BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking Proceeding to Consider Changes to the Commission's Carrier of Last Resort Rules.	Rulemaking 24-06-012

REPLY 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")[1] respectfully submits this reply to comments on the Order Instituting Rulemaking Proceeding to Consider Changes to the Commission's Carrier of Last Resort Rules ("OIR").

I. EXECUTIVE SUMMARY

The record demonstrates that today's competitive voice services marketplace bears little resemblance to the monopolistic era in which the carrier of last resort ("COLR") framework was established. Most commenters agree that there are many areas of California where continued designation of a COLR is no longer necessary to ensure access to voice services given existing and increasingly robust competition.

In light of these competitive market conditions, and as supported by many initial proposals in response to the OIR, CalBroadband recommends that the Commission remove mandatory COLR obligations in areas with effective competition for voice services. To the extent the Commission finds that COLR obligations remain necessary to ensure ubiquitous access to voice service in certain limited areas that lack competition, the Commission should maintain existing

[1] CalBroadband was formerly known as the California Cable & Telecommunications Association.

COLRs' obligations in those areas and reassess the level of competition in the future. This approach aligns with current COLRs' stated commitments to remain in areas where there is not yet sufficient competition.[2] It also would render superfluous the adoption of a process to mandate that any other providers be designated as COLRs.

The Commission should also reject calls to add broadband to the definition of "basic service" or to extend COLR obligations to broadband providers. Any of these actions would exceed the Commission's jurisdiction and the scope of this proceeding, and be subject to federal preemption.

Finally, as a procedural matter, the Commission should adopt the recommendation to recategorize this proceeding as quasi-legislative. A quasi-legislative categorization will facilitate efficient collaboration and information-sharing and ensure the Commission develops a sufficient record to resolve the scoped issues. Moreover, the central focus of this OIR is on issues related to the provision of voice service by COLRs, not setting rates for specifically named utilities.

II. THERE IS STRONG SUPPORT IN THE RECORD FOR ELIMINATING COLR OBLIGATIONS IN AREAS WITH VOICE SERVICE COMPETITION WITHOUT DESIGNATING A REPLACEMENT COLR.

Commenters agree with CalBroadband that the monopoly telephone era that gave rise to COLR requirements has given way to robust competition for voice services nearly everywhere in California. By a number of measures in the record, the vast majority of households have multiple options for voice providers, and universal voice service has been nearly achieved for all Californians. As a result, COLR requirements have become obsolete in many areas of the state

[2] *See infra* Section III and n.16.

where there is strong competition for voice services.[3] TDS Companies highlight the Commission's findings that "[c]ompetition in this consumer intermodal voice market, as measured by service deployment and market concentration, appears strong."[4] Frontier notes that in urban and suburban markets, "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 [Charter]. Likewise, in these environments, there is a multiplicity of alternatives for voice service."[5] Indeed, Consolidated reports that at least 99% of customer locations in its service territory have access to at least one wireline alternative for voice service, and at least 95% of these locations have three alternatives for wireless voice service.[6]

It is imperative that the Commission take a broad view of the voice services market in assessing competition, understanding that multi-modal competition is present for most California households. Cable, copper, fiber, fixed wireless, and mobile wireless[7] service providers compete

[3] *See* Consolidated Communications of California Company ("Consolidated") Comments at 3 (asserting that the COLR designation is "an outdated concept that is a relic of rate-of-return regulation and incompatible with the modern competitive environment"); Frontier California Inc., Citizens Telecommunications Company of California Inc. DBA Frontier Communications of California, Frontier Communications of the Southwest Inc. ("Frontier") Comments at 1 ("The concept of COLR is outdated, and incompatible with the competitive modern telecommunications marketplace."); Happy Valley Telephone Company, Hornitos Telephone Company, Winterhaven Telephone Company ("TDS Companies") Comments at 5 ("The COLR concept is outdated.").

[4] TDS Companies Comments at 2-3 (citing D.16-12-025 at 184-85).

[5] Frontier Comments at 2.

[6] Consolidated Comments at 4.

[7] Californians regularly use mobile wireless service as their primary voice service. Both the Federal Communications Commission ("FCC") and the Commission have determined that mobile wireless providers may participate in the federal and state Lifeline programs, and as such, have found that wireless service meets the needs of consumers and plays a role in achieving universal service for all Californians. *Cf.* R.22-03-016, Comments of the California Cable & Telecommunications Association in Response to Order Instituting Rulemaking Proceeding to Consider Amendments to General Order 133, Exhibit B ¶ 49 (May 9, 2022) ("Rosston-McDowall Report"); *see also* D.16-12-025 at 185 (Finding of Fact 7(c)) ("Mobile voice service is a substitute for fixed landline voice service for most Californians, subject to limitations."); *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47*

with one another to serve the *same* households and typically offer their own facilities-based voice service. And all of these technologies, plus satellite, offer access to numerous over-the-top voice services—which also compete with one another and with facilities-based services.

Due to this widespread voice service competition, COLR obligations no longer make sense on a statewide or service-area-wide basis and should be eliminated in areas with effective competition.[8] As CalBroadband detailed in opening comments, many other states have taken this sensible, market-based approach.[9] Because effective competition obviates the need for a COLR, it necessarily follows that there is no need to designate a replacement COLR in competitive areas.

Multiple commenters agree. TDS Companies argue, for example, that "[t]he withdrawal of an ILEC as a COLR . . . should be driven by the existence of competitive alternatives, regardless of whether . . . alternative providers are interested in seeking COLR status."[10] Consolidated likewise explains that "[t]here is no reason to require a replacement COLR or mandate a 'reverse auction' in areas where there is not a competitive basis for having a COLR in the first place."[11]

C.F.R. § 54.201(i), Order, 20 FCC Rcd 15095 ¶ 27 (2005) (permitting non-facilities-based wireless providers to participate in the Lifeline program); *2022 Communications Marketplace Report,* 37 FCC Rcd 15514, ¶¶ 165-173 (2022) (including mobile voice service in the discussion of voice telephone services competition).

[8] *See* Frontier Comments at 1, 5 (COLR requirements should be "eliminated or significantly scaled back," especially in "urban and suburban markets," which host "extensive" voice competition.); 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 ("Small LECs") Amended Comments at 7 (Oct. 3, 2024) ("COLR designations may well be unnecessary in some areas, especially urban and suburban areas where there is extensive competition."); TDS Companies Comments at 3 ("COLRs are unnecessary in today's competitive intermodal voice marketplace.").

[9] CalBroadband Comments at 3-5 (citing COLR relief based, at least in part, on competition in Colorado, Idaho, Virginia, Nevada, Texas, Oregon, and South Dakota).

[10] TDS Companies Comments at 11.

[11] Consolidated Comments at 8-9.

There is similarly no compelling justification for the Commission to impose COLR obligations on competitive VoIP providers, which by definition offer a competitive alternative to COLR voice services. And even if such a designation *were* justified as a matter of policy—and it is not—the Commission does not have the authority to mandate that VoIP providers become COLRs. A diverse array of stakeholders agree,[12] and acknowledge the legal "complexities" to asserting jurisdiction over unregulated providers, which would introduce needless conflict and delay.[13]

The Commission should also dismiss SBUA's suggestion to designate VoIP providers as COLRs while also maintaining the ILECs' COLR obligations. In addition to raising the same jurisdictional issues discussed above,[14] SBUA's proposal for multiple providers to assume duplicative COLR obligations[15] fundamentally misunderstands that the purpose of a COLR is to

[12] Consolidated Comments at 6-7 ("Asserting jurisdiction over VoIP providers would be unlawful under both state and federal law. VoIP providers do not own, control, operate or manage 'telephone lines'"; thus they "are not public utilities under the Public Utilities Code." "[F]ederal law confirms that VoIP is interstate and subject to a federal policy of preemption as to contrary state laws that would seek to regulate the service."); Frontier Comments at 4 (The Commission lacks authority to regulate VoIP because "the FCC has deemed VoIP an interstate service" and "[a]t least one appellate court has designated VoIP as an "information service"); Small LECs Amended Comments at 7-8 ("[T]here are significant legal obstacles to any attempt to regulate VoIP as an intrastate public utility service. By their nature, VoIP services do not involve 'owning, controlling, operating or managing any telephone line,' so VoIP providers cannot reasonably be regarded as 'telephone corporations' or 'public utilities' under state law."); TDS Companies Comments at 7 ("[T]he Commission cannot lawfully assert jurisdiction over VoIP providers, nor could it compel them to be COLRs" because VoIP providers are not "telephone corporations" or "public utilities"; the FCC has determined that VoIP is interstate; and the United States Court of Appeals for the Eighth Circuit held that interconnected VoIP is an information service. Even if the Commission had jurisdiction to apply COLR obligations to VoIP providers, it should not do so because VoIP providers operate in a highly competitive market.).

[13] Empowering Quality Utility Access for Isolated Localities ("EQUAL") Comments at 18; The Utility Reform Network, Communications Workers of America, District 9, and Center for Accessible Technology ("Joint Commenters") Comments at 30 (It is a "thornier question" as to "whether the Commission can *require* a VoIP provider" to act as a COLR.) (emphasis in original).

[14] *See supra* note 12.

[15] Small Business Utility Advocates ("SBUA") Comments at 6.

be *the* backstop for basic voice service in a given area—and ignores that existing COLRs receive funding in connection with this obligation.

III. IT IS REASONABLE TO MAINTAIN COLR OBLIGATIONS IN AREAS WHERE THERE IS NOT YET EFFECTIVE VOICE SERVICE COMPETITION.

Despite the strong voice service competition throughout nearly all of California, discrete areas remain where effective competition is still developing. With respect to those limited areas, the record supports maintaining existing COLRs' obligations until there is sufficient competition to ensure reliable access to voice service.[16]

AT&T, whose application regarding its COLR designation[17] was the catalyst for this proceeding, recognizes the need to remain a COLR in areas without competition and has committed to doing so: "AT&T California wishes to provide reassurance that, in populated areas where it is currently the COLR and there is no other voice provider, it commits to remaining the COLR until circumstances warrant a change."[18] Thus, households that truly rely on a COLR will not be left without reliable access to voice service.

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[16] Pacific Bell Telephone Company d/b/a AT&T California ("AT&T") Comments at 29 ("[T]here may be a small number of local communities that—because of their distinctive factors—continue to have a compelling need for a safety-net voice service for emergencies. . . . [T]his proceeding should explore these needs and identify the best solution for any such community."); CalBroadband Comments at 5 ("[T]o 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."). *Cf.* Consolidated Comments at 6 ("To the extent that the COLR designation is retained, COLR requirements should only be applied in a service territory that is non-competitive."); Frontier Comments at 3 ("To the extent that the COLR concept is retained, it should only apply in those rural areas where there is little or no competition.").

[17] A.23-03-003, *Application of Pac. Bell Tel. Co. d/b/a/ AT&T Cal. (U1001C) for Targeted Relief from Its Carrier of Last Resort Obligation & Certain Associated Tariff Obligations* (Mar. 3, 2023) (AT&T Application for Relief).

[18] AT&T Comments at 3. *Cf.* Consolidated Comments at 5 ("Consolidated supports the development of a reasonable standard for lifting COLR obligations where certain competitive conditions exist, but Consolidated's particular circumstances are so compelling that it would meet any reasonable standard for COLR relief.").

IV. THE COMMISSION MUST REJECT PROPOSALS TO ADD BROADBAND TO THE DEFINITION OF "BASIC SERVICE" OR TO EXTEND COLR OBLIGATIONS TO BROADBAND PROVIDERS.

The Commission must reject any suggestion to add broadband to the definition of "basic service."[19] Designating broadband providers as COLRs would exceed the Commission's authority and be subject to federal preemption. Under California law, the Commission has limited jurisdiction over specifically defined "public utilities."[20] Broadband providers are not among those regulated entities, and the Commission lacks the power to unilaterally expand its jurisdiction to non-utilities.[21] Moreover, federal law and regulations currently prohibit the Commission from imposing COLR obligations—which are among the most onerous examples of utility-style common-carrier regulation—on broadband providers and services.[22]

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[19] *See* Public Advocates Office ("PAO") Comments at 11-23; SBUA Comments at 3-4. *Cf.* Joint Commenters Comments at 36-39.

[20] *See* Cal. Const. art. XII, § 6 (providing that the Commission "may fix rates, establish rules, examine records, issue subpoenas, administer oaths, take testimony, punish for contempt, and prescribe a uniform system of accounts for *all public utilities subject to its jurisdiction*.") (emphasis added); Pub. Util. Code § 216(a)(1) (listing entities subject to public utility regulation).

[21] *See* Pub. Util. Code § 1757(a)(1) (providing for judicial review of decisions in which "[t]he commission acted without, or in excess of, its powers or jurisdiction"). The Commission's assertions that VoIP providers are public utility "telephone corporations"—which has not been affirmed by any court and CalBroadband maintains is incorrect—has no bearing on the Commission's jurisdiction over broadband providers. *See* R.22-08-008, Proposed Decision Establishing Regulatory Framework for Telephone Corporations Providing Interconnected Voice Over Internet Protocol Service (Sept. 13, 2024). Even by the Commission's own reasoning, broadband providers do not own, control, operate, or manage "telephone lines" in California, and the provision of broadband service is plainly not "communication by telephone." *See id.* at 13.

[22] The FCC's recent order reclassifying broadband as a Title II service, *Safeguarding and Securing the Open Internet; Restoring Internet Freedom*, WC Docket 23-320, *Report and Order, et al.,* FCC 24-52, 2024 WL 2292993 (rel. May 7, 2024) ("*Title II Order*"), was stayed by the Sixth Circuit Court of Appeals. *In re MCP No. 185*, No. 24-7000, 2024 WL 3650468 (6th Cir. Aug. 1, 2024) (per curiam); *see id* at *1, *3 (noting that the *Title II Order* was stayed because broadband providers seeking such relief "are likely to succeed on the merits and . . . the equities support them."). Accordingly, the previous "Title I" framework for broadband regulation is currently in effect. *See Restoring Internet Freedom*, WC Docket No. 17-108, *Declaratory Ruling, Report and Order, and Order*, 33 FCC Rcd. 311 (2018) (classifying broadband Internet access as an "information service"), *vacated in part on other grounds by Mozilla Corp. v. FCC*, 940 F.3d 1, 35 (D.C. Cir. 2019). Interstate information services may not be

In addition to exceeding the Commission's jurisdiction and conflicting with federal law and regulations, proposals to add broadband to the definition of basic service or otherwise extend COLR obligations to broadband providers are not relevant to the issues identified in the OIR and fall outside the scope of this proceeding.[23] Measures of broadband availability are only relevant here as a proxy for the availability of competitive voice service alternatives.[24] Using the COLR construct to indirectly force broadband buildout or advance adoption goals would be highly inefficient, at odds with other state and federal grant programs, and unlawful.

V. THE COMMISSION SHOULD RECATEGORIZE THIS PROCEEDING AS "QUASI-LEGISLATIVE."

Multiple parties recommend that this proceeding be recategorized from ratesetting to quasi-legislative.[25] CalBroadband agrees and urges the Commission to change the categorization, pursuant to Rules 7.1(d) and 7.3.[26] A quasi-legislative categorization would facilitate efficient collaboration and information-sharing and would support the Commission's efforts to resolve the scoped issues in this rulemaking.

A quasi-legislative categorization would promote collaboration and ensure that parties have sufficient opportunities to provide input. More specifically, the quasi-legislative

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subjected to state common carrier regulation. Even if the *Title II Order* were to be upheld, the Commission would be preempted from extending COLR obligations to broadband providers and services to the extent such obligations conflict with the FCC's regulatory policy for broadband. *See Title II Order,* 2024 WL 2292993 ¶¶ 265-67.

[23] *See* OIR at 4-6.

[24] *Cf.* AT&T Comments at 27-29 (noting that voice services provided over fixed and mobile broadband compete with traditional voice services and, where those competitive services are available, "the COLR obligation generally is unnecessary and should be removed now").

[25] *See* TDS Companies Comments at 4-5; Consolidated Comments at 10-11; Small LECs Amended Comments at 4-5.

[26] Rule 7.1(d) ("The preliminary determination [of an OIR] is not appealable, but shall be confirmed or changed by assigned Commissioner's ruling pursuant to Rule 7.3, and such ruling as to the category is subject to appeal under Rule 7.6."); Rule 7.3 (providing that the assigned Commissioner's scoping memo shall determine the proceeding's categorization).

categorization would provide the procedural mechanisms appropriate for this proceeding: a staff report, workshops, and public engagement workshops.[27] It would also ensure that parties have the opportunity to provide information to the Commission via ex parte communications.[28] CalBroadband agrees with parties' comments emphasizing the value of ex parte communications "where the Commission is performing legislative functions."[29] CalBroadband also agrees with the Small LECs' comments emphasizing the quasi-legislative classification's ability "to facilitate the free flow of pertinent information."[30]

Additionally, as other parties observed,[31] quasi-legislative categorization is appropriate in this proceeding, where the Commission will "establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry, even if those proceedings have an incidental effect on ratepayer costs."[32] Here, the OIR seeks to explore and establish updated policies and rules affecting regulated voice service providers across California. Updated rules or policies would have industry-wide impacts. Any changes that may implicate ratemaking policy or rules would be applied to a class of regulated entities, not a "specifically named utility (or utilities)."[33] While the

[27] Rule 7.5(a). Quasi-legislative proceedings also allow (though do not require) hearings, which the Commission preliminarily determined to be necessary. OIR at 6-7, 11 (Ordering ¶ 3).

[28] Rule 8.2(a); *cf.* Rule 8.2(c) (applying to ratesetting proceedings certain conditions for ex parte communications, depending on the form and participants).

[29] Small LECs Amended Comments at 5.

[30] *Id*.

[31] TDS Companies Comments at 4; Consolidated Comments at 10; Small LECs Amended Comments at 4.

[32] Rule 1.3(f).

[33] Consolidated Comments at 10.

Commission aptly assigned a ratesetting categorization to AT&T's recent application for relief from COLR obligations,[34] this proceeding does not warrant the same designation, given the broader impacts on a class of entities within the voice communications industry. Moreover, categorizing this proceeding as quasi-legislative would be consistent with the Commission's quasi-legislative categorization of Rulemaking 09-06-019 where, like here, the Commission considered changes to basic service requirements impacting the collection of ratepayer monies, including the California High-Cost Fund-B.[35]

Finally, the ratesetting categorization is not the best choice for this proceeding, because ratesetting proceedings are those "in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities)" and "include complaints that challenge the reasonableness of rates or charges…."[36] The Commission preliminarily categorized this proceeding as ratesetting "because some of the issues in Section 2, Initial Scope, may require changes to basic service requirements or impact the collection and expenditure of ratepayer monies, including the California High Cost Fund-B."[37] Yet, as several parties noted, the ratesetting considerations are "incidental" to the primary issues,[38] and the thrust of the OIR to consider whether and how the Commission's COLR rules should be updated is predominantly legislative in nature.[39]

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[34] *See* AT&T Application for Relief.

[35] *See* R.09-06-019 *Order Instituting Rulemaking on Reforms to the California High-Cost Fund B Program* at 9 (June 3, 2009).

[36] Rule 1.3(g).

[37] OIR at 6.

[38] TDS Companies Comments at 4-5; Consolidated Comments at 10-11; Small LECs Amended Comments at 4-5.

[39] *See* TDS Companies Comments at 5; Consolidated Comments at 10-11. Ten of the twelve issues in the OIR's Preliminary Scoping of Issues are unlikely to involve a consideration of rates, and the other

VI. CONCLUSION

CalBroadband shares the Commission's interest in ensuring that Californians everywhere have access to essential voice services and appreciates the opportunity to reply to initial proposals on the OIR. There is broad agreement in the record that the Commission should focus its efforts on limiting COLR obligations to existing COLRs in the increasingly small number of California areas that lack competition. In those limited areas, legacy COLR obligations should only continue to apply to existing COLRs until competition has been achieved.

CalBroadband also urges the Commission to reject any calls to inappropriately expand the definition of "basic service" to incorporate broadband or to otherwise extend COLR obligations to broadband providers. Either action would be poor public policy, exceed the Commission's authority, be preempted by federal law, and fall outside the scope of this proceeding.

Finally, given the broader policy issues presented in this proceeding, the Commission should recategorize it as quasi-legislative, which is more appropriate than a ratesetting proceeding.

Respectfully submitted,

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two—Question h, relating to basic service, and Question i, relating to CHCF-B subsidy amounts—only incidentally concern rates. OIR at 4-6.