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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

REPLY COMMENTS OF

HAPPY VALLEY TELEPHONE COMPANY (U 1010 C)
HORNITOS TELEPHONE COMPANY (U 1011 C)
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

Sarah J. Banola
BRB Law LLP
492 9th Street, Suite 220
Oakland, CA 94607
Phone: (510) 955-1082
Email: sarah@brblawgroup.com

Attorneys for the TDS Companies

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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, Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U 1011 C), and Winterhaven Telephone Company (U 1021 C) (collectively, the "TDS Companies") submit these reply comments addressing issues raised in the opening comments of the parties on the OIR.[1]

As TDS and the Small LECs explained in their opening comments, this OIR should remain focused on the continuing need for Carriers of Last Resort ("COLRs"), the procedure for withdrawing from COLR status, and the definition of basic service, which all concern *voice* services.[2] The Opening Comments of the consumer groups seek to greatly expand this OIR beyond its intended purpose and scope to address issues such as broadband affordability, deployment and service quality, but they fail to provide sufficient factual or legal justification to support their proposed expansion.[3] As Joint Commenters' comments acknowledge, this OIR "is potentially extremely broad in scope,"[4] yet many other proceedings are addressing broadband affordability, deployment and service quality.[5] Therefore, these issues should not be addressed in this COLR rulemaking, which would pose jurisdictional concerns and cause unnecessary delay. Rather than adopt the consumer groups' proposals, the Commission should modernize its COLR rules and authorize relief from COLR obligations for Incumbent Local Exchange Carriers

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[1] The following parties filed opening comments: Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Foresthill Telephone Co., Kerman Telephone Co., Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Company, Inc., The Siskiyou Telephone Company, and Volcano Telephone Company (collectively, the "Independent Small LECs"); California Broadband & Video Association ("CalBroadband"); California Farm Bureau Federation ("Farm Bureau"); the Center for Accessible Technology ("CforAT"), the Communications Workers of America ("CWA") District 9, and The Utility Reform Network ("TURN") (collectively, the "Joint Commenters");Consolidated Communications of California Company ("Consolidated"); CTIA – The Wireless Association ("CTIA"); EMF Safety Network; Empowering Quality Utility Access for Isolated Localities ("EQUAL"); Frontier California Inc., Citizens Telecommunications Company of California Inc., Frontier Communications of the Southwest Inc. (collectively, "Frontier"); Pacific Bell Telephone Company ("AT&T"); Public Advocates Office ("Cal Advocates"); Small Business Utility Advocates ("SBUA"); and USTelecom - The Broadband Association ("USTelecom").

[2] *TDS Opening Comments* at 4; *Independent Small LECs Opening Comments* at 3.

[3] *Joint Commenters Opening Comments* at 1-5, 10-13, 19-21, 25-28, 36-39; *Cal Advocates Opening Comments* at 1-4, 6-9, 11-23, 43-56, 69-71; *SBUA Opening Comments* at 4-5, 7.

[4] *Joint Commenters Opening Comments* at 62.

[5] *Id.* at 13-18.

("ILECs") like the TDS Companies who do not participate in the CHCF-A or CHCF-B universal service funding programs. The comments provide many reasonable proposals for the Commission to provide COLR relief in areas with sufficient competition.[6] 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 state universal service support. Reasonable relief from COLR obligations and the ability to opt into the URF framework are necessary to ensure fair competition, which will benefit consumers.

II. THE CONSUMER GROUPS' PROPOSALS DISREGARD THE CURRENT COMPETITIVE INTERMODAL VOICE MARKETPLACE WHICH JUSTIFIES ELIMINATION, RATHER THAN EXPANSION OF COLR OBLIGATIONS.

The consumer groups' proposals to greatly expand ILECs' COLR obligations ignore technology changes and the increasingly competitive intermodal voice marketplace since the COLR rules were last developed nearly thirty years ago in a monopoly environment. The intense intermodal voice competition is amply supported by the industry parties' opening comments.[7] This overwhelming evidence justifies elimination of outdated COLR requirements in areas with sufficient competition as many parties have suggested and many other state commissions have done.[8] The opening comments further demonstrate that the continued imposition of inequitable

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[6] *See, e.g.*, *TDS Opening Comments* at 3 ("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."); *AT&T Opening Comments* at 34-35 (summarizing initial proposals to "(i) to end the COLR obligation for areas that are well-served with broadband; (ii) to end the COLR obligation for areas where (a) the census reports that there is no population, (b) the applicable COLR does not serve any customer address with basic telephone service in that census block, *and* (c) the National Broadband Map does not report any serviceable locations; . . . [and] (iv) to develop a straightforward mechanism to remove the COLR obligation in an area that becomes well-served with broadband, absent a compelling need"); *Cal Broadband Opening Comments* at 3 ("Taking into consideration factors such as the availability of competitive service and receipt of universal service fund support, a growing number of states have limited COLR obligations to areas lacking competition or eliminated these requirements altogether.").

[7] *See, e.g.*, *AT&T Opening Comments* at 3-4, 6-26, Attachment B (Israel Declaration); *CalBroadband Opening Comments* at 1-8; *US Telecom Opening Comments* at 2-4; *TDS Opening Comments* at 2-3.

[8] *See, e.g.*, *Cal Broadband Opening Comments* at 3-5 (summarizing many other states who have provided reasonable relief from COLR obligations in areas with sufficient competition and observing that these "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 distortionary COLR obligations solely on ILECs in today's highly competitive marketplace harms competition and consumers, deters innovation, and "diverts resources from investment in broadband," which "can help narrow the digital divide."[9]

In support of Cal Advocates' proposal to condition provisional authorization to end COLR obligations on complete deployment of "broadband basic service" at 100/20 Mbps across the COLR's service area for which the COLR is seeking to withdraw, Cal Advocates presents a misleading depiction of broadband deployment. Cal Advocates identifies an area as unserved simply because the area is unserved by a specific technology, such as DSL, fiber, cable modem, fixed wireless, or mobile wireless.[10] Cal Advocates' narrow portrayal of broadband coverage is inconsistent with its repeated claim that an assessment of COLR needs or Cal Advocates' proposed withdrawal conditions should be "technology neutral."[11] The fact that an area is not served by a specific technology does not mean the area is "unserved." An assessment of whether sufficient competitive alternatives are available to authorize relief from COLR obligations should be based on *voice* services and consider all alternatives available via multiple technologies and providers offering service in a COLR's service area. Indeed, the carriers' opening comments show that "the vast majority of Californians already have broadband service available to them," and "[t]he 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."[12] Moreover, as Cal Broadband highlights 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."[13] As all commenters acknowledge, these percentages will increase as broadband deployment advances to rural areas pursuant to recent broadband grant programs, such as the Rural Digital Opportunity

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AT&T Opening Comments at 26-33; *Consolidated Opening Comments* at 5; *TDS Opening Comments* at 2-3; *US Telecom Opening Comments* at 5-7.

[9] *AT&T Opening Comments* at 11-14, Attachment B (Israel Declaration) at ¶¶ 53, 55, 58; *Consolidated Opening Comments* at 1-2; *Frontier Opening Comments* at 1; *US Telecom Opening Comments* at 4.

[10] *See Cal Advocates Opening Comments* at 23-42.

[11] *Id.* at 43, 46, 54.

[12] *AT&T Opening Comments* at 23; *Cal Broadband Opening Comments* at 8, n.25.

[13] *CalBroadband Opening Comments* at 6.

Fund ("RDOF") and the Broadband, Equity, Access and Deployment Program ("BEAD").[14] In addition, broadband deployment will significantly increase for many carriers, including the TDS Companies, who participate in the Enhanced Alternative Connect America Cost Model program. Contrary to Cal Advocates' conclusory claims, further Commission intervention is not needed to ensure universal service,[15] particularly through this COLR OIR, which should be focused on voice services. Based on this well-documented competition, the consumer groups' proposals would impose onerous and unjustified requirements on existing COLRs that would make the COLR requirements even more inequitable and discriminatory and harm competition. As all carriers agree, reasonable and prompt COLR relief should be available in service areas with sufficient competition.[16] TDS agrees with AT&T that competition can be measured by a service area that is well-served by broadband,[17] but competition should also be measured by the availability of other alternative voice options, including VoIP and wireless services which many consumers prefer.[18] The consumer groups' onerous proposals for carriers seeking relief from COLR obligations are unjustified in today's competitive voice marketplace.

In addition, their proposals are not clearly defined. For example, Cal Advocates argues that a "COLR withdrawal request area must be defined at a minimum at the CBG level to prevent erroneous assessments that an 'area' is already served (by cherry-picking only specific census blocks)."[19] It further argues that deployment or subscription should be assessed at both the census block and serviceable location levels and that numerous conditions must be met at the census block level.[20] Cal Advocates fails to justify defining a COLR withdrawal request at the CBG level because COLR obligations are unnecessary in a census block with sufficient competition and withdrawing COLR obligations in these census blocks would not raise cherry-

[14] *See, e.g.*, *AT&T Opening Comments* at 25-26; *Cal Advocates Opening Comments* at 20; *CalBroadband Opening Comments* at 3; *Joint Commenters Opening Comments* at 13-14; *USTelecom Opening Comments* at 5.
[15] *Cal Advocates Opening Comments* at 22-23.
[16] *See, e.g.*, *AT&T Opening Comments* at 26-33; *Cal Broadband Opening Comments* at 5; *Consolidated Opening Comments* at 5; *TDS Opening Comments* at 2-3; *US Telecom Opening Comments* at 5-7.
[17] *AT&T Opening Comments* at 27-29.
[18] *See US Telecom Opening Comments* at 3 (customers "overwhelmingly prefer wireless and VoIP technologies," and "in California, less than 5% of the households have a traditional telephone line"); *CalBroadband Opening Comments* at 7 (showing significant decline in wireline subscriptions as VoIP and wireless subscriptions have continued to increase since 2009).
[19] *Cal Advocates Opening Comments* at 54.
[20] *Id*.

picking concerns. In addition, to the extent a COLR's service area does not include an entire census block or CBG, any COLR obligations or withdrawal conditions should not apply to portions outside a COLR's defined service area. Instead of adopting the consumer groups' harmful, overly broad and confusing proposals, the Commission should provide reasonable procedures for carriers seeking relief and evaluate criteria, such as the presence of competition and the receipt of state universal service, as many other states have done.

In addition, RLECs like the TDS Companies who do not participate in the CHCF-A or CHCF-B programs should be permitted to transition to URF status through a Tier 3 advice letter process.[21] COLR relief and the ability to opt into URF will foster a more level playing field in an increasingly competitive telecommunications marketplace.

III. THIS OIR SHOULD NOT BE EXPANDED TO INCLUDE HIGHLY COMPETITIVE BROADBAND SERVICES OVER WHICH THE COMMISSION LACKS JURISDICTION TO IMPOSE RATE REGULATIONS.

The proposals of Joint Commenters, SBUA and Cal Advocates to include broadband service requirements as part of COLR obligations or withdrawal conditions would unnecessarily expand the scope of this proceeding, which should remain focused on voice services consistent with the preliminary scope of issues identified in the OIR.[22] As many parties recognize, many other Commission proceedings are already addressing the broadband deployment, service quality and affordability issues these consumer groups recommend be considered in this OIR.[23] There is no need to address these duplicative issues here, which would result in an extremely overbroad scope and cause unnecessary delay. As AT&T and US Telecom point out, for those limited areas in California with insufficient broadband coverage, the Commission should incentivize willing providers to provide broadband access to these areas through its existing broadband grant and universal support programs, which is consistent with the FCC's policy that "universal

[21] The Commission could impose reasonable customer notice requirements and rate freezes for reasonable periods, such as six to twelve months.

[22] *OIR* at 4-6. Cal Advocates' proposals are also inconsistent with disingenuous arguments it made in support of its Motion to Compel TDS to produce granular broadband subscription data, which it claimed was needed to comment on the ability of VoIP providers to serve as COLRs. *Cal Advocates' Motion to Compel Responses from the TDS Companies* at 2, 5, 7. Notably, Cal Advocates provides no such proposal or analysis in its comments.

[23] *See, e.g.*, *Joint Commenters Opening Comments* at 13-18; *AT&T Opening Comments* at 5-6; *CalBroadband Opening Comments* at 12; *US Telecom Opening Comments* at 5.

service should be fulfilled by willing participants."[24] The consumer groups' proposals to force only existing COLRs to meet broadband service requirements would be discriminatory and inequitable and implicate equal protection concerns.[25]

Moreover, these proposals would exceed the Commission's jurisdiction, which is limited to the intrastate regulated activities of California public utilities, and it does not include Internet Service Providers or broadband services.[26] Cal Advocates recognizes that the "Commission generally lacks a mechanism to compel a broadband provider to deploy broadband service to a specific location or area," yet erroneously asserts that the Commission may compel a COLR to do so as a condition to seeking relief from its COLR obligations.[27]

Even if the Commission had broad authority under state law to impose onerous common carrier requirements on broadband services—which it does not—mandating COLRs or their ISP affiliates to comply with broadband deployment, speed, pricing and service quality regulations would be subject to federal preemption. The FCC recently adopted a tailored regulatory framework for broadband services designed to avoid "unnecessarily stifling investment and innovation."[28] The FCC's *Title II Order* is under judicial review, and a stay has been imposed by the Sixth Circuit, making the "Title II" framework provisionally inoperative.[29] Under either a "Title I" or the "Title II" classification, it would be unlawful for the Commission to impose

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[24] *AT&T Opening Comments* at 31-32; *US Telecom Opening Comments* at 4.
[25] *See, e.g.*, *Walgreen Co. v. City & Cty. of San Francisco,* 185 Cal.App.4th 424, 443–44 (2010); *United States Steel Corp. v. Pub. Utilities Comm'n*, 29 Cal.3d 603, 610 (1981).
[26] *See* Pub. Util. Code § 234(a) (limiting authority over "telephone corporations" to companies that own, control, operate, or manage a "telephone line" "within this state"), 216 (defining public utility with reference to "telephone corporations"); Cal. Const., art. XII, §§ 3 (defining public utilities that are "subject to control by the Legislature"), 6 (the CPUC "may fix rates . . . for all *public utilities subject to its jurisdiction*.") (emphasis added); *see also City & County of San Francisco v. W. Air Lines, Inc.*, 204 Cal.App.2d 105, 131 (1962) ("Unless the enterprise or activity in question is a public utility as defined in the Constitution or Public Utilities Code, it is not subject to the jurisdiction of such commission.") (citing *Television Transmission v. Public Util. Comm'n.,* 47 Cal.2d 82, 84 (1956)); *United States v. Costanzo* (9th Cir. 2020) 956 F.3d 1088, 1092 (The Ninth Circuit "ha[s] long recognized that the Internet and the nation's vast network of telephone lines are instrumentalities of and intimately related to interstate commerce.").).
[27] *Cal Advocates Opening Comments* at 13.
[28] *In the Matter of Safeguarding and Securing the Open Internet Restoring Internet Freedom*, WC Docket 23-320, *Report and Order, et al.,* FCC 24-52, ¶ 6 (rel. May 7, 2024) ("*Title II Order*").
[29] *In re MCP No. 185*, No. 24-7000, 2024 U.S. App. LEXIS 19815 (6th Cir. Aug. 1, 2024) (stay imposed in "per curiam" opinion).

onerous broadband service requirements on broadband operations that the Commission does not regulate.

If broadband is a "Title I" service, the consumer group's proposed broadband service regulations would impermissibly conflict with the FCC's determinations that broadband should be free of "public utility-type" regulations.[30] While the Ninth Circuit rejected preemption arguments in an interlocutory appeal from the denial of a preliminary injunction in a case challenging a California "net neutrality" statute,[31] the legislation there merely "touche[d] on interstate communications."[32] Unlike the generic policy to encourage an open Internet by prohibiting content prioritization, throttling, and blocking, the consumer groups' proposals would impose costly and burdensome broadband deployment, speed, pricing and service quality regulations on COLRs.

Alternatively, if broadband is a "Title II" service, the FCC's extensive forbearance and preemption provisions invoke express and conflict preemption as to state commission attempts to regulate broadband service.[33] In support of this regulatory approach, the FCC adopted broad regulatory forbearance directives,[34] which would preclude state commissions from applying or

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[30] *See In the Matter of Restoring Internet Freedom*, WC Docket No. 17-108, *Declaratory Ruling, Report and Order, and Order*, FCC 17-166 (rel. Jan. 4, 2018) ("*Restoring Internet Freedom Order*"), ¶¶ 1, 20, 100 (adopting classification of broadband as an "information service" under "Title I" of the Telecommunications Act, and confirming that that ISPs must be free of "utility style regulation."), *vacated in part on other grounds by Mozilla Corp. v. Fed. Commc'ns Comm'n*, 940 F.3d 1, 35 (D.C. Cir. 2019) (upholding the FCC's classification of broadband Internet access as an "information service"); *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 873 (2000) (citing *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941) ("a "state law" will be preempted if it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."); *see Mozilla, supra,* 940 F.3d at 81-82, 86 (preserving conflict preemption as a possibility if there are future "particular state law[s]" that "conflict with the 2018 Order.").

[31] *ACA Connects-America's Communs. Ass'n v. Bonta*, 24 F.4th 1233 (9th Cir. 2022).

[32] *Id*. at 1247 (dismissing plaintiffs' arguments by explaining that not everything that "touches on interstate communications . . . impermissibly regulates in that field.").

[33] *Title II Order*, FCC 24-52 at ¶ 426 (noting that the FCC forbears "from all *ex ante* and *ex post* rate regulation, tariffing, and related recordkeeping and reporting requirements insofar as they would arise from our classification of BIAS."); 47 U.S.C. § 160(e) ("A State commission may not continue to apply or enforce any provision of this chapter that the Commission has determined to forbear from applying . . . ."); *see also Title II Order,* FCC 24-52 at ¶ 267 ("Because our Order today restores and rests on the broad regulatory authority conferred on the Commission by Title II, *Mozilla* does not cast any doubt on the Commission's power, under the impossibility exception as well as ordinary principles of conflict preemption, to preempt state law when exercising—or when forbearing from—our affirmative regulatory authority over broadband.").

[34] *Title II Order* at ¶ 383.

enforcing any provision that are within the scope of the FCC's forbearance.[35] The consumer groups' proposed broadband service regulations would be precluded by the FCC's broad forbearance from "all ex ante and ex post rate regulation."[36] In addition, these proposals would interfere with or undermine the FCC's restrained and carefully-configured federal regulatory framework for broadband services, so conflict preemption would also apply.[37]

IV. CAL ADVOCATES' PROPOSED COPPER MIGRATION RULES SHOULD BE REJECTED AS THEY ADMITTEDLY EXCEED THE SCOPE OF THIS OIR AND ARE UNNECESSARY AND HARMFUL.

Cal Advocates proposes granular, onerous, and extensive copper retirement and customer migration plans for all ILECs "regardless of the ILEC's COLR status or any intention to change COLR status."[38] Cal Advocates fails to identify a sufficient connection between this issue and the scope of this OIR, which is focused on modernization of COLR rules. Indeed, Cal Advocates acknowledges that "copper retirements have and will continue to occur largely outside the context of changes in COLR obligations."[39] Moreover, Cal Advocates also recognizes that the FCC already imposes copper migration requirements on carriers.[40] Cal Advocates further acknowledges that the Commission itself has considered and adopted limited copper migration rules for CLECs and ILECs but declined to adopt additional copper migration regulations.[41] In fact, the Commission previously declined Cal Advocates' and other parties' proposals to impose more extensive copper migration requirements in light of the FCC's existing requirements, the lack of proof of any harm caused by ILECs' copper retirements, and federal and state policies to promote competition and investments in fiber and other "new technologies and services to meet customer need and encourage the ubiquitous availability of state-of-the-art services."[42] This reasoning remains true today and the Commission should reject Cal Advocates'

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[35] 47 U.S.C. § 160(e) ("A State commission may not continue to apply or enforce any provision of this chapter that the Commission has determined to forbear from applying . . . .").
[36] *Title II Order* at ¶ 426 (noting that the FCC forbears "from all *ex ante* and *ex post* rate regulation, tariffing, and related recordkeeping and reporting requirements insofar as they would arise from our classification of BIAS."); 47 U.S.C. § 160(e).
[37] *Title II Order* at ¶¶ 265-267.
[38] *Cal Advocates Opening Comments* at 57-64.
[39] *Id.* at 57.
[40] *Id.* at 59; *see also* 41 C.F.R. § 51.333 *et. seq*.
[41] *Id.* at 57-58, *citing* D.08-11-033 and D.10-07-024.
[42] D.08-11-033 at 32-33.

improper proposal for the Commission to reconsider its prior rejection of additional copper migration rules, which are unnecessary and would harm competition, investment and innovation.

V. CONCLUSION.

The COLR rules should remain up to date with the significant advances in technology and intermodal voice competition that has occurred since the COLR rules were developed in the mid-1990s. The consumer groups' proposals are out of touch with the current competitive environment and would be detrimental to fair competition, innovation and investments needed to close the digital divide. Their proposed broadband service and copper migration regulations are unjustified and unnecessary. As the industry parties' opening comments show, this OIR should be focused on the modernization of the COLR rules to remove unnecessary and outdated elements and obligations from the COLR definition and to provide reasonable COLR relief in areas with sufficient competition. In addition, the Commission should authorize RLECs not receiving state universal support to opt into URF to foster a fair competitive marketplace and benefit consumers.

Respectfully submitted on October 30, 2024.

Sarah J. Banola
BRB Law LLP
492 9th Street, Suite 220
Oakland, CA 94607
Phone: (510) 955-1082
Email: sarah@brblawgroup.com

By */s/ Sarah J. Banola*
Sarah J. Banola

Attorneys for the TDS Companies