

**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.

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Rulemaking 24-06-012

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**COMMENTS OF THE CALIFORNIA BROADBAND & VIDEO ASSOCIATION ON  
ORDER INSTITUTING RULEMAKING PROCEEDING TO CONSIDER CHANGES  
TO THE COMMISSION'S CARRIER OF LAST RESORT RULES**

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Pursuant to the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure, the California Broadband & Video Association (“CalBroadband”)<sup>1</sup> respectfully submits these comments on the Order Instituting Rulemaking Proceeding to Consider Changes to the Commission’s Carrier of Last Resort Rules issued on June 28, 2024 (“OIR”).

**I. INTRODUCTION**

In the OIR, the Commission questions whether carrier of last resort (“COLR”) obligations remain necessary in today’s communications market and whether related definitions and service areas should be reexamined.<sup>2</sup>

The OIR comes at a time when both changing technology and significant new communications infrastructure deployment throughout the state are meaningfully enhancing competition and may soon render COLR requirements unnecessary to ensure ubiquitous access to voice service. In this context, the Commission should limit COLR obligations to existing COLRs in the increasingly small number of areas in California that lack competition, as many other states have done, and decline to require new providers to become COLRs. In those limited areas without

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<sup>1</sup> CalBroadband was formerly known as the California Cable & Telecommunications Association (“CCTA”).

<sup>2</sup> CalBroadband understands that the Commission opened this proceeding in response to AT&T’s recent application seeking relief from its COLR designation. *See* Decision (“D.”) 24-06-024 at 3.

competition, legacy COLR obligations should continue to apply to existing COLRs until competition has been achieved.

## II. BACKGROUND

A derivative of traditional utility regulation, “[t]he COLR is a regulatory concept rooted in the idea that by accepting the franchise obligation from the state to serve a particular area, the public utility is obligated to serve all the customers in that service area who request service.”<sup>3</sup> California’s COLR rules were adopted in the 1990s as part of the transition from telephone monopolies to a competitive voice services market. These rules facilitated competition and provided that all Californians would have at least one option for “basic” telephone service (as that concept was understood at the time). Both prior to and after the opening of the local exchange market to competition, each of California’s 22 incumbent local exchange carriers (“ILECs”) serve as the COLR in their respective local telephone exchanges.<sup>4</sup>

Today, universal voice service has been achieved for nearly all Californians—largely due to competition. The modern voice services market is more competitive than ever and offers an increasing number of options through a range of technologies, including plain old telephone service (“POTS”), facilities-based VoIP, over-the-top (“OTT”) VoIP, mobile wireless, fixed wireless, and emerging satellite services.<sup>5</sup> An expert economic analysis concluded in 2022 that

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<sup>3</sup> D.96-10-066, 1996 Cal. PUC LEXIS 1046 at \*292.

<sup>4</sup>*Id.*

<sup>5</sup> See, e.g., R.22-03-016, CCTA Opening Comments, Attachment A, *Out of Sync: Outdated Financial and Operational Reporting for Competitive VoIP Providers* at 11 (Dec. 21, 2022) (“Brattle Report”) (finding that “[v]oice services delivered over wireless, 5G Fixed Wireless Access (FWA), cable, fiber optic, and satellite broadband, are [] available to provide alternatives even to the extremely limited set of customers that [network examination reports ordered by the CPUC] characterize as ‘captive’ to ILECs”). The Commission found as early as 2006 that “a service need not be identical to provide a competitive substitute.” D.06-08-030 at 76.

“[t]he market for voice services in California is hyper-competitive,” and there are only “an extremely small number of customers who actually lack [] competitive choices for voice service.”<sup>6</sup> Given the continued growth of OTT VoIP, fixed wireless, and satellite voice services, competition has likely increased *even further* by 2024. This multi-modal competition ensures that the vast majority of Californians are well-served by a choice of voice providers and services irrespective of any COLR requirements.<sup>7</sup>

This trend is expected to continue into 2025 and beyond. Current middle-mile and last-mile grant funding programs, as well as the increasing availability of residential satellite and wireless services, will enhance competition for voice services throughout the state—quite possibly to the point where COLR requirements will be rendered obsolete.<sup>8</sup>

These competitive conditions are not unique to California. Other states have evaluated how best to address COLR requirements in light of current marketplace realities. Taking into consideration factors such as the availability of competitive service<sup>9</sup> and receipt of universal service fund support,<sup>10</sup> a growing number of states have limited COLR obligations to areas lacking competition or eliminated these requirements altogether. For example:

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<sup>6</sup> Brattle Report at 11.

<sup>7</sup> The Commission currently has registered more than 400 interconnected VoIP providers alone in the state. See *R.22-08-008*, Proposed Decision of Commissioner John Reynolds, *Decision Establishing Regulatory Framework for Telephone Corporations Providing Interconnected Voice Over Internet Protocol Service* at App. D (Sep. 13, 2024) (“VoIP Sep. 13 PD”). This number does not include LECs, certain other interconnected VoIP providers, and other providers of voice service.

<sup>8</sup> See National Regulatory Research Institute, *Carrier of Last Resort: Anachronism or Necessity?* at 13, 16 (Jul. 2016), <https://pubs.naruc.org/pub/FA85B978-00A3-862C-5E8D-9E10816FA7DB> (“NARUC Report”) (nine states do not have COLR requirements, and “a growing number of states have limited the requirement for COLR service to areas without competition”).

<sup>9</sup> See, e.g., *id.*; see also *id.* at 35-36 tbl.5 (listing states that tie COLR relief to competition).

<sup>10</sup> See, e.g., *id.* at 12-13.

- Colorado ties COLR duties to the acceptance of universal service funds in areas without effective competition. In 2016, Colorado transitioned from a framework where all ILECs were COLRs to one where only providers of basic local exchange service that receive high cost support are designated as COLRs in the geographic areas where they receive support.<sup>11</sup> Thus, in “effective competition areas”—where no provider is eligible for high cost support—there is no COLR.<sup>12</sup> Colorado found that “competition in the market for basic local exchange service will increase the choices available to customers and reduce the costs of such service,” and determined it should be state policy to “encourage” such competition and “ensure that all consumers benefit from such increased competition” with “the ultimate goal of replacing the [existing COLR] regulatory framework . . . with a fully competitive telecommunications marketplace statewide.”<sup>13</sup>
- Other states have established similar deregulatory processes based largely on the presence of competition. Idaho and Virginia relieve a voice service provider from COLR-like obligations if there is at least one alternative provider, which does not have to be formally designated as a COLR.<sup>14</sup> Nevada discharges a voice service provider from COLR obligations if two or more wireless voice providers are present in the area for which relief is sought, or if three providers of any technology are present in such area.<sup>15</sup> Texas has eliminated COLR obligations in markets that have been deregulated based on competition or population size.<sup>16</sup> Oregon and South Dakota assess a variety of factors, though largely relying on indicators of competition, when determining on a case-by-case basis whether to waive COLR requirements.<sup>17</sup>

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<sup>11</sup> See Colo. Rev. Stat. § 40-15-401(1)(b)(III); 4 Colo. Code Regs. §§ 723-2(2001)(fff), 723-2(2186)(a).

<sup>12</sup> 4 Colo. Code Regs § 723-2(2001)(aa).

<sup>13</sup> Colo. Rev. Stat. § 40-15-501(1).

<sup>14</sup> The alternative provider must be able to provide basic LEC or an “equivalent” service in Idaho. See Idaho Code § 62-612(1). Virginia provides that a telephone company is not required “to extend or expand its facilities to furnish service and facilities when the person, firm or corporation has service available from one or more alternative providers of wireline or terrestrial wireless communications services at prevailing market rates.” Va. Code Ann. § 56-234(A).

<sup>15</sup> Nev. Rev. Stat. § 704.68886(1)(b)-(c) (2023).

<sup>16</sup> 16 Tex. Admin. Code § 26.23 (ILECs are relieved of COLR obligations if the market has been deregulated pursuant to Public Utility Regulatory Act); *id.* § 26.22(a)(1) (“A deregulated company that holds a certificate of operating authority is not obligated to be a provider of last resort. A transitioning company is not obligated to be a provider of last resort in a deregulated market.”). When determining whether a market should be deregulated, the Texas Public Utilities Commission may consider whether the population is at least 100,000 or, if not, there are at least two competitors to the ILEC that provide voice service via any technology. See Tex. Utilities Code Ann. § 65.052(b). When an ILEC is granted deregulatory status, the COLR obligations no longer apply. *Id.* §§ 65.102, 65.151(b). Both AT&T and Verizon exchanges are fully deregulated in Texas, and therefore there are no COLR obligations throughout large portions of the state.

<sup>17</sup> Or. Rev. Stat. § 759.052 (Oregon Public Utilities Commission may exempt telecommunications services from traditional regulation, including COLR requirements, if: (a) price or service competition exists; (b)

Significantly, CalBroadband and its members are unaware of any instances of consumers being unable to obtain voice service in places where COLR obligations have been limited or eliminated. Other states' determinations and experience support findings that across-the-board COLR obligations are not necessary where there is sufficient competition to ensure access to voice service for all Californians and that there is no need for the Commission to require any new providers to act as COLRs.

### III. RESPONSES TO OIR QUESTIONS<sup>18</sup>

- 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.**

COLR obligations have become increasingly outdated in areas where a competitive, multi-modal market exists for voice service, likely rendering COLR obligations unnecessary on a statewide or service-area-wide basis. That said, to the extent the Commission determines that COLR obligations remain necessary in certain areas that have not yet achieved sufficient competition, the current COLRs should retain their existing obligations in those areas until the marketplace facts change.

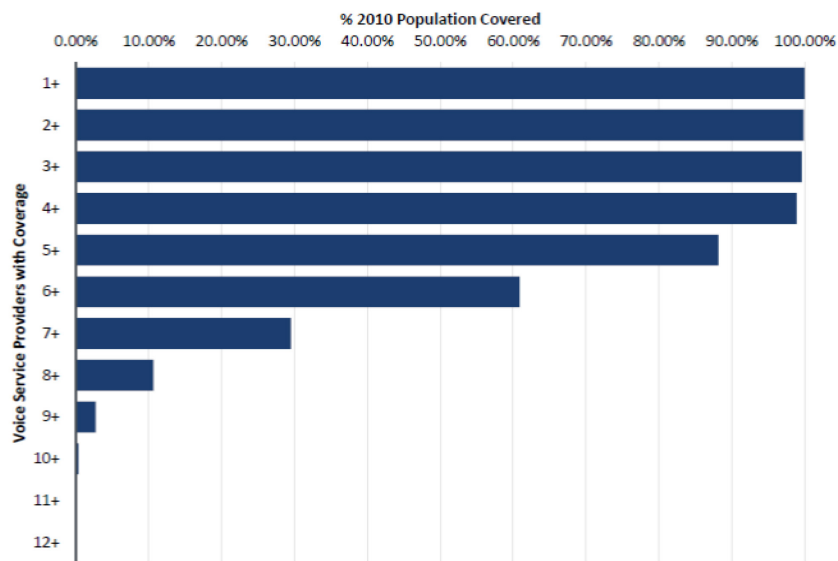
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telecommunications services can be demonstrated by the petitioner or the commission to be subject to competition; or (c) the public interest no longer requires full regulation of the telecommunications services); S.D. Codified Laws § 49-31-3.2 (South Dakota Public Utilities Commission must consider: (1) the number and size of alternative providers of the service and the affiliation to other providers; (2) the extent to which services are available from alternative providers in the relevant market; (3) the ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions of service; (4) the market share, the ability of the market to hold prices close to cost, and other economic measures of market power; and (5) the impact on universal service).

<sup>18</sup> CalBroadband does not respond to all of the OIR's questions but reserves the right to comment further on reply.

California has achieved nearly universal voice service through robust competition amongst myriad providers. Based on FCC Form 477 data as of June 2021, 98.9% of Californians are covered by *four or more* voice providers, while 99.6% are covered by *three or more* voice providers.<sup>19</sup> As illustrated below, almost 100% of the population has access to at least two voice providers.<sup>20</sup>

FIGURE 2: CALIFORNIA VOICE PROVIDERS IN 2021



SOURCE: FCC Form 477 Data (June 2021).

Not only do nearly all Californians have access to multiple voice service providers, but analysis of the market shows they can choose from a wide *variety* of voice products and services offered by both facilities-based wireline and wireless providers, wireless mobile virtual network

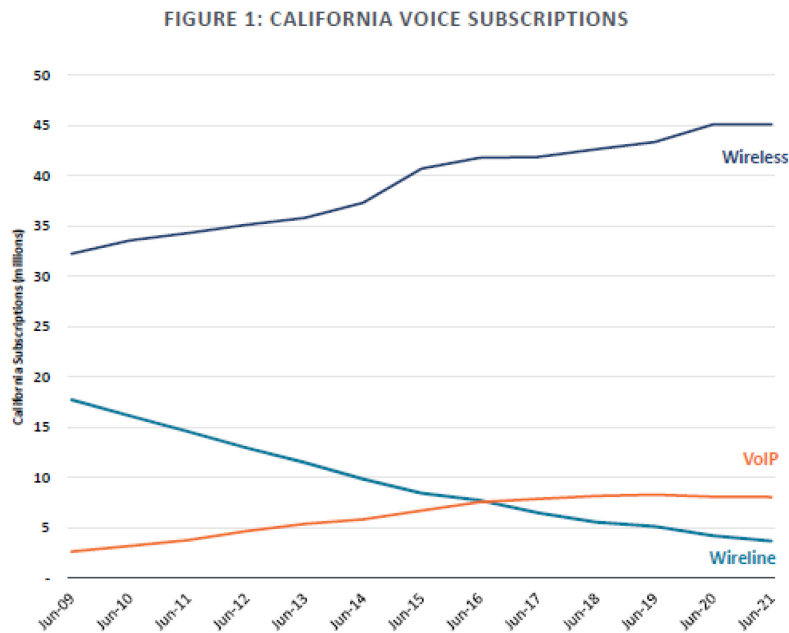
<sup>19</sup> Brattle Report at 13-14. When the Commission last analyzed retail communications services in California in 2016, only 0.2% of households were in census blocks with only one voice provider. See I.15-11-007, Staff Report, *Report of the Communications Division Pursuant to Ordering Paragraph 3 of Decision 16-12-025 Analyzing the California Telecommunications Market* at 27 (Dec. 2018).

<sup>20</sup> Brattle Report at 14.



operators, and others.<sup>21</sup> As competitive providers, CalBroadband’s members collectively operate cable systems that pass 97% of California households, offering fixed cable VoIP service to virtually all of those customers.<sup>22</sup>

Moreover, mobile wireless coverage is now nearly ubiquitous statewide and has become the first choice for voice service for the vast majority of Californians as wireline subscriptions have decreased, as shown in the Brattle Report graphic below.



SOURCE: FCC Form 477 Data

Wireless providers also are beginning to offer voice service via fixed wireless access technology. In addition, there has been a rapid increase in new satellite services that are able to provide voice service even in very remote geographical areas. These technologies provide dedicated voice

<sup>21</sup> See R.22-03-016, CCTA Comments, Exhibit B, Report of Dr. Gregory L. Rosston and Dr. Ana McDowall on Behalf of the California Cable and Telecommunications Association at 7 (May 9, 2022) (“Cornerstone Report”).

<sup>22</sup> See CalBroadband, Policies and Initiatives, <https://www.calbroadband.org/policies-and-initiatives>.

services as alternatives to traditional fixed wireline voice services and are being deployed virtually everywhere in California.<sup>23</sup> Satellite services also keep wireless voice customers connected even when they travel or live outside the provider’s terrestrial facilities-based service area.<sup>24</sup> Furthermore, a wide range of OTT VoIP services are available throughout the state.<sup>25</sup>

In this context, broad COLR obligations no longer make sense on a statewide or service-area-wide basis. However, if the Commission determines that COLR obligations remain necessary in areas that have no competitive options, existing COLRs should retain their COLR obligations in such areas until circumstances warrant relieving them of such obligations.

**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 not revise the definition of a COLR at this time. Instead, the Commission should consider the extent to which COLR obligations are outdated in areas where there is a competitive, multi-modal market for voice service.

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<sup>23</sup> *Id.*

<sup>24</sup> See, e.g., *Elon Musk Confirms T-Mobile Will Get Exclusive Access to Starlink Mobile Internet For One Year*, Wireless Estimator (Sept. 4, 2024), <https://wirelessestimator.com/articles/2024/elon-musk-confirms-t-mobile-will-get-exclusive-access-to-starlink-mobile-internet-for-one-year/> (describing how Starlink and T-Mobile have partnered to expand mobile coverage by using Starlink’s low-Earth orbit (LEO) satellites to eliminate “dead zones” and extend T-Mobile’s network coverage to rural and isolated locations); cf. Press Release, Verizon, 5G + LEO: Verizon and Project Kuiper team up to develop connectivity solutions (Oct. 26, 2021), <https://www.verizon.com/about/news/5g-leo-verizon-project-kuiper-team> (announcing strategic collaboration to, among other things, expand coverage of Verizon’s terrestrial mobile network).

<sup>25</sup> The FCC’s National Broadband Map reports that nearly 96% of California units have access to a 100/20 Mbps fixed, terrestrial broadband connection capable of providing a high-quality OTT VoIP experience. See FCC, National Broadband Map (last updated Aug. 6, 2024), [https://broadbandmap.fcc.gov/area-summary/fixed?version=dec2023&geoid=06&type=state&zoom=4.96&vlon=-119.306607&vlat=37.418961&br=r&speed=100\\_20&tech=1\\_2\\_3\\_4\\_5\\_6\\_7\\_8](https://broadbandmap.fcc.gov/area-summary/fixed?version=dec2023&geoid=06&type=state&zoom=4.96&vlon=-119.306607&vlat=37.418961&br=r&speed=100_20&tech=1_2_3_4_5_6_7_8).

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

COLR requirements should be limited to existing COLRs in areas that lack competition for voice service and applied only for as long as those areas lack competition.

**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?**

As explained above, well-served areas of California that benefit from competitive voice service options no longer require a COLR. Accordingly, COLR requirements should be limited to existing COLRs in areas that lack competition for voice service and applied only for as long as such circumstances persist.

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

The Commission initially required the ILECs to be COLRs because these carriers were monopoly providers that were—and continue to be—obligated to serve all customers in their service areas, which collectively cover the entire state. When the Commission opened the local exchange market to competition, it did not require (i.e., “designate”) any competitive local exchange carriers (“CLECs”) to serve as COLRs, but instead adopted rules which allowed them to voluntarily serve as COLRs. It would have been—and remains—irrational and inefficient to *require* competitive providers to become COLRs when ILECs already have that obligation throughout the state. If sufficient competition justifies relieving ILECs of their COLR obligations, then there is no reason for the Commission to impose a COLR obligation on competitive VoIP providers, or others.

Insofar as the Commission finds that COLR obligations are necessary to ensure ubiquitous access to voice service in certain limited areas without competition, the Commission should

maintain the existing COLRs' obligations in those areas and reassess the level of competition in the future. Requiring alternative voice providers to assume COLR obligations is not the answer.

Forcing VoIP providers to serve as COLRs also would exceed the Commission's authority and be subject to federal preemption. COLR requirements are classic common-carrier obligations associated with economic regulation of public utilities. The FCC has adopted certain limited regulatory requirements for VoIP providers, but it has declined to classify VoIP as a telecommunications service or to subject VoIP providers to common carrier regulation.<sup>26</sup> These longstanding federal decisions preempt conflicting state requirements.<sup>27</sup>

Furthermore, despite the Commission's unilateral declaration that VoIP providers are "telephone corporations"—which has not been affirmed by any court—the OIR points to no authority under state law for the Commission to impose COLR obligations developed for ILECs on competitive VoIP providers. Requiring any competitive provider to serve as a designated COLR in a defined area may also contravene local competition rules. CLECs, for example, are only required to serve customers within their self-designated service territories and within 300 feet of the CLEC's transmission facilities.<sup>28</sup>

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<sup>26</sup> See, e.g., *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Util. Comm'n*, Memorandum Opinion and Order, 19 FCC Rcd. 22404, 22404-05 ¶ 1, 22416-17 ¶ 21 n.78 (2004) (preempting application of state common carrier requirements to VoIP service), *aff'd sub nom Minn. Pub. Util. Comm'n v. FCC*, 483 F.3d 570 (8th Cir. 2007); *IP-Enabled Servs. E911 Requirements for IP-Enabled Serv. Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd. 10245, 10262 ¶ 29 n.95 (2005) (distinguishing E911 requirements for interconnected VoIP providers from the "traditional common carrier economic regulations" that the FCC has rejected).

<sup>27</sup> See *Charter Advanced Servs. (MN), LLC v. Lange*, 903 F.3d 715, 719 (8th Cir. 2018) (preempting state utility regulation of fixed cable VoIP service).

<sup>28</sup> See D.95-12-056, 1995 Cal. PUC LEXIS 966 at \*169, Appendix C Section 4.F(2). See also D.96-10-066, 1996 Cal. PUC LEXIS 1046, at \*301 ("In response to some of the comments that we received about requiring the COLR to serve the entire CBG... We did not intend to suggest that the GSA serve as the

**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?**

As discussed above, the Commission should focus on removing existing COLR obligations in areas where there is competition.<sup>29</sup> To the extent the Commission finds that COLR obligations are necessary to ensure ubiquitous access to voice service in certain limited areas without competition, the Commission should maintain existing COLRs' obligations in those areas and reassess the level of competition in the future.

**G. 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?**

If the Commission were to revise its rules, it should relieve existing COLRs of their obligations in areas where there is voice competition and make clear that no COLR is required in those areas. Insofar as the Commission finds that COLR obligations remain necessary to ensure access to voice service in a given area, the Commission should maintain the existing COLR's obligations in that area only for as long as the market lacks competition.

#### **IV. CONCLUSION**

CalBroadband appreciates the opportunity to comment on the OIR, which raises important questions regarding the need for COLR obligations in areas of California where there are multiple voice service providers. Indeed, California consumers enjoy strong competition for voice service

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geographic service area for all CLCs. This would be contrary to the local competition rule which allows the CLCs to designate the service territory that they intend to serve.”).

<sup>29</sup> Importantly, were the Commission to determine that it is necessary for a new service provider to be designated as a COLR in any area that lacks competition, such designation should remain voluntary and come with universal service fund support.

throughout much of the state. Accordingly, the Commission should decline to require new providers to become COLRs. In limited areas without competition, legacy COLR obligations should continue to apply to existing COLRs until competition has been achieved.

Respectfully submitted,

*/s/ Jerome F. Candelaria*

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