WC Docket No. 26-125

COMMENT

of

WASHINGTON LEGAL FOUNDATION

to the

FEDERAL COMMUNICATIONS COMMISSION

In Support of
AT&T Services, Inc., Petition for Preemption and Declaratory Ruling
WC Docket No. 26-125 (filed May 20, 2026)

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Submitted Electronically (https://fcc.gov/ecfs/).
Joseph Calascione, Chief
Wireline Competition Bureau
Federal Communications Commission
WC Docket No. 26-125
45 L Street, NE
Washington, DC 20554

Re: *In the Matter of Petition of AT&T for Preemption and Declaratory Ruling Regarding California's Carrier of Last Resort and Related Requirements*
WC Docket No. 26-125 (in response to the Public Notice at DA-26-520)

Washington Legal Foundation (WLF) submits this comment to the Federal Communications Commission (FCC or Commission) in response to the Commission's invitation for comments on AT&T's Petition for Preemption and Declaratory Ruling.

Interest of WLF

WLF is a nonprofit, public-interest law firm and policy center with supporters nationwide. It promotes free enterprise, limited government, and the rule of law. WLF has long sought to ensure that federal law operates uniformly and efficiently, as Congress intended, by avoiding the economic inefficiencies that arise when multiple layers of government seek simultaneously to regulate the same business activity. Excessive or conflicting state rules often frustrate the operation of specific federal regulatory regimes and can make it nearly impossible for regulated entities to comply with both federal and state laws.

To that end, WLF often participates as an amicus curiae in litigation over the preemptive reach of federal communications law.[1] WLF also regularly files formal comments with federal administrative agencies, including the FCC, to ensure faithful adherence to federal law.[2] And WLF's Legal Studies division publishes expert commentary on these questions.[3] As detailed below, WLF believes that granting AT&T's Petition will reaffirm the Commission's Section 214 authority under the

[1] *See, e.g., N.Y. State Telecomms. Ass'n v. James*, 101 F.4th 135 (2d Cir. 2024); *ACA Connects v. Bonta*, 24 F.4th 1233 (9th Cir. 2022).

[2] *See, e.g., In re Safeguarding and Securing the Open Internet*, WC Docket No. 23-320, FCC 23-83 (Dec. 12, 2023); *In re Proposed FCC Rule on Protecting Privacy*, WC Docket No. 16-106, FCC 16-39 (May 27, 2016).

[3] *See, e.g.,* Corbin K. Barthold, *The Second Circuit Sticks it to Ajit Pai—and Badly Misconstrues Federal Preemption—in NY Telecom Law Ruling*, WLF Legal Pulse (May 29, 2024), https://perma.cc/639C-V44C.

Communications Act of 1934 and ensure uniform, coherent rules for the telecommunications industry.

Introduction

For more than a decade, the Commission has charted a single course: retire legacy copper, build modern networks, and serve the public by clearing the way for that transition. It built the Section 214 framework that governs copper discontinuance, streamlined that path in the Network Modernization Order, and approved AT&T's copper retirements time and again. But California disagrees. Through its carrier-of-last-resort regime, the California Public Utilities Commission (CPUC) forces AT&T to keep outdated copper alive, blocks the very discontinuances the Commission has authorized, and—rather than reform—has moved to *expand* those obligations while barring AT&T from seeking relief until at least 2028.

That collision with federal policy cannot stand. Copper telephone service is jurisdictionally mixed, which places its discontinuance within the Commission's exclusive interstate authority. California's regime founders on three independent preemption principles. First, Section 214 expressly preempts state requirements that interfere with a federal discontinuance authorization. Second, the impossibility exception preempts intrastate rules where interstate and intrastate service can no longer be separated and federal regulation is needed to advance a valid federal objective—both true here. And lastly, conflict preemption forecloses a state regime that nullifies the Commission's Section 214 authority and frustrates its goal of spurring network modernization. On any of these grounds, the Commission can—and should—preempt.

I. The Commission holds exclusive authority over copper discontinuance because copper is a jurisdictionally mixed service.

The Network Modernization Order holds that Section 214 "creates an exclusively federal discontinuance regime for interstate or jurisdictionally mixed telecommunications services."[4] Legacy copper service is exactly that kind of service.

Consumers no longer buy local and long-distance as separate subscriptions; "all-distance" service is the norm. Interstate and intrastate calling have fused. Even if a carrier could sell the two separately, the network that carries the calls cannot be split in two—a single network connects every call, local or long-distance. As AT&T's

[4] *Reducing Barriers to Network Improvements and Service Changes; Accelerating Network Modernization*, WC Docket Nos. 25-208, 25-209, FCC 26-19, ¶ 108 (Mar. 27, 2026) (*Network Modernization Order*).

Petition explains, if the Commission approved discontinuance of interstate service while California withheld approval for intrastate service, the carrier could not comply; no carrier can retire half of a single set of wires.[5]

Copper telephone service is thus jurisdictionally mixed, and the statute places its discontinuance squarely within the Commission's authority. On any of three preemption theories, the Commission can—and should—preempt California.

II. The Commission has authorized copper retirement as a federal objective—and California blocks it.

The Commission has long treated copper retirement and the move to modern networks as a federal goal—and it has used its statutory tools to accomplish that mission. In 2014, it relieved carriers of certain eligible-telecommunications-carrier obligations in designated census blocks.[6] And in 2016, it released them from Lifeline duties to new customers in designated counties.[7] Both moves freed capital to flow toward modern broadband.

A year later, the Commission built the framework that governs these transitions today. Its 2015 Technology Transitions rules opened a path for carriers to discontinue legacy copper voice service, complete with an Adequate Replacement Test within the Section 214 discontinuance process.[8] AT&T has walked that path ever since—applying for, and winning, Commission approval to retire copper wherever adequate replacements exist.[9] This year, the Network Modernization Order streamlined the path further and confirmed the reach of the Commission's Section 214 discontinuance authority.[10]

The throughline is unmistakable. Retiring copper and transitioning to modern alternatives serves the American public, and the Commission has said as much. Exercising its Section 214 authority, it has approved discontinuance after discontinuance to advance that salutary federal objective.

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[5] AT&T Pet. at 12-14.

[6] *Connect America Fund*, Report and Order, 29 FCC Rcd. 15644, ¶ 65 (2014).

[7] *Lifeline and Link Up Reform and Modernization*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd. 3962, ¶ 337 (2016).

[8] *Technology Transitions*, Report and Order, 30 FCC Rcd. 9372 (2015).

[9] AT&T Pet. at 4–6.

[10] *Network Modernization Order*, FCC 26-19, ¶¶ 106–09 (Mar. 27, 2026).

California has other ideas. The CPUC requires every carrier to provide "basic service" to all residential households in its territory—and "basic service," as California defines it, can be met in practice only by legacy copper-based telephone service. The state has bolted onto that definition a list of copper-specific demands: customers must be able to choose their own long-distance carrier, receive a free white-pages directory, and reach operator services.[11] California has gone further still, rejecting Commission-approved alternatives, declaring that wireless can never "be a full substitute" for a carrier of last resort, and refusing to adopt service-quality standards for non-wireline technologies.[12]

Against that regulatory whipsaw, AT&T asked for relief. In 2023 it applied to surrender its carrier-of-last-resort designation across its California territory and to obtain the associated tariff relief, supporting the application with evidence that 99 percent of the population in its service area can already have at least three alternatives to copper available. California said no.[13]

What followed was not reform but entrenchment. The CPUC opened a rulemaking to revisit its rules—then barred AT&T from filing another application for relief until a year after that rulemaking closes. Two years on, the proceeding grinds forward, with a decision pushed to at least February 2027. If that date holds, AT&T cannot even ask again until 2028—nearly five years of process before a single customer transitions to a modern network. And the direction of travel runs backward: rather than loosen the carrier-of-last-resort regime, California has proposed to expand it, floating new obligations that would force carriers like AT&T to offer wireline broadband across the entire service territory.

California's rules do not merely slow the copper transition. They make it impossible—colliding head-on with the Network Modernization Order and with the discontinuances the Commission has already approved.

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[11] Cal. Pub. Util. Comm'n, Decision No. 12-12-038 (Dec. 20, 2012) (setting forth the required elements of basic service for carriers of last resort); *see also* Cal. Pub. Util. Comm'n, Decision No. 96-10-066 (Oct. 25, 1996) (establishing the foundational framework for basic service and carrier-of-last-resort obligations).

[12] *See* Cal. Pub. Util. Comm'n, Decision Denying Application of AT&T California to Be Relieved of Its Carrier of Last Resort Obligations, A.23-03-002 & A.23-03-003 (adopted June 20, 2024).

[13] *Id.*

III. California's regime is preempted three times over.

With the Commission's exclusive authority established and California's obstruction laid bare, the only question left is which preemption doctrine California's regime offends. The answer is all three.

A. Express preemption.

Section 214 makes the answer plain: state requirements fall when they interfere with the Commission's authorization to discontinue interstate or jurisdictionally mixed service. The statute's structure leaves no daylight. Subsection (a) forbids any carrier from discontinuing service without the Commission's approval.[14] Subsection (b) gives States notice that the Commission is weighing a discontinuance—but no say on the outcome.[15] Subsection (c) vests the discontinuance power in the Commission alone; once it approves, a carrier need seek no further blessing, and any contrary state law yields.[16]

That is precisely this case. California still demands that AT&T win state approval before retiring copper the Commission has already cleared. Section 214 forbids it.

B. Impossibility-exception preemption.

The Communications Act tried to draw a clean line—States over intrastate service, the Commission over interstate. But when that line can no longer be drawn, the courts apply an impossibility exception: intrastate regulation is preempted where (1) the interstate and intrastate components of a service cannot be separated, and (2) federal regulation is needed to advance a valid federal objective.[17] Both conditions hold here.

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[14] 47 U.S.C. § 214(a).

[15] 47 U.S.C. § 214(b); *Network Modernization Order*, FCC 26-19, ¶ 108 (Mar. 27, 2026) ("Once the Commission authorizes discontinuance, a carrier may discontinue the covered service 'without securing [other] approval.'").

[16] 47 U.S.C. § 214(c); *Network Modernization Order*, FCC 26-19, ¶ 109 (Mar. 27, 2026) ("[T]he question of whether a carrier may discontinue a specific interstate service is wholly governed by section 214(a)–(c).").

[17] *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 375 n.4 (1986); *Pub. Serv. Comm'n of Md. v. FCC*, 909 F.2d 1510, 1515 (D.C. Cir. 1990); *California v. FCC*, 39 F.3d 919, 931–33 (9th Cir. 1994).

Start with separability. Copper service no longer divides into local and long-distance subscriptions; "all-distance" calling is the norm. Local and long-distance calls ride the same network, and that network cannot be carved into local and interstate pieces. For regulatory purposes, the two services are indistinguishable.

Turn to the federal objective. Through its Technology Transitions orders, its Network Modernization Order, and its repeated approvals of AT&T's copper discontinuances, the Commission has established network modernization as a federal goal—and granting AT&T's application would advance it. Overriding California's rules is thus necessary to vindicate the Commission's own objective.

C. Conflict preemption.

Finally, California's regime cannot coexist with federal law. "State law is preempted when it 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'"[18] By blocking AT&T from retiring copper, the CPUC nullifies the very Section 214 authority Congress gave the Commission. It frustrates the Commission's express goal of "spur[ring] network modernization."[19] And it lets California seize a role Section 214 never assigned the States—gatekeeper over a decision the statute reserves for the Commission alone. That conflict is reason enough to preempt.

IV. Preemption Frees Investment for Modern Networks by Retiring Obsolete Copper.

The FCC's targeted preemption of state mandates that obstruct copper retirement advances sound communications policy. By streamlining discontinuance procedures under Section 214 and preempting state requirements that conflict with federal authorizations or force continued maintenance of obsolete networks, the Commission correctly removes artificial barriers to the deployment of modern IP-based infrastructure. Legacy copper networks, designed for nineteenth-century voice service, now serve a rapidly shrinking customer base while imposing outsized costs and constraining investment in higher-capacity alternatives. The March 2026 Modernization Order recognizes this mismatch and aligns federal rules with both

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[18] *Arizona v. United States*, 567 U.S. 387, 399 (2012); *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000).

[19] *Network Modernization Order*, FCC 26-19, ¶ 2 (Mar. 27, 2026).

technological reality and statutory directives to promote advanced communications services.[20]

Maintaining these deteriorating facilities diverts substantial resources from productive uses. Carriers report spending billions annually on copper upkeep—AT&T alone incurs more than one billion dollars per year in California for a network segment now used by only a small fraction of households.[21] Industry analysis confirms the scale of the inefficiency: all-fiber networks generate approximately $91 in lower annual operating expenses per home passed compared with legacy DSL equivalents, driven primarily by sharply reduced truck rolls and power consumption.[22] These savings are not marginal; across millions of homes they represent tens of billions in capital and operational resources that can instead fund fiber and wireless builds. Forcing carriers to continue propping up legacy copper for ever-fewer subscribers creates precisely the kind of deadweight loss that well-designed regulation should avoid.[23]

The performance gap further underscores the policy case for transition. Legacy copper networks lack the bandwidth and scalability required for contemporary and future applications. In contrast, fiber can deliver exponentially greater capacity—a single fiber optic cable has a theoretical capacity of approximately 86,000,000 Gigabits per second, while the equivalent bundle of copper cables supports less than 0.01% of that capacity.[24] What's more, a single fiber location can serve a 40-kilometer area through passive infrastructure, whereas copper or coaxial systems require dozens of active locations to cover the same distance.[25]

The Commission's Modernization Order preserves essential safeguards—customer notice, 911 coordination requirements, and standards for adequate replacement services—while eliminating unnecessary procedural hurdles. Preemption applies only where state rules conflict with federal Section 214

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[20] *Id. at* ¶ 1.

[21] AT&T Pet. at 3.

[22] Fiber Broadband Ass'n, *Operational Expenses for All-Fiber Networks are far Lower Than for Other Access Networks* 12 & fig.7 (2020), https://tinyurl.com/59bmhfkw.

[23] *Network Modernization Order*, FCC 26-19, ¶ 49 (Mar. 27, 2026).

[24] Fiber Broadband Ass'n, *The Benefits of Retiring Copper Today* 7 (2024), https://tinyurl.com/j45xsbpu.

[25] *Id.* at 6.

authorizations or otherwise impede the national policy of moving to next-generation networks.[26] It leaves intact legitimate state interests in consumer protection and universal service implementation within federal bounds.

In short, granting AT&T's Petition aligns with the Commission's approach to treat copper retirement as an ordinary, efficiency-driven technology transition rather than an occasion for indefinite regulatory lock-in. By clearing away mandates that compel carriers to maintain obsolete facilities at great expense, preemption frees investment for networks that deliver greater speed, reliability, and functionality.

Conclusion

Copper's day has passed. The Commission should grant the Petition and preempt California's regime.

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[26] *Network Modernization Order*, FCC 26-19, ¶ 106 (Mar. 27, 2026).