

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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. _____

ORDER INSTITUTING RULEMAKING

1. Summary

The California Public Utilities Commission (CPUC or Commission) institutes this Rulemaking to add California providers of interconnected Voice over Internet Protocol (VoIP) service to the category of voice service providers who are required to fund California's universal service programs. These programs include the California LifeLine Telephone Program (formerly known as the Universal Lifeline Telephone Service or ULTS), the California High-Cost Fund A, the California High-Cost Fund B, the California Advanced Services Fund, the California Teleconnect Fund, and the Deaf and Disabled Telecommunications Program.¹

We are persuaded to require contributions from intrastate end-users of interconnected VoIP service in recognition that the Federal Communications

¹ The Commission's Universal Service Public Programs are described at: <http://www.cpuc.ca.gov/PUC/Telco/Public+Programs/>.

Commission (FCC) has already determined that interconnected VoIP providers must report and contribute to the federal Universal Service Fund on all of their interstate and international end-user revenues, and has recently concluded that “the application of state universal service contribution requirements to interconnected VoIP providers does not conflict with federal policies, and could, in fact, promote them.”² It also ruled “that states may extend their universal service contribution requirements to future intrastate revenues of nomadic interconnected Voice over Internet Protocol (VoIP) service providers....”³ Currently there is no requirement for interconnected VoIP providers offering service in California, of which there are approximately 275, by FCC count, to contribute to California’s universal service public purpose programs.

Our limited objective in this Rulemaking is 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. To carry out this objective, we rely upon prior decisions and policy determinations of the FCC as well as the authority of this Commission. VoIP services benefit from universal service through their interconnection with the Public Switched Telephone Network. Also the principle of competitive neutrality requires that universal service should neither unfairly

²*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, rel. November 5, 2010 (*Declaratory Ruling*), ¶16.

³ *Id.*, ¶1; see also *Universal Service Contribution Methodology Proceeding, Report and Order of Proposed Rulemaking* (WC Docket No. 06-122) (2006) 21 FCC Rcd 7518, at ¶34. (*VoIP Universal Service Order*.)

advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another. Further, absent inclusion of intrastate revenues of interconnected VoIP providers in the contribution base, California's universal service programs could be put at financial risk as the largest carriers migrate their end-users to IP-enabled voice services.⁴

Accordingly, this Rulemaking seeks to require interconnected VoIP service providers within California to collect and remit state public purpose program surcharges on intrastate revenues, thereby treating IP-enabled voice services in the same manner as traditional wireline and wireless voice services for the purpose of surcharge contributions to universal service programs. Such surcharge requirement is consistent with FCC policy and will put California's surcharge policy in parity with FCC practice.

2. Background

When the Commission adopted its universal service policy, chiefly in Decision (D.) 96-10-066, circuit-switched wireline telephone service was the main

⁴ The Commission previously concluded that because some of the new communications services are not currently subject to surcharges to fund the public policy programs, such as Internet-based telephone service, the funding mechanism may be undermined as customers migrate to other providers. While recognizing that no significant, near-term threat to the current intrastate surcharge methodology had been identified to that point, the ruling concluded that the prudent course was to monitor any impacts to our funding mechanism as well as track potential changes on the federal level and in the treatment of VoIP by other states. *Rulemaking on the Commission's Own Motion to Review the Telecommunications Public Policy Programs*, Rulemaking (R.) 06-05-028, *Interim Decision Addressing California Teleconnect Fund, Payphone Enforcement and Public Policy Payphone Programs, and The Deaf and Disabled Telecommunications Program*, D.08-06-020 (Cal. P.U.C. June 12, 2008).

telephone service used by California households.⁵ Wireless service had not been widely adopted nor had the Internet become a technological staple of everyday life. During the past decade, the telecommunications industry has experienced advances in technology, shifts in the competitive markets, and major changes in service and price structures.

2.1. Transition to IP-Enabled Voice Services

Of increasing importance among these recent changes in technology is the migration of voice service away from the circuit-switched platform, to routed or soft-switched “packetized” telephone transmission relying on the Internet Protocol (IP). IP represents another language for arranging the digital bit-stream of telephone calls. With IP, the network routes a call over different network pathways maintained by the carrier or carriers carrying the voice service, not over one sustained circuit, and as a consequence the network’s voice delivery is more efficient and less expensive to provision.⁶ All voice services, along with other network services, are now transitioning to this increasingly common transmission protocol as a converged network is adapted to carry voice, data, and video bits seamlessly from the point of view of the consumer.

⁵ *Rulemaking on the Commission’s Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643; Investigation on the Commission’s Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643, R.95-01-020/Investigation (I.) 95-01-021 (October 25, 1996).* In D.06-06-010, the Commission closed I.04-02-007, ruling that “we find we need not establish a regulatory framework for Voice over Internet Protocol telephony (VoIP)... at this time.”

⁶ An accessible discussion of circuit-switching and how it differs from routed calls using IP-based packet technologies can be found Newton’s Telecom Dictionary, 24th Updated and Expanded Edition (New York: Flatiron Publishing, 2008): “circuit switching,” “IP telephony,” “Voice over IP.”

The transition of telephone voice service by telephone service providers from switched circuit technology to what the FCC has called “interconnected IP” voice service is accelerating. As we noted in our June 2008 Report to the California Legislature on Residential Telephone Subscribership and Universal Service, “[p]hone service provided via Voice over Internet Protocol, or VoIP, has quickly been gaining popularity with consumers, especially cable provided VoIP. We estimate there are approximately 1 million current VoIP users in California alone.”⁷ More recent FCC Form 477 data indicate that there are, as of December 2008, some 2.5 million VoIP users in the state, of which approximately 2 million are residential subscribers.⁸ Absent inclusion of intrastate revenues of interconnected VoIP providers in the contribution base, California’s universal service programs could be at financial risk in the not-too-distant future.

As the FCC has observed:

The IP-enabled services marketplace is the latest new frontier of our nation’s communications landscape. As such, new entrants and existing stakeholders are rushing to bring IP-enabled facilities and services to this market, relying on new technologies to provide a quickly evolving list of service features and functionalities.⁹

The FCC has noted that:

⁷ “Residential Telephone Subscribership and Universal Service,” *Report to the California Legislature in Accordance with California Public Utilities Code Section 873* (Cal. P.U.C. June 2008), at 13.

⁸ FCC, “Trends in Telephone Service,” September 2010, Table 8.5.

⁹ *IP-Enabled Services Proceeding*, First Report and Notice of Proposed Rulemaking (WC Docket No. 04-36) (2005) 20 FCC Rcd 10245, at ¶4. (*E-911 Order*).

The number of VoIP subscribers in the United States has grown significantly in recent years, and we expect that trend to continue. At the same time, the USF contribution base has been shrinking, and the contribution factor has risen considerably as a result.¹⁰

As a consequence, the FCC has issued Orders requiring VoIP providers to contribute to the federal universal service fund.¹¹

As early as July of 2007, we had recognized “that new communications services, not currently subject to surcharges to fund these [public purpose] programs, such as internet-based telephone service, may undermine the funding mechanism as customers migrate to other providers.”¹² While we found then that no party had “identified significant, near-term threats to the current intrastate surcharge methodology,”¹³ nevertheless, we anticipated FCC

¹⁰ *VoIP Universal Service Order*, at ¶34.

¹¹ In its recent *Declaratory Ruling*, the FCC notes that it “has issued several orders addressing the regulatory obligations of VoIP providers in a variety of areas. Of particular relevance to this proceeding, the Commission in 2006 adopted rules requiring interconnected VoIP providers to contribute to the federal Universal Service Fund. *Declaratory Ruling*, ¶6. Citing earlier rulings, the FCC explained that “interconnected VoIP providers, like other contributors, ‘benefit from universal service because much of the appeal of their services to consumers derive from the ability to place calls to and receive calls from the PSTN [Public Switched Telephone Network].” [Citing Interim Contribution Methodology Order, 21 FCC Red at 7540-41, ¶43.] The FCC added, “... requiring interconnected VoIP providers to contribute to universal service would promote the ‘principle of competitive neutrality’ by ‘reduc[ing] the possibility that carriers with universal service obligations will compete directly with providers without such obligations.’” [Citing *Id.* at 7541, ¶44.]

¹² *Rulemaking on the Commission’s Own Motion to Review the Telecommunications Public Policy Programs*, R.06-05-028, *Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge Determining the Scope, Schedule, and Need for Hearing in this Proceeding* (Cal. P.U.C. July 13, 2007), at 3. (Scoping Memo).

¹³ *Id.*

proceedings “to consider changes to the funding mechanism for federal programs.”¹⁴ We resolved, out of an abundance of caution, to reassess our “position as necessary to ensure adequate funding for these important programs.”¹⁵

The need for changes to universal service programs has become apparent as new and established carriers have deployed “interconnected IP-based” voice services more extensively. For example, Comcast California has discontinued its traditional voice services -- largely circuit-switched and inherited from earlier acquisitions -- in favor of VoIP or “digital voice.”¹⁶ All Comcast’s voice customers are now served by the company’s brand of VoIP. So too with Time Warner Cable’s California voice services where a similar mass migration has occurred.¹⁷

But these changes pale in comparison to the number of consumers who would be served by VoIP when AT&T and Verizon migrate their customers to IP-based phone service, as they are expected to do. AT&T, the State’s largest

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See *Application of Comcast Phone of California, LLC (U5698 C) for Authority to Discontinue Telecommunications Services in the State of California*, Application (A.) 07-11-014, *Opinion Addressing Application of Comcast Phone of California, LLC for Authority to Discontinue Telecommunications Services in the State of California* for Comcast’s mass migration of customers from its circuit-switched service, D.08-04-042 (Cal. P.U.C. November 20, 2007).

¹⁷ See *Application of Time Warner Cable Information Services (California), LLC (U6874C) For Authority to Discontinue Telecommunications Services in the State of California*, A.07-07-010, *Opinion Addressing Application of Time Warner Cable Information Services, LLC for Authority to Discontinue Telecommunications Services in the State of California* for Time Warner’s

Footnote continued on next page

incumbent local exchange carrier, with over 12 million access lines, is experiencing a decline in demand for its traditional circuit-switched wireline voice services, and is expanding availability of its U-verse service, a managed IP-based service delivered over AT&T's expanding fiber-to-the-node network where voice service makes the smallest bandwidth demand on this converged IP-based platform.¹⁸ Further, Verizon offers Digital Voice service in conjunction with its Fiber Optic Service (FiOS) deployment. "The service transmits phone calls using Internet protocols, as cable telephone services do."¹⁹ As with other

mass migration of customers away from circuit-switched telephony, D.08-02-006 (Cal. P.U.C. February 14, 2008).

¹⁸ AT&T Investor Briefing, Fourth Quarter 2008 (available at: http://www.att.com/Investor/Financial/Earning_Info/docs/4Q_08_IB_FINAL.pdf). In its most recent Investor Briefing, AT&T noted: "In the third quarter [2010], AT&T posted a decline in total consumer revenue connections due primarily to expected declines in traditional voice access lines, partially offset by increases in broadband, U-verse TV and VoIP (Voice over Internet Protocol) connections. Combined wireline consumer TV and broadband connections increased by 343,000 in the third quarter and 1.3 million over the past four quarters. AT&T U-verse Voice connections increased by 166,000 in the quarter and 759,000 over the past four quarters. Total consumer revenue connections at the end of the third quarter were 43.7 million, compared with 45.7 million at the end of the third quarter of 2009 and 44.3 million at the end of the second quarter of 2010."

¹⁹ See Verizon's Investor Quarterly, Fourth Quarter, 2008, January 27, 2009, at 17 (available at: <http://investor.verizon.com/financial/quarterly/vz/4Q2008/4Q08Bulletin.pdf?t=633716980161047881>). (Verizon's Investor Quarterly 4th Quarter 2008.) See also Todd Spangler, "FiOS to Raise Its Voice - Verizon Plans to Widely Roll Out Internet-Based Phone Service in Early 2009," *Multichannel News*, December 12, 2008. Available at, http://www.multichannel.com/article/print/160706-FiOS_to_Raise_Its_Voice.php (*FiOS to Raise Its Voice*.)

telecommunications carriers, Verizon has experienced a shift in demand from its traditional circuit-switched service to IP-enabled voice, data and video services.²⁰

2.2. Universal Service Goals and Support Obligations

Our longstanding goal of universal service ensures that consumers have access to basic voice service that is both affordable and ubiquitously available. The California Legislature has codified this policy, finding that as more citizens are connected to the network, the value of the network grows. Thus, it has been a longstanding commitment of the federal and state governments to promote universal service.²¹ The United States Congress first made universal service a basic goal of telecommunications policy with the passage of the Communications Act of 1934 (1934 Act).²²

In 1983, the California Legislature enacted the Moore Universal Telephone Service Act with the goal of providing high quality basic telephone service at

²⁰ *FiOS to Raise Its Voice*. Todd Spangler states that Verizon has seen a 12% decline in the number of its residential access lines *in one year* (2007-2008). This is confirmed in Verizon's Investor Quarterly 4th Quarter 2008, at 17. For the most recent reporting quarter, Verizon had a 8.5% decline year-over-year in residential and business switched access lines.

<http://investor.verizon.com/financial/quarterly/vz/3Q2010/3Q10Bulletin.pdf?t=634248242683446808>.

²¹ See Cal. Pub. Util. Code § 709 (Pub. Util. Code); 47 U.S.C. § 151, § 254. See also D.08-06-020.

²² Section 1 of the 1934 Act indicates that the FCC was created “[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges” 47 U.S.C. § 151 (as amended).

affordable rates to the greatest number of California citizens.²³ This Commission implemented these objectives when it authorized the first explicit universal service policy for California in D.84-11-028.²⁴

In 1994, the Commission opened a proceeding which produced rules governing a competitive local exchange telephone market. The rules went into effect in 1996. Concurrent with the Commission's action, the Legislature, acknowledging the increasing competition in telecommunications markets, required the Commission to examine the current and future place of universal service in the State, including how universal service should work in newly competitive markets.²⁵

In the Telecommunications Act of 1996 (1996 Act), Congress directed the FCC and the states to take the steps necessary to establish support mechanisms to ensure the delivery of affordable telecommunications service to all Americans in a changing competitive environment.²⁶ This was the first major overhaul of United States telecommunications policy in nearly sixty-two years and it modified earlier telecommunications legislation, primarily the Act of 1934. The

²³ Pub. Util. Code § 871. Assembly Bill (AB) 1348, repealed and reenacted in 1987 by AB 386, Stats. 1987, Chap. 163, Sec. 2. The Commission previously had initiated a "universal service" policy by decision, with costs embedded in basic rates. The Legislature refined that program, and expressly authorized the Commission to fund it through application of an all-end user surcharge on intrastate billings.

²⁴ Investigation on the Commission's Own Motion into the Method of Implementation of the Moore Universal Telephone Service Act, Order Instituting Investigation (OII) 83-11-015, Opinion on Establishing a General Order for Administration of the Moore Act, D.84-11-028, 16 CPUC 2d 381 (November 7, 1984).

²⁵ See Pub. Util. Code § 709.2 and § 709.5.

²⁶ 47 U.S.C. § 254.

1996 Act formalized the FCC's practice of providing universal service support for "telecommunications services" in high-cost areas and for low-income end-users, and added a universal service program for libraries, schools, and public health facilities.²⁷ The 1996 Act also defined the nature of "universal service" as "an evolving level of telecommunications services" that takes into account advances in telecommunications. The 1996 Act further accommodates the financial stature of the service provider by creating a *de minimus* contribution exception for entities providing interstate and international telecommunications, which the FCC has set at \$10,000 or less.²⁸

Section 254 (f) of the Act addresses state universal service and state authority:

A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

A working group of FCC and state public utility commission officials, the Federal-State Joint Board on Universal Service, was charged with establishing

²⁷ *Id.*

²⁸ *De Minimus Exception*, 47 U.S.C. § 254 (d); C.F.R. 54.708; *VoIP Universal Service Order* ¶61.

specific, predictable, and sufficient support mechanisms to preserve and advance universal service.²⁹ In addition, in section 254(b), Congress provided a list of principles upon which the FCC was to base its policies for the preservation and advancement of universal service.³⁰ Among those stated policy objectives are the principles related to support mechanisms, including the following:

- All providers of telecommunications services should contribute in an equitable and nondiscriminatory manner;³¹
- Federal and state support mechanisms must be specific, predictable and sufficient to preserve and advance universal service;³² and
- Any other principles as the Joint Board and the FCC determine are necessary and appropriate.³³

The FCC used this last principle to add a competitive neutrality requirement, an acknowledgement that technology would continue to change.³⁴

Also in 1996, at the behest of the Legislature, the CPUC opened a proceeding to examine the current and future definitions of universal service.³⁵ That proceeding resulted in D.96-10-066, in which the Commission created additional universal service programs, defined basic service, and reaffirmed the

²⁹ 47 U.S.C. § 254.

³⁰ 47 U.S.C. § 254(b)(1)-(7).

³¹ *Id.* at (b)(4).

³² *Id.* at (b)(5).

³³ *Id.* at (b)(7).

³⁴ *Declaratory Ruling* ¶6 at 4.

³⁵ California AB 3643 (Stats. 1994, Chap. 278).

Commission's universal service goals.³⁶ Additionally, the Commission established the policy that customers' bills for telecommunications services explicitly identify surcharges assessed.³⁷

To comply with these statutory objectives, the Commission has implemented a total of five universal service programs. For each of the five programs, telephone corporations are required to collect from customers a surcharge which is calculated as a percentage of each customer's charges for intrastate services. For prepaid intrastate services, the customer pays the surcharge upfront. For a customer that is billed monthly, the surcharges appear on the monthly phone bill. These universal service programs include the following:

- **California LifeLine**, established in 1984,³⁸ provides discounted basic telephone service to low-income households as a means to achieve universal.
- **The California Teleconnect Fund (CTF)**, established in compliance with Assembly Bill (AB) 3643, provides discounts on selected telecommunications services to qualified entities.³⁹

³⁶ See D.96-10-066, which outlined the following objectives: Available and affordable basic telephone service to all Californians regardless of geography, language, culture, ethnicity, physical characteristics or income differences; choice among competitive telecommunications providers; access to new services and technologies as they become available in order to avoid inferior access to information by some groups; and sufficient information to make informed telephone service choices.

³⁷ See D.96-10-066 at 6.

³⁸ See D.84-11-028; (AB 1348, Chapter 1143, Statutes 1983) (AB 1348). The Moore Universal Telephone Service Act was codified as Pub. Util. Code § 871 et seq.

³⁹ AB 3643 (Chap. 278, Stat. 1994); see also D.96-10-066.

- **The Deaf and Disabled Telecommunications Program** (DDTP) was originally created by CPUC decision and then codified in P.U. Code § 2881 *et seq.* Other legislation was added to the Code, ultimately creating four separate programs to provide equipment and services to Californians who are deaf, hard of hearing, or otherwise disabled. The California Relay Service is a component of the DDTP.
- **The California High Cost Funds** provide a source of supplemental revenues to Local Exchange Carriers (LECs) who are Carriers of Last Resort (COLRs) and whose basic exchange access line service rates would otherwise be increased to levels that would threaten universal service.⁴⁰ In D.96-10-066, the Commission identified two programs for the purpose of determining universal service subsidy support; the *California High-Cost Fund A (CHCF-A)* for the State's small LECs, and the *California High-Cost Fund-B (CHCF-B)* for the mid-size and large LECs.
- **The California Advance Services Fund (CASF)** supports the deployment of broadband facilities and service to

⁴⁰ California High Cost Funds were originally identified to support medium and small rural-LECs, whereas large LECs costs and rates were averaged. For a history of funding universal service and the establishment of the original High-Cost Fund, see *re Pacific Bell*, D.88-07-022, *Order Restructuring Local Exchange Telephone Rates and Redistributing Revenues, for a Net Zero Effect on Revenues* (Cal P.U.C. July 8, 1988), as modified by D.91-05-016 and D.91-09-042, and *Pacific Telephone and Telegraph Company*, D.85-06-115, *Third Interim Opinion Addressing Access Charges Assessable to Interexchange Telephone Carriers by Local Carriers and the Risk of Bypass as a Result of the Level of Access Charges Established* (Cal P.U.C. June 12, 1985), as modified by D.88-07-022, D.88-12-044, and D.91-09-042.

unserved and underserved areas of the State.⁴¹ The Legislature codified the CASF in 2008.⁴²

The current surcharge rates for the Public Purpose Programs are:⁴³

<u>Lifeline</u>	<u>DDTP</u>	<u>CHCF-A</u>	<u>CHCF-B</u>	<u>CASF</u>	<u>CTF</u>	<u>Total</u>
1.150%	0.20%	0.00%	0.450%	0.00%	0.079%	1.879%

Currently the CPUC has no requirement in place for VoIP providers to contribute to these universal service programs. While some VoIP providers are currently contributing on a voluntary basis, including Time Warner and Comcast,⁴⁴ others are not. This status quo is not competitively neutral and threatens continued funding for these programs as providers move toward offering IP-based voice services.

2.3. Regulatory Status of VoIP

This Rulemaking follows a series of decisions at federal and state levels regarding the treatment of VoIP providers in the context of universal service support. As the industry transitions to these IP-based applications, regulation must be reviewed to ensure that universal service and other public purpose programs remain appropriately funded in a competitively-neutral manner.

The FCC's Declaratory Ruling of November 5, 2010, has removed much uncertainty regarding state jurisdiction over VoIP, in particular over nomadic

⁴¹ *Order Instituting Rulemaking into the Review of the California High Cost Fund B Program*, D.07-12-054, *Interim Opinion Implementing California Advanced Services Fund* (Cal. P.U.C. June 29, 2006).

⁴² Senate Bill 1193 (2008), codifying the California Advanced Services Fund.

⁴³ Commission mandated telecommunications all-end-user surcharges are here: <http://www.cpuc.ca.gov/PUC/Telco/Consumer+Information/surcharges.htm>.

⁴⁴ See footnotes 16 and 17, *supra*.

VoIP, where state authority was considered to be most precarious. The Declaratory Ruling was in response to a petition from the Nebraska and Kansas state commissions asking for a declaratory ruling that “states are not preempted from imposing universal service contribution requirements on ‘the future intrastate revenues’ of nomadic interconnected VoIP providers.”⁴⁵ As the FCC notes in the Declaratory Ruling, it has extended certain common carrier obligations to interconnected VoIP service providers, including the obligation to contribute to the federal universal service fund.⁴⁶

⁴⁵ *Declaratory Ruling* at ¶1, quoting the Amendment to the Petition of Nebraska Public Service Commission and Kansas Corporation Commission, WC Docket 06-122, at 1 (Sept. 14, 2010, amending the Petition of the Nebraska Public Service Commission and Kansas Corporation Commission for *Declaratory Ruling*, or, in the Alternative, Adoption of Rule Declaring State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues, WC Docket 06-122 (July 16, 2009)). The amendment modified the original petition by dropping the request that assessments be retroactive. “Because the amended petition seeks a declaratory ruling with prospective only effect and does not present the question of retroactivity, we need not and do not reach that question in this Declaratory Ruling.” *Declaratory Ruling*, ¶1, footnote 1.

⁴⁶ *Declaratory Ruling* at ¶6. The FCC cites the following: *IP-Enabled Services; 911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005) (VoIP E911 Order) (E911), *aff’d*, *Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006); *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14989 (2005) (assistance for law enforcement); *IP-Enabled Services*, WC Docket No. 04-36, Report and Order, 22 FCC Rcd 11275 (2007) (disability access); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007) (customer privacy); *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket No. 07-243, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 (2007) (local number portability and numbering administration); *IP-Enabled Services*, WC Docket No. 04-36, Report and Order, 24 FCC Rcd 6039 (2009) (discontinuance notifications).

The FCC announced its regulatory treatment of VoIP in the *E-911 Order* in June of 2005. Since that Rulemaking, the FCC's *actual treatment* of VoIP services for purposes of funding emergency and universal service programs has changed even though its regulatory *classification* of the IP-enabled services has not. In practice then, the FCC has dropped the hands-off approach to VoIP service that it had previously taken, without explicitly determining if VoIP service providers should otherwise be regulated or how VoIP services should be classified.⁴⁷ The Declaratory Ruling does not depart from this approach.

The FCC concluded it had authority to impose E-911 requirements on interconnected VoIP providers under the broad regulatory authority conferred by Title I of the 1934 Communications Act, which applies to "all interstate and foreign communications by wire or radio"⁴⁸ The FCC stated that it had not decided whether interconnected VoIP services are telecommunications or information services. Thus, the FCC analyzed the issues under its Title I ancillary jurisdiction to encompass both types of services.⁴⁹

⁴⁷ To date, the FCC maintains that it has not determined whether VoIP service is to be classified as an information service or a telecommunication service. See *In the matter of Vonage Holdings Corporation's Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission* (WC Docket No, 03-211) (2004) 19 FCC Rcd 22404.

⁴⁸ 47 U.S.C. § 152 (a). See also *E-911 Order* at ¶26.

⁴⁹ Ancillary jurisdiction may be employed when Title I of the Act gives the FCC subject matter jurisdiction over the service to be regulated, and the assertion of jurisdiction is "reasonably ancillary to the effective performance of [the FCC's] various responsibilities." *United States v. Southwestern Cable Co.* (1968) 392 U.S. 157, 178. The FCC found that both predicates for ancillary jurisdiction were satisfied in the instant case. *E-911 Order* at ¶27. *Comcast v. FCC* did not address the adequacy of the FCC's ancillary jurisdiction for purposes of universal service. *Comcast v. FCC*, U.S. Court of Appeals for the District of Columbia Circuit, April 6, 2010.

Footnote continued on next page

In its *E-911 Order*, the FCC adopted rules requiring providers of interconnected VoIP service to supply enhanced 911 (E-911) capabilities to their customers.⁵⁰ The FCC defined “interconnected VoIP service” using the following criteria: (1) the service enables real-time, two-way voice communications; (2) the service requires a broadband connection from the user’s location; (3) the service requires IP-compatible customer premises equipment (CPE); and (4) the service offering permits users generally to receive calls that originate on the public switched telephone network (PSTN) and to terminate calls to the PSTN.⁵¹ The FCC determined that interconnectedness of “interconnected VoIP service” was crucial because it permits users to receive calls from and terminate calls to the PSTN.⁵²

The *E-911 Order* applies to all interconnected VoIP providers, both “nomadic”⁵³ and “fixed.”⁵⁴ The FCC noted that the implementation challenges

<http://pacer.cadc.uscourts.gov/common/opinions/201004/08-1291-1238302.pdf>.

⁵⁰ *E-911 Order* at ¶¶12, 13, and 24.

⁵¹ *Id.* at ¶24. The FCC repeats this definition in the *Declaratory Ruling* at ¶3. 47 C.F.R. § 9.3.

⁵² *Id.* at ¶¶23 and 24; see also *Nebraska Public Service Commission, on its own motion, seeking to establish guidelines for administration of the Nebraska Universal Service Fund*, App. No. NUSF-1, Prog. No. 18, at 8 (April 17, 2007) (*NPSC USF Order*).

⁵³ A *nomadic* VoIP customer can use the service by connecting with a broadband internet connection anywhere in the world to place a call; *fixed* means that the call is associated with a particular physical location and equipment tethered to that location. *Minnesota P.U.C. v. FCC* (8th Cir. 2007), 483 F.3d 570, 575 (*Minnesota P.U.C. v. FCC*).

⁵⁴ Fixed VoIP service describes the use of the same technology, but in a way where the service is used from a fixed location. *Id.* “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* at ¶3.

faced by “nomadic” or “portable” VoIP service providers were similar to obstacles faced by wireless carriers in implementing E-911.⁵⁵ The FCC duly emphasized that it was not making a determination as to whether interconnected VoIP services should be considered telecommunications services or information services.

Meanwhile, in June of 2006, this Commission, as noted above, concluded it was premature to assess our regulatory role over VoIP service, given that the FCC still had not formally acted to clarify the status of interconnected IP services as either telecommunications services or information services within the framework of the Telecommunications Act of 1996.⁵⁶ Shortly thereafter, in the *VoIP Universal Service Order*, issued on June 27, 2006, the FCC established universal service contribution obligations for providers of interconnected VoIP services.⁵⁷ The FCC found that interconnected VoIP service providers offer interstate voice communications and therefore should be subject to the FCC’s mandatory and permissive authority derived from Section 254 of the 1996 Act.⁵⁸ The FCC found that requiring contribution from interconnected VoIP providers was in the public interest for two reasons: first, VoIP services benefit from universal service through their interconnection with the PSTN;⁵⁹ and second, the principle of competitive neutrality requires that universal service should “neither unfairly advantage nor disadvantage one provider over another, and neither

⁵⁵ *E-911 Order* at ¶25.

⁵⁶ *See* D.06-06-010 at 3.

⁵⁷ *See generally VoIP Universal Service Order.*

⁵⁸ *Id.* *See* footnote 30, *supra*, and *Declaratory Ruling* at ¶4.

⁵⁹ *VoIP Universal Service Order* at ¶2.

unfairly favor nor disfavor one technology over another.”⁶⁰ As the FCC further noted, interconnected VoIP service is increasingly used to replace analog voice service.⁶¹

To implement the order, the FCC determined that interconnected VoIP providers must report and contribute to the Universal Service Fund (USF) on all of their interstate and international end-user revenues.⁶² To determine such interstate and international revenues, the FCC gave interconnected VoIP providers three options: (1) they may use the interim safe harbor established in the order (64.9% - representing a reasonable percentage of revenue that can be attributed to interstate traffic); (2) they may report their *actual* interstate revenues and contribute accordingly; or (3) they may rely on *traffic studies*, subject to the conditions described in the order.⁶³

The interim safe harbor was intended to be a convenient alternative for interconnected VoIP providers to use when they cannot accurately determine the exact percentage of revenue generated by their interstate/international traffic. In such cases, the FCC determined it was reasonable to assume that 64.9% of total revenue could be attributed to revenue derived from interstate and international service.⁶⁴ Conversely, should a provider claim that its interstate/ international

⁶⁰ *VoIP Universal Service Order* at ¶44.

⁶¹ *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Notice of Proposed Rulemaking (ET Docket No. 04-295) (2005) 20 FCC Rcd 14989, at ¶42 (*CALEA order*).

⁶² *See VoIP Universal Service Order*.

⁶³ *VoIP Universal Service Order* at ¶¶52 and 53; *Declaratory Ruling* at ¶7 and ¶14.

⁶⁴ *VoIP Universal Service Order* at ¶53.

service is less than 64.9%, it can provide the FCC with a traffic study showing the actual percentage of revenue attributable to that service.⁶⁵

Until the Declaratory Ruling, the FCC had remained officially silent on the states' ability to assess a universal service surcharge on the *intrastate* portion of revenues derived from interconnected VoIP service. At the same time, in establishing a safe harbor provision, the FCC made highly visible the residual percentage of revenue from calls that could be allocated to the intrastate jurisdiction on a default basis.⁶⁶ This safe harbor provision allows the states to adopt that same percentage in order to calculate state USF surcharges. Indeed, this proved to be crucial to the reasoning in the Declaratory Ruling:

While the *Interim Contribution Methodology Order* did not address the subject of preemption, its establishment of a mechanism for separating interstate and intrastate revenues in the specific context of universal service contribution requirements has important implications for our preemption analysis in this proceeding. Now that the Commission has shown that it is possible to separate the interstate and intrastate revenues of interconnected VoIP providers for purposes of calculating universal service contributions, we find no basis at this time to preempt states from imposing universal service contribution obligations on providers of

⁶⁵ *Id.* at ¶54.

⁶⁶ *See Id.* at ¶¶52-57. As noted above, we follow the definition of interconnected VoIP service as provided by the FCC in *E-911 Order* at ¶24 (47 C.F.R. § 9.3) and repeated in the *Declaratory Ruling*: "Interconnected VoIP service is one we define for purposes of the present Order as bearing the following characteristics: (1) the service enables real-time, two-way voice communications; (2) the service requires a broadband connection from the user's location; (3) the service requires IP-compatible CPE; and (4) the service offering permits users generally to receive calls that originate on the PSTN and to terminate calls to the PSTN." (Emphasis in the original; footnotes omitted.) *Declaratory Ruling* at ¶3.

nomadic interconnected VoIP service that have entered the market, so long as state contribution requirements are not inconsistent with the federal contribution rules and policies governing interconnected VoIP service.⁶⁷

The FCC went on to conclude that “the application of state universal service contribution requirements to interconnected VoIP providers does not conflict with federal policies, and could, in fact, promote them.” That is because interconnected VoIP providers benefit from state universal service funds, just as they benefit from the federal Universal Service Fund. Their customers “value the ability to place calls to and to receive calls from users of the PSTN.”⁶⁸ And the FCC again recognized the importance of the “principle of competitive neutrality.”⁶⁹

2.4. E-911 Surcharges

Similar to the treatment of VoIP described above, both the FCC and California have decided it is appropriate to collect 911 surcharges from VoIP service providers. In 2008, the California Legislature enacted Senate Bill (SB) 1040 to amend the Emergency Telephone Users (911) Surcharge Act to extend 911 surcharges to VoIP services as of January 1, 2009.⁷⁰ This Bill requires those entities providing VoIP services whose customers are able to access the “911” emergency system by utilizing the digits 9-1-1, to collect the 911 surcharge from all customers located in California. The service supplier may elect to use one of

⁶⁷ *Declaratory Ruling* at ¶15.

⁶⁸ *Id.* at ¶16.

⁶⁹ *Id.*

⁷⁰ California, SB 1040 (2008), Emergency Telephone Users Surcharge Act (SB 1040); see California Revenue and Taxation Code § 41020.

the following optional methods for each type of service it provides: 1) books and records used in the course of business, 2) traffic or call pattern studies of service provided to customers within California, or 3) the FCC's VoIP Safe Harbor factor.⁷¹

3. Preliminary Scoping Memo

As required by Rule 7.1(d)⁷² of the Commission's Rules of Practice and Procedure (Rules), this Order Instituting Rulemaking (OIR) includes a Preliminary Scoping Memo. In this Preliminary Scoping Memo, we describe the issues to be considered in this proceeding and the timetable for resolving the proceeding.

3.1. It Is Proper to Assess Universal Service Surcharges on Interconnected IP Services

Our objective in this Rulemaking is modest: it is to make the funding for and contribution base of California's universal service programs technology neutral.⁷³ In our interim decision regarding our Telecommunications Public Policy Programs, we took steps to make the California Teleconnect Fund (CTF)

⁷¹ California Revenue and Taxation Code § 41020.

⁷² An order instituting rulemaking shall preliminarily determine the category and need for hearing, and shall attach a preliminary scoping memo. The preliminary determination is not appealable, but shall be confirmed or changed by assigned Commissioner's ruling pursuant to Rule 7.3, and such ruling as to the category is subject to appeal under Rule 7.6.

⁷³ See 47 U.S.C. § 254 (f), "State Authority: A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State."

“more competitively and technologically neutral.”⁷⁴ The Commission has addressed and will continue to address the application of new technologies to meet its commitment to the principles of universal service and technology neutrality.⁷⁵

Based on this objective, and in the face of the rapid growth of IP-enabled voice services in California, we believe it appropriate to require all interconnected VoIP providers operating in California – apart from those meeting a *de minimus* exception -- to contribute to each of the California public purpose programs. Even prior to the FCC’s November 2010 Declaratory Ruling, we were not alone in this belief. In a July 17, 2008, letter to then FCC Chairman Kevin Martin, AT&T argued that VoIP providers be required to contribute to State universal service funds.⁷⁶ The letter states that “the Commission should authorize State Commissions to impose Universal Service Contribution Requirements on VoIP providers.”⁷⁷ AT&T further maintained that:

[T]here remain serious questions at the *state* level about the long-term sustainability of any provider-funded universal

⁷⁴ D.08-06-020, at 2.

⁷⁵ *Id.* at 5. The CPUC conducted a DDTP wireless equipment pilot program for those also eligible to receive LifeLine service, *See also* Resolution T-17089, *To conduct a pilot of a program which offsets the costs of wireless equipment for California Telephone Access Program (CTAP)-certified pilot participants, who meet a certain low-income threshold, using Deaf and Disabled Telecommunications Program (DDTP) funds and to delegate authority to CPUC Executive Director to perform the required functions, including, but not limited to, entering into any necessary contracts, to execute and support the DDTP wireless equipment pilot* (Cal P.U.C. May 3, 2007).

⁷⁶ *In the Matter of IP-Enabled Services, Ex Parte* Letter to Chairman Kevin Martin from AT&T, WC Docket No. 04-36 (Dated July 17, 2008). (*See*: www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/VOIP+Providers.htm.)

⁷⁷ *Id.* at 11.

service model that does not include VoIP. Authorizing states to impose state universal contribution requirements on VoIP would help address this concern and thereby further the federal policy interest in enabling states to administer sustainable universal support mechanisms.⁷⁸

AT&T also pointed out that a “regime in which VoIP providers are free from state universal service assessments that apply to other competing carriers undermines the principle of competitive neutrality.”⁷⁹ AT&T concluded by stating:

The Commission should . . . make clear that state universal contribution requirements on VoIP are consistent with federal policy and therefore lawful. As noted, the absence of such requirements at present creates an uneven playing field that not only distorts competition but also threatens the stability of state universal service funds.⁸⁰

Given the support for imposing a state universal service obligation on VoIP providers from major industry providers such as AT&T, from the FCC in its Declaratory Ruling, and from California’s own actions respecting VoIP and the collection of E-911 surcharges, we believe it appropriate for the Commission to take action at this time.

3.2. We Have the Authority to Collect Universal Service Charges on Interconnected IP Service Providers

Based on prior FCC decisions and rulings and our own authority, we tentatively conclude that we may assess universal service surcharges on

⁷⁸ *Id.* at 12.

⁷⁹ *Id.*

⁸⁰ *Id.* at 13 and 14.

intrastate revenues of interconnected IP telephone services provided to residents and businesses in the State.

While the 1934 Communications Act generally grants the FCC exclusive jurisdiction over interstate (and international) communications, it leaves the regulation of intrastate communications to the states.⁸¹ The Act permits states to “adopt regulations not inconsistent with the [FCC’s] rules to preserve and advance universal service.”⁸² In the Declaratory Ruling, the FCC chose not to “preempt states from imposing universal service contribution requirements on the future intrastate revenues of nomadic interconnected VoIP providers,”⁸³ citing the Act:

Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the state, to the preservation and advancement of universal service in that state. A state may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that state only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden the universal service support mechanisms.⁸⁴

In the Declaratory Ruling, the FCC placed two qualifications on state authority in this context:

⁸¹ *FCC Amici Brief*, at 4, *Qwest Corp. v. Scott*, 380 F.3d 367, 370 (8th Circuit); 47 U.S.C. § 152(b).

⁸² 47 U.S.C. § 254(f).

⁸³ *Declaratory Ruling* at ¶12.

⁸⁴ 47 U.S.C. § 254(f).

- 1) The relevant state's contribution rules are consistent with the FCC's universal service contribution rules;
- 2) The state does not apply its contribution rules to intrastate interconnected VoIP revenues attributable to services provided in another state.⁸⁵

With respect to the issue of duplicative state universal service charge assessments, the Declaratory Ruling cites the example of wireless billings:

This issue of duplicative assessments is not one of first impression for states. Concern about potential double billing of intrastate revenues exists in the wireless context as well, because a wireless customer's principal place of use may be different from his or her billing address. Evidence in the record indicates that states have successfully resolved allocation of wireless intrastate revenues for purposes of state universal service contributions without the need for Commission intervention.⁸⁶

In addition to the FCC's conclusion that we are not federally preempted, we believe state law authorizes us to act. The Moore Universal Telephone Service Act was adopted in 1987 with the goal of offering high quality basic telephone service at affordable rates to the greatest number of citizens.⁸⁷ Pursuant to the Moore Act, the CPUC developed programs to assure that the statute's goal and objectives were met. These programs, now called the Universal Service Public Purpose Programs, require telephone corporations, as defined in section 234 of the Public Utilities Code, to contribute specific surcharges to each program fund.⁸⁸

⁸⁵ *Declaratory Ruling* at ¶11.

⁸⁶ *Declaratory Ruling* at ¶21.

⁸⁷ Pub. Util. Code § 871.

⁸⁸ See footnote 20, *supra*. See D.84-11-028. AB 1348.

A "telephone corporation" is defined as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state."⁸⁹ Further, "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."⁹⁰ We believe this broad definition of "telephone corporation" includes interconnected VoIP service providers.⁹¹

We therefore, tentatively conclude that this Commission has the authority to require interconnected VoIP service providers to satisfy contribution obligations to support our universal service public purpose programs. We seek comment on this tentative conclusion and whether we need to reach this conclusion in order to achieve our limited purposes here. Further, we tentatively conclude that interconnected VoIP service providers should be permitted to choose among the three options identified above for separating interconnected IP interstate/international revenues from California intrastate interconnected IP

⁸⁹ Pub. Util. Code § 234.

⁹⁰ Pub. Util. Code § 233.

⁹¹ As we noted above, the FCC defines "interconnected" VoIP service as follows: (1) the service enables real-time, two-way voice communications; (2) the service requires a broadband connection from the user's location; (3) the service requires IP-compatible customer premises equipment; and (4) the service offering permits users generally to receive calls that originate on the PSTN and to terminate calls to the PSTN. *VoIP Universal Service Order* at ¶24; *Declaratory Ruling* at ¶3 (47 C.F.R. § 9.3.)

revenues and provide contributions to our public policy programs accordingly, and seek comment on this methodology.

3.3. Implementation Issues

In the *VoIP Universal Service Order* and in the Declaratory Ruling, the FCC noted that it had established the principle of competitive neutrality to guide the development of universal service programs.⁹² This principle was a driving factor in the decision to require interconnected VoIP providers to contribute to the support mechanisms.⁹³

As we have also observed, the FCC found it appropriate to extend universal service contribution obligations to classes of providers that benefit from universal service through their interconnection with the PSTN, such as VoIP providers.⁹⁴ Currently, VoIP providers are required to contribute to the federal Universal Service Fund on all of their interstate and international end-user revenues. To fulfill this obligation, interconnected VoIP providers may employ one of the three options already described for calculating revenues against which surcharges are assessed.⁹⁵

In this Rulemaking, we tentatively adopt a contribution methodology consistent with the FCC's orders and the Declaratory Ruling. For our purposes,

⁹² *VoIP Universal Service Order*, at ¶37; *Declaratory Ruling* at ¶¶6 and 16.

⁹³ *VoIP Universal Service Order*, at ¶44; *Declaratory Ruling* at ¶22: "We do not believe that those policies [of encouraging the development of IP-based services and promoting the deployment of broadband infrastructure] are best advanced by giving one class of providers an unjustified regulatory advantage over its competitors..."

⁹⁴ *VoIP Universal Service Order*, ¶37; see also FCC's definition of interconnected VoIP service, *E-911 Order*, at ¶ 24; *Declaratory Ruling* at ¶¶6 and 16.

⁹⁵ *VoIP Universal Service Order*, at ¶¶52 and 53; *Declaratory Ruling* at ¶¶14, 17, and 19.

all interconnected IP voice service providers earning California intrastate revenues shall contribute to our Universal Service programs using one of the FCC-approved options already outlined:

- 1) Use the interim safe harbor allocation factor set forth in the FCC's USF Contribution Order, 35.1% intrastate revenues;⁹⁶
- 2) Use actual intrastate revenues; and
- 3) Use an FCC-approved traffic study to identify intrastate traffic or any other formula that may be approved in any future FCC decision and authorized by this Commission.

VoIP service providers will be permitted to choose among these options for separating interconnected IP interstate/international voice revenues from California intrastate interconnected IP voice revenues, and to provide contributions to our public policy programs accordingly.

Additionally, the FCC determined that "a provider of interstate and international telecommunications whose annual universal service contribution is expected to be less than \$10,000 is not required to contribute to the USF, or file a Telecommunications Reporting Worksheet unless it is required to contribute to other support and cost mechanisms. VoIP providers that meet this *de minimus* exemption need not contribute to the Fund."⁹⁷ We tentatively mirror the FCC's standard for reporting and remitting. If interconnected VoIP providers do not contribute to the federal Universal Service Fund under the FCC's *de minimus* criterion, they need not collect and remit California universal service surcharges

⁹⁶ The FCC percentage for the interstate portion is 64.9%; 35.1% represents the remaining portion that may be allocated to intrastate service.

⁹⁷ 47 U.S.C. § 254 (d). *VoIP Universal Service Order* ¶61.

for their interconnected VoIP revenues within this state. The Commission proposes to adopt these criteria pursuant to the Commission's state authority with respect to intrastate services.

We seek comment on two implementation questions.

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

3.4. Standards for Identification of VoIP Providers

3.4.1. FCC Reporting Requirements

The FCC requires that “[a]ll providers of interstate telecommunications within the United States must file an FCC Form 499-Q Telecommunications Reporting Worksheet.”⁹⁸ Further, the FCC requires that providers “must file this Worksheet, and are subject to universal service contribution requirements, if they offer interstate telecommunications for a fee to the public even if only a narrow or limited class of users could utilize the services.”⁹⁹ In the *VoIP Universal Service Order*, the FCC determined that “interconnected VoIP providers must file this

⁹⁸ *VoIP Universal Service Order*, Appendix D, Telecommunications Reporting Worksheet, FCC Form 499-Q: Instructions for Completing the Quarterly Worksheet for Filing Contributions to Universal Service Support Mechanisms. (Available at: <http://www.fcc.gov/Forms/Form499-Q/499q.pdf>.)

⁹⁹ *Id.*

Worksheet if they do not qualify for the *de minimus* exemption under the Commission's universal service rules."¹⁰⁰

The FCC compiles a database of the detailed contact and business information regarding each provider who files the required Worksheet.¹⁰¹ The database is searchable by State/Jurisdiction where service is provided, by principle communications type (e.g., interconnected VoIP), etc., and is accessible to the public. Currently, there are some 275 interconnected VoIP providers registered with the FCC who also provide service within California.

3.4.2. Registration with the Board of Equalization

The California Board of Equalization (BOE) is charged with collecting surcharges to support the State's E-911 system. As of January 1, 2009, providers of VoIP services whose customers are able to access the "911" emergency system by utilizing the digits 9-1-1, are required to register with the BOE,¹⁰² and to remit 911 surcharges to the BOE.¹⁰³

3.4.3. CPUC Registration Requirement

Because interconnected VoIP providers connect to the PSTN and otherwise meet the definition of a "telephone corporation,"¹⁰⁴ we tentatively conclude that a simple registration with the Commission, such as that required for wireless providers, will suffice for our purposes in this Rulemaking. We seek comment

¹⁰⁰ *Id.*

¹⁰¹ FCC Consumer and Governmental Affairs Bureau Website - Telecommunications Reporting Worksheet Form 499-A. Available at: <http://fjallfoss.fcc.gov/cgb/form499/499a.cfm>.

¹⁰² See SB 1040.

¹⁰³ *Id.*

¹⁰⁴ Pub. Util. Code § 234. See footnote 78, *Supra*.

on this tentative conclusion and the proposed VoIP Registration Form (see Appendix) by which we may implement this registration process.

4. Category of Proceeding

The Commission's Rules of Practice and Procedure require that an order instituting rulemaking preliminarily determine the category of the proceeding and the need for hearing.¹⁰⁵ Pursuant to Rule 7.1(d), we preliminarily determine this rulemaking to be "quasi-legislative" as that term is defined in Rule 1.3(d). The preliminary determination is not appealable, but shall be confirmed or changed by assigned Commissioner's ruling pursuant to Rule 7.3, and such ruling as to the category is subject to appeal under Rule 7.6.

Our purpose is to solicit comments from interested parties regarding the appropriate rules for implementing a program to require Interconnected VoIP service providers to contribute to the California Public Purpose Programs for the purpose of furthering the goals of universal service. We contemplate that this proceeding will be conducted through a written record. An order will issue based on the record established in this docket. However, the Commissioner and Administrative Law Judge (ALJ) assigned to this OIR may adjust this preliminary assessment as necessary.

5. Proposed Schedule and Need for Hearing

For purposes of addressing the issues in this rulemaking, we establish the following tentative schedule, which is subject to change by the assigned Commissioner or the assigned ALJ:

Proposed Schedule

¹⁰⁵ Rule 7.1(d).

Parties Advise Process Office to be Placed on Service List	20 days after the mailing date of this OIR
Responses to OIR	30 days after the mailing date of this OIR
Replies	15 days after responses are received
Comments on Proposed Rule	30 days after Issuance of Proposed Rule
Reply Comments on Proposed Rule	15 days after Comments on Proposed Rule

As previously stated, we do not anticipate the need for evidentiary hearings, but any party who believes hearings are necessary may make that request in its response to the OIR. The request must identify the specific questions of material fact to be addressed through evidentiary hearings. The assigned Commissioner, in consultation with the assigned ALJ, will determine the need for a prehearing conference or hearings. Thereafter, the assigned Commissioner will issue a scoping memo that determines the category, need for hearing, scope, and schedule of this rulemaking. The ruling, only to category, may be appealed under the procedures in Rule 7.6. Through the scoping memo and other rulings, the assigned Commissioner, or the assigned ALJ with the assigned Commissioner's concurrence, may adjust the timetable as necessary during the course of the proceeding and establish the schedule for remaining events.

This proceeding will conform to the statutory case management deadline for quasi-legislative matters set forth in Public Utilities Code Section 1701.5 of 18 months.

6. Parties and Creation of the Official Service List

All telephone companies and providers of IP-enabled voice services to end-users in the State under the Commission's jurisdiction are made respondents to this proceeding. We invite broad participation. However, whether they

choose to participate in this proceeding or not, all interconnected VoIP service providers within the State will be bound by the outcome of this proceeding.

The Commission will create an official service list for this proceeding, which will be available at http://www.cpuc.ca.gov/published/service_lists. We anticipate that the official service list will be posted before the first filing deadline in this proceeding. Before serving documents at any time during this proceeding, parties shall ensure they are using the most up-to-date official service list by checking the Commission's website prior to each service date.

If the OIR names you as a respondent, you are already a party, but you or your representative must still ask to be added to the official service list. While all respondents will be bound by the outcome of this proceeding, only those who notify us that they wish to be on the service list will be accorded service until a final decision is issued. All persons seeking to be added to the service list, including respondents, shall inform the Commission's Process Office of the below noted information no later than 20 days after the issuance date of this rulemaking via electronic mail (Process_Office@cpuc.ca.gov) or by postal mail (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California 94102):

- Name and party represented, if any;
- Address;
- Telephone number;
- Email address;

- Request for Party, State Service, or Information Only status; and¹⁰⁶
- Specify the docket number of this rulemaking in the subject line of the email or letter.

Upon receipt of your information, the Process Office will place your name on the official service list posted on the Commission's website as soon as practicable.

In addition, interested persons may be added to the official service list after this 20-day period, but will only receive service of documents that are filed subsequent to their addition to the service list. You may become a party beyond this 20-day period by filing comments in response to this rulemaking pursuant to Rule 1.4(a)(2) or by making a motion to become a party pursuant to Rule 1.4(a)(3) or (a)(4). A person seeking party status pursuant to Rule 1.4(a)(3) or (a)(4) shall comply with Rule 1.4(b). After the expiration of this 20-day period, you also may have your name added to the official service list, either as State Service or Information Only, upon request to the Process Office (Rule 1.9(e)). A person may change the mailing address or e-mail address for service or the designation of a person for service by sending a written notice to the Process Office and serving a copy of the notice on each person on the official service list (Rule 1.9(e)).

The Executive Director shall serve a copy of this Order Instituting Rulemaking on each respondent and on each person on the service list for

¹⁰⁶ Party status is, in addition to respondents, for those planning to actively participate in this rulemaking through, at a minimum, submission of written comments on the questions raised herein. State Service status is for employees of the State of California who will not be submitting comments. Information Only status is for those who wish to follow the proceeding and receive electronic service of documents associated with it, but who will not be actively participating.

R.06-05-028, our rulemaking to review the telecommunications universal service programs.

Service and receipt of this order does not confer party status on any person, and does not result in that person being placed on the official service list for this proceeding. You must follow the procedures explained above to become a party and/or have your name placed on the official service list.

6. Service of Documents

After the official service list is issued, parties must use the most up-to-date official service list on the Commission's website when serving documents. In addition, service of all documents filed with the Commission's Docket Office must be done consistent with Rule 1.9 and Rule 1.10. These rules permit electronic mail (e-mail) service of documents, in searchable format. In this proceeding, parties shall provide concurrent e-mail service to all persons on the official service list for whom an e-mail address is available, including "Party," "State Service," and "Information Only" designations.

We encourage electronic filing and e-mail service in this proceeding. Parties can find information about electronic filing of documents at www.cpuc.ca.gov/PUC/efiling. E-mail service should be made according to Rule 1.10. Parties providing e-mail service should also provide a paper copy to the assigned Commissioner and ALJ. The electronic copy should be in Microsoft Word or Excel formats to the extent possible. The paper copy should be double-sided. E-mail service of documents should occur no later than 5:00 p.m. on the date that service is scheduled to occur.

If you have questions about the Commission's filing and service procedures, contact the Commission's Docket Office.

7. Commission's Public Advisor Office

Any person interested in participating in this rulemaking and who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor's Office in San Francisco at (866) 849-8390 or (415) 703-2074, (TTY-toll free) (866) 836-7825 or (TYY) (415) 703-5282, or in Los Angeles at (866) 849-8391 or (213) 649-4782, or send an e-mail to public_advisor@cpuc.ca.gov. More information about the Public Advisor's Office is available at the Commission's website, <http://www.cpuc.ca.gov>.

8. Intervenor Compensation

Any party that expects to claim intervenor compensation for its participation in this rulemaking in accordance with Rule 17.1 of the Commission's Rules and Practices and Procedure shall file its notice of intent to claim intervenor compensation no later than 30 days after the first prehearing conference or pursuant to a date set forth in a later ruling which may be issued by the assigned Commissioner or ALJ.

9. Ex Parte Communications

This proceeding is subject to Article 8 of the Rules of Practice and Procedure, which specifies standards for engaging in ex parte communications and the reporting of such communications. Pursuant to Rule 8.2(a), ex parte communications will be allowed in this proceeding without any restrictions or reporting requirements unless and until the Commission modifies this determination pursuant to Rule 7.6.

IT IS ORDERED that:

1. A Rulemaking is instituted to require Interconnected VoIP service providers to contribute to the California Public Purpose Programs for the purpose of furthering the goals of universal service and to determine in what way they shall contribute.
2. All telephone corporations and providers of IP-enabled voice services to end-users in the State under the Commission's jurisdiction are made respondents to this proceeding.
3. The Executive Director shall serve a copy of this rulemaking on all respondents to this proceeding and the parties to Order Instituting Rulemaking 06-05-028.
4. This rulemaking is preliminarily determined to be a "quasi-legislative" proceeding as that term is defined in Rule 1.3(d) of the Commission's Rules of Practice and Procedure.
5. Not later than 20 days after the mailing date of this rulemaking, respondents and all other persons or entities seeking to be included on the service list for this proceeding may do so by informing the Commission's Process Office. Requests to be added to the service list should be sent via email (Process_Office@cpuc.ca.gov) or by postal mail (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California 94102). The request should include the following information: (1) the full name, address and telephone number of the person or entity upon whom service should be made (if the participant is an entity, the full name of the entity's representative for service of process should also be included); (2) email address if available; and (3) request for party, state service, or information only status.

6. The assigned Administrative Law Judge shall include in the final decision an ordering paragraph that directs the Process Office to serve that decision and the final rules adopted by it on the service list then current as well as on all other respondents named herein.

7. Responses to the Order Instituting Rulemaking and Comments shall conform to Rule 6.2 and shall be filed with the Commission's Docket Office and served in conformance with the schedule and other directions contained in Section 6 of this document.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX

VoIP Provider Registration Form

STATE OF CALIFORNIA
Governor
PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

ARNOLD SCHWARZENEGGER,



VOIP Provider Registration

VOIP providers that submit CPUC fees and public program surcharges should complete the information on this sheet and return to

telcofiling@cpuc.ca.gov

You will be assigned an ID number by to use on fee and surcharge transmittal forms used to submit the fees and surcharges; the ID will be sent to you by e-mail. The fee and surcharge transmittal forms can be found at:

Public Program Surcharges: <http://www.cpuc.ca.gov/PUC/telco/Information+for+providing+service/>

Company Legal Name: _____

DBA: _____

DBA: _____

Contact Person:

1. Name:
2. Title:
3. E-Mail Address:
4. Address:
5. City:
6. State:
7. Zip Code:
8. Telephone:
9. Fax:
10. Web-Site Address:
11. Date:

For CPUC Use Only

UCS ID Number _DVS - _____ Issued by _____ Date _____

(END OF APPENDIX)

^