FILED
10/30/24
04:59 PM
R2406012

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

FRONTIER CALIFORNIA INC. (U 1002 C)
CITIZENS TELECOMMUNICATIONS COMPANY OF CALIFORNIA INC. DBA FRONTIER COMMUNICATIONS OF CALIFORNIA (U 1024 C)
FRONTIER COMMUNICATIONS OF THE SOUTHWEST INC. (U 1026 C)
("FRONTIER")

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

Patrick M. Rosvall
BRB Law LLP
492 9th Street, Suite 220
Oakland, CA 94607
Phone: (510) 955-1081
Email: patrick@brblawgroup.com

Attorneys for Frontier

October 30, 2024

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, Frontier California Inc. (U 1002 C), Citizens Telecommunications Company of California Inc. dba Frontier Communications of California (U 1024 C), and Frontier Communications of the Southwest Inc. (U 1026 C) (collectively, "Frontier") provide these reply comments in response to opening comments and initial proposals filed on September 30, 2024 regarding the Commission's carrier of last resort ("COLR") rules.

The Commission opened this proceeding to consider changes to its COLR rules.[1] Responding to this invitation, some parties suggested revisions to the elements of "basic service" originally identified in D.96-06-066.[2] Others set forth detailed analysis in support of targeted removal of the COLR designation.[3] Frontier supports these concepts and recommends that the Commission prioritize consideration of them in this proceeding.

However, the Public Advocates Office ("Cal Advocates"), in particular, perceives this proceeding as an opportunity to urge the Commission to extend its regulatory jurisdiction over the delivery of broadband services.[4] Frontier opposes the expansion of this proceeding to undertake what would constitute a complex, controversial evaluation of legal and policy matters pertaining to the Commission's potential regulation of broadband services, to the detriment of the articulated intent underlying the opening of this proceeding, *i.e.*, to consider changes to the Commission's thirty year old COLR rules. If the Commission is nonetheless inclined to expand this proceeding in response to Cal Advocates' proposal, the Commission should establish separate phases, whereby it prioritizes changes to voice COLR rules, and in particular, as Frontier specified in its opening comments, COLR relief in urban and suburban areas; any

[1] *See Order Instituting Rulemaking* ("R.") 24-06-012 at 1.
[2] *See, e.g.*, *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 8-10, Appendix A.
[3] *See, e.g.*, Pacific Bell Telephone Company d/b/a AT&T ("AT&T") Opening Comments at 26-34; *USTelecom – The Broadband Association ("USTelecom") Opening Comments* at 5-7.
[4] *See Initial Proposal of Cal Advocates* at 11-23.

activities in this proceeding pertaining to broadband services should be taken up during a later phase of this proceeding, if at all.

Frontier also takes this opportunity to reply to some of the more onerous changes to the COLR rules proposed by Cal Advocates and in the joint initial proposal sponsored by The Utility Reform Network, the Communications Workers of America, District 9, and the Center for Accessible Technology ("TURN/CWA/CforAT").

II. THE COMMISSION SHOULD PRIORITIZE COLR RELIEF IN URBAN AND SUBURBAN MARKETS.

Given the opportunity presented by this proceeding, Frontier reiterates its contention that the Commission should prioritize COLR relief in urban and suburban markets. Such action represents proverbial "low-hanging fruit," and the Commission should implement that relief as soon as possible. If the Commission is inclined to consider possible expansion of COLR obligations to address controversial topics such as whether to include broadband services, then the Commission should create separate phases for this proceeding and address COLR relief in urban and suburban markets at the earliest possible time.

III. THE COMMISSION SHOULD NOT EXTEND THIS PROCEEDING TO REGULATION OF BROADBAND SERVICES.

A rulemaking addressing changes to COLR rules is not the appropriate proceeding in which to address the weighty legal and policy issues presented by any proposal that would expand the concept of basic service to include broadband services. Such an inquiry would require the dedication of substantial resources and distract the Commission from the primary task at hand, specifically to update thirty-year-old rules addressing the delivery of voice communications. Furthermore, even TURN/CWA/CforAT which have touched on the possibility of addressing broadband in this proceeding, acknowledge that revising the concept of basic service to include broadband, "has larger implications than only for COLRs . . ."[5]

In the mid-1990s, with the recent introduction of competition into the delivery of voice services, there was uncertainty how competition would impact availability of voice services going forward, leading to the adoption of policies, including the concept of a basic service offering, to preserve universal service. For broadband services, no such uncertainty exists. As

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

AT&T's opening comments demonstrate, a mixture of competition supplemented by federal and state funding has resulted in deployment of broadband-capable facilities that now cover the vast majority of the population.[6] Broadband availability is a major success story in California, accomplished largely without the inflexible yolk of regulatory mandates. Given the robust presence of facilities-based broadband competition, there is simply no basis to even consider a major expansion of regulatory oversight to include broadband services.

Even if the Commission were inclined to take up the issue of regulating broadband services, limitations in existing law do not allow the Commission to proceed in this manner. State law does extend public utility regulation to broadband.[7] Furthermore, federal law, regardless of whether the delivery of broadband services is analyzed as a "Title I"[8] or "Title II"[9]

---

[6] *See AT&T Opening Comments* at 23-24.

[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] *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" and preserving conflict preemption as a possibility if there are future "particular state law[s]" that "conflict with the 2018 Order); *see 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.").

[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) ("*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."), stayed by *In re MCP No. 185*, No. 24-7000, 2024 U.S. App. LEXIS 19815 (6th Cir. Aug. 1, 2024); *see* 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

service, leaves no room for the Commission to regulate broadband. Given the hurdles presented by both state and federal law, it would not be prudent for the Commission to entertain the regulation of broadband services in this proceeding.

IV. THE COMMISSION SHOULD DECLINE TO INCORPORATE INTO THIS PROCEEDING THE ONEROUS EXPANSION OF COLR OBLIGATIONS PROPOSED IN OPENING COMMENTS.

Although this proceeding was opened to consider changes to COLR rules, some of the proposals lodged in opening comments are so extreme and onerous that the Commission should decline to take them up here. Frontier hereby highlights these concerns and identifies some of the proposals that should not be included in this proceeding.

In its initial proposal, Cal Advocates recommends requiring that a carrier must be offering broadband service at speeds of at least 100 megabits per second (Mbps) download and 20 Mbps upload (100/20 Mbps) as a condition of authorization to withdraw from the COLR obligation in a service area.[10] As discussed above, state and federal law prevent the Commission from regulating the delivery of broadband service. However, it is highly counter-intuitive to require a carrier to invest in facilities as a condition to be released from a universal service obligation. Cal Advocates seems to perceive existing COLRs as hostages, and the only way to be released from the obligation is to pay a ransom. Furthermore, Cal Advocates incorrectly assumes that the removal of a COLR designation means that a carrier will cease operating its network in the area where the COLR designation is removed; Frontier has no plans to cease operating its networks where a COLR designation is removed. Moreover, as a general matter, COLR "relief" is not the equivalent of a market exit, nor would it necessarily signal a market exit by any provider. Accordingly, the Commission should not include this proposal in the scope of the proceeding.

Cal Advocates also recommends that a COLR designation can only be lifted after meeting a ten-factor test over a three-year period including extensive customer noticing requirements.[11] The COLR removal construct offered by Cal Advocates is so onerous that if

---

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.").

[10] *See Initial Proposal of Cal Advocates* at 9.

[11] *See Initial Proposal of Cal Advocates* at 53-56.

adopted, it would be impracticable to ever imagine a carrier successfully satisfying its terms. The overreach of the proposal is so manifest that it is clear that Cal Advocates' objective in this proceeding is to maintain the COLR designation indefinitely into the future. Accordingly, the Commission should exclude Cal Advocates' ten factor, three-year COLR removal construct from the scope of this proceeding.

In their initial proposal, TURN/CWA/CforAT recommend adding various provisions to the COLR obligation and to the definition of basic service to further goals of affordability, service quality and disaster relief protections.[12] While such goals may be laudable policies, imposing such requirements specifically on COLRs is at odds with the Commission's Uniform Regulatory Framework ("URF"),[13] which follows a path of deregulation or lightened regulation as the optimal means to achieving these goals. URF proceeds from a baseline that all carriers should have the same regulatory burdens in most domains. If one set of carriers are forced to be COLRs, and these requirements are applied to them but not others, the competitive playing field becomes distorted and "un-level." Based on the lessons learned over the last twenty to thirty years, the Commission should instead reduce COLR obligations to only focus on basic voice functionalities, and then address any other issues on an industrywide basis, if at all.

TURN/CWA/CforAT also offer "robust" notice requirements for carriers seeking to remove the COLR designation based on the Commission's "Mass Migration" precedent.[14] However, TURN/CWA/CforAT base this proposal on two faulty assumptions: (1) that the carrier seeking to remove the COLR designation will cease providing service to its customers; and (2) that there must be a COLR in every service area. The foundational principle underlying removal of COLR requirements in a particular market is that there are adequate alternatives for the customers in that market, making command and control noticing requirements unnecessary and, even worse, confusing to customers. Furthermore, as previously articulated, Frontier has no plans to cease serving customers where the COLR designation is removed; accordingly, there is no need to impose onerous, potentially confusing notice requirements on carriers seeking to remove the COLR designation.

---

[12] *See Initial Proposal of TURN/CWA/CforAT*, Appendix B (Proposed Edits to the Commission's Definition of Basic Service and COLR Rules).
[13] D.06-08-030.
[14] *See Initial Proposal of TURN/CWA/CforAT* at 42, 49-52.

V. CONCLUSION.

The opening comments present the Commission with a reasonable set of proposals to update outdated COLR rules pertaining to voice services and to consider the circumstances when it is appropriate to remove the COLR designation altogether. The Commission should prioritize consideration of such proposals. In contrast, the Commission should not extend this proceeding into consideration of whether to regulate broadband services. The Commission should also refrain from entertaining the more onerous proposals for expanding COLR requirements which represent a step backward from the principles underlying URF and a return to command and control regulation.

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

Patrick M. Rosvall
BRB Law LLP
492 9th Street, Suite 220
Oakland, CA 94607
Phone: (510) 955-1081
Email: patrick@brblawgroup.com

By */s/ Patrick M. Rosvall*
Patrick M. Rosvall

Attorneys for Frontier