

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Application of Pacific Bell Telephone  
Company d/b/a/ AT&T California  
(U1001C) for Targeted Relief from its  
Carrier of Last Resort Obligation and  
Certain Associated Tariff Obligations.

Application 23-03-003

**MOTION OF THE PUBLIC ADVOCATES OFFICE  
TO DISMISS THE AMENDED APPLICATION OF PACIFIC BELL  
TELEPHONE COMPANY DBA AT&T CALIFORNIA (U 1001 C) FOR  
TARGETED RELIEF FROM ITS CARRIER OF LAST RESORT OBLIGATION  
AND CERTAIN ASSOCIATED TARIFF OBLIGATIONS**

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## I. INTRODUCTION

Pursuant to Rules 11.1 and 11.2 of the California Public Utilities Commission’s (Commission) Rules of Practice and Procedure, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) files and serves this motion to dismiss Application (A.) 23-03-003, the May 17, 2023 *Amended Application of Pacific Bell Telephone Company d/b/a AT&T California (U 1001 C) for Targeted Relief from Its Carrier of Last Resort Obligation and Certain Associated Tariff Obligations* (Amended Application) with prejudice.<sup>1 2</sup>

The state’s telecommunications policy, including the Commission’s Environmental and Social Justice (ESJ) Action Plan,<sup>3</sup> is founded on an ongoing commitment to universal service by assuring the continued affordability and widespread availability of high-quality telecommunications services.<sup>4</sup> The Commission has deemed Carrier of Last Resort (COLR) obligations an important component of universal access to communications services because these obligations ensure that customers who want service, receive it.<sup>5</sup> As a COLR, Pacific Bell Telephone Company d/b/a AT&T California (AT&T) has an obligation to serve all customers in its service area who request service.<sup>6</sup>

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<sup>1</sup>Commission Rules and Practice and Procedure, Rule 11.1(b) states that, “[a] motion may be made at any time during the pendency of a proceeding by any party to the proceeding.” Rule 11.2 states that a “motion to dismiss a proceeding based on the pleadings (other than a motion based on lack of jurisdiction) shall be made no later than five days prior to the first day of the hearing.” In this proceeding, no hearing has been held at the time of the submission of this motion. Therefore, the motion to dismiss is proper.

<sup>2</sup> Cal Advocates has concurrently filed a protest to the Amended Application in the event the Amended Application proceeds to hearing.

<sup>3</sup> See *Environmental and Social Justice Action Plan Version 2.0, California Public Utilities Commission*, April 7, 2022 at 24 (“Goal 3: Strive to Improve Access to High-Quality Water, Communications, and Transportation Services for ESJ Communities.”)

<sup>4</sup> California Public Utilities Code (Pub. Util. Code), § 709, subd. (a).

<sup>5</sup> See Decision (D.) 96-10-066, *Re Universal Service and Compliance with the Mandates of Assembly Bill 3643* at 109.

<sup>6</sup> See D.96-10-066 at 109 and 163, Rule 6.D.5.

AT&T's Amended Application seeks: 1) COLR relief for geographic areas where there is a voice alternative to AT&T's Plain Old Telephone Service (POTS), and 2) approval to exclude additional areas from its basic service tariff by way of Tier 1 advice letters if and when these areas have a voice alternative offered by any provider.<sup>7</sup>

AT&T's request for relief as the sole remaining COLR in its service area declines to follow the Universal Service Rules adopted by the Commission in Decision (D.) 96-10-066, *Re Universal Service and Compliance with the Mandates of Assembly Bill 3643* (hereafter Adopted Universal Service Rules).<sup>8</sup> Instead, AT&T urges the Commission to eliminate the presence of a COLR<sup>9</sup> for "virtually every customer in the [company's] service territory,"<sup>10</sup> based on claims that "[t]he COLR obligation serves no continued purpose."<sup>11</sup> AT&T seeks COLR relief for over 99% of the census blocks in its service territory, with a total population of over 29 million Californians, including over half a million residential POTS customers alone.<sup>12</sup> However, the end sought by AT&T is patently incompatible with the state's ongoing commitment to universal service. The Commission should not grant AT&T's Amended Application to dispose of the COLR concept, when AT&T offers no equivalent pathway to universal service in its place.

Cal Advocates requests that the Commission dismiss the Amended Application with prejudice. In the alternative, the Commission should dismiss without prejudice and

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<sup>7</sup> AT&T Amended Application at 42-45.

<sup>8</sup> D.96-10-006 at 163, Rules 6.D.1, 6.D.6, 6.D.7, and 6.E.1.

<sup>9</sup> Amended Application at 19. ("However, the Commission's rules do not prevent it from granting this Application without the presence of a replacement COLR.")

<sup>10</sup> AT&T Amended Application at 16. ("Although these decisions do not clearly state the specific criteria that should now apply for assessing COLR relief applications, the history and purpose of COLR obligations make clear that the Commission should approve such applications where, as here, virtually every customer in the ILEC's service territory can choose another facilities-based voice service provider.")

<sup>11</sup> AT&T Amended Application at 25. (III.THE COLR OBLIGATION SERVES NO CONTINUED PURPOSE IN AT&T CALIFORNIA'S SERVICE TERRITORY.)

<sup>12</sup> AT&T Amended Application, Third Declaration Of Mark A. Israel (Israel Third Decl.), Attachments D4 and E1.

make clear that if AT&T continues its failure to comply with rulings and rules, its application will be dismissed with prejudice.

## II. BACKGROUND

In 1994 the California Legislature passed Assembly Bill (AB) 3643 declaring:

The longstanding cornerstone of state and federal telecommunications policy is universal service, which requires that telephone service be affordable and ubiquitously available. . . Universal service must be defined in a way that ensures all segments of California Society have access to technology that will allow them to enjoy the benefits of the information age and the information superhighway.<sup>13</sup>

The Legislature continued, “California telecommunications policy recognizes that. . . [w]e must ensure the widespread availability of high-quality telecommunications service to all Californians. . .” and “[a]dvanced telecommunications services should be made available as ubiquitously and economically as possible to California’s citizens, institutions, and businesses. . .”<sup>14</sup> AB 3643 directed the Commission to examine, among other objectives related to universal service, “. . . the issues of ‘carrier of last resort. . .’”<sup>15</sup> Pursuant to the legislature’s directive, the Commission engaged in the Rulemaking Proceeding (R.) 95-01-020 that culminated in D.96-10-066 and the Commission’s Adopted Rules of Universal Service.<sup>16</sup>

Additional legislative direction and the intent to ensure truly “universal”<sup>17</sup> service has been codified in California Public Utilities Code section 709, subdivision (a):

The Legislature hereby finds and declares that the policies for telecommunications in California are as follows: (a) To continue our universal service commitment by assuring the

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<sup>13</sup> Stats. 1994, Ch. 278 (Polanco and Moore), Sec. 1(a) and (c).

<sup>14</sup> Stats. 1994, Ch. 278 (Polanco and Moore), Sec. 1(d)(1) and (2).

<sup>15</sup> Stats. 1994, Ch. 278 (Polanco and Moore), Sec. 2(a)(5).

<sup>16</sup> D.96-10-066 at 3-6 and 157-165.

<sup>17</sup> “. . . including or covering all or a whole collectively or distributively without limit or exception, especially: available equitably to all members of a society. . .” <https://www.merriam-webster.com/dictionary/universal> (emphasis added).

continued affordability and widespread availability of high-quality telecommunications services to all Californians. . .<sup>18</sup>

Along these same lines, the Commission created the Environmental and Social Justice (ESJ) Action Plan which “serves as both a commitment to furthering principles of environmental and social justice, as well as an operating framework with which to integrate ESJ considerations throughout the agency’s work.”<sup>19</sup> ESJ communities are defined as:

. . . predominantly communities of color or low-income communities that are underrepresented in the policy setting or decision-making process, subject to disproportionate impact from one or more environmental hazards, and are likely to experience disparate implementation of environmental regulations and socioeconomic investments in their communities.<sup>20</sup>

In order to serve all Californians, the Commission “must focus on communities that have been underserved.”<sup>21</sup>

In the present matter, on March 3, 2023, AT&T filed the *Application of Pacific Bell Telephone Company d/b/a AT&T California (U 1001 C) for Targeted Relief from Its Carrier of Last Resort Obligation and Certain Associated Tariff Obligations* (AT&T Application).<sup>22</sup> In response, on April 6, 2023, Cal Advocates filed a protest that raised the issue of AT&T’s Application’s disregard for the state’s ongoing commitment to universal service and the Commission’s Adopted Universal Service Rules as provided in

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<sup>18</sup> Pub. Util. Code, § 709, subd. (a).

<sup>19</sup> *Environmental and Social Justice Action Plan Version 2.0*, California Public Utilities Commission, April 7, 2022 at 1 and 24 (“Goal 3: Strive to Improve Access to High-Quality Water, Communications, and Transportation Services for ESJ Communities.”).

<sup>20</sup> *Environmental and Social Justice Action Plan Version 2.0*, California Public Utilities Commission, April 7, 2022 at 1.

<sup>21</sup> *Environmental and Social Justice Action Plan, About the ESJ Action Plan*, viewable at <https://www.cpuc.ca.gov/ESJactionplan/>.

<sup>22</sup> *Application of Pacific Bell Telephone Company d/b/a AT&T California (U 1001 C) Seeking Targeted Relief from its Carrier of Last Resort (COLR) and Associated Tariff Obligations*, A. 23-03-003, March 3, 2023.

D.96-10-066.<sup>23</sup> On May 3, 2023, Administrative Law Judge Thomas Glegola (ALJ Glegola) issued *Administrative Law Judge’s Ruling Ordering Applicant to Amend Application Due to Substantial Incompleteness*.<sup>24</sup> ALJ Glegola expressed concern that the insufficient information in AT&T’s initial application “defeat[ed] due process of notice to the public, intervenors and the Commission of the relief sought.”<sup>25</sup> In response, on May 17, 2023, AT&T filed its Amended Application.

However, AT&T’s Amended Application suffers from the same fatal flaws that Cal Advocates raised in its protest to the original application, especially the incompatibility of AT&T’s request and the state’s commitment to universal service.

### **III. THE COMMISSION’S STANDARD TO DISMISS REQUIRES DISMISSAL OF AT&T’S AMENDED APPLICATION.**

#### **A. The Commission Must Dismiss Applications When the Outcome is a Foregone Conclusion.**

Over the last quarter century, the Commission has repeatedly made clear that applications may be dismissed on policy grounds, to husband limited resources, to avoid conflict with statutory policy, to avoid inefficiency, and many other reasons.<sup>26</sup> For motions to dismiss an application, the Commission has articulated the legal standard

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<sup>23</sup> *Protest of Public Advocates Office to the Application of Pacific Bell Telephone Company dba AT&T California (U 1001 C) for Targeted Relief from Its Carrier of Last Resort Obligation and Certain Associated Tariff Obligations*, A.23-03-003, Apr. 6, 2023.

<sup>24</sup> *Administrative Law Judge’s Ruling Ordering Applicant to Amend Application Due to Substantial Incompleteness*, A.23-03-003, May 3, 2023.

<sup>25</sup> *Id.* at 3.

<sup>26</sup> See D.99-11-023, *Opinion Dismissing Without Prejudice Western Gas Resources-California, Inc.’s Application for a Certificate of Public Convenience and Necessity* at 2 (citing *Application of Southern California Edison for an Order Under Section 701 of the Pub. Util. Code Granting Authorization to Establish Pilot Program for Reselling Bilateral Forward Purchases into the PX and ISO*, D. 99-07-018, July 8, 1999; *In the Matter of the Annual Depreciation Application of Roseville Telephone Company*, D. 99-04-046, 1999 Cal. PUC LEXIS 188; *Application of Southern California Gas Company to Unbundle Core Interstate Pipeline Transportation*, D. 98-12-071, 1998 Cal.PUC LEXIS 1017; *In the Matter of the Application of Southern California Edison Company for a Finding of Reasonableness for the Ratepayer Expenditures for the ENVEST Pilot Program*, D. 98-10-047, 1998 Cal.PUC LEXIS 811.) and *Decision Granting the Public Advocates Office of the California Public Utilities Commission Motion to Dismiss Sunnova Community Microgrids California, LLC’s Application*, D.23-04-005 at 15.

against which the sufficiency of an application is measured.<sup>27</sup> First, the Commission assumes that the applicant will be able to prove everything the applicant alleged to receive the requested relief, excluding ultimate facts and conclusions.<sup>28</sup> Then, the Commission looks to its own law and policy and asks whether it would be a waste of resources to proceed forward to a hearing when the outcome is a foregone conclusion under the current law and policy of the Commission.<sup>29</sup> At the outset of a case, in response to a motion to dismiss, the Commission may decline to change its policy within the context of an application.<sup>30</sup>

As explained below, even assuming the alleged facts to be true, the Commission must find that AT&T's Amended Application does not conform to the Commission's Adopted Universal Service Rules. The Commission must also decline to change the requirements of the Adopted Universal Service Rules as requested by AT&T. As a matter of law, the Commission can neither deprive millions of Californians of a COLR, nor change its Adopted Universal Service Rules in this proceeding.

Therefore, under this standard, the Commission must grant this motion to dismiss.

**B. AT&T's Amended Application Disregards the Adopted Universal Service Rules.**

The Adopted Universal Service Rules govern COLR obligations and mandate that “[a] designated COLR shall be required to serve all customers upon request. . .who are located within the COLR's designated service area. . .”<sup>31</sup> Rule 6 of the Commission's Adopted Universal Service Rules establishes the requirements that carriers must meet to opt out of their COLR obligations while ensuring continued affordability and widespread availability of high-quality telecommunications services.<sup>32</sup> AT&T's Amended

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<sup>27</sup> D.99-11-023 at 3 and D.23-04-005 at 15.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup>D.96-10-006 at 163, Rule 6.D.5.

<sup>32</sup> D.96-10-006 at 163, Rules 6.D.1, 6.D.6, 6.D.7, 6.E.1.



Application disregards Rules 6.D.1, 6.D.6, 6.D.7, and 6.E.1, which govern COLR designation and opting out.

AT&T's Amended Application mimics, yet harmfully distorts, Rule 6's framework by replacing the determinative, necessary presence of a COLR obligated to provide service,<sup>33</sup> with the presence of an uncommitted "voice alternative."<sup>34</sup> This is a misleadingly familiar, yet false equivalency. It would be foreclosed as a possibility if AT&T did not misconstrue and disregard the Commission's requirement that the last remaining COLR in a Geographic Study Area (GSA) can only be relieved of COLR responsibilities after another carrier is designated as a COLR to take its place.<sup>35</sup>

The required presence of a new COLR before an application can be granted to relieve the last remaining COLR of its designation and obligations is consistent throughout Rule 6. For example, Rule 6.D.1 mandates that AT&T's COLR designation in its service area remain "at least until such time that another carrier or carriers are designated as the COLR."<sup>36</sup> Rule 6.D.6 reiterates this requirement where it states that a designated COLR shall be required to serve "[u]ntil such time as provided for in rule 6.D.1."<sup>37</sup> Rather than allowing for the possibility that an application for relief could be granted at the current subsidy level without designating another COLR, when read together, Rules 6.D.7<sup>38</sup> and 6.E.1<sup>39</sup> further speak to the contingency of another provider

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<sup>33</sup> D.96-10-006 at 163.

<sup>34</sup> See AT&T Amended Application at 42-44.

<sup>35</sup> D.96-10-006 at 163, Rules 6.D.1, 6.D.6, 6.D.7, and 6.E.1.

<sup>36</sup> D.96-10-006 at 163, Rule 6.D.1 ("All of the incumbent LECs listed in Attachment A of these rules shall be designated as the COLR in all their respective service areas at least until such time that another carrier or carriers are designated as the COLR.") and D.96-10-006 at 166, Attachment A (" . . . Pacific Bell. . .").

<sup>37</sup> D.96-10-006 at 163, Rules 6.D.6.

<sup>38</sup> D.96-10-006 at 163, Rule 6.D.7 ("A designated COLR may opt out of its obligations in a GSA by advice letter, unless it is the only carrier remaining in the GSA, in which case it must file an application to withdraw as the COLR, and continue to act as the COLR until the application is granted or a new COLR has been designated as a result of an auction.").

<sup>39</sup> D.96-10-006 at 163, Rule 6.E.1 ("If there is only one carrier in a GSA and that carrier has filed an application to withdraw as the COLR in that GSA, and no other provider is willing to assume the COLR responsibility at the current subsidy level: a. The Commission will initiate an auction whereby service providers shall bid on the amount of subsidy each would require to operate as the COLR. . .").

assuming the obligation. A carrier who has filed an application to be relieved of its COLR obligations must continue to serve until either “. . .the application is granted,”<sup>40</sup> implicitly, without an auction, because another provider is willing to assume the COLR responsibility at the current subsidy level,<sup>41</sup> or “. . .a new COLR has been designated as a result of an auction,”<sup>42</sup> because “no other provider is willing to assume the COLR responsibility at the current subsidy level.”<sup>43</sup>

Additionally, rather than filing an application to opt out of its COLR obligations in a specific, identified GSA, when there is no other COLR present,<sup>44</sup> AT&T’s Amended Application bundles “areas with a voice alternative” together and asks for wholesale relief from its COLR obligation across these areas.<sup>45</sup>

Rule 6’s provisions also outline an opt out process for carriers when another COLR is presently providing service in a specific, identified GSA.<sup>46</sup> Again, AT&T’s Application mimics but distorts the process. Specifically, Rule 6.D.7. provides that a designated COLR may opt out of its obligations in a GSA by advice letter unless it is the only COLR remaining in the GSA.<sup>47</sup> AT&T replaces the presence of a COLR, presently providing service with a future uncommitted “voice alternative.”<sup>48</sup> Furthermore, rather than submit Tier 2 advice letters, requiring staff approval, as required by General Order 96-B, Industry Rules 5 and 7,<sup>49</sup> AT&T’s Amended Application seeks permission

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<sup>40</sup> D.96-10-006 at 163, Rule 6.D.7.

<sup>41</sup> See D.96-10-006 at 163, Rule 6.E.1.

<sup>42</sup> D.96-10-006 at 163, Rule 6.D.7.

<sup>43</sup> See D.96-10-006 at 163, Rule 6.E.1.

<sup>44</sup> D.96-10-006 at 163, Rule 6.D.7.

<sup>45</sup> See AT&T Amended Application at 42-44.

<sup>46</sup> See D.96-10-006 at 163, Rule 6.D.7.

<sup>47</sup> See *Ibid*; see also D.96-10-006 at 163, Rule 6.D.1, 6.D.6, and 6.E.1.

<sup>48</sup> See AT&T Amended Application at 42-44.

<sup>49</sup> See General Order 96-B, Industry Rules 5 and 7; see also *Resolution T-1768 Approving MCI metro Access Transmission Services Corp.’s (U-5253-C) advice letter request to opt out of its Carrier of Last Resort (COLR) responsibilities in areas that are also served by AT&T of California.*

to submit Tier 1 advice letters to opt out of its COLR obligations, without staff approval.<sup>50</sup>

Recent Commission actions starkly contrast with AT&T's drastic break with a quarter century of precedent. Specifically, on January 16, 2020, the Commission approved Resolution T-17681, granting MCImetro's Tier 2 advice letter request to opt out of its COLR responsibilities in areas that are also served by AT&T of California.<sup>51</sup> In contrast with MCImetro's approved request, it would be improper for AT&T to submit a Tier 2 advice letter, not to mention a Tier 1 advice letter that is effective pending disposition, to be relieved of its COLR obligations as the sole remaining COLR in its service area.

There is no need to proceed to hearing to establish that AT&T's Amended Application impermissibly deviates from the Commission's Adopted Universal Service Rules. Similarly, whether the Commission can lawfully approve AT&T's deviation from the requirements of the Adopted Universal Service Rules in this proceeding is a matter of law that is not reasonably subject to dispute. The fundamental tenants of due process would require that the parties to the rulemaking receive notice of changes and an opportunity to be heard. To the extent that AT&T seeks an exception from the Commission's Adopted Universal Service Rules, the request is anathema to the state's commitment to universal service. Therefore, AT&T's Amended Application must be dismissed.

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<sup>50</sup> See AT&T Amended Application at 42-44 (emphasis added).

<sup>51</sup> Resolution T-17681.

**C. AT&T's Amended Application is Not Compatible with California's Ongoing Commitment to Universal Service as a Matter of Law.**

**1. AT&T fails to identify credible alternative providers that guarantee offering comparable and functionally equivalent<sup>52</sup> service to AT&T's POTS basic service to all current and future customers in census blocks where AT&T seeks COLR obligation relief.**

ALJ Glegola's May 3, 2023, ruling required AT&T to identify credible alternatives to its service within the census blocks in which it seeks relief, how much of the census blocks in question these providers serve, and whether they are COLRs.<sup>53</sup> However, AT&T has failed to demonstrate that in the census blocks where it seeks COLR relief, credible alternatives<sup>54</sup> exist to ensure that AT&T's POTS customers will not experience a degradation or discontinuation of voice service. AT&T's Amended Application provides a list of fixed or mobile broadband carriers (other than AT&T POTS) in AT&T's POTS service territory.<sup>55</sup> As discussed below, the list is riddled with problematic assumptions and issues that impugn its reliability and utility.

**a) AT&T incorrectly assumes that the presence of a provider on a map is equivalent to actual availability of voice service for customers.**

AT&T uses publicly available maps<sup>56</sup> which it claims evidence a list of credible alternative fixed or mobile broadband carriers (other than AT&T POTS) that offer voice service in each census block where AT&T seeks COLR relief.<sup>57</sup> Beyond the issue of AT&T identifying itself as a provider of voice service utilizing VoIP and wireless service

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<sup>52</sup> The term functionally equivalent includes, but is not limited to, availability of service, affordability of the service, and service quality and reliability.

<sup>53</sup> *Administrative Law Judge's Ruling Ordering Applicant to Amend Application due to Substantial Incompleteness*, ALJ Glegola, A.23-03-003, May 3, 2023 at 5.

<sup>54</sup> AT&T Amended Application, Israel Third Decl., Attachment D3 at 7.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Id.*, Attachment A at 12-16.

<sup>57</sup> *Id.*, Attachment D3 at 7.

to justify customer choice,<sup>58</sup> there are other troubling assumptions in AT&T's methodology of identifying credible alternatives.

AT&T incorrectly assumes that the presence of a fixed broadband provider in a census block on a map translates to that provider offering standalone VoIP service specifically in that census block. For example, in Shasta County's census block '060890125001027,' where 253 people live, AT&T identifies five alternative providers that include AT&T Mobility, Northland Communications, SnowCrest Telephone Inc., T-Mobile, and Verizon Wireless.<sup>59</sup> However, only two of these five providers offer fixed broadband service: SnowCrest Telephone Inc. and Northland Communications. AT&T has not provided documentation on whether these any of these companies provide standalone VoIP services, their price, and sign-up requirements. SnowCrest Telephone Inc.'s and Northland Communications' websites do not mention a VoIP service offering for customers.<sup>60 61</sup> For customers in Shasta County's census block '060890125001027,' then, there may not be standalone VoIP services available to replace AT&T's POTS service.

AT&T also glosses over coverage and reliability issues for wireless service. For scores of census blocks throughout AT&T's POTS service territory, the only identified alternative is a wireless service provider.<sup>62</sup> Wireless providers' networks can often have gaps in coverage over their service area. All three wireless carriers identified in AT&T's list of alternatives include disclaimers indicating that actual coverage may vary and is subject to change.<sup>63</sup> Wireless service coverage and reliability issues were on stark

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<sup>58</sup> See, for example, AT&T Amended Application at 28.

<sup>59</sup> AT&T Amended Application, Israel Third Decl., COLR Exhibits III.

<sup>60</sup> SnowCrest Inc., DSL Internet, available at: <https://sc.snowcrest.net/index.php/services/dsl-internet>.

<sup>61</sup> Northland Communications, products page of public website, available at: <https://www.northland.net/solution-products/>.

<sup>62</sup> For example, Verizon Wireless is the only alternative in census block '060630004002170' in Plumas County. AT&T Amended Application, Israel Third Decl., Attachment D3 and D4.

<sup>63</sup> See, for example, Verizon Wireless, Explore Verizon 5G and 4G LTE network coverage in your area, disclaimer on network coverage, Available at: <https://www.verizon.com/coverage-map/>.

display at two recent public participation hearings (PPHs) in the *Order Instituting Rulemaking to Consider Amendments to General Order 133*, R.22-03-016 (Service Quality Proceeding). Customers stressed that AT&T was often the only choice available for emergency communications,<sup>64</sup> not just in remote areas, but also in urban areas as exemplified in three customer comments below:

“AT&T been telling us that they’re abandoning copper. The Ranch [in Big Sur] settled and homesteaded in 1834 received the first phone service in 1922, and we’re being told that our copper lines will be abandoned, and that is the only form of service for 9-1-1 for all six residences on The Ranch. Cell service is not available at any of those residences.”<sup>65</sup>

“I live in an unincorporated area five miles outside Cupertino. I have an AT&T landline because my home is in an area with zero cell phone coverage and no cable. So I have to drive five miles if I want to get a cell signal.”<sup>66</sup>

If AT&T is permitted to discontinue basic service, Californians living in census blocks where AT&T has only identified a wireless alternative to POTS service are likely to experience a loss of guaranteed, reliable voice service. AT&T is the largest, and often the only, POTS provider available to customers in California. Based on the information presented in the Amended Application, the Commission could not conclude that AT&T has identified credible alternatives to its POTS service or has ensured that customers will not experience a discontinuation of voice service.

**b) The mere presence of a provider in a census block does not guarantee that all customers who request service are able to receive it.**

To support its claim of availability of alternative services, AT&T states “that there are both bundled and non-bundled voice alternatives costing a similar amount or less than

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<sup>64</sup> *Order Instituting Rulemaking to Consider Amendments to General Order 133*, R.22-03-016, Public Participation Hearings (Virtual), December 6 & 8, 2023.

<sup>65</sup> R.22-03-016, Public Participation Hearings (Virtual), December 8, 2023 at 153, lines 14-21.

<sup>66</sup> R.22-03-016, Public Participation Hearings (Virtual), December 6, 2023 at 47-48, lines 24-1.

the current \$34.50 price of AT&T residential POTS service in California.”<sup>67</sup> However, the current price of service quoted by AT&T excludes the added costs and sign-up requirements for customers to receive service. AT&T also ignores the Commission’s guidelines for what constitutes basic service.<sup>68</sup>

Affordability of service and sign-up requirements may potentially create a significant barrier to customers acquiring service, even if a provider actually operates in a census block. AT&T outlines the prices of VoIP services competing with AT&T POTS service in Table 2.<sup>69</sup> Yet, this table fails to show additional costs associated with installation of service. For example, Comcast charges both installation and activation charges for VoIP service.<sup>70</sup> These charges may escalate the price for service beyond what customers can afford, especially customers residing in disadvantaged and ESJ communities.<sup>71</sup> In addition to these charges, VoIP service requires additional equipment,<sup>72</sup> including backup power to ensure service reliability in the event of a power outage; such additional equipment also increases costs to a customer<sup>73</sup> Table 2’s reliance on bundled plans also contravenes the Commission’s basic service guidelines mandating that “carriers must not obligate the customer also to subscribe to data and/or video services as a condition of basic service.”<sup>74</sup>

In addition, AT&T’s fails to consider that providers’ plans may include credit checks or deposit requirements that constitute financial barriers for customers who are low-income and/or not creditworthy. For example, Cox’s terms of service advise that credit checks and deposits may be required of customers before service will be

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<sup>67</sup> AT&T Amended Application, Israel Third Decl., Attachment A at 26.

<sup>68</sup> D.12-12-038, Ordering Paragraph 1 at 55-56.

<sup>69</sup> AT&T Amended Application, Israel Third Decl., Attachment A at 27.

<sup>70</sup> AT&T Amended Application, Workpaper ATTCA-CPUC-COLR-00001570\_CONFIDENTIAL.

<sup>71</sup> AT&T Amended Application, Israel Third Decl., Attachment A at 27.

<sup>72</sup> AT&T Amended Application, Israel Third Decl., Attachment A at 26.

<sup>73</sup> VOIP Review.org, backup power requirements for VoIP service, Available at: <https://www.voipreview.org/blog/voip-phone-system-battery-backups>.

<sup>74</sup> D.12-12-938, Ordering Paragraph 1 at 55-56.

provided.<sup>75</sup> Basic service must be offered on a non-discriminatory basis.<sup>76</sup> Credit check requirements create a barrier to customers accessing voice service and imperil the guarantee of universal service for all Californians.<sup>77</sup>

Lastly, AT&T states that none of the identified voice alternatives is subject to a COLR obligation.<sup>78</sup> This further underscores the fact that the mere presence of providers in AT&T's POTS service territory is insufficient to guarantee that a customer will be able to acquire a functional and equivalent voice service. Absent a COLR requirement,<sup>79</sup> none of the alternative providers are *obligated* to offer service to customers who request it. Such an outcome would be antithetical to the mandate to ensure universal service for all Californians.

**2. AT&T omits from its Amended Application its service area distribution of LifeLine and DDTP participants, and high-cost area residents, and whether they would have access to providers ensuring a continuity of service.**

AT&T does not clearly identify the distribution of impacted customers that are LifeLine participants, DDTP participants, and whether the impacted areas are high-cost<sup>80</sup> areas. AT&T merely states that it has 120,260 LifeLine customers in California as of December 2022.<sup>81</sup> This information is insufficient to assess where these customers are located across the state, whether they have access to providers that would be able to take on these customers and ensure continuity of service, and AT&T's plan to help the

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<sup>75</sup> Cox Communications, customer service agreement (section on credit checks and deposits), Available at: <https://www.cox.com/aboutus/policies/customer-service-agreement.html#credit>.

<sup>76</sup> D.12-12-038 Ordering paragraph 1 at 55-56.

<sup>77</sup> Federal Communications Commission, Report and Order and Further Notice of Proposed Rulemaking, FCC-22-2A1, 2022 at 68 FN 428.

<sup>78</sup> AT&T Amended Application at 61.

<sup>79</sup> AT&T Amended Application, Israel Third Decl. at 7.

<sup>80</sup> High-cost areas of California are those in which the cost to the COLR to provide service is \$36 or more per telephone line. For more information, see <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/california-high-cost-fund-b>.

<sup>81</sup> AT&T Amended Application, ATTCA-CPUC-COLR-00001285.



customers in the transition to other available providers at no-cost. Vulnerable customers, specifically those participating in LifeLine, DDTP, and those with medical needs, must have reliable voice service connections for emergency alerts and contacting medical services. AT&T's Amended Application, along with its application to relinquish its status as an Eligible Telephone Corporation (ETC) LifeLine provider in California,<sup>82</sup> attempts to avoid Commission oversight. In doing so, AT&T fails to consider the consequences of loss of access to voice services for vulnerable customers, especially customers from ESJ communities.

**3. AT&T again fails to provide a detailed migration plan for impacted customers that includes customer notifications and scheduled milestones.**

AT&T's Amended Application does not provide a reasonably detailed migration plan, a customer notice strategy, and a plan for impacted customers. For instance, AT&T fails to provide a customer outreach plan that includes, at minimum, the list of all impacted customers, an outreach and communication schedule, the method by which customers will be notified, including accessible and in-language customer notifications, and information on dedicated AT&T customer support phone lines to help customers with the migration. AT&T also fails to provide information on how impacted customers will receive information on the communications service choices available to them, including whether the available choices include backup power and require additional equipment, the prices of the service and equipment, the terms and conditions of service, and whether impacted customers would be burdened with forced switching costs. Impacted customers should not experience out of pocket costs or pay higher prices. Lastly, AT&T's Amended Application effectively seeks to discontinue voice service. AT&T's request, however, fails to follow the 2010 revised Mass Migration Guidelines.<sup>83</sup>

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<sup>82</sup> *Application of Pacific Bell Telephone Company D/B/A AT&T California (U1001C) to Relinquish its Eligible Telecommunications Carrier Designation*, A.23-03-002, March 3, 2023.

<sup>83</sup> *Decision Adopting Guidelines for Competitive Local Exchange Carriers (CLEC) Involuntary Exits and Principles and Procedures for CLEC End-User Migrations and Modifying the Mass Migration Guidelines*, D.10-07-024, R.03-06-020, August 4, 2010, Attachment 3 Mass Migration Guidelines.

AT&T's Amended Application must be dismissed because it asks the Commission to vacate the COLR concept and the Adopted Universal Service Rules, but fails to fill the void that would be left behind to ensure universal service for all Californians. The Commission could not determine that credible alternative providers are present in AT&T's service area ready to guarantee offering comparable and functionally equivalent service. Nor could the Commission determine that LifeLine, DDTP, and high-cost area, and vulnerable customers would have access to providers that could take them on and ensure continuity of service. The Commission could not be assured that impacted customers would be able to successfully transition to a new provider.

#### **IV. CONCLUSION**

AT&T has an obligation to serve all customers in its service territory. AT&T's Amended Application frustrates the Commission's framework that guarantees universal access to service and provides no equivalent pathway to universal service in its place. As a matter of law, the Commission cannot find that AT&T's Amended Application allows the Commission to meet its obligation to safeguard universal service for all Californians, especially ESJ communities and the most vulnerable. Therefore, Cal Advocates respectfully requests that the Commission grant this motion to dismiss AT&T's Amended Application with prejudice.

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AT&T's Amended Application appears to possibly constitute a technology migration request, or a request to exit the market for offering a specific type of voice service. The Mass Migration Guidelines are to be used when a CLEC is exiting the local exchange market, or a portion of its market, and has a customer base to migrate to other carriers.

Respectfully submitted,

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