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09/30/24
04:59 PM
R2406012

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Proceeding to Consider Changes to the Commission's Carrier of Last Resort Rules.	R. 24-06-012

OPENING COMMENTS AND INITIAL PROPOSALS OF

HAPPY VALLEY TELEPHONE COMPANY (U 1010 C) HORNITOS TELEPHONE COMPANY (U 1011 C) AND WINTERHAVEN TELEPHONE COMPANY (U 1021 C) (THE "TDS COMPANIES")

ON ORDER INSTITUTING RULEMAKING PROCEEDING TO CONSIDER CHANGES TO THE COMMISSION'S CARRIER OF LAST RESORT RULES

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September 30, 2024

I. INTRODUCTION.

In accordance with Rule 6.2 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure ("Rules"), and consistent with the procedural schedule outlined in the Order Instituting Rulemaking ("OIR") that initiated this proceeding, Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U 1011 C), and Winterhaven Telephone Company (U 1021 C) (collectively, the "TDS Companies") provide these opening comments and initial proposals on the OIR in response to the specific questions in the OIR. In today's highly competitive intermodal voice marketplace, the imposition of Carrier of Last Resort ("COLR") obligations uniquely on Incumbent Local Exchange Carriers ("ILECs") is outdated, unnecessary and inequitable. This is particularly true for the TDS Companies who have not received California High Cost Fund A ("CHCF-A") support in over two decades. The Commission should authorize reasonable relief from COLR obligations for ILECs like the TDS Companies who do not participate in the CHCF-A or CHCF-B universal service funding programs. Specifically, a carrier should be permitted to relinquish its COLR status upon a showing through a Tier 3 advice letter process that 80% or more of the area in which it seeks to lift the COLR designation has access to service by at least one alternative service provider.

Regardless of whether the Commission authorizes an expedited process for relief from COLR obligations, it should modernize and streamline its "basic service" definition by removing unnecessary elements like directory service, operator service, free blocking of the "billing provisions" set forth in Appendix A to Commission Decision ("D.") 12-12-038. These modifications will reduce competitive disparities in the highly competitive intermodal voice marketplace. The Commission should also update the outdated methodology for computing CHCF-B support, which is "based on cost proxy data from 1996."[1]

In addition, the Commission should authorize Rural Local Exchange Carriers ("RLECs") to opt into the Uniform Regulatory Framework ("URF") through a Tier 3 advice letter process, provided that they do not receive CHCF-A or CHCF-B support. This relaxed regulatory framework is critical to provide the TDS Companies with necessary pricing flexibility and the ability to offer bundle voice packages that consumers want in today's competitive market.

[1] *See* D.12-12-038 at 7.

II. THE COMMISSION SHOULD PERMIT ILECS TO RELINQUISH COLR STATUS IF THEY DO NOT TAKE HIGH-COST SUPPORT AND CAN DEMONSTRATE SUFFICIENT COMPETITION.

The "COLR" concept is based on a Commission decision from nearly thirty years ago.[2] Since that time, intermodal voice competition has significantly increased, as both this Commission and the Federal Communications Commission ("FCC") have recognized. For instance, in the Commission's 2016 decision on its Order Instituting Investigation into the State of Competition Among Telecommunications Providers in California, the Commission reached the following findings:

1. Wireless and cable-based Voice over Internet Protocol (VoIP) services have rapidly displaced traditional landline phones as the primary modes of voice communication in California.

2. Voice communication itself is a diminishing segment of the broader telecommunications market.

3. Approximately 92 percent of Californians obtain their voice service in a bundle with broadband.[3]

Based on data and testimony in that proceeding, the Commission further found that "[c]ompetition in this consumer intermodal voice market, as measured by service deployment and market concentration, appears strong."[4]

In August 2020, the Commission authorized competition by Competitive Local Exchange Carriers ("CLECs") in rural telephone company service territories, including the TDS Companies' service areas.[5]

The most recent FCC 2022 Communications Marketplace Report further highlights the increasingly competitive intermodal voice market. For example, this report notes that "[a]lthough the public switched telephone network used to be the only means to connect, there now exist many other voice service options for consumers in the United States," and "[t]he relative growth trends show that fixed switched access continues to decline while interconnected

[2] *See* D.96-10-066, 1996 Cal.PUC LEXIS 1046 at *418, Appendix B (COL 140).
[3] D.16-12-025 at 184 (FOF 1-3).
[4] *Id.* at 185.
[5] D.20-08-011.

VoIP services continue to increase."[6] In addition, "[t]he number of households that eschew fixed subscriptions altogether in favor of relying solely on mobile voice services has been increasing."[7]

COLRs are unnecessary in today's competitive intermodal voice marketplace. For carriers that do not receive CHCF-A or CHCF-B support, the Commission should authorize relief from COLR obligations via a Tier 3 advice letter process based upon a showing that 80% of the carrier's customer locations have access to service from at least one other reliable wireless or wireline voice provider.

III. THE COMMISSION SHOULD AUTHORIZE RLECS TO OPT INTO URF THROUGH A TIER 3 ADVICE LETTER PROCESS.

The Commission should also authorize RLECs to opt into the URF through a Tier 3 advice letter process, provided that they do not receive CHCF-A or CHCF-B funding. As noted above, the TDS Companies have not received CHCF-A support in over two decades. During this time period, competition has significantly increased in their service territories. The proposed Tier 3 advice letter process to opt into the URF would help provide regulatory parity and ensure that they can compete on equal footing with competitors in their service areas. Pricing and contract flexibility, including the ability to offer competitively priced bundled services demanded by their customers, is critical to the TDS Companies' ability to fairly compete. This pricing flexibility and regulatory freedom are necessary to meet the market demands caused by increasing competition and are consistent with the Commission's reasoning for adopting the URF for the larger and mid-sized ILECs.[8] The TDS Companies or other RLECs who opt into URF would then be able to offer new services and respond to competitors more quickly using market-based pricing, which would provide all consumers with more choice.

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[6] *In the Matter of Communications Marketplace Report*, GN Docket No. 22-203, *2022 Communications Marketplace Report*, FCC 22-103 at ¶¶ 168, 170 (rel. Dec. 30, 2022).
[7] *Id.* at ¶ 172.
[8] *See* D.06-08-030, at pp. 3, 265 (Findings 49-50) (finding presence of increased competition by CLECs and other providers in ILECs' service territory resulting in ILECs' lack of market power), 267 (Findings 67-68) (these market conditions support pricing freedoms for basic residential rates not subject to CHCF-B and removal of pricing controls).

IV. THE COMMISSION SHOULD CLARIFY THE SCOPE OF THIS PROCEEDING IS LIMITED TO COLR AND BASIC VOICE SERVICE ISSUES TO AVOID IRRELEVANT, COSTLY AND BURDENSOME INQUIRIES.

The Commission should clarify in its Scoping Memo that the scope of this OIR is focused on addressing the continuing need for COLRs, the procedure for withdrawing from COLR status, and the definition of basic service, which all concern voice services. The TDS Companies have already been subject to overly broad, burdensome and costly data requests by the Public Advocates Office ("Cal Advocates"), which far exceed the preliminary scope of the OIR and the Commission's jurisdiction.[9] The TDS Companies are concerned that this OIR will be greatly expanded beyond the Commission's stated intent in identifying specific issues in the OIR that relate to COLR status and basic service. Although each issue is focused on voice service, Cal Advocates has issued expansive data requests that seek irrelevant information, such as granular broadband subscription information and future infrastructure deployment plans. The Commission should confirm the focused scope of this OIR to avoid a boundless inquiry that imposes expensive and unnecessary costs and burdens on the parties and the Commission.

V. THIS PROCEEDING SHOULD BE CATEGORIZED AS "QUASI-LEGISLATIVE."

Pursuant to Rule 6.2, the TDS Companies object to the preliminary categorization of this proceeding as "ratesetting." Under the Commission's rules, "ratesetting" proceedings are those "in which the Commission sets or investigates rates for a specifically named utility" or "establishes a mechanism that in turn sets the rates for a specifically named utility." In contrast, "quasi-legislative proceedings" are those which "establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated utilities . . . even if those proceedings have an incidental effect on ratepayer costs." Based on the Commission's own rules, this proceeding should be classified as quasi-legislative.

The OIR preliminarily categorizes this proceeding as "ratesetting" on the grounds that some of the issues within the preliminary scope "may require changes to basic service

[9] *See TDS Motion for Reconsideration* (September 19, 2024). On September 26, 2024, TDS's Motion for Reconsideration was summarily and inexplicably denied as "moot" by Administrative Law Judge's Ruling Granting the Public Advocates Office Motion to Shorten Time to Respond to Motion to Compel Responses to Data Requests and Granting the Public Advocates Motion to Compel Data Requests. However, the scoping and other issues raised in TDS's Motion have never been fully or fairly addressed or resolved.

requirements or impact the collection and expenditure of ratepayer monies, including the California High Cost Fund-B." These are only incidental ratemaking considerations, which do not justify a "ratesetting" designation. Many rulemakings impacting public policy funds have been classified as ratesetting, including the recently-concluded CHCF-A rulemaking, R.11-11-007, which involved significant revisions to the Commission's implementation of the CHCF-A program and rate-of-return regulation for "small independent telephone corporations." Each of the previous proceedings to review the CHCF-B were likewise classified as "quasi-legislative," as are the current rulemakings to evaluate the California LifeLine program and the Deaf and Disabled Telecommunications Program ("DDTP"). The "quasi-legislative" designation is appropriate where, as here, the Commission is acting in a quasi-legislative capacity and considering changes to important industrywide rules.

VI. RESPONSES TO SPECIFIC QUESTIONS.

a. Is it still necessary for the Commission to maintain its COLR rules? Here, the Commission adopts a rebuttable presumption that the COLR construct remains necessary, at least for certain individuals or communities in California.

The COLR concept is outdated. In today's intermodal competitive environment, the imposition of COLR obligations uniquely on ILECs is unnecessary and inequitable. The retention of COLR obligations for the TDS Companies is especially inapt because the TDS Companies do not receive any support from the CHCF-A or the CHCF-B. Absent receipt of these state universal service funds, the TDS Companies should not be subject to COLR obligations. To the extent that COLR obligations are retained, ILECs should be permitted to seek relief from COLR status through a Tier 3 advice letter procedure. If an ILEC can show that 80% of its customer locations have access to service from at least one other reliable wireless or wireline voice provider, the ILEC should be relieved of its COLR obligations. In most areas, the TDS Companies expect that ILECs would be able to show multiple competitors covering substantially all locations, but 80% of customer locations having access to service by at least one competitor should be enough to lift COLR obligations, which are an outdated construct in the modern telecommunications environment.

b. Should the Commission revise the definition of a COLR, and if yes, how should the Commission revise that definition? What should be the responsibilities of a COLR?

The Commission should update the definition of COLR from D.96-10-066 with the more recent Legislatively-defined term in Public Utilities Code Section 275.6(b)(1), which confirms that a COLR is "a telephone corporation that is required to fulfill all reasonable requests for service within its service territory."[10] The reasonableness clarification reflects the reality that there are some locations that simply cannot be reached without exorbitant expense as the Commission has recognized.[11] The TDS Companies are interested in other parties' comments on this question, so it reserves the right to augment its response with further proposals or perspectives in reply comments.

c. Should the Commission revise how it defines a COLR's service territory?

To the extent that the Commission retains the COLR concept and applies it to ILECs, it should retain COLR obligations only in limited areas where there are no other competitive options for telecommunications services. As discussed above, if one or more wireless or wireline competitors to an ILEC's service are available, the COLR requirements should be lifted.

d. Are there regions or territories in California that may no longer require a COLR? Are there regions that require COLR service? If yes, how should the Commission distinguish between the two? What criteria should be met for a region or territory to no longer require COLR designation?

Yes, there are many areas of California that no longer require a COLR. As expressed above, the TDS Companies believe that the COLR concept is outdated. The Commission should lift COLR obligations wherever there is at least one other viable wireless or wireline competitor in an existing COLR's territory. This will help COLRs with smaller footprints in California, like the TDS Companies, to compete with numerous industry players who are much larger and less regulated than the TDS Companies. To the extent that the COLR designation is retained for existing providers, it should be limited to only those areas where there are no other competitive options.

[10] Pub. Util. Code § 275.6(b)(1).

[11] *See, e.g.,* Res. T-17378 at 2 (rejecting grant-funded line extension projected by existing COLR based on the Commission's "concerns about the cost of the project."); *accord* Draft Resolution T-17316 (rejected Nov. 10, 2011).

e. Can the Commission require Voice over Internet Protocol (VoIP) providers to be COLRs? If yes, should the Commission designate VoIP providers as COLRs?

No, the Commission cannot lawfully assert jurisdiction over VoIP providers, nor could it compel them to be COLRs. This issue should therefore be removed from the preliminary issues within the scope of this OIR. Both as a matter of state and federal law, VoIP providers are not subject to the Commission's jurisdiction. Because VoIP services operate over underlying broadband-capable facilities, VoIP operations do not qualify as a "corporation or person owning, controlling, operating or managing any telephone line."[12] Therefore, VoIP providers are not "telephone corporations" or "public utilities" under the Public Utilities Code.[13] Likewise, the FCC has determined that VoIP is an interstate service and that state commission regulation "produces a direct conflict with our federal law and policies, and impermissibly encroaches on our exclusive jurisdiction over interstate services."[14] Moreover, at least one circuit court has found that interconnected VoIP is an information service.[15] The TDS Companies are aware of the pending proposed decision in the VoIP proceeding, R.22-08-008, but the conclusions in that proposed decision are misguided for the same reasons stated herein.

Even if the Commission did have jurisdiction to apply COLR obligations to VoIP providers, it should not do so, as VoIP providers operate in a highly competitive market with a multiplicity of competitors, each of which can make their services available to any customer with a broadband connection. This question is also ambiguous because it does not explain which types of VoIP providers might be subject to COLR obligations. The question does not distinguish between "fixed" or "nomadic" VoIP, nor does it explain whether the question is seeking information regarding VoIP services or the providers who supply them—some of which are already COLRs.

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[12] Pub. Util. Code § 234; *see also* Pub. Util. Code § 285(a) (incorporating federal definition of "Interconnected VoIP service" by reference to 47 C.F.R. Section 9.3).
[13] *See id.; see also* Pub. Util. Code § 216(a)(1).
[14] *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning and Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, *Memorandum Opinion and Order*, FCC 04-267 (rel. Nov. 12, 2004) at ¶ 22; *Minnesota PUC v. FCC*, 483 F.3d 570 (8th Cir. 2007) (affirming *Vonage* order).
[15] *Charter Advanced Services, LLC v. Lange*, 903 F.3d 715, 719 (8th Cir. 2018), ("[i]n the absence of direct guidance from the FCC," interconnected VoIP service should be treated as an "information service.") *cert. denied*, 140 S.Ct. 6 (2019).

f. Can COLR service be provisioned using wireless voice service? Can the Commission direct wireless voice providers to serve as COLRs? If yes to both, should the Commission designate wireless voice providers as COLRs?

To the extent that this question is inquiring whether wireless service could be a functional substitute for wireline service offered by COLRs, the Commission has already determined the answer is yes.[16] Insofar as this question requests jurisdictional information regarding the extent to which the Commission could order wireless providers to serve as COLRs, the TDS Companies understand that there are likely to be significant legal limitations on such a policy.[17] Regarding whether the Commission should forcibly designate providers as COLRs even where they do not receive state high-cost support, the TDS Companies believe that such a designation would be improper—whether applied to the existing ILECs, VoIP providers, or wireless carriers. However, the Commission should permit a COLR to satisfy its COLR obligations via wireline services, wireless services, or a combination of the two.

g. If the Commission does not have the authority to require a wireless voice provider to offer COLR service, is a wireless voice provider eligible to volunteer to be a COLR? If yes, should the Commission grant such an application? Should the requirements of a potential wireless COLR be different than a COLR offering Plain Old Telephone Service (POTS) or VoIP service?

The COLR concept is outdated, so the TDS Companies believe that it is unlikely that a wireless service provider or a VoIP provider would volunteer to become a COLR. Therefore, this question is likely purely academic. It is possible that the Commission could pursue a competitive process for designating COLRs, but given the archaic nature of the framework, such an action is unlikely to produce public benefits. If the CHCF-B program were reformed significantly to provide additional support to COLRs in competitive areas, the circumstances might be different. As currently framed, the CHCF-B is unlikely to attract alternative COLRs, so the Commission should focus on providing COLR relief rather than positing the existence of other COLRs or pursuing other paradigms that are unlikely to materialize.

h. Should the Commission revise the requirements of basic service? If yes, which requirements or elements should be revised, and what should be those revisions?

Yes. The elements of basic service date back to a monopoly environment that has long-

[16] *See* D.16-12-025 at 38 ("We are persuaded that wireless voice service is, in general, a reasonable economic substitute for landline voice service…").
[17] *See* 47 U.S.C. § 332(c)(3)(A) (preempting state regulation of "entry" and "rates" for wireless services).

since evaporated. The elements are far too extensive, and include nine different service elements, as noted in the OIR.[18] Rather than retain this framework, the Commission should streamline the basic service elements by limiting them to the provision of "voice-grade service," a commitment to provide E911, access to "8YY" service, access to telephone relay, and access to LifeLine service. In other words, the Commission should retain Service Elements 1, 2, 5, 6, and 7, and remove the other elements. There is no reason to continue requiring directory service, operator service, free blocking, or the "billing provisions" set forth in Appendix A to D.12-12-038. Streamlining these requirements will reduce competitive disparities that will otherwise continue to exist between COLRs and their competitors. These revisions should be made regardless of whether the Commission creates an expedited procedure for COLR relief.

i. Should the Commission revise the subsidy amount offered for participation in the California High Cost Fund-B? What is an appropriate subsidy amount and how should it be calculated?

The methodology for computing CHCF-B is outdated and should be updated. As the Commission recognized in D.12-12-038, the CHCF-B formula is "based on cost proxy data from 1996," and the TDS Companies understand that the cost proxy model used at that time is not readily available.[19] This model does not include the TDS Companies' service territories. Through this proceeding, the Commission should confirm that the TDS Companies are eligible to receive CHCF-B support. As an interim measure, and subject to further modernizing of the CHCF-B support amounts, the TDS Companies' CHCF-B draw should be established based on the statewide per-access line average for all CHCF-B-eligible lines. As explained above, to the extent any of the TDS Companies elect not to receive CHCF-A or CHCF-B support, they should be relieved of their COLR obligations and authorized to opt into URF through a Tier 3 advice letter process.

[18] *See OIR*, at 2, n. 5 (citing D.12-12-038, Appendix A).
[19] *See* D.12-12-038 at 7.

j. Should the Commission revise its rules for how and when a COLR is allowed to withdraw from its designated service territory? If so, how should the Commission revise its rules? Should the Commission require that the service of a potential replacement COLR be functionally similar to that of the current COLR? If yes, what similar functionality requirements should the Commission adopt?

As the OIR expresses, the existing COLR regulations permit withdrawal of a COLR either where a replacement COLR is identified or where a "reverse auction" is held.[20] This procedure dates back to the early days of local competition and it is outdated in today's competitive environment. A carrier should be permitted to relinquish its COLR status upon a showing that 80% or more of the area in which it seeks to lift the COLR designation has access to service by at least one alternative service provider. A Tier 3 advice letter procedure should be sufficient to confirm the factual basis for COLR relief.

k. When should a COLR seeking to withdraw be required to notify residents in the COLR territory of its request to withdraw? What should be included in the contents of that notification? What method(s) should be used for notification?

A customer notice in the form of a bill message or bill insert should be sufficient to inform customers of a carrier's request to relinquish its COLR status. This customer notice should be provided contemporaneously with the Tier 3 advice letter submission seeking the reclassification. The content of the notice should be carefully worded so that it does not imply that the carrier is withdrawing from serving the area—the notice should state only that the carrier is seeking removal of its COLR status, such that it would no longer be mandated to fulfill all requests for basic local exchange service. To the extent that the TDS Companies seek such a reclassification, they would still intend to serve in all areas where they have current facilities or where such facilities could be reasonably deployed. Significant customer confusion could result if the notice incorrectly suggests that the carrier is withdrawing as a service provider just because it is seeking COLR relief. In addition to the advance notice provided with the advice letter contemplated in the TDS Companies' proposal, it would be reasonable to require a follow-up customer notice, again in the form of a bill insert or bill message, no later than 45 days after the effective date of the resolution granting the advice letter.

[20] *OIR* at 4 (citing D.12-12-038 and D.96-10-066).

l. If a COLR applies to withdraw, and a new COLR is designated, is there a need for a customer transition period? If yes, how long should that transition period last? What customer service protections, if any, should the Commission impose as part of a customer transition period? What other elements or processes, other than customer protections, should be provided in a customer transition period? How long should a customer transition period last?

The withdrawal of an ILEC as a COLR should not be contingent upon the existence of a replacement COLR; it should be driven by the existence of competitive alternatives, regardless of whether those alternative providers are interested in seeking COLR status. It is unlikely that alternative providers will seek to become COLRs, but it would be reasonable to permit such designations through a Tier 3 advice letter process, paralleling the proposed procedure for COLR relief that TDS suggests above. To the extent that this question is seeking information regarding a transition of customers from one carrier to another, such transitions should not be necessary and would be inappropriate. The designation of a new COLR should not imply that the current COLR would transfer its customers' accounts to the new COLR, so the reference to "customer transition" in this question is misguided.

VII. CONCLUSION.

As described above, it is appropriate for the Commission to modernize, streamline and simplify its COLR concept and "basic service" definition in today's intensely competitive intermodal voice marketplace. To ensure regulatory and competitive parity comparable to that of URF companies, the Commission should similarly authorize an expedited procedure for the TDS Companies to transition to URF regulatory status.

Respectfully submitted on September 30, 2024.

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