BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Joint Application of Comcast Corporation, Time Warner Cable Inc., Time Warner Cable Information Services (California), LLC, and Bright House Networks Information Services (California), LLC for Expedited Approval of the Transfer of Control of Time Warner Cable Information Services (California), LLC (U-6874-C); and the Pro Forma Transfer of Control of Bright House Networks Information Services (California), LLC (U-6955-C), to Comcast Corporation Pursuant to California Public Utilities Code Section 854(a).	Application 14-04-013 (Filed April 11, 2014)
And Related Matter.	Application 14-06-012 (Filed June 17, 2014)

JOINT APPLICANTS OF COMCAST CORPORATION, TIME WARNER CABLE INC., TIME WARNER CABLE INFORMATION SERVICES (CALIFORNIA), LLC (U6874C), BRIGHT HOUSE NETWORKS INFORMATION SERVICES (CALIFORNIA), LLC (U6955C), AND CHARTER FIBERLINK CA-CCO, LLC CONSOLIDATED REPLY COMMENTS ON COMMISSIONER FLORIO'S ALTERNATE PROPOSED DECISION

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Pursuant to Rule 14.3(d), Joint Applicants respectfully submit these consolidated reply comments on the Alternate Proposed Decision, responding to Intervenors' May 4, 2015 comment filings.[1]

INTRODUCTION

The transactions underlying the proposed transfers of control and assets in the above-captioned proceedings have been terminated and will not occur. The FCC and other state commissions have terminated their review proceedings. This Commission should do the same by issuing a decision granting the Joint Applicants' April 27, 2015 Motion to Withdraw and taking other necessary procedural steps to close its docket. This is the approach that makes more sense than continuing to debate the merits of a non-existent transaction and voting on the Proposed Decision or Alternate Proposed Decision.[2] Joint Applicants will not reply to each flawed argument and theory about proposed benefits and theoretical harms from a transaction that no longer exists. Instead, Joint Applicants focus this reply on the main reasons why the Commission should reject Intervenors' efforts to obtain an advisory opinion that would contravene well-established precedent, result in clear jurisdictional overreach, and lead to needless additional litigation.

I. INTERVENORS' IMPROPER ATTEMPT TO OBTAIN AN ADVISORY OPINION ON A TRANSACTION THAT WILL NOT OCCUR WOULD CONTRAVENE COMMISSION PRECEDENT AND OFFEND DUE PROCESS.

Joint Intervenors urge the Commission to adopt a final decision on the merits to (1) ensure intervenor compensation and prevent a "chilling effect" on intervenor participation in

[1] Administrative Law Judge Bemesderfer granted 15 pages to Joint Applicants in a consolidated filing. These comments are timely filed because in his Ruling denying the stay, ALJ Bemesderfer extended the time to file reply comments to the Alternate Proposed Decision until May 11, 2015.

[2] *See* Joint Applicants' Consolidated Comments on Commissioner Florio's Alternate Proposed Decision ("JA Comments to APD") at 2-3.

future transactions; (2) provide "guidance" for other transactions and matters involving the "same jurisdictional questions" and (3) preserve the "record" of these proceedings.[3] None of these purported grounds justifies the kind of improper advisory opinion that Intervenors seek.

A. Intervenors' Concerns Regarding Compensation Are Misplaced.

Intervenors' concerns about their inability to seek compensation and its possible "chilling effect" on their participation in future review proceedings are misplaced. Joint Applicants have made clear that they do not and will not object to Intervenors seeking compensation and further clarify that Joint Applicants will not object to reasonable compensation for Intervenors' efforts in these proceedings.[4] And Joint Intervenors themselves have identified no less than six prior Commission awards of intervenor compensation in similar circumstances (i.e., where compensation was awarded for substantial contributions prior to the grant of a motion to withdraw a merger application prior to a final decision).[5]

[3] Comments of the Joint Intervenors on the Alternate Proposed Decision Denying Application to Transfer Control ("JI Comments to APD") at 2, 6; *see also* Comments of Center For Accessible Technology, The Greenlining Institute and Writers Guild of America, West on the Alternate Proposed Decision of Commissioner Florio ("CforAT, Greenlining, and WGAW Comments to APD") at 4-5.

[4] JA Comments to APD at 6-7; Notice of Ex Parte Communication (Apr. 30, 2015 & May 1, 2015). Joint Applicants are willing to work with Joint Intervenors to further define the parameters of compensable intervenor compensation. JA Comments to APD at 7 & n.18.

[5] JI Comments to APD at 2 n.6.

B. The Commission Should Reject Intervenors' Calls For An Advisory Opinion.

Joint Intervenors contend that a final decision is necessary to provide guidance in other Commission proceedings, such as the Service Quality and Lifeline proceedings, arguing that parties should not have to start from "square one" and "re-litigate" the same issues.[6] But the Commission, like other deliberative bodies, has a "longstanding policy against issuing advisory opinions in the absence of a case or controversy,"[7] including where circumstances have made "the questions . . . raised. . . hypothetical."[8] This is the case even where a decision could arguably provide a precedential decision for larger issues such as federal or state constitutional rights, procedural requirements under the P.U. Code, or issues of federal preemption.[9]

Based on this longstanding policy, the Commission has dismissed proceedings where, as here, the "only relief" sought was "a restatement of . . . jurisdictional authority . . . in the form of an advisory opinion" but without "a 'case or controversy' to adjudicate."[10] Because Joint Applicants have terminated the Transaction, any final decision on whether the proposed transfers of control at issue here would have served the public interest would be entirely hypothetical.[11] The fact that the parties litigated jurisdictional and procedural issues while the applications were pending does not change that reality.

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[6] *Id.* at 2.

[7] *See* D.98-03-038, 1998 Cal. PUC LEXIS 74, at *5-6 (granting withdrawal where substantial questions remained but underlying controversy was moot); *see also* D.99-08-018, 1999 Cal. PUC LEXIS 515, at *5-6 ("We seldom issue advisory opinions and have clearly articulated our rationale for declining to do so.").

[8] *See* D.98-03-038, 1998 Cal. PUC LEXIS 74, at *3.

[9] *See id.* at *5.

[10] D.99-08-018, 1999 Cal. PUC LEXIS 515, at *5-6, 11.

[11] This distinguishes these proceedings from the SDG&E merger decision, which was still ongoing at the federal level and in California at the time the Commission voted to deny the merger. D.91-05-028, 1991 Cal. PUC LEXIS 253, at *11-13. The Commission acknowledged the existence of a parallel FERC proceeding and the necessity that both commissions approve the respective applications, but took pains to make clear that it was evaluating its own evidentiary record under its own standards. *Id.* at *12, 39.

Moreover, the industry-wide rulemakings that Joint Intervenors contend would benefit from an advisory opinion were both opened in 2011. There has been extensive briefing and consideration of the relevant issues in those rulemakings during the intervening years.[12] Far from starting from "square one," the Commission can – and consistent with its longstanding policy should – act based on the record independently developed by all of the participants in those proceedings. Any attempt to obtain an advisory opinion here, to influence the outcome of those or other proceedings involving different parties, would be procedurally improper and subject to significant due process and other legal challenges. Indeed, Joint Intervenors propose numerous "clarifications" of the Alternate Proposed Decision in a blatant attempt to obtain advisory rulings that would directly affect the rights and interests of third parties in other proceedings.[13] The Commission should reject these improper, self-serving arguments and adhere to its longstanding policy against issuing advisory opinions by terminating these review proceedings in a full Commission decision.

[12] R.11-03-013; R.11-12-001.

[13] Joint Intervenors devote 11 out of 14 total pages of their comments to discussing a wish list of additions. Almost all the Intervenors now treat their filings as the kitchen sink, by introducing new arguments, some wholly unrelated to this proceeding, in contravention of the Commission's rules. *See* Comments of the California Emerging Technology Fund on the Alternate Proposed Decision of Commissioner Florio ("CETF Comments to APD") at 6 (proposing that the Commission consider the FCC's stated goal speed of 25 Mbps/3 Mbps when making assessments for new CASF projects); *id.* at 8 n.4 (suggesting the Commission attempt to regulate the *Internet Essentials* program "[r]egardless of whether the merger goes forward"); *id.* at 10 (asserting that the Commission has independent enforcement authority of the FCC's *OI Order*); JI Comments to APD at 3-4, 9-13 (introducing argument regarding need to address unbundling and new "facts" regarding Comcast's compliance with NBCUniversal conditions); Comments of the Joint Minority Parties on Alternate Proposed Decision of Commissioner Florio ("JMP Comments to APD") at 2-4 (raising new argument concerning data caps and availability of multi-lingual customer service).

C. Joint Intervenors' Request For The FCC Responses On Hard Drives Is Inappropriate, Inconsistent With The FCC Protective Order And Parties' NDAs, And Unnecessary.

Joint Intervenors also argue that the entire set of Joint Applicants' responses to information, data and document requests in the now-terminated FCC proceeding ("FCC Responses") (totaling more than four million pages for Comcast alone) should be provided on a hard drive to the Commission pursuant to P.U. Code § 583(c).[14] Their only rationale for this request is that it is "necessary in order to preserve the record of the Commission in this important proceeding."[15] Joint Applicants do not object to preserving the record of this proceeding consistent with the appropriate confidentiality protections and as the Commission has done in proceedings involving other withdrawn mergers in the past.[16] However, by this request, the Joint Intervenors do not seek to preserve the *record* – instead, they seek to expand it.[17] The FCC Responses are not part of the official record of a proceeding.[18] The requesting parties relied upon or extracted portions of the FCC Responses to develop testimony, declarations, or pleadings, thus causing those excerpts alone to be properly submitted into the record. While the Commission has required preservation of the official record in withdrawn merger dockets before, it does not in the normal course mandate the preservation of *extra-record* materials as well, and

[14] JI Comments to APD at 5-6.

[15] *Id.* at 6.

[16] *See* D.01-02-040.

[17] As Joint Intervenors acknowledge, they received access to the FCC Responses via the Relativity platform after arguing during discovery that the submission of documents on a hard drive would be impossible to search. *See* JI Comments to APD at 5-6; Office of Ratepayer Advocates' Motion for Reconsideration of Law And Motion Judge's Ruling on Motion to Compel Production of Information and Documents in a Format that is Accessible to ORA and the Commission at 9-10 (Oct. 1, 2014). Despite vociferously arguing the uselessness of producing the FCC Responses on a hard drive, the Joint Intervenors now claim that these documents will have future utility if stored on a hard drive.

[18] *See* D.01-06-020, mimeo at 3 n.1 (noting that letters not filed and served are not part of the official record of the docket); *see also* CPUC Rule 13.14 (holding that a proceeding is submitted for decision and the record closed after the "taking of evidence, the filing of briefs, and the presentation of oral argument as may have been prescribed").

in particular does not seek to include *all* documents produced in discovery.[19] To the contrary, the customary practice is for confidential documents produced in discovery to be either returned or destroyed upon the closing of a docket.[20] This approach is consistent with the NDAs signed by the parties, which state that the use of the confidential or highly confidential information is limited to this proceeding and that the documents will be returned or destroyed when the NDAs expire.[21]

Ordering the preservation of the confidential or highly confidential portions of the FCC Responses would effectively disregard the terms of those NDAs. It would also be inconsistent with the FCC protective order for the national Transaction, under which these documents were originally allowed to be produced to the FCC. The protective order requires parties to the FCC proceeding to destroy or return the documents to Joint Applicants by May 13, 2015.[22] This

[19] The Commission required preservation of the *record* of a prior proceeding, but not the preservation of discovery documents, in the closed MCI/Sprint transfer proceeding. D.01-02-040, mimeo at 7 (finding that the Commission can "receive in evidence in a proceeding documents from prior proceedings that are 'on file in the public record'"); *see also* D.89-11-061 (granting motion to dissolve prior order to preserve all relevant documents in parties' possession after the final decision had been issued in the proceedings, noting that testimony prepared on the basis of extensive discovery was preserved in the Commission's "formal file" and little benefit would accrue from retention of all other documents in the docket).

[20] *See* I.11-06-009 (AT&T/T-Mobile merger), App. C (Protective Order) ¶ 16 (requiring return or destruction of Stamped Confidential and Stamped Highly Confidential Documents within two weeks of the conclusion of the proceeding).

[21] TURN NDA ¶ 3 (agreeing to limit use of discovery responses to this docket); CALTEL NDA ¶ 2 (same); CETF NDA ¶ 2 (same); CforAT NDA ¶ 2 (same); Greenlining NDA ¶ 2 (same); NAAC NDA ¶ 2 (same); Selwyn NDA ¶ 2 (same); Greenlining NDA ¶ 4 (agreeing to return or destroy documents on expiration of NDA or on written request by submitting party); CETF NDA ¶ 4 (same); CforAT NDA ¶ 4 (same); CALTEL NDA ¶ 4 (same); NAAC NDA ¶ 4 (same); Selwyn NDA ¶ 4 (same); TURN NDA ¶ 6 (agreeing to return or destroy such documents within 10 days after the proceeding concludes). With one exception, these NDAs with Comcast and Time Warner Cable have expired, triggering the obligation within 10 business days after expiration to destroy or return information covered by the NDA and confirm the same in writing. In light of the pendency of the Joint Applicants' Motion to Withdraw these Applications, Comcast and Time Warner Cable have notified the relevant intervenors that they are extending the right to review confidential material produced pursuant to the NDAs for ninety additional days and will not enforce the destruction requirement at this time.

[22] *See Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations*, Order, DA 15-511, ¶ 3 (Apr. 29, 2015) (reminding all

obligation extends to protective order signatories who also participated in the California proceeding (i.e., Commission staff, Greenlining).

Finally, as a practical matter, Joint Intervenors' request is unnecessary. There is no reasonable basis for preserving the full set of FCC Responses for future use in other proceedings.[23] Parts of the FCC Responses that the Joint Intervenors have identified as relevant have presumably been attached to pleadings or testimony and already are part of the record. Moreover, it is unclear what value the FCC Responses would have in the future. The documents were provided in response to specific requests related to the unique facts of the transactions between Comcast and TWC and Comcast and Charter. Even if there were a future hypothetical transfer proceeding involving one or more of the Joint Applicants, relevant documents would be produced within the context of those future cases and it would be those documents that would be relevant, not the instant documents. For the same reasons, and as discussed in Joint Applicants' Comments, there is no reason to produce the California record to the FCC.[24] That agency has already concluded its proceeding, and will expect that the confidential documents have been

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participants of obligations under paragraph 22 of the Protective Order to "destroy or return to the Submitting Party all Stamped Confidential Documents and Stamped Highly Confidential Documents within two weeks of the date of this Order"); *Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations*, Second Amended Modified Joint Protective Order, 29 FCC Rcd. 13799, ¶ 22 (2014).

[23] CETF requests that the Alternate Proposed Decision be amended to add CETF's list of recommendations for the "improvement of the *Internet Essentials* program" so that "these recommendations may be considered by the FCC's program staff that oversee the Internet Essentials program." CETF Comments to APD at 5-6. This request is nonsensical and would serve no purpose, further showing the mootness of continuing to debate the merits of either the ALJ's Proposed Decision or the Alternate Proposed Decision as if a transaction still existed. The condition that led to the creation of the program expired at the end of the 2013-2014 school year, and the FCC did not and does not now administer the program. Comcast currently maintains *Internet Essentials* on a voluntary basis.

[24] JA Comments to APD at 8 & n.22.

destroyed in compliance with its protective order.[25] The Commission should reject these inappropriate and baseless requests.

II. INTERVENORS' JURISDICTIONAL ARGUMENTS ARE LEGALLY UNSOUND.

As shown in Joint Applicants' Comments,[26] and further discussed below, adoption of the Alternate Proposed Decision (or any other decision) endorsing Intervenors' jurisdictional arguments would not only be procedurally improper under Commission precedent, but also result in clear legal error.

A. Section 706 Does Not Grant Authority To Regulate Broadband.

In their comments, Joint Applicants demonstrated that the Alternate Proposed Decision errs in interpreting Section 706 of the Telecommunications Act as a grant of regulatory jurisdiction to the Commission over broadband services, in derogation of P.U. Code Section 710. Intervenors' comments compound these errors, making additional baseless claims regarding the Commission's "Section 706 authority."

For example, Joint Intervenors claim that the Alternate Proposed Decision is wrong to view the Commission's purported authority under Section 706(a) as "limited" and encourage removal of the modifier.[27] Indeed, citing *Verizon*,[28] Joint Intervenors claim that the Commission has the same jurisdiction over broadband services as the FCC. But that is plainly incorrect. As Joint Applicants have already shown, *Verizon* identifies inherent limiting principles in Section 706 – including, most notably, any existing limits on a state commission's subject matter

[25] *See* CforAT, Greenlining, and WGAW Comments to APD at 4-5; JI Comments to APD at 3 (supporting transmittal of "the confidential record of the [California] proceeding to the FCC").

[26] *See* JA Comments to APD §§ II, III (addressing erroneous jurisdictional conclusions and flaws in competitive analyses).

[27] JI Comments to APD at 8 ("Joint Intervenors request that the word 'limited' be removed from the discussion of the Commission's jurisdiction under Section 706(a) on pages 21 and 23 of the APD.").

[28] *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014).

jurisdiction. That limiting principle alone precludes the Commission from regulating broadband services, since the California Legislature has expressly determined to remove those services from the scope of the Commission's subject matter jurisdiction.[29] In addition to that hurdle, nothing in Section 706 expressly "requires" a state commission to take any regulatory action with respect to broadband services. Thus, the statute does not fit within the limited exception to the statutory prohibition in Section 710, in any event. And, as more fully discussed below, in its *Open Internet Order*, the FCC reaffirmed its longstanding conclusion that broadband is an interstate service, and it further limited state commissions from regulating in this area – even where a state commission might otherwise have proper subject matter jurisdiction (which the Commission lacks here).[30]

Joint Intervenors (and both the original and Alternate Proposed Decisions) further err by claiming that *Verizon* permits the Commission to act pursuant to Section 706 so long as any regulation relates to "transmission by wires or radio waves."[31] This argument wrongly conflates the regulatory jurisdiction granted by Congress to the FCC, pursuant to 47 U.S.C. § 152(a), with the California Legislature's grant of regulatory jurisdiction to the Commission. As *Verizon* again makes clear, any grant of authority under Section 706 is inherently limited to the subject matter jurisdiction of the FCC and a state commission. And in this case, the California Legislature has prohibited the Commission from exercising regulatory authority over broadband (and VoIP) services under Section 710. Simply referencing the FCC's statutory jurisdiction under federal

[29] JA Comments to APD at 8-9.

[30] *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, ¶ 281 (Mar. 12, 2015) ("*OI Order*"); *see also id.* ¶ 282 ("Our regulations again only apply to last-mile providers of broadband services—services that are not only within our subject matter jurisdiction, but also expressly within the terms of section 706.").

[31] APD at 23; JI Comments to APD at 8.

law does not answer the question of the Commission's regulatory jurisdiction, let alone trump the express mandate of the California Legislature in Section 710.[32]

CETF similarly compounds the Alternate Proposed Decision's error by pointing to P.U. Code Section 709(d) policies as sources of independent review authority. This again conflates very different things. The statutory standards for Commission review of the applications here are clearly specified in P.U. Code Section 854, which governs all transfers of control for utilities and entities under the jurisdiction of this Commission. The policy goals of Section 709 are separate from the Commission's public interest analysis under Section 854. And, in all events, these policy goals are not a grant of review authority, much less an express delegation of authority that requires the Commission to stray into the regulation of broadband (or VoIP) services.

B. Joint Intervenors Misinterpret The *Open Internet Order*.

Besides vastly overstating the Commission's regulatory jurisdiction based on Section 706 and P.U. Code Section 709, Intervenors' push for adoption of the Alternate Proposed Decision would wrongly take the Commission into areas and concerns that the FCC has comprehensively addressed in its *OI Order*. The Commission should decline the invitation.

Specifically, in purporting to deny the now-defunct Transaction, the Alternate Proposed Decision expresses primary concern that if the applications filed by the regulated entities were approved by the Commission, Comcast would "exercise . . . increased market share on Internet content" or reduce competition in the "segment [of the broadband market] that allows edge or

[32] Joint Intervenors also propose expanding the Commission's purported Section 706 authority to VoIP. JI Comments to APD at 7-8. Not only is this in clear contravention of P.U. Code Section 710, but Joint Intervenors provide not a single citation supporting this supposed broad grant of regulatory authority, to state actors, over an interstate telecommunications service.

content providers to reach retail subscribers."[33] The Alternate Proposed Decision contends the Commission has jurisdiction to "focus" on "the leverage that [Comcast] will be able to exercise on the edge-provider content that those subscribers may want to access, and the effect that leverage may have on the availability, price, and selection of such content."[34]

Of course, none of these baseless theories matters any more since the Transaction has been terminated. But even apart from such mootness and the Commission's clear lack of regulatory jurisdiction over these broadband-related issues, and as acknowledged by CETF, the *OI Order* addresses these exact same areas and expressly limits the manner in which the states may involve themselves in these broadband-related concerns. As noted above, the *OI Order* reaffirms the FCC's longstanding conclusion that broadband Internet access service is jurisdictionally interstate. In adopting comprehensive open Internet rules, the FCC announced its "firm intention to exercise [its] preemption authority to preclude states from imposing obligations on broadband service that are inconsistent with the carefully tailored regulatory scheme . . . adopt[ed] in th[e] Order."[35]

Just as they ignore reality by arguing over a Transaction that no longer exists, Joint Intervenors likewise disregard the purpose and effect of the *OI Order*. Joint Intervenors echo the Alternate Proposed Decision's view that the FCC has failed adequately to "ameliorate" their broadband-related concerns in the *OI Order*, and thus urge the Commission to substitute its own judgment for the FCC's in addressing these same issues here.[36] Given this new federal regime, however, it is clear that even if the Commission otherwise had authority over broadband

[33] APD at 66-67.

[34] *Id.* at 70.

[35] *OI Order* ¶ 433; *see also* Feb. 26, 2015 FCC Press Release at 2, 5.

[36] APD at 75-76.

services, it has no room in these proceedings to supplant or supplement the FCC's regulatory approach for protecting the public interest on these same broadband-related issues.[37]

Joint Intervenors further contend that paragraph 203 of the *OI Order* gives the Commission broad power to review any broadband-related aspect of the Transaction, including interconnection issues. But this paragraph simply observes that the FCC and DOJ Antitrust Division conduct analyses into anticompetitive impacts of proposed transactions, using their express statutory powers, and that these analyses will work in conjunction with the open Internet regulatory scheme adopted by the FCC.[38] The discussion is only relevant here to the extent it shows the FCC's intent to regulate in these areas. It says nothing at all about state commissions. Far from authorizing the Commission to regulate interconnection or other broadband-related matters, the cited paragraph – along with the rest of the *OI Order* – reveals a clear intention by the FCC to preempt state commissions from straying into these areas through additional or conflicting regulatory actions.

C. *NCPA* Does Not Expand the Scope Of The Commission's Review Authority.

Finally, citing *Northern California Power Agency v. Public Utilities Commission* ("*NCPA*"), Joint Intervenors contend that the Commission must "review the anti-competitive harms in every proceeding before it and is *required* to make findings on those anti-competitive effects, *whether the CPUC has jurisdiction or not*."[39] That misinterprets *NCPA* and invites further legal error by the Commission.

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[37] CETF also contends that the Commission would have independent enforcement authority of the *OI Order* based on Section 706(a). CETF Comments to APD at 10. This is simply wrong. The FCC has the sole enforcement authority for these rules. *OI Order* ¶ 242 (defining avenues for enforcement of open Internet rules as FCC-only processes). Further, any such action is barred by California state law.

[38] JI Comments to APD at 3-5.

[39] *Id.* at 8 (emphasis in original) (citing *NCPA*, 5 Cal. 3d 370 (1971)).

As Joint Applicants have previously shown, the California Legislature determines the scope of the Commission's regulatory jurisdiction,[40] and has expressly prohibited the Commission from regulating broadband (and VoIP) services under Section 710.[41] Although *NCPA* did not address Section 710, the California Supreme Court – which decided *NCPA* – has made clear that the Commission is not permitted to "disregard . . . express legislative directions to it, or restrictions upon its power . . . ."[42] In other words, the California Legislature decides the scope of the Commission's regulatory authority – including its authority to review anticompetitive issues – the California courts do not. Thus, contrary to Joint Intervenors' argument, nothing in *NCPA* can be properly read to give the Commission freewheeling authority to assess the "potential anticompetitive impacts" of aspects of this (or any other) Transaction over which it has no or expressly limited jurisdiction, as determined by the California Legislature (i.e. here, video programming, VoIP, and broadband services).

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[40] Under the California Constitution, the Legislature is vested with "plenary power . . . to confer . . . authority and jurisdiction upon the commission." Cal. Const. art. XII, § 5. Thus, both the scope of the Commission's subject matter jurisdiction and its regulatory authority over utilities and services within its jurisdictional scope are established by the Legislature.

[41] JA Comments to APD at 8-9, 13.

[42] *Assembly of the State of Cal. v. Pub. Utils. Comm'n*, 12 Cal. 4th 87, 103 (1995).

III. CONCLUSION

Accordingly, for these and the other reasons shown above and in Joint Applicants' Comments, the Commission should reject the Alternate Proposed Decision as moot and, in all events, legally and factually erroneous. Instead, the Commission should issue a full Commission decision granting the Joint Applicants' Motion to Withdraw the applications and closing this proceeding.

Respectfully submitted May 11, 2015, at San Francisco, California.

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