BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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RESPONSE OF USTELECOM – THE BROADBAND ASSOCIATION ON THE ORDER INSTITUTING RULEMAKING PROCEEDING TO CONSIDER CHANGES TO CARRIER OF LAST RESORT RULES

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RESPONSE OF USTELECOM – THE BROADBAND ASSOCIATION

I. INTRODUCTION

USTelecom — The Broadband Association (USTelecom)[1] respectfully submits these comments in response to the California Public Utilities Commission's (CPUC) Order Instituting Rulemaking to Consider Changes to Carrier of Last Resort (COLR) Rules[2] to consider whether the Commission should revise its COLR rules and, if so, what those revisions should be.[3] USTelecom members consist of incumbent telephone companies subject in many instances to the CPUC's COLR obligations, that have in recent years been investing to deliver resilient, reliable, and secure 21st century broadband internet service across California. As the providers with COLR obligations in California, USTelecom members are uniquely situated to understand how the current COLR obligations not only impact the provider of service, but also consumers, and how changes to those obligations would best be implemented to ensure that Californians

[1] USTelecom is the premier trade association representing service providers and suppliers for the communications industry. USTelecom members provide a full array of services, including broadband, voice, data, and video over wireline and wireless networks. Its diverse membership ranges from international publicly traded corporations to local and regional companies and cooperatives, serving consumers and businesses in every corner of the country.

[2] Order Instituting Rulemaking Proceeding to Consider Changes to Carrier of Last Resort Rules, Rulemaking 24-06-12 (Jun. 20, 2024) (*Order)*.

[3] *See Order* at 4.

continue to have access to voice service and also have access to the most robust service possible in every home and business across the state.

II. COLR RULES AS CURRENTLY DEFINED ARE NO LONGER NECESSARY

Prior to the competitive environment in which we operate today, telecommunication providers were considered to be monopolies and were required by regulation to provide service at a regulated rate to any reasonable request for service. In return, the Federal Communications Commission and the state Commission guaranteed an opportunity to earn a fair return on investment, using “cost of service” or “rate-of-return” regulation to set prices.

In the late 1980s and early 1990s, policymakers determined that competition was a better policy framework for telecommunication companies and consumers – a change our members agree with. With that shift in policy, most large communication companies were no longer rate-of-return regulated, and regulators could no longer guarantee customers, revenues, or profits. However, many of the monopoly-era regulatory requirements stayed in place, including the requirement to provide voice service to any reasonable request. This requirement may have been justified in the early years of competition when the majority of consumers continued to use regulated basic service from the former monopolies, but the market, technologies, and consumer demand have significantly changed the telecommunications industry in the last 28 years, and the legacy service obligation is no longer appropriate in today’s competitive environment.

Since the passage of the Federal Telecommunications Act of1996, competition has developed in some unexpected ways. The 1996 Act was largely premised on the notion that competition would evolve over time, and that competitors would rely on the ILECs’ networks for resale and unbundled network elements (“UNEs”) for a period of time while facilities-based (a/k/a intermodal) competition grew. But facilities-based competition grew rapidly, primarily from cable and wireless providers, who relied on interconnection. With the introduction and rapid adoption by consumers of intermodal voice alternatives, traditional telephone service is now a very small part of the communications marketplace. Where there is an adequate voice alternative, there is no longer a need to require ANY one company to maintain a COLR obligation and, in particular, require that they offer outdated basic phone service or maintain copper lines for any requesting customer in a geographic area without adequate remuneration for that often uneconomic obligation.

The change in consumer demand over the past decades is plain to see and incontrovertible. Consumers have spoken with their choices, and they overwhelmingly prefer wireless and VoIP technologies in their home: Over 70% of American households are "wireless only,"[4] while, in California, less than 5% of the households have a traditional telephone line.[5] According to the FCC, as of June 2022, there were almost 30 million residential interconnected VoIP connections, and 24 million of these are obtaining service from non-ILECs. That compares to just 11 million traditional "switched access" residential connections.[6] This change towards alternative technologies and the widespread adoption of wireless service in particular is good for consumers, because, like fiber, in the case of outages these services are typically restored quicker than copper landline service. Whether these alternatives are exactly the same as traditional Plain Old Telephone Service (POTS) in every respect or not is not important since the majority of consumers have already voluntarily transitioned to alternative services. Competition should be measured based on what households use to communicate.

It is imperative that the CPUC's telecommunications policy and rules stay up to date to meet consumers' needs. Despite the clear irreversible shift away from traditional POTS, the CPUC's COLR rules in effect require keeping copper services available for a small and shrinking number of consumers, instead of transitioning them to receive better service with a different technology. Copper-based lines are less reliable and take much longer to repair following weather events, in some cases taking weeks to dry after heavy rain or flooding. Copper networks also cost more to maintain, use harder-to-source equipment, and are a greater drain on energy than fiber networks and wireless technologies. Copper is energy intensive because power needs to be placed deeper into the distribution system to make the network function, placing a higher burden on the electric grid. Additionally, copper thefts continue to adversely impact POTS networks, diverting

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[4] *See e.g.*, https://www.washingtonpost.com/business/2023/06/23/landline-telephone-holdouts/
[5] See "Protecting California in the 21st Century" Joint Venture Silicon Valley (April 2024). https://jointventure.org/images/stories/pdf/public-safety-report.pdf
[6] Federal Communications Commission, Voice Telephone Services Report, Status as of June 30, 2022 (released August 2023), Figure 2.

technicians away from ordinary repair activities. Many companies are moving to fiber for just this reason. For example, altafiber, a regional US internet provider, is transitioning from copper to fiber, noting that its copper-based networks account for over 36% of the company's annual carbon emissions, compared to just 6% for its fiber networks over nearly the same geographic area. altafiber emphasizes that its fiber network is up to twice as energy efficient as copper, making this transition crucial to achieving its goal of reducing emissions by 40% by 2030.

Indeed requiring incumbent providers to maintain their COLR obligations and strictly defining those obligations in terms of offering tariffed, regulated POTS may prevent them from retiring copper in favor of more efficient and reliable fiber if the provider only offers VoIP services over that fiber network, thereby slowing the transition to modern service. And maintaining a copper network drains resources away from building a next generation broadband network that can help narrow the digital divide.

In many of the most rural parts of the state, despite significant ongoing private investment,[7] this leap into the future cannot efficiently occur without further subsidies and programs similar to BEAD. Some locations may transition to wireless or LEO (low earth orbit) satellite instead of fiber.[8] Resources for investment into infrastructure are not limitless. Currently COLR obligations combined with the FCC's discontinuance rules mean that providers are having to continue maintenance of copper while also building and maintaining fiber networks. The expense of maintaining these copper networks is exponential compared to fiber. Maintaining both a circuit-switched *and* a packet-switched network is expensive—and each dollar that a carrier is forced to invest in the former is one less dollar that can be invested in deployment of next-generation broadband facilities and services.

[7] America's fixed broadband providers alone invested $102.4 billion just in 2022 and a total of $2.1 Trillion since 1996– a significant portion of which is targeted to California – in private capital to deploy and upgrade networks, including the hardest to serve remote areas. *See e.g., 2022 Broadband Capex Report*, USTelecom (Sept. 8, 2023), https://ustelecom.org/research/2022-broadband-capex/

[8] *See Order* at 5.

III. NOT ALL OF CALIFORNIA NEEDS COLR AND THE CPUC SHOULD REVISE ITS RULES FOR WITHDRAWAL

The Commission asks if it should revise its definition of a COLR's service territory, whether there are regions or territories in California that may no longer require a COLR, and how the Commission should distinguish between those that do and those that do not.[9] The answer is simple – competition. As explained above, the COLR framework was designed for a time when there was not a competitive environment. That is no longer the case in a majority of the state. USTelecom's members typically serve less than 5% of the households in their COLR designated area with POTS but are expected to keep that narrow-band copper network functional to 100% of the households in their service territories. Requiring companies to maintain an old copper network that uses and relies on equipment that can be 50 years old does not make sense when the states and policy makers are urging the deployment of and adoption of more advanced technologies, especially given customers prefer alternative networks that are already available. California is in the process of making significant Federal Funding Account grants to reach Californians with broadband[10] and the state will soon be implementing its Broadband Equity and Deployment (BEAD) Program which will provide even more funding for broadband in an effort to close the digital divide.[11] Once these broadband networks are deployed, consumers can use them for voice services, thereby negating the need for POTS service.

The Commission specifically asks if it should revise its rules for when and how a COLR is allowed to withdraw from its designated service territory and if so, how?[12] Once again the answer lies in the fundamentals of the competitive market. Because there are multiple carriers offering similar network-based voice services at competitive prices (and because customers continue to abandon POTS), the most appropriate policy is to have no COLR rules in these circumstances. However, if the CPUC determines that a COLR is needed in a specific geographic area because there is no voice alternative, that requirement should

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[9] *See Order* at 5.
[10] *See e.g.,* "CPUC Recommends Sixth Round Grant Awards of Last Mile Broadband Infrastructure Projects Across California" (Aug.23, 2024). https://www.cpuc.ca.gov/news-and-updates/all-news/sixth-round-of-grant-awards-for-last-mile-broadband-infrastructure-projects
[11] California Broadband Equity and Deployment Program https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/broadband-implementation-for-california/bead-program
[12] *See Order* at 6.

be limited to those specific locations. At the federal level, a provider is already required to file a Section 214 "discontinuance" application to withdraw basic telephone service in areas with existing customers, and the FCC will review that application to ensure that the withdrawal is in the public interest, potentially by determining whether a proposed replacement service meets the FCC's stringent Alternative Replacement Test.[13] Similarly, in the limited areas of California where there are no voice alternatives, the Commission could require that a COLR be designated, if the Commission ultimately determines it should retain a COLR framework. But it is not necessary or appropriate to designate a COLR for locations with cable, fiber, and/or wireless voice service available, and the Commission should no longer require a COLR in areas where those alternative networks are deployed.

Furthermore, the state should be "technology-agnostic" if it maintains any COLR requirement on any provider. The rationale for a COLR requirement is to ensure that consumers have access to voice services, but we have seen in the past two decades that consumers do not have to have a particular network technology for voice service, and we have shown that they choose wireless and VoIP alternatives to a great extent. Any remaining COLR obligation should come with the flexibility for a provider to use VoIP, wireless, or other reliable technologies to ensure the availability of voice. And regulated is not necessary to impose legacy regulations on such voice services at the state level. The important thing is to maintain universal access to voice communications.

Elimination of legacy obligations will not leave customers without communications service, in fact, quite the opposite. Loosening the ties to old networks will increase their already abundant communications options by facilitating advanced network deployment. In short, there no longer is any strong policy reason to compel any provider, or any class of providers, to be on call to serve any customer regardless of the cost, when those customers have alternatives. USTelecom is unaware of any instances where consumers have been harmed by the removal or modification of COLR obligations in any state. Indeed over the last 15 years, over twenty states have adopted progressive laws and rules that eliminate or modernize their COLR obligation.

[13] 47 U.S.C §214 (a); *See Technology Transitions et al*., Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14968 (2014); *Technology Transitions et al.*, Report and Order et al., 30 FCC Rcd 9372 (2015); *Technology Transitions et al.*, Declaratory Ruling et al., 31 FCC Rcd 8283 (2016) (*2016 Technology Trans Order*).

While these states have adopted different flavors of laws, they uniformly recognize that consumers have many choices for their communication needs and that outdated regulatory requirements, imposed on just one competitor and often one technology, hinder investment in the next generation networks and services that consumers crave.[14]

IV. CONCLUSION

For the reasons stated above, the CPUC should eliminate the COLR framework, or should at least change its COLR rules and no longer require that obligation in areas where the customer has access to alternative voice services. Also, the CPUC should allow any remaining COLR obligation to provide voice service using any technology, without imposing legacy regulations on those services. Furthermore, the CPUC should eliminate the COLR requirement and associated rules in its decision in this proceeding. USTelecom appreciates the opportunity to submit this response, and USTelecom's members look forward to continuing to work with the CPUC in their commitment to providing reliable voice and high-speed broadband connectivity to all Californians.

Respectfully submitted,

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[14] *See e.g.*, Florida (2008); Georgia (2012); Kansas (2013); Mississippi (2012); Missouri (2014); North Carolina (2011); and Tennessee (2013); Kentucky (2015/2017); Wisconsin (2011, 2-year phase in); Oklahoma (2012); Alabama (2012, 3 month phase-in); Indiana (2012, 2 year phase-in); Michigan (2014) conditioned any COLR relief on complying with requirements established by the FCC during the IP-transition trial; Ohio (2015) eliminated COLR obligations and retained state commission authority if residential customers have no competitively-priced alternative for voice service; South Carolina (2016) eliminated all remaining COLR obligations and retained state commission authority to address emergency situations if customers have no available voice service. Illinois (2017) eliminated all remaining COLR obligations, must notify residential customers and commission 255 days prior to filing FCC 214; Louisiana (2009); Texas (2011); Nevada (2013); Arkansas (2013) law provides that if a carrier is no longer an eligible telecommunications carrier under federal law, it has no state COLR obligation.