

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

10/30/24

04:59 PM

R2406012

Order Instituting Rulemaking Proceeding to
Consider Changes to the Commission's Carrier of
Last Resort Rules.

Rulemaking 24-06-012

**REPLY COMMENTS OF CTIA ON
ORDER INSTITUTING RULEMAKING**

Jordan J. Pinjuv
WILKINSON BARKER KNAUER LLP
2138 W. 32nd Ave., Suite 300
Denver, CO 80211
Telephone: 303-626-2336
Email: JPinjuv@wbklaw.com

Attorneys for CTIA

October 30, 2024

CTIA submits these reply comments in response to the Order Instituting Rulemaking Proceeding to Consider Changes to the Commission’s Carrier of Last Resort (“COLR”) Rules issued June 28, 2024 in this docket (“OIR”).¹

CTIA’s initial comments addressed solely the question in the OIR regarding whether the Commission can direct wireless providers to serve involuntarily as COLRs. CTIA’s comments demonstrated that it would be both bad policy and contrary to federal law for the Commission to do so. None of the other comments challenged these conclusions.

Certain other parties’ initial comments contained inaccurate statements regarding the availability and quality of wireless service, which CTIA also corrects in this reply.

I. THE RECORD AFFIRMS THAT THE COMMISSION SHOULD NOT AND CANNOT DIRECT WIRELESS PROVIDERS TO SERVE INVOLUNTARILY AS COLRS.

As CTIA explained in its comments, the Commission may not direct wireless providers to serve involuntarily as COLRs because such an involuntary designation would be preempted by federal law. Moreover, even if the Commission were legally permitted to direct wireless providers to serve involuntarily as COLRs, it should not because doing so would be inconsistent with the competitive marketplace in which wireless providers operate. The record in this proceeding confirms both points.

Initial comments demonstrated that wireless providers operate in a highly competitive environment.² As CTIA explained, the foundational justifications underlying COLR policy are

¹ *Order Instituting Rulemaking Proceeding to Consider Changes to the Commission’s Carrier of Last Resort Rules*, R. 24-06-012 (Issued June 28, 2024) (“OIR”).

² *See, e.g.*, California Broadband & Video Ass’n (“CalBroadband”) Comments at 7-8; Frontier Comments at 3; USTelecom Comments at 3-4. Unless otherwise specifically noted, references herein to a party’s “Comments” refer to the party’s initial comments in response to the OIR filed on Sept. 30, 2024, except in the case of the Center for Accessible Technology, The Utility Reform Network, Comms. Workers of

ill-suited for providers operating in such a dynamic marketplace.³ As such, directing a wireless carrier to serve involuntarily as a COLR would be bad policy.⁴

Commenters also affirmed that federal law preempts the Commission from directing a wireless provider to serve involuntarily as a COLR. Several commenters recognized that federal preemption precludes the Commission from directing a wireless provider to serve involuntarily as a COLR. For example, EQUAL correctly observed that “the Commission’s limited jurisdiction over market entry issues makes a mandate for cellular carriers to serve as COLRs unduly complicated and likely litigious.”⁵ Similarly, Joint Commenters stated that “whether the Commission can direct wireless provider[s] to serve as COLRs is in flux”⁶ due to “legal and jurisdictional issues specific to wireless carriers,” particularly the need to avoid “regulating [their] market entry.”⁷ The Small ILECs agreed that “there would be significant legal obstacles to classifying cellular or mobile wireless carriers as COLRs.”⁸

No commenter refuted that federal preemption would preclude the Commission from directing a wireless provider to serve involuntarily as a COLR. The Public Advocates Office (“PAO”) discussed various provisions of California law that empower the Commission to regulate public utilities generally but did not address the extent to which such authority is

Am., District 9 (“Joint Commenters”), where we refer to Joint Commenters amended initial comments filed October 17, 2024.

³ CTIA Comments at 1-2.

⁴ *Id.*

⁵ Empowering Quality Utility Access for Isolated Localities (“EQUAL”) Comments at 18.

⁶ Joint Commenters Comments at 32.

⁷ *Id.* at 35.

⁸ Calaveras Tel. Co. et al. (“Small ILECs”) Comments at 8, *citing* 47 U.S.C. § 332(c)(3)(A); *see also* Frontier Comments at 4 & n.7.

constrained by federal law.⁹ Despite characterizing wireless providers as “generally poor candidates for serving as COLRs” and acknowledging “legal and jurisdictional issues,”¹⁰ the Joint Commenters nevertheless asserted that, in the Disaster Response proceeding, “the Commission rejected [wireless] providers’ arguments that federal preemption prohibited the Commission” from imposing “service quality requirements and service guarantees.”¹¹ This is inaccurate, and, in any event, the Commission’s decisions in that docket have no bearing on whether the Commission may direct a wireless provider to serve involuntarily as a COLR. In the Disaster Response docket, the Commission mandated that wireless providers “develop comprehensive resiliency strategies to prepare for catastrophic disasters and power outages” and report on those strategies to the Commission.¹² The Commission specifically acknowledged that the “scope of § 332’s preemptive language” bars state requirements that “prevent market entry, or require a determination of the reasonableness of rates.”¹³ Directing a wireless provider to serve involuntarily as a COLR would directly regulate the wireless provider’s rates and entry, as CTIA has shown, and also would conflict with a federal decision not to require wireless providers to obtain regulatory approval for market exit.¹⁴ Further, as CTIA has explained and continues to maintain, the Commission’s conclusions in the Disaster Response docket regarding its jurisdiction over wireless providers’ networks were incorrect.¹⁵

⁹ PAO Comments at 73-77.

¹⁰ Joint Commenters Comments at 16 and 32.

¹¹ *Id.* at 32, *citing* D.20-07-011 (Issued July 20, 2020); D.21-10-015 (Issued Oct. 12, 2021).

¹² D.21-10-015 at 2. *See also* D. 20-07-011 at 143-146 (Ordering ¶¶ 1-4 adopting reporting requirements).

¹³ D. 20-07-011 at 137 (Conclusions of Law 37).

¹⁴ CTIA Comments at 3-6.

¹⁵ *See* Application of CTIA, AT&T Mobility, Cellco Partnership, and T-Mobile for Rehearing of Decision 20-07-011, R. 18-03-011 (filed Aug. 19, 2020), *reh’g denied* D.21.10-015.

Finally, in addressing potential modifications to the Commission’s COLR definition, some commenters proposed that the Commission modify its COLR definition in ways that could potentially include wireless providers.¹⁶ CTIA offers no comment on these proposals, other than to reiterate that the Commission should not and may not direct wireless providers to serve involuntarily as COLRs.

II. THE COMMENTS INCLUDE CERTAIN INACCURATE STATEMENTS REGARDING WIRELESS SERVICE.

CTIA observes that the comments in response to the OIR contained certain statements regarding wireless service that are inaccurate. CTIA seeks here to correct these inaccuracies in the record, but reaffirms that it takes no position on the arguments for which these inaccurate points were offered.

Some commenters inaccurately maligned the quality and availability of wireless networks. For example, Joint Commenters suggested that there is a “lack of wireless service in many areas located within the reported coverage areas of cell service providers,”¹⁷ or that “wireless carriers may not actually have service everywhere in their service territories.”¹⁸ The wireless industry is constantly expanding the scope of its networks—including by adding over 83,000 cell sites in the last five years, a 24% increase.¹⁹ As CTIA has noted in other dockets, complaints about wireless coverage generally come from residents of areas that lie at the edge of or outside of wireless providers’ current coverage areas.²⁰ While the precise contours of wireless

¹⁶ See, e.g., Small Business Utility Advocates (“SBUA”) Comments at 4-5; Small ILECs comments at 6-7.

¹⁷ Joint Commenters Comments at 16.

¹⁸ *Id.* at 33; see also PAO comments at 42 (questioning the veracity of wireless coverage maps).

¹⁹ CTIA 2024 Annual Survey Highlights at 6 (Sept. 2024).

²⁰ See, e.g., Comments of CTIA on Joint Summary of September 7, 2023 Workshop, R.22-03-016, at 7-8 (filed Oct. 5, 2023).

coverage are inherently variable based on a variety of factors outside wireless providers' control, including signal blocking from terrain and buildings and the capabilities of the customer's wireless device, current wireless coverage maps are generated based on standardized parameters articulated by the Federal Communications Commission ("FCC").²¹ Indeed, similar maps designed in accord with FCC mapping rules are being used in California to inform the distribution of over a billion dollars in federal broadband deployment subsidies. CTIA also notes that wireless coverage maps are predictive, not actual, so some variability is to be expected.

CTIA acknowledges that there is more work to do to address barriers to wireless deployment. In some areas, the barrier to deployment is an inability to obtain permission to site wireless facilities, such as towers. In other areas, barriers may include factors such as terrain or low population density. These are issues that the Commission certainly cannot resolve through a COLR designation. The Commission would be constrained because, as Joint Commenters observed, "the Commission does not have the authority to require wireless carriers to install more antennas on towers."²² CTIA and its members continue to look for ways to expand wireless coverage throughout California, but such solutions will not be found in this docket.

²¹ See 47 C.F.R. § 1.7004(c)(3)-(7) (coverage map standards); *see also id.* at § 1.7006(c), (e) (mobile coverage verification requirements).

²² Joint Commenters Comments at 16.

III. CONCLUSION.

Any rules adopted in this docket should reflect that the Commission should not and may not direct a wireless provider to serve involuntarily as a COLR.

Respectfully submitted,

By: /s/ Jordan J. Pinjuv
Jordan J. Pinjuv
WILKINSON BARKER KNAUER LLP
2138 W. 32nd Ave., Suite 300
Denver, CO 80211
Telephone: 303-626-2336
Email: JPinjuv@wbklaw.com

Attorneys for CTIA

October 30, 2024