15] AT&T, however, did not present the CPUC with an alternative COLR provider, thus requiring the CPUC to deny the application.[16] Nor did it ask for a waiver from any basic service elements or related requirements that might hinder its efforts to upgrade its network.

B. California's Efforts to Update Its COLR Regulations

As noted above, the CPUC is currently modernizing the COLR regulations at issue in AT&T's petition. According to the Scoping Ruling in that Proceeding,[17] the eight issues to be determined are:

> 1. What communications needs or activities still require COLR service?
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> 2. Current COLR service requirements are technology neutral, meaning a COLR must offer basic service to any resident in its service territory that requests it, but may determine what technology to use to provide that service. Should the [CPUC] revise this standard of technology neutrality? If yes, what parameters should be used to determine whether a COLR satisfies the requirement to provide a voice grade connection irrespective of the underlying technology?
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> 3. Should the [CPUC] revise the requirements of basic service? If yes, which requirements or elements should be revised, and how?
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>   a. Should the requirements of basic service be different, depending on the technology used to deliver service?
>   b. Are there elements of basic service that are not technology neutral? If so, are there changes that could make those elements technology-neutral?

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[15] D.24-06-024, at 21.

[16] *Id.*

[17] Assigned Commissioner's Scoping Memo and Ruling, R.24-06-012, at 4-6 (Cal. P.U.C. Feb. 4, 2025), *available at* https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M555/K967/555967147.PDF.

4. Should the [CPUC] revise its processes for allowing withdrawal of COLR obligations? Under what conditions should the [CPUC] allow a COLR to withdraw? Can the [CPUC] grant a COLR withdrawal while still requiring other discrete common carrier obligations?

5. As part of this proceeding, should the [CPUC] de-designate certain areas that currently are in a COLR's service territory, from requiring a COLR? What are those areas?13 What conditions must be met for the [CPUC] to do so?

6. When should a COLR seeking to withdraw be required to notify residents in the COLR territory of its request to withdraw? What should be included in the contents of that notification? What method(s) should be used for notification?

7. If a COLR applies to withdraw, and a new COLR is designated, is there a need for a customer transition period? If yes, how long should that transition period last? What customer service protections, if any, should the [CPUC] impose as part of a customer transition period? What other elements or processes, other than customer protections, should be provided in a customer transition period? How long should a customer transition period last?

8. With regard to impacts on environmental and social justice communities, and the achievement of the goals in the [CPUC]'s Environmental and Social Justice Action Plan, how should the [CPUC]ensure that the prohibition on redlining affirmed in

9. D.95-12-057 and D.95-07-056 applies to providers who may no longer serve as a COLR in a particular area, in accordance with Goal 3.4?

On December 15, 2025, CPUC Communications Division Staff issued a Staff Proposal for comment.[18] And, on February 13, 2026, AT&T and Cal Advocates[19] offered

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[18] *Available at* https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M591/K255/591255757.PDF.

[19] "The Public Advocates Office (also known as Cal Advocates) was created in 1984. [It is] the only State entity charged with helping ensure Californians are represented at the California Public Utilities

a "Joint Proposal for Fiber Deployment Commitment for Carrier of Last Resort (COLR) Relief and Basic Service Discontinuance," which would authorize a COLR to relinquish its COLR status and discontinue basic service in return for a binding commitment to deploy fiber to a percentage of the total number of serviceable locations in a specified relinquishment area. The Joint Proposal also provides that the COLR would commit to participate in the California LifeLine program for its standalone broadband or a broadband/voice service bundle offered to the newly deployed fiber serviceable locations in the relinquishment area for a specified period of time, and the COLR would agree to prioritize deployment in areas that overlap with areas the CPUC has found to be "Low-Income Areas" and "Disadvantaged Communities" on the CPUC's Federal Funding Account ("FFA") map.[20] As a result of that filing, the assigned Administrative Law Judge set aside submission of the proceeding to allow parties to comment on the Joint Proposal, as well as posing clarifying questions to AT&T and Cal Advocates.[21]

Most recently, on May 28, 2026, the assigned Administrative Law Judge solicited comments on the impact, if any, of the revised Section 214 discontinuance rules adopted in the Commission's Network Modernization Order (discussed below) on the CPUC's

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Commission and in other forums. [It does] this mainly by recommending solutions and alternatives in utility customer best interests for decision-makers to consider when making policy and investment decisions on how to advance the state's energy, water and communications goals." https://www.publicadvocates.cpuc.ca.gov/about

[20] Public Advocates Office Reply Comments on the Administrative Law Judge's Ruling Issuing Staff Proposal, Appendix A, R.24-012-016 (filed Feb. 13, 2026), *available at* https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M599/K037/599037513.PDF.

[21] Administrative Law Judge's Ruling on Comments to Joint Proposal of AT&T California and Cal Advocates, R.24-012-016 (Mar. 25, 2026), *available at* https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M602/K998/602998763.PDF.

proceeding.[22] Opening and reply comments were received on June 10, 2026, and June 17, 2026.[23]

The COLR Proceeding has consisted of thoughtful work on insightful questions with engagement from a varied and active group of stakeholders, including AT&T, resulting in a Staff Proposal and a Joint Proposal between AT&T and Cal Advocates, with several further rounds of opening and reply comments, which is scheduled to culminate in a proposed decision. It does not stand to reason that the FCC should preempt California's COLR rules when California is itself in the process of modernizing them, and the petitioning party here, AT&T, has been actively involved in the proceeding to shape California's modernized COLR program.

III. ARGUMENT

A. Because AT&T has not shown itself to be entitled to preemption, its petition must be dismissed.

AT&T argues that California's COLR rules are preempted under three different theories: express preemption, the impossibility exception, and general theories of conflict preemption.[24]

[22] Administrative Law Judge's Ruling Soliciting Comments on FCC Section 214 Service Discontinuance Rules Change Impact, R.24-06-012 (May 28, 2026), *available at* https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M607/K356/607356434.PDF.

[23] *Id.*

[24] Though AT&T does not explain how its "general conflict preemption" theory differs meaningfully from its argument on the impossibility exception: as discussed in further detail below, although the impossibility exception allows the Commission to *expressly* preempt state law, it does so only when a *conflict* exists between state law and Commission regulation. The CPUC thus does not separately address that argument—nor, in any event, does AT&T develop its "general conflict" argument in any detail.

Preemption is never presumed; rather, the party seeking preemption bears the burden of clearly showing that preemption is warranted.[25] Consumer protection regulations like California's COLR rules fall squarely within the states' police powers,[26] and it is a "bedrock principle . . . 'that the historic police powers of the States were not to be superseded . . . unless that was the clear and manifest purpose of Congress.'"[27] "[I]t is a state's historic police power—not preemption—that [the Commission] must assume, unless clearly superseded by federal statute."[28] "Once triggered, the presumption against preemption applies 'even if the law "touch[es] on" an area of significant federal presence.'"[29] "Invoking some brooding federal interest or appealing to a . . . policy preference should never be enough to win preemption of a state law; a litigant must point specifically to 'a constitutional text or a federal statute' that does the displacing or conflicts with state law."[30]

On their own merit—and particularly in light of the general presumption against preemption—AT&T's arguments fail.

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[25] *See Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 255 (1984).

[26] *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996); *Durnford v. MusclePharm Corp.*, 907 F.3d 595, 601 (9th Cir. 2018).

[27] *Nation v. City of Glendale*, 804 F.3d 1292, 1297-98 (9th Cir. 2015) (quoting *Wyeth v. Levine*, 555 U.S. 555, 565 (2009)) (cleaned up).

[28] *United States v. California*, 921 F.3d 865, 887 (9th Cir. 2019) (citation omitted), *cert. denied*, 590 U.S. 1015 (2020).

[29] *Nwauzor v. GEO Grp., Inc.*, 127 F.4th 750, 768 (9th Cir. 2025) (citation omitted).

[30] *Va. Uranium, Inc. v. Warren*, 587 U.S. 761, 767 (2019) (lead opinion of Gorsuch, J.) (cleaned up).

1. Express Preemption

AT&T first argues that "Section 214 of the Communications Act expressly preempts state requirements that impinge on modifications to interstate or jurisdictionally mixed services where the Commission has authorized 'discontinuance, reduction, or impairment of service.'"[31] Section 214(c) provides that, once the Commission has authorized a discontinuance, the carrier may implement that discontinuance "without securing approval other than such certificate . . . ." Thus, if the Commission allows AT&T to retire certain facilities, and California's COLR rules require it to provide services *over* those facilities, then, AT&T urges, the COLR rules must fail.[32] There are two problems with this argument. First, Section 214(c) is better read as a limitation on further *federal* requirements, not as a limitation on state action, and none of the cases AT&T cites are to the contrary. Second, even assuming AT&T correctly interprets Section 214(c), it is not true that the COLR rules require AT&T to maintain copper facilities that the CPUC for nearly two decades has allowed it to discontinue.

"Express preemption is a question of statutory construction, requiring a court to look to the plain wording of the statute and surrounding statutory framework to determine whether Congress intended to preempt state law."[33] Here, the plain wording does not support AT&T's expansive interpretation; Section 214(c) makes no mention of State regulatory authority at all. Rather, in the context of a provision covering the scope of *the*

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[31] Petition at 7.

[32] Petition at 24-26.

[33] *Jones v. Google LLC*, 73 F.4th 636, 641 (9th Cir. 2023).

Commission's authority to grant certificates, the provision clearly means that no additional Commission or federal action is required.

None of the cases that AT&T cites are to the contrary. Rather, they demonstrate how the phrase "without securing approval other than such certificate" has been interpreted to address further federal authorization. In *Cablevision of Texas II, L.P. v. Oklahoma Western Telephone Co.*, the Tenth Circuit held that Section 214(c) prevented a court from keeping in place a permanent injunction against a carrier where the Commission had issued a certificate allowing the carrier to act.[34] The court interpreted that language to mean that a carrier could comply with the certificate "regardless of any appeal that might be pending . . . ."[35] That decision had nothing to do with a state's authority to create and enforce its own regulations. Similarly, *ITT World Communications Inc. v. New York Telephone Co.* does not discuss the preemption of a state's regulations, but instead explains how Section 214 gives the Commission "primary jurisdiction" over a federal district court in determining whether a certificate should be granted under Section 214.[36] The same is true of all the cases AT&T cites in support of its express preemption argument; none deal with the preemption of state regulations.

[34] 993 F.2d 208, 210 (10th Cir. 1993).

[35] *Id.*

[36] 381 F.Supp. 113, 120-21 (S.D.N.Y. 1974) (holding that the Commission must decide in the first instance whether a telephone company that imposed a tariff that may have impaired carrier service was required to seek a certificate from the Commission).

AT&T's attempts to divine *express* preemption from a "negative inference" by pointing to other aspects of Section 214 likewise fail.[37] Nothing in Section 214 requires States to act only in a "supporting capacity" with respect to the impairment or reduction of a telephone service. Such conjecture goes against the requirement that Congress provide a "clear and manifest purpose" in statutes that preempt state law.[38] Indeed, had Congress intended Section 214 to be interpreted as AT&T does, it could have made that explicit, as it has done elsewhere. For example, Section 253 of the Act states: "[no] State or local regulation, or other State or local requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service."[39] 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."[40] Such specificity does not exist in Section 214(c). In circumstances such as these,[41] "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

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[37] Petition at 25-26.

[38] *Wyeth*, 555 U.S. at 565.

[39] 47 U.S.C. § 253(a).

[40] 47 U.S.C. § 253(d).

[41] There are further examples throughout the Act: *see*, *e.g.*, 47 U.S.C. § 152(a) ("Preemption.—A provider of direct-to-home satellite service shall be exempt from the collection or remittance, or both, of any tax or fee imposed by any local taxing jurisdiction on direct-to-home satellite service.").

tolerate whatever tension there [is] between them . . . [t]he case for federal pre-emption is particularly weak."[42] When the Act was first passed ninety years ago, it contained express preemption provisions in some sections, but not in Section 214(c). When it was amended thirty years ago, Congress added express preemption provisions to certain sections, but it again chose to leave Section 214(c) alone. That silence "is powerful evidence that Congress did not intend [Commission] oversight to be the exclusive means" of regulating the impairment or reduction of telephone service.[43] Congress evidently had no intention of providing the Commission with the authority to preempt state regulations regarding the reduction or impairment of telephone services. And, to the extent there is any ambiguity as to the meaning of the provision in Section 214(c), the dispute must be resolved in favor of protecting California's traditional police powers over consumer protection.[44]

Second, AT&T's arguments that California's COLR rules prohibit it from retiring copper are misplaced: AT&T improperly conflates *services* (which are the subject of the COLR rules) with *facilities* (which are not). On their face, COLR rules are technologically neutral and do not prohibit nor inhibit AT&T from providing basic service utilizing other technologies.[45] As the CPUC stated in D.12-12-038, the basic service elements are designed to apply on a technology-neutral basis to all forms of

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[42] *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 166–67 (1989).

[43] *Wyeth*, 555 U.S. at 574–75 (holding that similar legislative history in the context of the Federal Food, Drug, and Cosmetic Act meant that the Food and Drug Administration did not have "exclusive oversight" of "drug safety and effectiveness").

[44] *Nwauzor*, 127 F.4th at 768.

[45] *See generally* D.12-12-038.

communications technology that may be utilized, including wireline, wireless, and VoIP or any other future technology that may be used in the provision of telephone service.[46] AT&T's allegations that California's COLR rules prevent AT&T from discontinuing POTS are nonsensical.

It argues, for example, that basic service requirements like "free access to operator services" or "access to directory assistance within the customer's local community" are "foreign to any service other than POTS."[47] However, AT&T *now* offers basic service over fiber,[48] and *can* offer, for example, directory assistance over VoIP.[49] And it is telling that AT&T picks out specifically operator services and directory assistance from the basic service requirements—i.e., those requirements that, as AT&T acknowledges, everyone agrees are outdated.[50] AT&T pays no mention to other basic service requirements which, again, itself has acknowledged can be provided using modern facilities.[51]

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[46] *Id.* at 2-3.

[47] Petition at 36.

[48] Pacific Bell Telephone Company d/b/a AT&T California's (U1001C) Opening Comments on Administrative Law Judge's Ruling Regarding Comments on Topics Discussed at August Workshop, R.24-06-012, at 29-30 (filed Nov. 21, 2015) ("As of October 31, 2025, AT&T California had approximately 5,600 residential basic service customers serviced over last-mile fiber connections . . . ."), *available at* https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M588/K334/588334709.PDF ("AT&T Comments on R.24-06-012").

[49] *Id.* at 32 ("On AT&T California residential and business POTS and VoIP lines, a total of approximately 62,000 voice calls requesting directory assistance were made statewide in 2023 . . . .").

[50] *See* Petition at 36 n.158 (acknowledging that the CPUC staff proposal in R.24-06-012 proposes "to eliminate the operator-services and directory-services elements").

[51] *See*, *e.g.*, AT&T Comments on R.24-06-012 at 9-10 (stating that "interconnected VoIP and mobile wireless voice service already support California Relay Service" and that "[s]ervices delivered over advanced networks, whether wired or wireless, must comply with accessibility requirements"); *id* at 22 ("Mobile wireless and interconnected VoIP service must fully comply with the FCC's Enhanced 911 . . .

Nor is it true, as AT&T would have it, that the CPUC "views mobile as a second-class service."[52] The best evidence that AT&T provides for that assertion is several lines in the CPUC's Staff Proposal in R.24-06-012[53]—but, and it should hardly go without saying, *that is just a staff proposal.* Like this Commission, and like all administrative agencies, the CPUC speaks through its orders, not through its staff.[54] The Staff Proposal cannot be taken to reflect the CPUC's formal opinion on the matter.

Turning to tariffing requirements, the CPUC disagrees that directing a carrier to file a notice explaining what "its basic service rates, charges, terms, and conditions" are and making them publicly available[55] amounts to playing "mother-may-I".[56] Setting aside AT&T's evident disdain for standard, long-standing consumer protection requirements, AT&T fails to acknowledge that the advice letter filings required by the COLR rules are subject to staff-level, ministerial approval,[57] and cites no instance, in the 30-year history of the COLR rules, of a basic service tariff being rejected.

."); *id.* at 33 ("On AT&T California residential and business POTS and VoIP lines, a total of approximately 373 million toll-free 8YY voice calls were made statewide in 2023, and a total of approximately 264 million toll-free 8YY voice calls were made statewide in 2024.").

[52] Petition at 37.

[53] *See id.* and nn.160-162.

[54] *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."); *see also*, *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).

[55] D.12-12-038 at 10 (directing COLRs to file tariffs describing their basic service offerings).

[56] Petition at 38.

[57] D.12-12-038 at 10 (directing tariff filings to be done via Tier 2 advice letter); CPUC General Order 96-B, Telecommunications Industry Rule 7.2 (providing that Tier 2 advice letters are subject to staff disposition); CPUC General Order 96-B, General Rule 7.6.1 (providing that staff disposition is

The CPUC has made it clear that its COLR rules are not meant to be carved in stone or to remain fixed despite changes in technology. As it wrote in 2012:

> Different modes of technology may accommodate variations in how basic service is provided. A definition designed to be technologically and competitively neutral, however, does not require that all modes of technology provide basic service in identical fashion. The adopted definition must be broad enough to accommodate variations in service features and billing arrangements.[58]

And it has acted in accordance with this flexibility: in D.12-12-038, the CPUC permits providers that wish to offer basic service utilizing anything other than traditional exchange-based wireline technology that cannot comply with all the requirements of General Order (GO) 133-C to file a Tier 3 advice letter, indicating what GO 133-C service quality measurements and reporting procedures it can comply with, those it can provide functionally equivalent reports for and lastly what measurement and reporting requirements are not applicable to the technology it is using to provide basic service.[59] The CPUC has also expressly granted waivers to its rules. For example, the basic service rules used to require the provision of a printed white pages. In 2011, however, the CPUC approved a request from Verizon California to end automatic delivery of a printed white pages directory to its customers, and instead to allow its customers to choose whether to

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appropriate "where statutes or Commission orders have required the action proposed in the advice letter . . . ."). General Order 96-B is available at https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M023/K381/23381302.PDF.

[58] D.12-12-038 at 13.

[59] D.12-12-038 at OP 5. GO 133-C covers service quality rules for traditional wireline carrier. The service quality rules were updated in 2016 in GO 133-D, adopted by CPUC Decision 16-08-021. Most recently, the CPUC modernized the service quality rules in GO 133-E to reflect evolving technologies in the telecommunication market in D.25-09-031.

receive a printed white pages, to receive an electronic directory on CD-ROM, or to access directory listings online.[60] Yet, despite this flexibility, AT&T has never asked the CPUC to waive any specific basic service requirements that it believes hinder its ability to provide modern services.

In any event, several other California COLRs have expressly acknowledged that the COLR rules are technology-neutral and do not prohibit them from offering basic service over technologies other than TDM service provided over copper loops[61]—as, indeed, has AT&T itself. AT&T's arguments to the contrary are simply false.

Because AT&T has shown neither that Section 214(c) expressly preempts state COLR rules, nor that California's COLR rules prohibit AT&T from discontinuing copper facilities and replacing them with other technologies, its express preemption argument must fail.

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[60] Resolution T-17302 Approving Verizon California Inc. Advice Letter No. 12535 (June 14, 2011), *available at* https://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_RESOLUTION/137222.PDF.

[61] Response of Frontier California Inc., et al., to Administrative Law Judge's October 1, 2025 Ruling Regarding Comments on Topics Discussed at August 22, 2025 Workshop (Public Version), R.24-06-012, at 6, 22 (filed Nov. 21, 2025) ("Frontier is not aware of any limitations on its ability to satisfy basic service requirements over fiber or other network facilities. . ." and "does not agree that delivering a basic service is synonymous with Plain Old Telephone Service ('POTS') delivered over copper lines (presumably using TDM switching)."), *available at* https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M589/K625/589625103.PDF; Response of Consolidated Communications of California Company, LLC to Administrative Law Judge's October 1, 2025 Ruling Regarding Comments on Topics Discussed at August 22, 2025 Workshop, R.24-06-012, at 7 ("Consolidated is not aware of any limitations on its ability to satisfy basic service requirements over fiber facilities . . . ."), *available at* https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M588/K056/588056566.PDF.

For the same reason, to the extent that the Commission finds that any provision of California's COLR rules should be preempted as to *AT&T*, it should decline to find that the rules are preempted as to *any other provider*. The Commission has no record to make a broader determination especially where, as here, California's other COLRs have specifically rejected the premise underpinning AT&T's petition. In any event, those carriers are not before the Commission.

2. The Impossibility Exception

By invoking the impossibility exception, AT&T effectively concedes, as it must, that both the services it offers in California and the underlying facilities have at least some intrastate component.[62] The Communications Act of 1934 gives the Commission the authority to regulate "interstate and foreign commerce in wire and radio communication."[63] At the same time, the '34 Act expressly prohibited the Commission from exercising "jurisdiction with respect to . . . intrastate communication service by wire or radio of any carrier . . . ."[64] "[G]iven the breadth of the language" of section 152(b), it is "not only a substantive jurisdictional limitation on the FCC's power, but also a rule of statutory construction . . . ."[65] The Telecommunications Act of 1996 shifted the landscape some, giving the FCC authority over a portion of those intrastate matters that had previously been reserved for the states,[66] but absent a specific provision of the Act giving the FCC intrastate authority, those basic jurisdictional limitations remain.[67]

There is one exception to this jurisdictional bar. Under the impossibility exception, "FCC preemption of state regulation is permissible when (1) the matter to be regulated has both interstate and intrastate aspects, (2) FCC preemption is necessary to

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[62] *See* Petition at 27 (invoking the impossibility exception).

[63] 47 U.S.C. § 151.

[64] 47 U.S.C. § 152(b).

[65] *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 373 (1986).

[66] *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 377-81 (1999).

[67] *See*, *e.g.*, *Global Tel*Link v. FCC*, 866 F.3d 397, 409 (D.C. Cir. 2017) (noting that section 152(b) "erects a presumption against the [FCC's] assertion of regulatory authority over intrastate communications" and voiding FCC order setting intrastate rate caps for inmate calling services) (emphasis in original).

protect a valid federal regulatory objective, and (3) state regulation would negate the exercise by the FCC of its own lawful authority because regulation of the interstate aspects of the matter cannot be unbundled from regulation of the intrastate aspects."[68] And this exception "is a limited one. The FCC may not justify a preemption order merely by showing that some of the preempted state regulation would, if not preempted, frustrate FCC regulatory goals. Rather, the FCC bears the burden of justifying its entire preemption order by demonstrating that the order is narrowly tailored to preempt only such state regulations as would negate valid FCC regulatory goals."[69]

Even assuming here that all of AT&T's copper facilities facilitate both inter- and intrastate service and are thus jurisdictionally mixed, which they are not, AT&T has not shown that preemption of California's COLR rules is necessary to protect a valid federal objective. As noted above, it has failed to show that those rules prevent it from retiring copper or investing in new facilities.

Nor is it true, as AT&T would have it, that the COLR rules somehow "regulate the core terms and rates of interstate services."[70] AT&T's argument here is notably light on both authority and details. It asserts that "modern services like wireless and VoIP are not offered with a segregable intrastate component that could be subject to state

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[68] *Pub. Serv. Comm'n of Md. v. FCC*, 909 F.2d 1510, 1515 (D.C. Cir. 1990) (cleaned up). As noted above, this amounts to a conflict analysis. The CPUC therefore here addresses, and does not separately address, AT&T's redundant "general principles of conflict preemption" argument.

[69] *People of State of Cal. v. FCC*, 905 F.2d 1217, 1243 (9th Cir. 1990) (emphasis in original) (citing *Nat'l Ass'n of Regul. Util. Comm'rs v. FCC*, 880 F.2d 422, 430 (D.C. Cir. 1989) ("The FCC has the burden . . . of showing with some specificity" that state regulations would negate federal regulations)).

[70] Petition at 40.

jurisdiction."[71] But, while both wireless and VoIP are all-distance services, that does not mean that they are beyond state regulation.

In the case of wireless, expressly so: 47 U.S.C. § 332(c)(3)(A) preserves state authority to regulate the "terms and conditions" of wireless service, which the COLR rules plainly do. And while that provision does preempt state regulation of wireless market entry or rates, AT&T does not clearly explain which of the COLR provisions fall into which category, or assert that it would provide basic service via wireless but for Section 332.

In the case of VoIP, AT&T fails to distinguish between the different categories of VoIP service, which affect the regulatory treatment afforded to them. "Interconnected VoIP services may be fixed or nomadic. A fixed interconnected VoIP service can be used at only one location, whereas a nomadic interconnected service may be used at multiple locations."[72] In the *Vonage Order*, the Commission concluded that state entry and tariffing requirements on nomadic voice services were preempted,[73] but has also since confirmed that the *Order* does not apply to fixed service. On direct appeal of the *Vonage Order*, the New York Public Service Commission argued that the Commission's

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[71] *Id.*

[72] *In re Universal Serv. Contribution Methodology*, Declaratory Order, 25 FCC Rcd. 15651, 15652 para. 3 (2010).

[73] *Vonage Holdings Corp*., Declaratory Order, 19 FCC Rcd. 22404 (2004). It is unclear whether the Commission's preemption analysis in *Vonage*, in which the Commission stated that it could preempt state action even if VoIP is a Title I service, would survive recent developments in the law. *New York State Telecomms. Ass'n, Inc. v. James*, 101 F.4th 135, 154-57 (2d Cir. 2024), cert. denied 145 S.Ct. 984; *ACA Connects v. Bonta*, 24 F.4th 1233, 1241-46 (9th Cir. 2022); *Mozilla Corp. v. FCC*, 940 F.3d 1, 74-86 (D.C. Cir. 2018).

"apparent preemption of all state regulation of VoIP services—including 'fixed' services—exceed[ed] its jurisdiction."[74] The Commission replied that New York's challenge was premature "[b]ecause the order only addresses services 'having basic characteristics similar to Digital Voice,' and does not specifically address fixed VoIP service providers," arguing that the court "should decline to rule on the merits of the NYPSC's appeal until presented with an order preempting state regulation of fixed VoIP service providers."[75] The Eighth Circuit agreed with the Commission and ruled the issue was unripe: "The order only suggests the FCC, if faced with the precise issue, would preempt fixed VoIP services. Nonetheless, the order does not purport to actually do so and until that day comes it is only a mere prediction."[76] The Commission has never yet done so. Nor has AT&T asserted that it seeks only to provide nomadic VoIP service, nor that all of California's COLR rules fall afoul of the categories of state regulations forbidden by the *Vonage Order*. There is simply no authority for AT&T's sweeping argument that *all* wireless and VoIP service is beyond state regulation.

In sum, because AT&T has not and cannot meet the second prong of the impossibility exception—that is, that preemption of California's COLR rules is necessary to protect a valid federal objective—the Commission should reject AT&T's argument here.

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[74] *Minn. Pub. Utils. Comm'n v. FCC*, 483 F.3d 570, 581 (8th Cir. 2007).

[75] *Id.* at 582 (internal citation omitted).

[76] *Id.* at 582-83.

B. The Petition does not sufficiently or specifically address each of the COLR rules.

When analyzing preemption claims, courts "analyze the specific sections of the law to see if any actual conflict exists."[77] Failure to "engage at this specific level and show a specific conflict" precludes a preemption claim.[78] And, as set forth above, the *Network Modernization Order* itself anticipates that, in determining whether state regulations should be preempted for precluding discontinuance, an evaluation of individual state requirements "in their particulars" is required.[79] As set forth above in detail, "basic service" comprises nine elements, with such elements often comprising several sub-elements. These elements are not indivisible and may be severable if a carrier asks the CPUC for an exemption from particular requirements. Thus one would expect a petition from a litigant like AT&T, on a matter as weighty as this, to at least attempt to analyze the COLR rules in some detail. And yet:

At best the Petition references California's COLR regulations only vaguely, caricaturing them as stone-age relics fit only to be disposed of in gross—without ever explaining exactly what they are or why they stand as barriers to AT&T's proposed copper discontinuance. AT&T often refers to the requirement that COLRs offer "basic service" as a singular rule.[80] The closest that it comes to describing "basic service" is in a

[77] *Los Angeles Unified Sch. Dist. v. S&W Atlas Iron & Metal Co*., 506 F. Supp. 3d 1018, 1029–30 (C.D. Cal. 2020) (cleaned up).

[78] *Id.* (cleaned up).

[79] *Network Modernization Order* at para. 115.

[80] *See*, *e.g.*, Petition at 4.

single paragraph spanning pages 36 and 37. This description, however, by no means meets the requirements of the *Network Modernization Order* or engages with the problem at the specific level required by federal jurisprudence.

In the absence of any genuine effort on the part of AT&T to evaluate how each individual element of California's COLR rules run afoul of federal law, at a minimum the Commission should direct AT&T to amend its petition to provide the specificity it has so far failed to offer.

C. The Commission should defer its consideration of this Petition until the CPUC completes its open COLR Rulemaking.

In its current Rulemaking, the CPUC is focused on modernizing California's rules and the definition of basic service. The CPUC is likely to issue a final decision soon, which may address some or all of AT&T's concerns regarding California's current COLR rules. As noted above, AT&T has been an active participant in this proceeding: it has submitted, along with California's official ratepayer protection arm, a joint proposal to amend the COLR rules, which the CPUC is considering. And, as also noted above, the CPUC is working with the parties to determine how best to protect Californians while advancing the important goals this Commission set forth in the *Network Modernization Order*. Basic considerations of comity and the preservation of scarce resources strongly counsel against adjudicating this petition now, when it may soon be rendered moot.

IV. CONCLUSION

For the foregoing reasons, the CPUC respectfully requests that the Commission deny the Petition and reserves the right to submit further comments in the reply round. In the alternative, the FCC should direct AT&T to amend its petition to explain which specific COLR regulations will actually inhibit AT&T's proposed discontinuance and why.

Respectfully submitted,

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