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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Evaluate
Telecommunications Corporations Service
Quality Performance and Consider
Modification to Service Quality Rules.

Rulemaking 11-12-001
(Filed December 1, 2011)

**RESPONSE OF CALIFORNIA CABLE & TELECOMMUNICATIONS ASSOCIATION
TO APPLICATIONS FOR REHEARING OF DECISION 16-08-021, ADOPTING
GENERAL ORDER 133-D**

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Dated: October 13, 2016

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I. INTRODUCTION

Pursuant to Rule 16.1 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, the California Cable & Telecommunications Association (“CCTA”) respectfully submits this response to the applications for rehearing of Decision 16-08-021, adopting General Order 133-D (“Decision”) filed by the Joint Consumers¹ and Cox California Telcom, LLC, dba Cox Communications (“Cox”), respectively.

As explained below, the Commission correctly declined to extend service quality metrics to providers of interconnected voice over Internet Protocol (“VoIP”) service, despite Joint Consumers’ incorrect theory that such providers are “telephone corporations” subject to California Public Utilities Code Section 2896.² Joint Consumers provide no sound basis for revisiting the Decision, and their application for rehearing therefore should be denied. Further,

¹ “Joint Consumers” include the Office of Ratepayer Advocates (“ORA”), Center for Accessible Technology, The Greenlining Institute, and The Utility Reform Network.

² Even after receiving comments from ORA, presenting the argument that “Pub. Util. Code §§ 2896 and 2897 provide the express statutory direction...for the Commission to apply service quality rules over VoIP services,” the Commission correctly chose not to extend service quality metrics to VoIP service providers. *See* ORA Comments (filed July 12, 2016)

CCTA agrees with Cox that the extension of outage reporting requirements (G.O. 133-D, Rule 4) to interconnected VoIP providers is unlawful and unnecessary.

II. THE COMMISSION LAWFULLY CLOSED THIS PROCEEDING WITHOUT EXTENDING THE G.O. 133-D SERVICE QUALITY METRICS TO INTERCONNECTED VOIP PROVIDERS.

A. Section 2896’s Service Quality Standards Do Not Apply To Interconnected VoIP Service Providers Because Such Providers Are Not “Telephone Corporations,” And Public Utilities Section 710 Forecloses Utility Regulation Of VoIP Services In Any Event.

Joint Consumers contend that the Commission erred in declining to extend the service quality standards applicable to “telephone corporations” under California Public Utilities Code Section 2896 to interconnected VoIP service providers. That ruling, however, was entirely correct. As an initial matter, Section 2896 does not mandate the Commission promulgate VoIP service quality regulations. Section 2896 requires, in applicable part, that:

The commission shall require telephone corporations to provide customer service to telecommunication customers that includes, but is not limited to, all the following: [...] (c) Reasonable statewide service quality standards, including, but not limited to, standards regarding network technical quality, customer service, installation, repair, and billing.

This section obligates the Commission to “require” that telephone corporations provide customer service that includes “reasonable” service quality standards. It does not mandate that the Commission must issue *regulations* to satisfy its duty under the Public Utilities Code. It is well within the Commission’s discretion, for example, to determine that it is reasonable to permit market forces to ensure quality service.

Moreover, Section 2896 applies only to “telephone corporations.”³ And, contrary to Joint Consumers’ suggestions, the Commission has never held that a VoIP service provider is a “telephone corporation” within the meaning of the Public Utilities Code. In fact, the Commission has repeatedly made clear that providers of interconnected VoIP service are *not* regulated telephone corporations.⁴

Joint Consumers rely on the Commission’s “tentative conclusion” from a 2011 Order Instituting Rulemaking that “interconnected VoIP service providers fall within the broad definition of ‘telephone corporation.’”⁵ But Joint Consumers fail to note that the Commission closed that proceeding *without* making any such finding, because the question of whether interconnected VoIP service providers may qualify as telephone corporations “ha[d] been rendered moot by the passage of legislation that specifically addressed all of the issues involved.”⁶

³ Section 2896 authorizes the Commission to “require *telephone corporations* to provide customer service to telecommunication customers,” including “[r]easonable statewide service quality standards.” Pub. Util. Code § 2896 (emphasis added).

⁴ D.14-01-036 (“[T]he Commission has not deemed VoIP providers to be “telephone corporations” under the Public Utilities Code....”); T-17504 at 15 (issued November 23, 2015) (“...those surcharges and fees collected by the Commission from *telephone corporations and VoIP providers*.”) (emphasis added); *see also* Memorandum to Commission from Hazel Miranda, Director, Office of Governmental Affairs, recommending opposition to AB 2395 at 14-15 (April 6, 2016) (“Neither the CPUC nor the Legislature have deemed VoIP providers ... to be ‘telephone corporations,’ nor are they required to obtain operating authority from the CPUC.”).

⁵ Joint Consumers’ Application for Rehearing at 12 (citing *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*, OIR 11-01-008 at 27 (Jan. 13, 2011)) (emphasis added).

⁶ Decision Closing Rulemaking 11-01-008 at 4 (Feb. 28, 2013). In that proceeding, the Consumer Protection and Safety Division (CSPD) “filed a motion requesting that the scope of this proceeding be expanded to extend to VoIP telecommunications service providers the consumer protection rules applicable to other telecommunications service providers already considered to be telephone corporations.” *Id.* at 3. The Commission closed the proceeding

That, of course, refers to Public Utilities Code Section 710(a), which the Legislature adopted in 2012 to *prohibit* the Commission from “exercis[ing] regulatory jurisdiction or control” over VoIP services⁷ with narrow exceptions inapplicable here.⁸ The Legislature could have—but did not—include an exception authorizing service quality regulation of VoIP services under Section 2896. Moreover, the Legislature adopted Section 710 nearly *20 years after* the adoption of Section 2896, underscoring that Section 710 supersedes any authority over VoIP services that Joint Consumers may attempt to retroactively read into the 1993 statute that enacted Section 2896.⁹ Finally, by making Section 710 applicable to “services”—not “service providers”—the Legislature manifested its intent to limit the Commission’s regulatory jurisdiction over *all* VoIP services, even those provided by certificated entities.¹⁰ For these reasons, the Commission could not legally justify a decision that an entity is a telephone

without acting on this request, noting that legislation regarding “the regulatory status of VoIP services . . . effectively resolved all of the matters suggested for resolution by the CPSD motion.” *Id.* at 4.

⁷ Pub. Util. Code § 710(a).

⁸ *See, e.g.*, Pub. Util. Code § 710(c)(4) (preserving the Commission’s “authority to require data and other information” in connection with forbearance petitions filed with the FCC).

⁹ Section 2896 was adopted as part of the Telecommunications Customer Service Act of 1993. P.U. Code § 2896; *see also* AB 726 (1993).

¹⁰ The Legislature was well aware that several entities with Certificates of Public Convenience and Necessity offer both traditional landline and IP-enabled services. Rather than making the application of Section 710 turn on the regulatory status of the service provider, however, the statute was deliberately structured to focus on the nature of the service. *See* Senate Energy, Utilities and Communications Committee, analysis SB 1161 (2011-2012 Reg. Sess.) as amended March 26, 2012 (Hearing Apr. 17, 2012) at 3, 7. Joint Consumers misinterpret this distinction to suggest that “Section 710(a) is constrained to VoIP *services*, not to providers,” and that the Commission may somehow regulate the entities and networks that provide interconnected VoIP services without regulating the services themselves. *See* Joint Consumers Application for Rehearing at 14. But this attempt to split hairs cannot be reconciled with the Legislature’s clear purpose and intent in enacting Section 710, which would be rendered meaningless if the Commission could exercise “regulatory jurisdiction or control” over VoIP providers simply by purporting to regulate their “facilities” instead of their “services.” *See infra*, Section IV.

corporation with respect to the VoIP services it provides.

In sum, the Decision correctly declined to extend the service quality rules applicable to telephone corporations to the distinct regulatory category of interconnected VoIP service providers.¹¹ The Commission therefore should reject Joint Consumers' invitation to make an untenable ruling—with broad implications—that not only would violate the express statutory limitations on the Commission's jurisdiction, but also would depart from Commission precedent without a rational explanation.¹²

B. Section 706 Is Not An Independent Grant of Federal Authority to Regulate VoIP Service Quality.

The Commission also should reject Joint Consumers' claims that, even if it is barred under state law from exercising “regulatory jurisdiction or control” over VoIP services, it may independently rely on Section 706 of the federal Telecommunications Act of 1996 “to adopt and enforce service quality standards applicable to interconnected VoIP providers.”¹³ Joint Consumers' interpretation of Section 706 as a sweeping federal grant of authority to regulate “advanced telecommunications capability” over the express commands of a state legislature cannot be squared with statutory text, judicial precedent, or the California Legislature's plain intent in enacting Section 710.

¹¹ See, e.g., General Order (“G.O.”) 133-D, Section 1.3(i) (“Facilities-based Carriers: A *telephone corporation or interconnected VoIP provider* that owns or controls facilities used to provide communications for compensation, including the line to the end-user's location.”) (emphasis added).

¹² As the California Supreme Court has admonished, the Commission is not authorized to “disregard . . . express legislative directions to it, or restrictions upon its power found in other provisions of the [Public Utilities Code] or elsewhere in general law.” *Assembly of the State of Cal. v. Public Util. Comm'n*, 12 Cal. 4th 87, 103-104 (1995) (quoting *Pacific Tel. & Tel. Co. v. Public Util. Com.*, 62 Cal.2d 634, 653 (1965)).

¹³ Joint Consumers Application For Rehearing at 14.

1. Any Authority Delegated By Section 706 Is Limited By Section 710.

Joint Consumers misconstrue the D.C. Circuit’s holding in *Verizon v. FCC* to argue that Section 706 “confers parallel powers on state commissions and the FCC.”¹⁴ In fact, the *Verizon* court stated that “Congress has *not* ‘directly spoken’ to the question of whether section 706(a) is a grant of regulatory authority simply by mentioning state commissions in that grant.”¹⁵ Joint Consumers read far too much into *Verizon* when they assert that the court construed Section 706 as an identical grant of authority to state commissions.¹⁶

In any event, whatever role Congress may have envisioned for state commissions under Section 706(a), it must be limited by the subject matter jurisdiction granted to those commissions by their respective legislatures.¹⁷ Thus, even if Joint Consumers were correct in assuming that Section 706 “confers parallel powers on state commissions and the FCC,” *Verizon* confirms that any authority granted to the Commission by Section 706 likewise must be limited by “other provisions” of law, “including, most importantly, those *limiting the [Commission’s] subject matter jurisdiction.*”¹⁸

¹⁴ *Id.* at 15 (citing *Verizon v. FCC*, 740 F.3d 623, 638 (D.C. Cir. 2014)).

¹⁵ *Verizon*, 740 F.3d at 638 (emphasis added; citation omitted). The court also noted in passing that “Congress has granted regulatory authority to state telecommunications commissions on other occasions, and we see no reason to think that it could not have done the same here,” but those observations were *dicta*, and the question of state commission authority was not squarely at issue in the case.

¹⁶ The D.C. Circuit’s recent decision upholding the FCC’s 2015 *Open Internet Order* did not speak further to any purported state commission authority pursuant to Section 706. *See U.S. Telecom Assn. v. FCC*, 825 F.3d 674 (D.C. Cir. 2016).

¹⁷ To the extent it applies to state commissions, the *Verizon* court’s analysis of Section 706 strongly supports this reading. *See Verizon*, 740 F.3d at 640 (identifying “at least two limiting principles inherent in section 706(a),” including the principle that “the section must be read in conjunction with other provisions of the Communications Act, including, most importantly, those *limiting the [FCC’s] subject matter jurisdiction*”) (emphasis added).

¹⁸ *Id.*

This is also clear from the plain text of the statute. By its terms, Section 706(a) applies only to the FCC “and each State commission *with regulatory jurisdiction* over telecommunications services.”¹⁹ Joint Consumers’ suggestion that this Commission may assert regulatory jurisdiction over VoIP services because they are part of “the ‘advanced telecommunications capability’ referenced in Section 706”²⁰ is circular and ignores the principle that the Commission may not “disregard . . . express legislative directions to it, or restrictions upon its power found in other provisions of the [Public Utilities Code] or elsewhere in general law.”²¹

Even assuming that Section 706(a) confers any authority on state commissions, a general direction to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability” would not override the California Legislature’s more specific determination in Public Utilities Code Section 710(a) that this Commission “shall not exercise regulatory jurisdiction or control” over VoIP services. If Section 706 were read so expansively, the “numerous exceptions” in Section 710 that the Commission claims preserve its authority to regulate VoIP providers and facilities²² would be entirely superfluous, defying both logic and

¹⁹ 47 U.S.C. § 1302(a) (emphasis added).

²⁰ Joint Consumers Application For Rehearing at 15.

²¹ *Pac. Tel. & Tel. Co. v. Pub. Utilities Comm'n*, 62 Cal. 2d 634, 653 (1965).

²² See Decision at 25 (asserting that “Section 710 contains numerous exceptions which indicate that the Commission does retain some authority over VoIP providers and facilities”). While CCTA disagrees with the Commission’s overbroad interpretation of exceptions such as Section 710(f), *see infra*, Section IV, the Legislature’s deliberate inclusion of specific exceptions in its statutory framework governing IP-enabled services belies Joint Consumers’ claims that Section 706 provides a virtually unbounded delegation of independent federal authority to regulate “advanced telecommunications capability.”

basic principles of statutory interpretation.²³ Section 706(a), therefore, cannot create responsibilities “expressly delegated by federal law” that would contravene the Commission’s express jurisdictional limitations set under state law in Section 710(a).²⁴

2. VoIP Service Quality Regulation Would Not Promote Broadband Deployment or the “Virtuous Cycle.”

Joint Consumers’ reliance on Section 706 also fails for the independent reason that no plausible interpretation of the limiting factors or “virtuous cycle” discussed in *Verizon* would extend to utility-style regulation of interconnected VoIP service quality. Any regulations adopted under Section 706 “must be designed to achieve a particular purpose: to ‘encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.’”²⁵ Joint Consumers’ contorted attempts to connect the dots between extending the G.O. 133-D service quality metrics to VoIP and the “‘virtuous circle of innovation’ that had long driven the growth of the Internet” are unpersuasive and far removed from the jurisdictional theories advanced by the FCC in support of its Open Internet rules.²⁶ To the extent Joint Consumers contend that utility-style service quality regulations are necessary or appropriate to

²³ See, e.g., *Riverside Cty. Sheriff’s Dep’t v. Stiglitz*, 60 Cal. 4th 624, 630 (2014) (“[W]henever possible, significance must be given to every word [in a statute] in pursuing the legislative purpose, and the court should avoid a construction that makes some words surplusage.”).

²⁴ Notably, California adopted Section 710 some *16 years after* Congress enacted Section 706(a), underscoring that the Legislature could not have intended this Commission to have the independent regulatory authority over “advanced telecommunications capability” that Joint Consumers now attempt to read into the federal statute.

²⁵ *Verizon*, 740 F.3d at 640 (quoting 47 U.S.C. § 1302(a)).

²⁶ See *id.* at 634 (discussing the FCC’s theory that “[r]estricting edge providers’ ability to reach end users, and limiting end users’ ability to choose which edge providers to patronize . . . would reduce the rate of innovation at the edge and, in turn, the likely rate of improvements to network infrastructure”) (internal quotations omitted).

promote deployment of “VoIP and the broadband facilities on which it rides,”²⁷ the FCC clearly disagrees, emphasizing that “we are *not* regulating broadband Internet access service as a utility or telephone company.”²⁸

Beyond conclusory assertions that “service quality is inextricably linked to the deployment of advanced communications capability,” and that “VoIP, broadband competition and build-out, and public safety all stand in close relationship with one another,” Joint Consumers provide no evidence that extension of the G.O. 133-D service quality metrics to VoIP would promote “edge-provider investment and development” or “remove barriers to infrastructure investment.”²⁹ If anything, imposing unnecessary service quality metrics on interconnected VoIP services would have the opposite effect by raising costs, deterring competitive entry, and decreasing investment in new services.³⁰ Thus, Section 706 provides no basis to re-open this proceeding to consider service quality regulations for interconnected VoIP services.

III. IN NOT EXTENDING SERVICE QUALITY METRICS TO VOIP SERVICE PROVIDERS, THE DECISION IS CONSISTENT WITH ITS OWN FINDINGS AND PRIOR COMMISSION DECISIONS CITED BY JOINT CONSUMERS.

None of the Commission decisions cited by Joint Consumers requires the extension of service quality rules designed for “telephone corporations” to interconnected VoIP providers.

A. Closing This Proceeding Without Extending Service Quality Metrics to VoIP

²⁷ Joint Consumers Application For Rehearing at 16.

²⁸ *Protecting and Promoting the Open Internet*, 30 FCC Rcd. 5601 ¶ 430 n.1274 (2015) (emphasis added).

²⁹ Joint Consumers Application For Rehearing at 16 (quoting *Verizon*, 740 F.3d at 643).

³⁰ See CCTA Reply Comments, R.11-12-001, at 5 (April 18, 2016) (stating that the Commission’s proposal for VoIP outage reporting “has no rational relationship to promoting broadband deployment” and “would have the opposite result by deterring competitive entry into the state thereby precluding any reliance on § 706(a) in this proceeding”).

Service Providers is Consistent with the Decision’s Findings of Fact.

The Decision’s Finding of Fact No. 7 states: “Customers of all *telephone corporations* should receive the same standard of service.”³¹ As demonstrated above, however, interconnected VoIP service providers are not “telephone corporations,” and therefore this finding does not require extension of service quality standards to VoIP services. The Commission did not err in declining to adopt such standards based on a factual finding that is obviously inapplicable.

B. The Commission’s Decision Not to Extend the Service Quality Metrics to VoIP Service Providers is Consistent with its Basic Service Decision (D.12-12-038) and LifeLine Decision (D.14-01-036).

Joint Consumers also assert the Commission’s decision not to extend service quality standards to interconnected VoIP service providers violates its Basic Service Decision (D.12-12-038) and LifeLine Decision (D.14-01-036). Specifically, Joint Consumers appear to argue that the Commission concluded in both of those decisions that service quality standards would be established for VoIP service providers in the instant docket. Joint Consumers are incorrect. Both decisions made it clear that service quality could be addressed in multiple different dockets.³² Moreover, neither decision requires the adoption or extension of service quality standards to VoIP service providers in this or any other proceeding.³³ Finally, in any case, the Decision from which Joint Consumers seek rehearing *did* consider which service quality metrics should be met

³¹ Decision at 32, FOF 7 (emphasis added).

³² D.12-12-038 at 46 (“...opening a new OIR or addressing the issue in R.11-12001 is an appropriate forum in which to consider further issues relating to service quality standards...”); D.14-01-036 (stating that the Commission “will pursue some of these service and quality of service issues through other proceedings, including our service quality proceeding (R.11-12-001), the California Advanced Services Fund, and our wireless and broadband mapping project.”).

³³ Joint Consumers also appear to contend that the LifeLine Decision adopted service quality standards applicable to VoIP providers. *See* Joint Consumers Application for Rehearing at 22 (asserting that the Commission in the Lifeline Decision “indicated that standards for LifeLine service offered through” services such as VoIP “should be subject to minimum service quality standards established in this proceeding.”). This is simply false.

by interconnected VoIP service providers generally and which should be met by all carriers of last resort.³⁴

IV. COX IS CORRECT THAT THE DECISION ERRONEOUSLY ORDERS VOIP SERVICE PROVIDERS TO COMPLY WITH GO 133-D, IN VIOLATION OF SECTION 710.

CCTA agrees with the arguments in Cox’s *Application for Rehearing of Decision 16-08-021 of Cox California Telcom, LLC, DBA Cox Communications, (U-5684-C)*, that the extension of outage reporting requirements (G.O. 133-D, Rule 4) to interconnected VoIP service providers is unlawful and unnecessary.

As noted above, California Public Utilities Code Section 710(a) mandates that the Commission “shall not exercise regulatory jurisdiction or control over [VoIP and IP-enabled] services except as required or expressly delegated by federal law or expressly directed to do so by statute or as set forth in subdivision (c).” The Decision’s extension of mandatory FCC reporting requirements for major service interruptions necessarily involves the exercise of regulatory jurisdiction or control over VoIP services. Forcing an entity to turn over nonpublic and confidential data is a classic example of exercising “control” over the entity and its related services. The Legislature recognized this fact when it added an express exception in Section 710(c)(4) that allows the Commission to “require data and other information” from VoIP providers only in the limited context of responding to pending ILEC forbearance petitions to the FCC under Section 716—an issue irrelevant to the Decision. Moreover, compelling such

³⁴ Further, the Basic Service Decision’s discussion of wireless and VoIP service providers was focused only on “carriers in capacity of [carrier of last resort],” and not on service providers generally, which was the focus of the Service Quality Decision. Therefore, the Service Quality Decision does not violate the Basic Service Decision by not establishing service quality standards for wireless and interconnected VoIP service providers.

production of sensitive information under the Commission’s enforcement authority and penalties for noncompliance unquestionably subjects the entity and its services to the agency’s “regulatory jurisdiction.”³⁵

In its Decision, the Commission offers four theories in support of its authority to require interconnected VoIP providers to submit their FCC Network Outage Reporting System (“NORS”) reports to the Commission and ORA and comply with other “major service interruption” obligations, but none is persuasive. *First*, the Commission asserts that Section 710(f) permits the Commission to “monitor and discuss VoIP services.” Section 710(f), however, does not confer authority for new rules to “monitor” the quality of VoIP services. Rather, it is a narrow exception to Section 710(a), allowing the Commission to “continue to monitor and discuss” VoIP services to the extent that it did before the law was adopted. Specifically, this narrow exception only allows the Commission “to track and report to the [FCC] and the Legislature ... the number and type of *complaints* received by the commission from customers, and to respond informally to *customer complaints*.”³⁶ Nowhere does Section 710(f) suggest (let alone confer) an affirmative grant of rulemaking authority for outage reporting or any other data collection beyond continued “monitor[ing]” and “informal[ly]” response to customer complaints.

Second, citing various Public Utilities Code provisions generally governing regulated entities (*e.g.*, Sections 311 and 314 pertaining to subpoenas and inspection of records), the

³⁵ The Decision does not establish specific penalties for failure to submit outage reports, but the Commission generally has authority to penalize violations for non-compliance. *See* Pub. Util. Code § 2107 (authorizing civil penalties of between \$500 and \$50,000 for violations of CPUC rules or statutes).

³⁶ Pub. Util. Code § 710(f) (emphasis added).

Commission argues that it has “broad authority to obtain information.”³⁷ But none of the *general* provisions of law cited by the Commission (including, for example, Section 314) could overcome the *specific and express* limitation on the Commission’s authority set forth in Section 710. In any event, the provisions cited by the Commission, by their own terms, do not apply here. Section 314(a), for example, gives the Commission inspection authority over “public utilities,” a defined term that does not include interconnected VoIP providers.³⁸ Section 314(b) gives the Commission more limited inspection authority over unregulated affiliates or subsidiaries of such utilities, but it expressly limits such inquires “to any *transaction between*” the utility and the unregulated affiliate.³⁹ The NORs reporting mandated here has nothing to do with any such affiliate “transactions” (e.g., cross-subsidization of regulated and unregulated services) and cannot be justified based on Section 314(b).

Third, the Commission argues that “Section 710 only prohibits the regulation of VoIP ‘services,’” and therefore does not bar “the regulation of *facilities* over which VoIP services are transported.”⁴⁰ The Commission’s artificial distinction between regulation of “facilities” and “services” is flawed and inconsistent with the Legislature’s express intent. Section 710(c) preserves the Commission’s authority with respect to (i) “existing requirements regarding backup power systems” and (ii) construction standards for the poles (G.O. 95) and underground conduits (G.O. 128), but none of those exceptions is relevant here.⁴¹ Significantly, the

³⁷ Decision at 26.

³⁸ *See, e.g.*, Pub. Util. Code §§ 216(a) (defining “public utilities”); 314(a) (authorizing the CPUC to “inspect the accounts, books, papers, and documents of any public utility”); 581-588 (authorizing various other reports to the CPUC by public utilities).

³⁹ *Id.* § 314(b) (emphasis added).

⁴⁰ Decision at 26.

⁴¹ CCTA Comments on Alternate Proposed Decision at 6 (filed July 12, 2016).

Legislature did not carve out from Section 710's prohibition on VoIP regulation any exception for outage reporting.

Finally, although not expressly tied to a jurisdictional theory, the Commission makes the policy argument that any burden on VoIP providers is "trivial."⁴² Putting aside the inaccuracy of that assertion, it is beside the point. The purported burden of compliance with rules adopted without any legal basis is irrelevant to the jurisdictional analysis, and Section 710 makes no distinction between "trivial" and "non-trivial" assertions of regulatory authority. And in any event, CCTA agrees with Cox that the obligations adopted in GO 133-D Rule 4 could actually be quite burdensome for some interconnected VoIP providers and that any contrary finding would not be supported by the record.⁴³

Accordingly, CCTA agrees the Commission should correct these errors by eliminating G.O. 133-D, Rule 4(a)(iv) in its entirety and also deleting the reference to "and VoIP services" in GO 133-D, Rule 4(c)(i).

Respectfully submitted this 13th day of October 2016,

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⁴² Decision at 32, FOF 11.

⁴³ Cox Application for Rehearing at 23.