BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking on the Commission's Own Motion to Require Interconnected Voice Over Internet Protocol Service Providers to Contribute to the Support of California's Public Purpose Programs.	R. 11-01-008 (Filed January 13, 2011)

RESPONSE OF PACIFIC BELL TELEPHONE COMPANY D/B/A AT&T CALIFORNIA (U-1001-C); AT&T COMMUNICATIONS OF CALIFORNIA, INC. (U-5002-C); TCG SAN FRANCISCO (U-5454-C); TCG LOS ANGELES, INC. (U-5462-C); AND TCG SAN DIEGO (U-5389-C)

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SUBJECT INDEX

I. INTRODUCTION **1**

II. DISCUSSION **2**

A. AT&T SUPPORTS THE APPLICATION OF PUBLIC PURPOSE PROGRAM SURCHARGES TO INTERCONNECTED VOIP SERVICES 2

1. Application of Universal Service Surcharges to Interconnected VoIP Services Advances Important Federal and State Policy Objectives. *3*

2. Application of State Public Purpose Program Surcharges to Interconnected VoIP Is No Longer Preempted, So Long As State Programs Do Not Conflict With Federal Rules. *5*

3. Reasonable Implementation Safeguards Are Necessary to Ensure Consistency With Federal Rules and Moderate the Impact on Interconnected VoIP Providers. *7*

B. THE COMMISSION SHOULD NOT ATTEMPT TO REINTERPRET THE TERM "TELEPHONE CORPORATION" TO INCLUDE INTERCONNECTED VOIP. 8

1. It Is Not Clear That Reinterpretation of the Term "Telephone Corporation" Would Meet the Commission's Goals *9*

2. Classification of Interconnected VoIP Providers as "Telephone Corporations" Is Preempted. *11*

C. TO AUTHORIZE THE IMPOSITION OF PUBLIC PURPOSE PROGRAM SURCHARGES ON INTERCONNECTED VOIP, THE COMMISSION SHOULD INSTEAD SUPPORT APPROPRIATE LEGISLATION. 13

D. COMMENT ON ADDITIONAL QUESTIONS POSED 14

1. The Commission Should Not Impose Billing Requirements on Interconnected VoIP Services. *14*

2. Interconnected VoIP Providers Should Be Required to Contribute to California's Additional Public Purpose Programs. *15*

3. Any California Interconnected VoIP Provider Registration Process Is Preempted By the Vonage Preemption Order. *15*

E. REQUEST FOR EVIDENTIARY HEARINGS 16

III. CONCLUSION **17**

Pacific Bell Telephone Company d/b/a AT&T California (U-1001-C); AT&T Communications of California, Inc. (U-5002-C); TCG San Francisco (U-5454-C); TCG Los Angeles, Inc. (U-5462-C); and TCG San Diego (U-5389-C) (hereinafter, collectively, "AT&T"), pursuant to the schedule set forth in the **Order Instituting Rulemaking on the Commission's Own Motion to Require Interconnected Voice Over Internet Protocol Service Providers to Contribute to the Support of California's Public Purpose Programs** filed January 13, 2011 (hereinafter, "OIR"), provide the following response to the OIR.

I. INTRODUCTION

The California Public Utilities Commission ("Commission") proposes in this OIR to require surcharges to be imposed on interconnected Voice over Internet Protocol ("VoIP") services[1] to fund California's public purpose programs. The Commission notes that currently there is no requirement for interconnected VoIP providers to contribute to California's public purpose programs,[2] and proposes that such providers be required to contribute to the following California funds: (1) the California LifeLine Telephone Program ("LifeLine"), (2) the California High-Cost Fund A ("CHCF-A"), (3) the California High-Cost Fund B ("CHCF-B"), (4) the

[1] The OIR would adopt the Federal Communications Commission's ("FCC's") definition of interconnected VoIP, which AT&T supports. Under that definition, interconnected VoIP is "a service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment; and (4) permits users generally to receive calls that originate on the public switched telephone network (PSTN) and to terminate calls to the PSTN. 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." Declaratory Ruling, *In the Matter of Universal Service Contribution Methodology, Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling, or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds may Assess Nomadic VoIP Intrastate Revenues*, WC No. 06-122, FCC 10-185, rel. November 5, 2010 ("Declaratory Ruling") ¶ 3 (footnote omitted).

[2] OIR, p. 2.

California Teleconnect Fund ("CTF"), (5) the Deaf and Disabled Telecommunications Program ("DDTP"), and (6) the California Advanced Services Fund ("CASF").[3]

As explained more fully below, AT&T supports the prospective imposition of California public purpose program surcharges on interconnected VoIP end users, provided the California programs allow interconnected VoIP providers to identify intrastate revenues for public purpose program end user surcharge purposes by mirroring the Federal Communications Commission's ("FCC's") "safe harbor" percentage, are limited to revenue associated with end user customer service addresses in California, do not create a registration requirement, and afford a reasonable implementation period.

However, AT&T cannot support the OIR's proposed reinterpretation of the term "telephone corporation" to include interconnected VoIP providers, because it could improperly omit "over-the-top" (*i.e.*, nomadic) interconnected VoIP services and would subject other interconnected VoIP providers to traditional "telephone corporation" regulation—a result the FCC has expressly preempted. To achieve its stated objectives, and comply with the FCC's preemption decisions, the Commission should instead support legislation to expand application of California's public purpose program surcharges to interconnected VoIP services.

II. DISCUSSION

A. AT&T Supports the Application of Public Purpose Program Surcharges to Interconnected VoIP Services

AT&T supports the imposition of the California public purpose program end user surcharges specified above on interconnected VoIP services for many of the reasons discussed in the OIR. As the OIR notes, universal service is an important public policy objective. Including

[3] OIR, pp. 13-15.

interconnected VoIP services would advance that objective, and do so in a more competitively neutral manner.

1. Application of Universal Service Surcharges to Interconnected VoIP Services Advances Important Federal and State Policy Objectives.

Both federal and California law establish the importance of universal service. The Telecommunications Act of 1996 sets universal service as a core federal policy objective, and it authorizes states to take steps "to preserve and advance universal service."[4] The California Legislature has taken such steps, declaring it the policy of California "[t]o continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians."[5]

The increasing customer migration to VoIP services, which do not currently contribute to California public purpose programs, will ultimately threaten the ongoing viability of those funds. Contributions to federal and California universal service funds are calculated as a percentage of traditional wireline revenues.[6] As the FCC has recognized, the decline in wireline revenues caused, in part, by the migration of wireline voice service to VoIP has reduced the revenue base supporting universal service.[7] This OIR also correctly acknowledges that universal service funding is threatened "as providers move toward offering IP-based voice services."[8]

Simply put, the reduction in traditional wireline revenue base leads to an increase in contribution factors, which, in turn, increases the cost of traditional wireline service relative to

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[4] 47 U.S.C. § 254(f).

[5] Pub. Util. Code § 709(a).

[6] *See* Report and Order and Notice of Proposed Rulemaking, *Universal Service Contribution Methodology*, WC Docket No. 06-122 and others, FCC 06-94, rel. June 27, 2006 (Interim Contribution Order) ¶ 44; OIR, p. 13 (further history omitted).

[7] *See* Interim Contribution Order ¶ 44.

[8] OIR, p. 15.

VoIP services.[9] That gives VoIP providers an artificial regulatory and marketing advantage, causing additional customer migrations and further reductions in the traditional wireline revenue base. Over time, this spiral of ever-decreasing traditional wireline revenues and ever-increasing contribution factors is likely to accelerate. To preserve the base of universal service funding, the spiral must be stopped.

The artificial regulatory advantage afforded VoIP services today is not just bad public policy, it is inconsistent with federal and California law. Competitive neutrality is a cornerstone of federal communications policy,[10] and the 1996 Act directs states to "preserve and advance universal service" "on a competitively neutral basis."[11] California law similarly recognizes competitive neutrality as a universal service goal.[12] The current environment, which does not require VoIP services to contribute to California universal service programs, is not competitively neutral, and that imbalance must be corrected.

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[9] Wireless providers also contribute to state public purpose programs and wireless service therefore also bears an increase in cost to support the programs.

[10] *See*, *e.g.*, Report and Order, *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, ¶¶ 48-49 (1997) ("[C]ompetitively neutral rules will ensure that . . . disparities are minimized so that no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers."); *see also Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1243-44 (D.C. Cir. 2007) (reversing Commission decision on pre-approval of traffic studies in universal service context where it failed to offer rationale for treating wireless and VoIP providers differently).

[11] 47 U.S.C. § 253(b).

[12] *See, e.g.,* Pub. Util. Code § 739.3(c) ("The commission shall develop, implement, and maintain a suitable, competitively neutral, and broad based program to establish a fair and equitable local rate support structure aided by universal service rate support to telephone corporations serving areas where the cost of providing services exceeds rates charged by providers, as determined by the commission."); Pub. Util. Code § 871.7(d) ("feasibility" of redefining universal service "means consistency with…[t]echnological and competitive neutrality.")

2. Application of State Public Purpose Program Surcharges to Interconnected VoIP Is No Longer Preempted, So Long As State Programs Do Not Conflict With Federal Rules.

In its *Vonage Preemption Order*, the FCC preempted the imposition of state economic regulations on VoIP services.[13] This preemption extends to all state telephone company regulations, including certification requirements, and all regulations applicable to certificated entities.[14] The FCC concluded that federal preemption is necessary to promote the development of VoIP and other innovative advanced services, because the "imposition of 50 or more additional sets of different economic regulations on [Vonage's VoIP service] … could severely inhibit the development of this and similar VoIP services."[15] Preemption encourages broadband deployment, consistent with California and federal policy,[16] by "driving consumer demand for broadband connections, and consequently encouraging more broadband investment and deployment…."[17]

However, the FCC recently cleared the way for the application of state universal service contribution requirements to interconnected VoIP services by determining that such requirements are not preempted, under certain circumstances defined by the FCC.[18] Concluding application of state universal service contribution requirements "does not conflict with federal policies, and could, in fact, promote them," the FCC explained that interconnected VoIP

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[13] Memorandum Opinion And Order, *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, FCC 04-267, rel. Nov. 12, 2004 ("Vonage Preemption Order") ¶¶ 1, 11, fn. 30 (further history omitted).

[14] *Id.* at ¶ 11, fn. 30.

[15] *Id.* at ¶ 37.

[16] *See* Stats. 2008, c. 393 (S.B. 1193) § 1(f) (acknowledging "statewide policy to promote broadband throughout the state"); Pub.L. 104-104, Title VII, § 706 (Feb. 8, 1996) 110 Stat. 153 (found in the notes section of 47 U.S.C. § 157).

[17] Vonage Preemption Order ¶ 36.

[18] Declaratory Ruling ¶ 1.

providers "benefit from state universal service funds, just as they benefit from the federal Universal Service Fund, because their customers value the ability to place calls to and receive calls from users of the PSTN [Public Switched Telephone Network]."[19] Moreover, state requirements would promote competitive neutrality "by 'reduc[ing] the possibility that carriers with universal service obligations will compete directly with providers without such obligations.'"[20]

Critical to this determination was the FCC's finding that "state universal service contribution requirements do not conflict with federal rules to the extent that states calculate the amount of their universal service assessments in a manner that is consistent with" the FCC's rules and that "a state imposing universal service contribution obligations on interconnected VoIP providers must allow those providers to treat as intrastate for state universal service purposes the same revenues that they treat as intrastate under the [FCC's] universal service contribution rules."[21] Those rules allow providers three options for establishing the proportion of the federal universal service revenue base.[22] This Commission's proposal to mirror the FCC rules, including allowing use of the inverse of the FCC's "safe harbor" percentage to estimate intrastate revenues, properly ensures there is no conflict with the FCC's methodology for apportioning interconnected VoIP revenue between the federal and state jurisdictions for universal service program contribution purposes.

But the FCC made clear states must also "have a policy against collecting universal service assessments with respect to interconnected VoIP revenue that an interconnected VoIP

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[19] *Id.* at ¶ 16.

[20] *Id.* (footnote omitted).

[21] *Id.* at ¶ 17.

[22] *Id.*

provider has properly allocated to another state under that state's rules."[23] Otherwise, interconnected VoIP providers (and their end users) may have to pay state universal service surcharges to multiple states. The FCC explained:[24]

> For example, if State A requires an interconnected VoIP provider to use its customers' billing addresses to allocate revenue while State B relies on the address interconnected VoIP users register for 911 purposes, then the same intrastate revenue associated with an interconnected VoIP user with a billing address in State A and a registered 911 location in State B could be subject to assessment in both State A and State B. This possibility arises because, as the Commission explained in the *Vonage Preemption Order*, an interconnected VoIP user's billing address is not necessarily tied to the physical locations where interconnected VoIP services are used.

Multiple state assessment conflicts with federal rules and policies, including the policy of competitive neutrality,[25] and therefore is preempted.[26]

3. Reasonable Implementation Safeguards Are Necessary to Ensure Consistency With Federal Rules and Moderate the Impact on Interconnected VoIP Providers.

The OIR does not include safeguards identified by the FCC as necessary to guard against multiple state assessments, which are required to escape federal preemption. Interconnected VoIP revenues should be subject to assessment based on the revenue associated with customers' service addresses (*i.e.*, place of primary use—where the service is delivered to the customer), not customers' billing addresses. If all states follow this approach, as AT&T recommends, multiple state assessments will be avoided.

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[23] *Id*. at ¶ 21.

[24] *Id.* at ¶ 18.

[25] *Id.* at ¶¶ 19-20.

[26] *See id.* at ¶ 1 ("[S]tate universal service fund contribution rules for nomadic interconnected VoIP are not preempted if they are consistent with the Commission's contribution rules for interconnected VoIP providers and the state does not enforce intrastate universal service assessments with respect to revenues associated with nomadic interconnected VoIP services provided in another state.").

In addition, interconnected VoIP providers should be allowed a reasonable period of time to implement the billing changes necessary to assess and remit California's public purpose program surcharges—no less than 120 days—and the change should be prospective only. Retroactive imposition of such surcharges is not authorized by the FCC's *Declaratory Ruling*,[27] and would raise a host of practical implementation problems.

As explained above, AT&T supports the prospective imposition of California's public purpose surcharges on interconnected VoIP services because it would advance the important goal of universal service, and do so in a competitively neutral manner. It would also end an artificial regulatory advantage currently enjoyed by interconnected VoIP services. However, measures must be adopted to avoid multiple state assessments, and providers must be allowed a reasonable period of time to implement necessary billing changes. Further, as discussed below, the Commission should not reinterpret the definition of "telephone corporation" to achieve this important objective.

B. <u>The Commission Should Not Attempt to Reinterpret the Term "Telephone Corporation" to Include Interconnected VoIP.</u>

Public purpose program surcharges generally apply to "telephone corporations,"[28] but the Commission does not currently consider interconnected VoIP service providers to be "telephone corporations."[29] To expand the applicability of public purpose program surcharges, the OIR proposes reinterpreting the definition of "telephone corporation" to include interconnected VoIP

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[27] *Id*. at ¶ 1.

[28] *See, e.g.,* OIR, p. 27; Pub. Util. Code §§ 275(b), 276(b), 277(b), 278(b), 280(c), 281(b)(1), 871.5(d), 2881(d).

[29] Public purpose program surcharges apply to telephone corporations (OIR, p. 27), but do not currently apply to VoIP services (*id.* at 2). *See also* D.06-06-010 (declining to establish a California regulatory framework for VoIP services).

services. However, this proposed approach could fall short of the Commission's goals and would impose impermissible state regulation on interconnected VoIP services.

1. It Is Not Clear That Reinterpretation of the Term "Telephone Corporation" Would Meet the Commission's Goals

The Public Utilities Code defines "telephone corporation" as follows:[30]

> "Telephone corporation" includes every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state.

The term "telephone line" is, in turn, defined as:[31]

> "Telephone line" includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires.

It is unclear whether "over-the-top" interconnected VoIP providers such as Vonage and magicJack,[32] which rely primarily on broadband connections provided by other companies, could possibly fall within this definition of "telephone corporation." Vonage and magicJack may not own, control, operate or manage any conduits, ducts, poles, wires, cables, or any other property to facilitate communication. Both of these "over-the-top" services require an adapter that connects a telephone or telephones to a single customer's broadband connection (in the case of

[30] Pub. Util. Code § 234(a).

[31] Pub. Util. Code § 233.

[32] "Over-the-top" providers such as Vonage and magicJack are interconnected VoIP providers. *See* Declaratory Ruling ¶ 5. As a result, both Vonage and magicJack (and other "over-the-top" providers) are required to contribute to the federal Universal Service Fund. Interim Contribution Order ¶ 34.

Vonage)[33] or computer (in the case of magicJack),[34] but neither Vonage nor magicJack owns, controls, operates or manages these adapters.[35]

For the reasons discussed herein, the Commission should not reinterpret the term "telephone corporation" to include interconnected VoIP providers. However, if the Commission does consider that approach, it should allow discovery and hold evidentiary hearings to determine whether "over-the-top" VoIP providers own, control, operate or manage any conduits, ducts, poles, wires, cables, or any other property to facilitate communication by telephone, and thus can be said to fall within the definition of "telephone corporation."

Including "over-the-top" providers in the obligation to impose California public purpose surcharges is necessary to achieve the Commission's objectives. "Over-the-top" providers benefit from interconnection with the PSTN, but contribute little, if anything, to its construction and maintenance. Compounding this problem, exclusion of "over-the-top" providers from surcharge obligations gives them a regulatory advantage, artificially encouraging customers to migrate from traditional landline providers (which contribute to the PSTN) to "over-the-top" providers (which do not). Exclusion of "over-the-top" providers thus does not meet the Commission's "objective in this Rulemaking":[36]

> to ensure that the California universal service programs are supported in a *competitively and technologically neutral manner*, and that contributions to the programs are sufficient *to preserve and advance universal service*."

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[33] *See* http://www.vonage.com/how_vonage_works/?refer_id=WEBHO0706010001W

[34] *See* http://www.magicjack.com/6/index.asp

[35] *See* magicJack Terms of Service ¶ 2 (http://www.magicjack.com/tos/; "You will own the magicJack device…."); Vonage Terms of Service ¶ 7.2(e) (http://www.vonage.com/tos/?lid=footer_tos&refer_id=WEBSP091020001W1#DEVICES; "You will own your device….").

[36] OIR, p. 2 (emphasis added).

2. Classification of Interconnected VoIP Providers as "Telephone Corporations" Is Preempted.

Although the OIR proposes to find that the definition of "telephone corporation" includes interconnected VoIP providers only "[f]or purposes of this proceeding,"[37] it does not articulate any limiting principle that would preclude the application of all "telephone corporation" regulation to interconnected VoIP providers.[38] Such an expansion of jurisdiction has been preempted by the FCC.

The FCC, in its *Vonage Preemption Order*, preempted a Minnesota Public Utilities Commission order that applied "traditional 'telephone company' regulations" to VoIP service.[39] In particular, the FCC expressed concern about the application of Minnesota's "entry and certification requirements" to VoIP service, noting they could "stifle new and innovative services whereas blanket entry authority, *i.e.*, unconditional entry, would promote competition."[40]

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[37] OIR, p. 27.

[38] Indeed, the Consumer Protection and Safety Division is proposing to expand the scope of this OIR to consider applying California "consumer protections" to interconnected VoIP services. *See* "Petition of the Consumer Protection and Safety Division for Modification of the Scope of Rulemaking to Include Consumer Protection" (Mar. 3, 2011).

[39] Vonage Preemption Order ¶ 1.

[40] *Id*. at ¶ 20; *see also,* Declaratory Ruling ¶ 23 ("nothing in this Declaratory Ruling affects our conclusion in the *Vonage Preemption Order* concerning preemption of rate regulation, tariffing, or other requirements that operate as "conditions to entry." (footnote omitted)).

Like the Minnesota Commission's order, the OIR's proposal to include interconnected VoIP service providers within the definition of a "telephone corporation" would apply traditional telephone corporation regulations to interconnected VoIP service. For example, as a "telephone corporation," an interconnected VoIP provider would be required to obtain Commission approval to enter the California market:[41]

> A telephone corporation operating in this state shall either have a certificate of public convenience and necessity or be registered under this section [1013] or be a telephone corporation authorized to operate in California without a certificate of public convenience and necessity.

Moreover, even if the Commission only required the "registration" of an interconnected VoIP provider (as the OIR proposes),[42] the Commission still would be required to obtain a description of the telecommunications services the provider offers or intends to offer,[43] adopt rules regarding the registration process,[44] require a bond,[45] and allow protests to (and potentially hearings on) the exemption from the certification process.[46] Moreover, the Commission would retain the right to cancel, revoke or suspend the registration on numerous grounds, including violation of any "applicable" provision of the Public Utilities Code or regulations issued thereunder;[47] violation of any order, decision, rule, regulation, direction, demand or requirement established by the Commission under the Public Utilities Code;[48] and failure to pay any fee or fine imposed upon

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[41] Pub. Util. Code § 1013.

[42] OIR, p. 32.

[43] Pub. Util. Code § 1013(c).

[44] Pub. Util. Code § 1013(d).

[45] Pub. Util. Code § 1013(e).

[46] Pub. Util. Code § 1013(g).

[47] Pub. Util. Code § 1013(h)(4).

[48] Pub. Util. Code § 1013(h)(5).

the utility under the Public Utilities Code.[49] In other words, interconnected VoIP providers would be subject to extensive "traditional 'telephone company' regulation[]"—a result expressly preempted by the *Vonage Preemption Order*.

C. To Authorize the Imposition of Public Purpose Program Surcharges on Interconnected VoIP, the Commission Should Instead Support Appropriate Legislation.

As the Commission correctly notes,[50] current California law imposes several public purpose program surcharges only on "telephone corporations."[51] Rather than attempt to redefine that term, it is more appropriate for the reasons described above to amend the applicable public purpose programs' contribution statutes to expressly include interconnected VoIP providers. As the OIR notes, a similar effort, through SB 1040, successfully imposed 911 surcharges on interconnected VoIP providers.[52]

AT&T supports an effort, similar to that undertaken through SB 1040, to impose the public purpose program surcharges specified in the OIR on interconnected VoIP services in a manner consistent with the criteria identified by the FCC's recent *Declaratory Ruling*. A bill currently pending at the Legislature, AB 841, is the intended vehicle. AT&T will work with the Legislature and the Commission and other interested parties, to amend the public purpose program statutes as necessary to include interconnected VoIP services. The Commission should refrain from attempting to impose any requirements on interconnected VoIP services while this legislative effort is underway.

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[49] Pub. Util. Code § 1013(h)(6).

[50] OIR, p. 27.

[51] *See, e.g.,* Pub. Util. Code §§ 275(b), 276(b), 277(b), 278(b), 280(c), 281(b)(1), 871.5(d), 2881(d).

[52] *See* OIR, p. 22.

D. Comment on Additional Questions Posed

In addition to the issues discussed above, the Commission posed three specific questions for comment, each of which is addressed below.

1. The Commission Should Not Impose Billing Requirements on Interconnected VoIP Services.

The OIR requested comment on the following issue:[53]

> Given that the Commission requires explicit identification of surcharges on customer bills, should such explicit identification also apply to VoIP providers?

No. State imposition of traditional telephone company regulation generally is preempted by the *Vonage Preemption Order*.[54] As explained in that order, the federal interest in increased investment and innovation in advanced services is better promoted by preempting interconnected VoIP services from traditional telephone company regulations, and allowing such providers operational flexibility.[55] That preemption is particularly clear where the state standard conflicts with the federal standard,[56] which is the case here. The FCC does not require explicit identification of surcharges on customer bills.[57] Any state attempt to do so is thus preempted.

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[53] OIR, p. 30.

[54] Vonage Preemption Order ¶ 1.

[55] *Id.* at ¶¶ 1, 2.

[56] *See, e.g., id.* at ¶ 20.

[57] *See* 47 C.F.R. § 54.712(a) ("Federal universal service contribution costs may be recovered through interstate telecommunications-related charges to end users. If a contributor chooses to recover its federal universal service contribution costs through a line item on a customer's bill the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor.").

2. Interconnected VoIP Providers Should Be Required to Contribute to California's Additional Public Purpose Programs.

The OIR also inquired:[58]

> Our California programs differ from federal programs. Therefore, we seek comment on whether VoIP providers should remit surcharges supporting our state programs, such as the DDTP, California Teleconnect Fund and California Advanced Services Fund, which differ from federal universal service programs.

Yes. Interconnected VoIP providers should be required to contribute to the additional public purpose programs identified in the OIR. Expansion of these surcharges to interconnected VoIP is necessary for many of the same reasons discussed above: to ensure the ongoing viability of the funds; to ensure competitive neutrality; and because many of these funds either support or increase subscribership to the PSTN, from which interconnected VoIP services benefit.[59]

3. Any California Interconnected VoIP Provider Registration Process Is Preempted By the *Vonage Preemption Order*.

The OIR seeks comment on its tentative conclusion that VoIP providers are "telephone corporations" and thus should file a "simple registration" with the Commission.[60] However, as discussed above in section II.B.2., registration with the Commission is not a simple matter. To the contrary, it would subject interconnected VoIP providers to a panoply of traditional telephone corporation regulation—a result expressly preempted by the *Vonage Preemption Order*. Accordingly, interconnected VoIP providers cannot be required to register with the Commission.

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[58] OIR, p. 30.

[59] California's traditional public purpose programs appear to be the type of universal service funds the FCC has determined are not preempted because they do not conflict with federal policy. *See* Declaratory Ruling ¶ 16. Although the FCC has not specifically addressed support for broadband, the CASF does not appear on its face to conflict with federal policy.

[60] OIR, p. 32.

E. Request for Evidentiary Hearings

As discussed above, the Commission should not attempt to reinterpret the definition of "telephone corporation" to include interconnected VoIP providers because it is preempted from doing so, and legislation expanding the applicability of California's universal service program surcharges is a preferable path. However, if the Commission were to consider reinterpreting the term "telephone corporation," it should hold evidentiary hearings to determine whether "over-the-top" interconnected VoIP providers such as Vonage and magicJack own, control, operate or manage any conduits, ducts, poles, wires, cables, or any other property to facilitate communication, and thus could possibly fall within the definition of "telephone corporation." Inclusion of "over-the-top" interconnected VoIP providers is necessary to competitive neutrality, a requirement of California and federal law.

III. CONCLUSION

For the reasons set forth above, AT&T supports the prospective imposition of California public purpose program surcharges on interconnected VoIP services, provided it is based on service addresses, allows at least 120 days for implementation, includes "over-the-top" providers, does not require any registration, and is authorized by appropriate legislation. The Commission should not reinterpret the term "telephone corporation" to include interconnected VoIP providers because it could improperly exclude "over-the-top" providers and would impermissibly subject other interconnected VoIP providers to "traditional 'telephone company' regulation"—a result preempted by the FCC.

Respectfully submitted,

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