

**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.

R.24-06-012

**REPLY OF EMPOWERING QUALITY UTILITY ACCESS
FOR ISOLATED LOCALITIES ("EQUAL") TO OTHER PARTY
PROPOSAL FOR CHANGES TO CARRIER OF LAST RESORT RULES
IN ORDER INSTITUTING RULEMAKING PROCEEDING**

Anita Taff-Rice
iCommLaw
1547 Palos Verdes, #298
Walnut Creek, CA 94597
Phone: (415) 699-7885
Fax: (925) 274-0988
Email: anita@icommlaw.com
*Counsel for Empowering Quality Utility
Access for Isolated Localities (EQUAL)*

October 30, 2024

Empowering Quality Utility Access for Isolated Localities (“EQUAL”) hereby submits its reply to other party proposal for changes to the Commission’s rules for carriers of last resort (“COLRs”) in response to the Order Instituting Rulemaking (“OIR”) in the above-captioned proceeding. EQUAL is impressed with the detailed proposal offered by the California Advocates’ office and agrees with the majority of its recommendations.¹ However, EQUAL respectfully submits that the proposal to allow an existing COLR to be eligible for even more public money to replace its deteriorating network with broadband facilities is ill advised.

All party proposals, including PAO’s, err by failing to examine how the reverse auction process ordered by the Commission in D.96-10-066 could be utilized to identify replacement COLRs. EQUAL submits that the lack of carriers stepping forward to replace AT&T as a COLR is not evidence that the reverse auction process is unworkable. Rather, AT&T was unwilling to facilitate incoming COLRs by providing necessary information so that COLRs would not be faced with an extreme level of uncertainty about the condition of AT&T’s copper network.

Further, despite being approached by two different CLECs expressing interest in becoming a replacement COLR for a portion of AT&T’s COLR service area, AT&T failed to take action to negotiate a transfer of assets or otherwise facilitate the entrance of a replacement COLR. Those CLECs could have used AT&T’s copper facilities where feasible and began to replace sections with fiber over time, but this would have required AT&T to facilitate the process by transferring necessary entitlements such as pole attachments that were previously occupied by copper, conduit use, interconnection points, collocation and operational systems such as billing. Finally, it was unclear whether the Commission would require a replacement COLR to

¹ AT&T’s proposal is largely a rehash of the unsuccessful policy arguments it made in A23-03-003 when it sought permission to abandon its COLR status. Therefore, EQUAL will not address AT&T’s proposal in detail, but opposes its proposal in its entirety.

serve AT&T's entire COLR service area statewide, an overwhelming requirement that no smaller carrier could meet.

As discussed below and as put forth in its Opening Comments, EQUAL submits that a blended approach that builds on the PAO proposal, but also incorporates elements of EQUAL's proposal, will create a mechanism that provides the correct incentives for replacement COLRs to step forward, thereby increasing competitive options for consumers while allowing COLRs such as AT&T who firmly insist they no longer wish to serve as a COLR to have a clearly defined pathway to exit.

I. COMMISSION SHOULD REVISE ITS COLR WITHDRAWAL RULES

EQUAL agrees with PAO that the Commission should retain its COLR rules until customers who currently depend on landline service have a reliable and ubiquitous replacement service for voice that is ubiquitous, operational and verifiable. The AT&T COLR proceeding made clear that concrete standards are needed to provide a pathway for COLRs to exit without stranding customers in areas with no reasonable alternative voice service. But just ensuring basic voice service is not enough, and EQUAL agrees with PAO that the Commission should amend the definition of basic service applicable to include broadband.

However, PAO's singular focus on broadband is misplaced. As discussed below, COLRs who wish to withdraw should be required to undertake a two-pronged process. EQUAL agrees with PAO that "[t]he COLR must be in compliance with service quality standards (revised GO 133-D) including "reliability" and "availability" service standards,"² but notes that the COLR must demonstrate compliance with construction standards in General Order 95 and network resiliency requirements set forth in D. 21-02-029.

² PAO Proposal, at pg. 54 (III.C.I.a.3).

As EQUAL points out in its Opening Comments, existing COLRS are out of compliance with many of these standards and requirements. The cost and responsibility of meeting these requirements should remain the full responsibility of the existing COLRS. It is unconscionable that they are not already fully in compliance. Holding existing COLRs to meet all operational, safety and service quality requirements is the bare minimum to be expected to protect vulnerable Californians when COLRs wish to abandon their networks and COLR status. These issues are of critical importance for all customers who live in areas classified as Tier 2 and Tier 3 High Fire Threats Districts and is a significant concern for EQUAL as a substantial majority of its constituents live in the highest fire threat areas. These High Fire Threat Districts are frequently also high-cost service areas with poor service. The danger is very real as these customers are the most likely to be impacted if there is a disaster, emergency, or power outage and they lose their access to minimum service levels including 9-1-1 service, 2-1-1, ability to receive alerts and notifications, and basic internet browsing to access emergency announcements on the internet.

EQUAL submits that upon filing an application to withdraw, the COLR should be required to undertake efforts to bring their networks into compliance with existing service quality standards so that customers (especially those in isolated communities) have access to basic voice service while the COLR transition process plays out. The COLR may use whatever method it chooses – rehabilitating copper or installing new fiber. PAO’s proposed process and timeframe sets forth a good framework for the COLR to bring its network into compliance with existing service quality standards. However, this compliance process must be funded with the COLR’s own resources, or it must enter into an agreement with a replacement COLR to assess and rehabilitate or upgrade the network.

If the replacement COLR determines that portions of the existing copper network cannot be rehabilitated uniformly, it should be provided opportunities to draw from public funds and/or

subsidy funds to upgrade the network and such network should support broadband in addition to basic voice. The replacement COLR should be eligible to draw from funding such as BEAD, CASF, CAF-II, RDOF to deploy new facilities. The Commission should not attempt to mandate technology winners and losers for replacement COLRs. So long as a replacement COLR can demonstrate that it can provide reliable and ubiquitous voice service that complies with all services standards and its own tariff, the technology, configuration and other particulars should be left to the replacement COLR.

EQUAL strongly opposes the portion of PAO's proposal that appears to suggest existing COLRs be allowed to withdraw if they replace their networks with broadband facilities *using public funds* prior to obtaining approval to abandon their COLR status.³ The Commission should not enable existing COLRs (some of whom have allowed their ratepayer-funded copper networks to dramatically deteriorate) to draw from public funds to deploy broadband facilities. Creating yet another source of broadband funding but restricting it only to existing COLRs to deploy broadband is sure to perpetuate the same failures the market is already experiencing. Despite receiving broadband funding from state and federal sources and surcharges to defray the cost of operating voice networks, the existing COLRs (almost all of whom are ILECs) has resulted in deteriorating networks and poor service quality.

PAO argues that “[t]he availability of broadband service or adoption will not increase without intervention.” As a general concept, EQUAL agrees. But why should such intervention go to the existing COLRs/ILECs? Such policy will serve only to entrench the existing COLR/ILEC, make it virtually impossible for competitive carriers to serve COLR areas and likely yield the same poor results to date.

³ See PAO Proposal, at p. 22.

PAO notes the Commission’s acknowledgement in Volume 2 of the BEAD rules that “the business case for broadband deployment does not exist without government support and is potentially insufficient even with fully public-funded deployment”. Again, EQUAL agrees. But there is no reasonable basis on which to create a policy in which such government support is directed only to existing COLRs such as AT&T that have taken public money and/or subsidies yet neglected their networks and customers in isolated communities.

At the very least, if the Commission decides to allow existing COLRs to upgrade their ailing copper infrastructure with fiber using public funds, the COLR should not be allowed to retain ownership. Rather, those facilities should be owned and managed by the state of California as an open-access network from which any provider may obtain capacity. If an existing COLR desires to exit the market and claims it cannot afford to bring its existing copper network up to required service quality standards, then it should be the steward of public money to deploy upgraded facilities but not handed title to those facilities. EQUAL expects that COLRs would be open to such approach since the CEO of AT&T recently made press statements characterizing open access networks as an important step in structural change occurring in the telecommunications industry.⁴

II. REVERSE AUCTION RULES SHOULD BE MODIFIED TO FUNCTION CONSISTENT WITH MARKET DYNAMICS

EQUAL believes that the rules and process for identifying and vetting a replacement COLR must be updated to ensure that at least one viable voice service option exists for all Californians. The AT&T COLR withdrawal application demonstrated that the two existing alternatives in the Commission’s rules are unlikely to produce a replacement COLR in a timely

⁴ <https://www.fierce-network.com/broadband/att-ceo-john-stankey-ponders-big-picture-thoughts-about-open-access-networks>

and efficient manner, if at all. In A.23-03-003, the Commission issued a notice to 207 representatives of local exchange carriers operating in California, giving them 60 days to indicate interest in taking over COLR designation from AT&T. Not a single carrier responded. EQUAL is aware, however, that representatives from some CLECs approached AT&T to explore the possibility of becoming a replacement COLR. AT&T either did not respond or had one call and never followed up. After no COLR replacement was identified for any portion of AT&T's service area, the Commission denied AT&T's application (correctly in EQUAL's view).

Under the current rules, if a carrier is the only COLR, it must file an application to withdraw. The Commission's COLR rules hold that an existing COLR must "continue to act as the COLR until the application is granted or a new COLR has been designated as a result of an auction." The Commission can grant a COLR withdrawal application in one of two ways: (a) another carrier is identified and is willing to serve potentially as a COLR or (b) a reverse auction is held, and the result is another carrier comes forward and is willing (and able) to serve as a COLR. If no replacement COLR is identified in the application, or if a replacement COLR does not come forward once the application has been filed, the Commission must hold a reverse auction. If no replacement carrier is identified in the reverse auction process, then the Commission must deny the COLR withdrawal application.

Had the Commission continued to the auction process set forth in D. 96-10-066, EQUAL is unconvinced it would have been successful. The Commission's auction rules presuppose that there will be multiple carriers willing to assume COLR obligations and those carriers must "bid on the amount of subsidy each would require to operate as the COLR." Competitive carriers could bid to become the replacement COLR, but only half of the subsidy would be available to them. Given that no ILEC or CLEC volunteered to become a replacement COLR, and CLECs could qualify for only half of the existing subsidy, EQUAL respectfully submits that an auction

will likely not be successful in finding replacement COLRs. However, a modified version of the reverse auction process would likely be successful.

EQUAL proposes a third alternative in which a COLR may qualify to withdraw by proactively working with other carriers to facilitate their ability to serve as a replacement COLR. That process would entail a COLR entering into an enforceable agreement with the replacement COLR to assign or otherwise transfer use of the COLR's copper plant (including vaults, manholes, collocation areas, pole attachments, conduit space, etc.) for a nominal amount, provide financial incentives, and to work with the replacement COLR to hand off operational and customer data and access to back-office systems needed for customer service and billing. In this way, the replacement COLR can ensure that a replacement carrier with comparable service availability, reliability and quality is available.

EQUAL notes that the vast majority of purported alternative voice providers identified by AT&T in A.23-03-003 were third parties over whom AT&T had no control, and no access to their technical, operational or financial data. It was therefore impossible for AT&T to vet whether these third-party providers actually did or could provide comparable service to POTS.

The Commission should assist in the process by making available to the replacement COLR the same subsidies and other financial assistance and benefits as the exiting COLR receives. In addition, the Commission should automatically give replacement COLRs Eligible Telecommunications Carrier ("ETC") status, automatically approve the assignment/transfer of the existing COLR's facilities to the replacement COLR and make funding from state and federal programs available to defray the cost of repairing or upgrading the exiting COLR's facilities. The Commission's examination of the state of AT&T California and Frontier California's copper network found persistent disinvestment and declining service quality. The poor condition of AT&T's copper plant is likely a primary reason that no replacement COLR

stepped forward and will serve as a significant disincentive for replacement COLRs going forward. EQUAL submits that requiring existing COLRs to work closely with replacement COLRs to facilitate handoff of copper facilities that the ILECs apparently have no interest in preserving or utilizing is the only feasible way to address COLRs' desire to exit the POTS market and to protect consumers.

III. CONCLUSION

EQUAL appreciates the opportunity to participate in this important proceeding that will determine whether Californians in isolated communities will have access to reliable and ubiquitous voice services. EQUAL urges the Commission to adopt an approach that melds the framework set forth in PAO's proposal with EQUAL's market-based approach so the Commission can ensure that COLRs that have ignored isolated communities and allowed their copper networks to deteriorate are not rewarded to allow to repeat their poor past practices.

Signed and dated this 30th day of October, 2024.

Respectfully Submitted,

/s/Anita Taff-Rice

iCommLaw

1547 Palos Verdes, #298

Walnut Creek, CA 94597

Phone: (415) 699-7885

Fax: (925) 274-0988

Email: anita@icommlaw.com

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