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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

CONSOLIDATED COMMUNICATIONS OF CALIFORNIA COMPANY (U 1015 C)

ON ORDER INSTITUTING RULEMAKING PROCEEDING TO CONSIDER CHANGES TO THE COMMISSION'S CARRIER OF LAST RESORT RULES

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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 based on the procedural schedule outlined in the Order Instituting Rulemaking ("OIR") that initiated this proceeding, Consolidated Communications of California Company (U 1015 C) ("Consolidated") hereby provides these reply comments on the OIR addressing the Commission's carrier of last resort ("COLR") rules.

The opening comments in this proceeding, filed on September 30, 2024, can essentially be placed into three categories: (1) carrier interests seeking updates and reforms to the existing COLR rules; (2) consumer interests seeking to make COLR rules more stringent; and (3) consumer interests attempting to co-opt this proceeding into an expansion of the Commission's jurisdiction to regulate the delivery of broadband services. The Commission should prioritize efforts to modernize COLR rules that are almost 30 years old, and, on that basis, the Commission should deem proposals in the first two categories to be within scope of this rulemaking; Consolidated does not agree with the proposals in the second category,but recognizes that they fall squarely within a proceeding opened to explore changes to the COLR rules. In contrast, Consolidated recommends that the Commission should decline the invitation to undertake a substantial review of its regulatory jurisdiction over broadband services or, at a minimum, should place a secondary priority on a consideration of the treatment of broadband services in the scope of this proceeding. In any event, the Commission should recognize the compelling evidence that Consolidated included with its opening comments regarding the robust level of competition in its service area and immediately remove the COLR designation from Consolidated.

II. THE COMMISSON SHOULD NOT UNDERTAKE REVIEW OF AN ISSUE AS CONTROVERSIAL AS WHETHER TO INCLUDE BROADBAND SERVICE IN THE DEFINITION OF BASIC SERVICE IN A PROCEEDING OPENED TO CONSIDER CHANGES TO COLR RULES.

In opening comments, several parties urge the Commission to expand the "basic service" concept to include broadband.[1] The Commission should decline to expand this proceeding into

[1] *See* Initial Proposal of the Public Advocates Office ("Cal Advocates") at 11-23; Initial Proposal of The Utility Reform Network, the Communications Workers of America, District 9, and the Center for Accessible Technology ("TURN/CWA/CforAT") at 37-39.

an inquiry whether to regulate broadband services. Including the question of whether the Commission should regulate broadband would represent a massive expansion of the scope of this proceeding, undermining the primary rationale for opening the proceeding, *i.e.*, to explore changes to COLR rules.

The COLR rules are focused on the delivery of voice services. The Commission adopted the COLR rules after determining that, in furtherance of Universal Service policies, it was necessary to explicitly identify the scope of the public utility obligation to ensure the availability of basic service, which was defined fundamentally to be a voice service.[2] Principles of reasoned decision-making suggest that before deciding what rules will apply to the delivery of a service, the elements of that service must be known. In this case, expanding basic service to include broadband would represent such a substantial expansion of the concept of basic service that it would be impossible to rationally update a COLR requirement until the scope of basic service is known. In other words, if the Commission even suggests it might consider expanding basic service to include broadband, it will effectively stifle any work on updating COLR rules; it would be inefficient to engage in the analysis required to update COLR rules if the scope of the service covered by the COLR obligation could be fundamentally different than it is today.

The initial proposal sponsored by TURN/CWA/CforAT dances around but ultimately acknowledges the difficulties associated with addressing broadband in this proceeding. First, those parties broach the topic in a way that implies their recognition that folding broadband into this proceeding was not necessarily considered in the Order Instituting Rulemaking, introducing their proposal with the conditional, "to the extent the Commission seeks to revise the definition of basic service . . .."[3] Next, they acknowledge that revising the concept of basic service to include broadband, "has larger implications than only for COLRs . . ."[4] They also concede that, ". . . the development of a broadband-basic service would require a substantial amount of stakeholder input on a variety of related topics . . .."[5] Finally, their section header leading into the discussion of broadband as basic service comports with Consolidated's view, *i.e.*, that

[2] *See* D.96-10-066.

[3] *See* Initial Proposal of TURN/CWA/CforAT at 37.

[4] *See* Initial Proposal of TURN/CWA/CforAT at 37.

[5] *See* Initial Proposal of TURN/CWA/CforAT at 38.

whether to include broadband in basic service should occur in, ". . . a Later Phase of this Proceeding or in Another Proceeding."[6] To be clear, Consolidated contends that any consideration of whether to include broadband in the basic service construct should be taken up in another proceeding, not in a proceeding intended to update thirty year old rules addressing delivery of voice service. At a minimum, if the Commission elects to scope the broadband issue in this proceeding, then it should delay consideration to a later phase of this proceeding, prioritizing an update to COLR rules for the delivery of voice services.

The invitation to expand this proceeding to include broadband within the scope of basic service should be rejected on the additional ground that taking this action would exceed the Commission's jurisdiction and be subject to federal preemption. The Commission's jurisdiction is limited to the intrastate regulated activities of California public utilities, and it does not include ISPs or broadband services.[7] The Commission has often recognized that Internet access services are not public utility services subject to the Commission's regulatory authority.[8]

The Commission is also federally preempted from regulating broadband services. The FCC recently adopted a tailored regulatory framework for broadband services designed to avoid "unnecessarily stifling investment and innovation."[9] The FCC's *Title II Order* is currently under

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[6] *See* Initial Proposal of TURN/CWA/CforAT at 37.

[7] *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.").).

[8] *See, e.g.*, D.13-12-005 at 2 ("It is well-established that Internet service is classified for state and federal regulatory purposes as an "information service" and that state commissions such as the [CPUC] do not have jurisdiction over information services even if the providers also provide "communications services" that are subject to state regulation."); R.13-01-010 at 9 ("internet access is not regulated by the Commission"); D.06-03-013, App. A at A-4 ("In adopting these principles the [CPUC] does not assert regulatory jurisdiction over broadband service providers; Internet Service Providers; Internet content or advanced services; or any other entity or service not currently subject to regulation by the [CPUC].").

[9] *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 (rel. May 7, 2024) at ¶ 6 ("*Title II Order*").

judicial review, and a stay has been imposed by the Sixth Circuit, making the "Title II" framework provisionally inoperative.[10]

However, under either a "Title I" or the "Title II" classification, it is improper for the Commission to impose COLR requirements on broadband operations that the Commission does not regulate. If broadband is a "Title I" service, any effort to impose COLR requirements on broadband services would impermissibly conflict with the FCC's determinations that broadband should be free of "public utility-type" regulations.[11] 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.[12] In support of this regulatory approach, the FCC adopted broad regulatory forbearance directives,[13] which would preclude state commissions from applying or enforcing any provision that are within the scope of the FCC's forbearance.[14] Outside the national security and public safety context, the FCC has expressly exercised forbearance "from applying information collection and reporting provisions of the [Communications] Act insofar as they would newly apply by virtue of [the FCC's]

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[10] *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).

[11] *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 Communications Act and confirming that ISPs must be free of "utility style regulation"), *vacated in part on other grounds by Mozilla Corp. v. FCC*, 940 F.3d 1, 35 (D.C. Cir. 2019) (upholding the FCC's classification of broadband Internet access as an "information service"); *see also 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 also 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.").

[12] *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.").

[13] *Title II Order* at ¶ 383.

[14] 47 U.S.C. § 160(e).

classification of BIAS as a Title II service."[15] Applying COLR requirements to broadband services would interfere with or undermine the FCC's restrained and carefully-configured federal regulatory framework for broadband services, so conflict preemption would also apply.[16]

III. CONSOLIDATED SUPPORTS TARGETED CHANGES TO COLR RULES, INCLUDING TO PROVIDE CLEAR GUIDANCE FOR REMOVING THE COLR DESIGNATION.

There is widespread concurrence that, after almost 30 years, the COLR rules require updating.[17] The Independent Small LECs identified specific elements of the definition of "basic service" which should be either updated or deleted.[18] Consolidated agrees with the Independent Small LECs' proposals in this regard; at a minimum, proposals such as this should be included within the scope of this proceeding. AT&T has identified a set of criteria for evaluating whether to remove the COLR designation;[19] this, too, is the type of issue the Commission should consider in this proceeding.

While some commenters have identified areas where outdated COLR rules should be updated, Cal Advocates' initial proposal misapprehends the intention behind seeking relief from COLR requirements. Cal Advocates interprets the removal of COLR requirements as the effective equivalent of a carrier seeking to withdraw service.[20] Starting from this premise, Cal Advocates sets forth a series of onerous requirements that a COLR would have to satisfy to relieve itself of the COLR designation. Many of the proposals set forth by Cal Advocates would interfere with the COLR's customer relationships, requiring detailed noticing and public

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[15] *Title II Order* at ¶ 396.

[16] *Title II Order* at ¶¶ 265-267.

[17] *See* California Broadband & Video Association ("CalBroadband") Opening Comments at 5 (noting that COLR obligations have become outdated); Initial Proposal of TURN/CWA/CforAT at 25 (advocating for changes to the COLR definition to accommodate changing technologies); Pacific Bell Telephone Company d/b/a AT&T ("AT&T") Opening Comments at 1 (observing that technological innovations have upended the assumptions on which the COLR requirements adopted in 1996 were based); 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 ("Independent Small LECs") Opening Comments at 2-3.

[18] *See* Independent Small LECs Opening Comments at 8-10, Appendix A.

[19] *See* AT&T Opening Comments at 38-34.

[20] *See* Cal Advocates' Initial Proposal at 65-73.

participation hearings that imply that the carrier no longer intends to serve a customer. From Consolidated's perspective, at least, Cal Advocates' view is misinformed. Consolidated is in the business of serving customers and will continue to be in that business even if the COLR designation is removed. Consolidated seeks removal of the COLR designation to level the playing field with its competitors, not to cease serving existing customers. Accordingly, the Commission should not pursue the onerous COLR designation removal procedures identified by Cal Advocates which interfere with the COLR's relationship with its customers.

IV. THE COMMISSION SHOULD REMOVE THE COLR DESIGNATION FROM CONSOLIDATED.

In its opening comments, Consolidated requested that the Commission immediately remove the COLR designation from it specifically based on the robust competition throughout Consolidated's incumbent local exchange carrier ("ILEC") service area. Without recounting the entire factual record set forth in Consolidated's opening comments, Consolidated notes that there are at least three providers which offer service in 100 percent of Consolidated's service area, four providers which offer service in 94 percent of Consolidated's service area, and wireline cable company networks cover approximately 99 percent of customer locations, creating a full, wireline facilities-based alternative to Consolidated's voice service.[21] The robust level of competition in Consolidated's service area comports with CalBroadband's observation that the market for voice communications is "hyper-competitive."[22]

Cal Advocates' initial proposal attributes a misleading figure to Consolidated that suggests that Consolidated's service area is comprised of 30.5% low-income households.[23] Trying to piece together the data in Appendix C to Cal Advocates' initial proposal, it appears that Cal Advocates equates "low-income" with a census track or census block whose median household income level is at 80% or below the statewide median household income of $91,551.[24] However, Cal Advocates provides no analytical support to demonstrate that its own definition of "low-income" has statistical significance. Additionally, Cal Advocates' analysis shows zero

[21] *See* Consolidated Opening Comments, Attachment A (*Keating Declaration*) at ¶ 6.

[22] *See* CalBroadband Opening Comments at 3.

[23] *See* Cal Advocates' Initial Proposal at 11.

[24] *See* Cal Advocates' Initial Proposal, Appendix C at C-2.

percent (0.0%) of the population in Consolidated's service area reside in disadvantaged communities, which is a classification derived from the California Office of Environmental Health Hazard Assessment (OEHHA) CalEnviroScreen tool; the CalEnviroScreen includes an income level factor in its identification of disadvantaged communities. Relying on the U.S. Census Bureau's definition of "poverty" as well as U.S. Census data pertaining to households in Consolidated's service area, Consolidated ascertained that only 7.9% of the households in Consolidated's service area are below the poverty threshold.[25] Accordingly, the Commission should disregard Cal Advocates' arbitrary characterization of "low-income" as applied to Consolidated's service area, which Consolidated contends does not accurately represent the characteristics of the economic demography of Consolidated's service area.

Based on the numerous competitive alternatives in Consolidated's service area, the relatively small geographic area comprising Consolidated's ILEC service area (approximately 83 square miles), the urban/suburban nature of its service area, and the small number of voice access lines served by Consolidated (a 65% decline in the last ten years), Consolidated's circumstances present the perfect opportunity for a test case to analyze the benefits that accrue when the COLR designation is removed. Furthermore, as discussed above, removal of the COLR designation is not the same as exiting the market, and Consolidated intends to serve its existing customers, regardless of income classification, after removal of the COLR designation. Therefore, the Commission should include in the scope of this rulemaking whether to immediately remove the COLR designation from Consolidated.

V. CONCLUSION.

Consolidated urges the Commission to refrain from expanding what should be a fairly innocuous regulatory review regarding how to update COLR requirements pertaining to voice service into a massive expansion of regulatory oversight regarding broadband services. Consolidated also supports revisions to COLR obligations which reflect the evolution of the industry from 30 years ago when the COLR requirements were first memorialized in the Commission's Universal Service docket. The Commission should create an efficient mechanism

[25] Relying on the U.S. Census Bureau's "Quick Facts" tool on its website, Consolidated ascertained that, based on 2023 census data, there are 111,966 total households in the communities comprising Consolidated's service area (Roseville, Granite Bay, Antelope and Citrus Heights) and that 8,827 of those households are at or below the U.S. Census Bureau's definition of poverty.

to facilitate relief from COLR obligations through this proceeding. Finally, as part of its consideration of COLR issues, the Commission should recognize the unique competitive circumstances in Consolidated's service area as established in Consolidated's opening comments and immediately remove the COLR designation from Consolidated.

Respectfully submitted on October 30, 2024 at Oakland, California.

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