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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 OF

FRONTIER CALIFORNIA INC. (U 1002 C)
CITIZENS TELECOMMUNICATIONS COMPANY OF CALIFORNIA INC. DBA FRONTIER COMMUNICATIONS OF CALIFORNIA (U 1024 C)
FRONTIER COMMUNICATIONS OF THE SOUTHWEST INC. (U 1026 C)
("FRONTIER")

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

Patrick M. Rosvall
BRB Law LLP
492 9th Street, Suite 220
Oakland, CA 94607
Phone: (510) 955-1081
Email: patrick@brblawgroup.com

Attorneys for Frontier

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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, Frontier California Inc. (U 1002 C), Citizens Telecommunications Company of California Inc. dba Frontier Communications of California (U 1024 C), and Frontier Communications of the Southwest Inc. (U 1026 C) (collectively, "Frontier") provide these opening comments on the OIR. Each of the Frontier Incumbent Local Exchange Carriers ("ILECs") is a Carrier of Last Resort ("COLR") based on historical determinations dating back to the mid-1990s.[1] The concept of COLR is outdated, and incompatible with the modern telecommunications marketplace, in which there are numerous options for wireless and wireline service that are economic and functional substitutes for Frontier's traditional voice service. Likewise, Voice over Internet Protocol ("VoIP") alternatives are available wherever there is a broadband connection. The competitive and technological developments since 1996 have made the COLR concept obsolete, and the Commission should take appropriate steps to respond to these trends by reducing inequitable and distortionary requirements that are currently disproportionately applied to ILECs through the COLR designation.

Frontier supports efforts to modernize the Commission's COLR rules through this proceeding, and likewise supports reasonable adjustments to streamline the definitions of "COLR" and "basic service." Through these opening comments, Frontier addresses these overall themes and responds to the specific questions posed in the OIR.

II. THE COMMISSION SHOULD PRIORITIZE COLR RELIEF IN URBAN AND SUBURBAN MARKETS.

Regardless of how the Commission manages its COLR requirements in rural areas, it should not delay COLR relief in urban and suburban markets, where there is a compelling need to remove unnecessary regulatory requirements based on the extensive competition that characterizes these areas. Frontier's footprint includes large, urban areas such as Long Beach and Santa Monica, and it also includes numerous suburban markets such as Thousand Oaks, Elk Grove, and portions of the Inland Empire and San Fernando Valley. These are not the types of

[1] *See* D.96-10-066, 1996 Cal.PUC LEXIS 1046 at *418, Appendix B (COL 140).

markets where the retention of COLR requirements is needed. In all of these places, there is expansive, reliable coverage from each of the major wireless carriers—AT&T, Verizon, and T-Mobile—as well as extensive competition from cable providers, such as Comcast and Spectrum. Likewise, in these environments, there is a multiplicity of alternatives for voice service, and saddling Frontier with the unique responsibility for acting as a "COLR" is unjustifiable. Through this proceeding, the Commission should identify these areas that are obvious candidates for COLR relief and reach a determination here that COLR designations can immediately be lifted through a simple Tier 2 advice letter. This task should not be delayed while the Commission determines how to formulate a process for more rural areas.

III. 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.

Response: Based on significant changes in the market for voice services since the current COLR obligations were formulated in 1996, it is appropriate to significantly scale back or eliminate COLR requirements and provide opportunities for COLR relief where sufficient voice competition exists. In the urban and suburban markets that Frontier serves, there is no need to impose "must serve" obligations on a single carrier just because that carrier happens to be an ILEC. In these highly-competitive markets, COLR mandates should be lifted, and their retention only serves to further regulatory inequities that distort the competitive market and harm consumers. To the extent that the Commission deems the COLR construct to be relevant, it should only be applicable in those rural areas where there is limited or no competition.

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?

Response: The Commission should update the scope its COLR definition by incorporating the "reasonableness" language in Public Utilities Code Section 275.6(b)(1), which defines "COLR" as a "telephone corporation that is required to fulfill all *reasonable requests* for service within its service territory."[2] This provision is the only Legislative definition of "COLR" and reflects the reality that there are some locations that are simply infeasible or unduly costly to serve, and thus they are not "reasonable" to include within the COLR obligation. This

[2] Pub. Util. Code § 275.6(b)(1) (emphasis added).

reasonableness limitation has been applied in practice where areas are too costly to serve, so this update just makes explicit what has been implicit in the Commission's existing COLR definition.[3]

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

Response: To the extent that the COLR concept is retained, it should only apply in those rural areas where there is little or no competition. It is not reasonable to apply COLR obligations to the entirety of ILEC study areas just because they are ILECs. COLR "service territories" should be defined on a census tract basis according to which areas lack sufficient competition to lift the COLR obligations. In all other areas, such as those with extensive competition in urban and suburban areas, the Commission should permit COLR relief through this proceeding based on a Tier 2 advice letter.

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?

Response: Yes. There are many parts of California that no longer require a COLR. As noted above, Frontier serves numerous urban and suburban markets where there is robust competition and numerous alternatives for voice service, including cable company networks and the extensive wireless networks from the major wireless carriers, which are highly reliable and generally ubiquitous in urban and suburban areas. Frontier does not have a specific proposal for how to identify areas with sufficient competition to lift COLR obligations, but Frontier observes that where there is a wireline competitor with substantial coverage of an ILEC's footprint and the same area has broadband access to each of the three major wireless carriers' service platforms, these conditions present an easy case for COLR relief. Using this standard, there would be many areas of Frontier's footprint where Frontier should not be saddled with COLR obligations. Frontier will evaluate the proposals from other parties regarding the trigger eliminating COLR obligations and offer additional perspectives in reply comments.

[3] *See, e.g.,* Res. T-17378 at 2 (noting that grant-funded line extension projected by existing COLR was rejected 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?

Response: VoIP service is an interstate service that the Commission does not have authority to regulate. For the Commission to assert jurisdiction over a VoIP provider, it would have to be deemed a "telephone corporation" under the Public Utilities Code, and designation as a "telephone corporation" depends on "owning, controlling, operating or managing any telephone line."[4] As both the Federal Communications Commission ("FCC") rules and the Public Utilities Code recognize, VoIP service "[r]equires a broadband connection from the user's location," and a broadband connection is not a "telephone line."[5] Therefore, as a matter of state law, the Commission cannot regulate VoIP. Likewise, the FCC has deemed VoIP an interstate service, and at least one appellate court has designated VoIP as an "information service."[6] Frontier is aware of the pending proposed decision in R.22-08-008 that reaches some contrary conclusions, but that proposed decision is misguided for the same reasons set forth here.

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?

Response: Frontier has no position regarding whether COLR service can be provisioned using wireless technology. Frontier is generally aware of restrictions on the Commission's authority over mobile wireless providers, which may present an obstacle to designating wireless providers as COLRs.[7] Aside from this observation, Frontier has no comments, but reserves the right to augment this response in reply comments.

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[4] Pub. Util. Code § 234; *see also* Pub. Util. Code §§ 216(a)(1), 233.

[5] *See* 47 C.F.R. § 9.3 (definition of "Interconnected VoIP service"); Pub. Util. Code §§ 285(a) (endorsing federal definition of "interconnected VoIP"); 233 (defining "telephone line"); *see also* Pub. Util. Code § 239(a)(1)(B) (further confirming use of federal "interconnected VoIP" definition).

[6] *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); *see also 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).

[7] *See* 47 U.S.C. § 332(c)(3)(A) (preempting state regulation of "entry" and "rates" for wireless services).

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?

Response: In general, the COLR rules should be administered on a competitively neutral basis, so if providers of alternative technologies can meet the standards, and they wish to be COLRs on a voluntary basis, that should be permitted.

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?

Response: The definition of basic service dates back to the advent of local competition, and it has not been substantively revised since that time.[8] As the OIR recognizes, there are currently nine different basic service elements, along with some "general" provisions that accompany the elements.[9] Many of these items are outdated, and Frontier would support a streamlining of the elements to focus on the delivery of a "voice-grade" connection and E911 support. These core requirements are summarized as Elements 1 and 2 in D.12-12-038. The remainder of the elements should either be eliminated or significantly scaled back. It is inappropriate given current market conditions for the Commission to unilaterally apply these prescriptive service requirements to ILECs simply because they are the historical providers of service in these areas.

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?

Response: Frontier has no specific proposals for how to modify the CHCF-B at this time, but reserves the right to address this further in reply comments.

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?

Response: It would be reasonable to permit COLR relief in urban and suburban areas as part of this proceeding by identifying areas where sufficient competition exists to lift the

[8] *See* D.96-10-066 at 109.
[9] *See OIR*, at 2, n. 5 (citing D.12-12-038, Appendix A).

requirements and lifting COLR requirements in these areas through a Tier 2 advice letter. As noted above, where there is access to an alternative wireline option and access to service from the major wireless carriers, it should present an easy case for COLR relief, and the Commission should permit efficient withdrawal from COLR obligations in all such areas. Beyond these obvious areas where COLR relief is appropriate, the Commission should permit further COLR relief through a Tier 3 advice letter process in more rural markets, based on a location-specific showing that competition is sufficient to lift the COLR obligations. These subsequent submissions should be flexible and should not require the presence of a wireline alternative in all areas, but the burden would be on the COLR seeking relief to demonstrate that competition is sufficient. Frontier defers judgment as to exactly what standards should govern COLR relief aside from the observation that most urban and suburban areas could be subject to COLR relief at this time based on the pervasive competitive dynamics that they reflect.

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?

Response: A simple notice in the form of a bill message should be sufficient to notify customers of a request to lift COLR obligations. To the extent that relief is pursued directly through this proceeding, such notices could be issued and COLR relief could be implemented within 120 days. Future requests for COLR relief could be subject to a notification requirement upon submission of a Tier 3 advice letter, and then an implementation period of 60 days following approval of an advice letter through a Commission resolution.

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?

Response: This question appears to contemplate a "customer transition," which appears to reflect a misunderstanding about the nature of the COLR designation. If a carrier withdraws from COLR status, that should not be interpreted as a withdrawal from the market such that a customer transition would be needed. No specific "protections" are needed in this context because lifting COLR obligations does not signal a customer transition.

IV. CONCLUSION.

This proceeding presents an important opportunity to modernize the rules governing COLRs and provide relief from COLR obligations where competitive conditions are sufficient to warrant a reclassification. There are many areas of California that present obvious cases for lifting COLR requirements because they have robust competition for voice services. The Commission should begin by identifying these "easy cases" and remove COLR obligations through this proceeding. The Commission should then set a process in place to address requests in rural areas and other markets where competition may be less pervasive, but still significant enough to warrant removing COLR responsibilities. The Commission should also adjust the definition of basic service, as noted herein. Frontier will closely examine the filings from other providers and reserves the right to expand or adjust these perspectives in reply comments.

Respectfully submitted on September 30, 2024 at Oakland, California.

Patrick M. Rosvall
BRB Law LLP
492 9th Street, Suite 220
Oakland, CA 94607
Phone: (510) 955-1081
Email: patrick@brblawgroup.com

By */s/ Patrick M. Rosvall*
Patrick M. Rosvall

Attorneys for Frontier