

**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.

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Rulemaking 24-06-012



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**CALIFORNIA BROADBAND & VIDEO ASSOCIATION ON  
REVISIONS TO INITIAL PROPOSALS**

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The June 28, 2024 *Order Instituting Rulemaking Proceeding to Consider Changes to the Commission’s Carrier of Last Resort Rules* directs parties to file revisions to initial proposals in the above-captioned proceeding by December 6, 2024. The California Broadband & Video Association (“CalBroadband”) hereby submits this filing to address certain claims and requests for revisions raised in initial and reply comments as well as to highlight consensus on key issues. As explained below, CalBroadband’s proposal finds strong support in the record and requires no revisions. Furthermore, parties broadly agree that mandating Voice over Internet Protocol (“VoIP”) providers to be carriers of last resort (“COLRs”) lacks legal or policy support and that incorporating broadband-related obligations in the COLR rules would exceed the Commission’s jurisdiction and the scope of this proceeding.

**I. CALBROADBAND’S PROPOSAL REQUIRES NO REVISIONS.**

CalBroadband’s proposal—that (1) mandatory COLR obligations should be eliminated in areas with effective competition for voice services, and (2) current COLRs retain their obligations in areas without such competition to ensure ubiquitous access to voice service until there is effective competition<sup>1</sup>—is well supported by facts and the record and is consistent with the public

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<sup>1</sup> See Comments of the California Broadband & Video Association on Order Instituting Rulemaking Proceeding to Consider Changes to the Commission’s Carrier of Last Resort Rules (“CalBroadband Comments”) at 8-9 (Sept. 30, 2024).

interest. Accordingly, the Commission should reject requests by The Utility Reform Network, the Communications Workers of America, and the Center for Accessible Technology (collectively, the “Joint Commenters”) to revise CalBroadband’s proposal.<sup>2</sup>

There is robust multimodal competition in the voice services market throughout California today.<sup>3</sup> Indeed, comments across the board recognize that most Californians have access to multiple competitive voice service providers.<sup>4</sup> Where competition for voice services is lacking, COLR obligations remain relevant.<sup>5</sup> But in places where consumers have options for competitive voice service, these obligations have become obsolete and unnecessary.<sup>6</sup> Accordingly, parties

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<sup>2</sup> See generally Comments of The Utility Reform Network, the Communications Workers of America, District 9, and the Center for Accessible Technology on Initial Party Proposals (“Joint Commenters Reply Comments”) (Oct. 30, 2024).

<sup>3</sup> Consumers have driven the transition toward competitive voice service options beyond legacy telephone service, and consumer preferences and demand will continue to drive further technological advancements. See Media Alliance Reply Comments at 4 (Oct. 30, 2024) (“[M]any, if not most, California residential customers absolutely want to take advantage of new innovations and services” in a market that includes “POTS, Facility-based VOIP, OTT VOIP, Mobile Wireless, Fixed Wireless, and Satellite.”); Pacific Bell Telephone Company d/b/a AT&T California’s (U 1001 C) Reply Comments (“AT&T Reply Comments”) at 1 (Oct. 30, 2024) (explaining that “consumer preferences” are “evolving” such that “[t]oday, more than 95 percent of households in AT&T California’s service territory fulfill their voice service needs with something other than COLR-mandated basic service”).

<sup>4</sup> See, e.g., AT&T Reply Comments at 7-12; EMF Safety Network Reply Comments at 1 (Oct. 30, 2024) (agreeing with CalBroadband that “there are many voice providers and choices”); Media Alliance Reply Comments at 4 (acknowledging that “many Californians can have their needs met by the increasing competition in the sector”); Reply Comments of Happy Valley Telephone Company (U 1010 C) et al. (“TDS Companies Reply Comments”) at 2, 4 (Oct. 30, 2024) (recognizing that there is an “increasingly competitive intermodal voice marketplace” in California and noting that they measure the competition to their basic service “by the availability of other alternative voice options, including VoIP and wireless services which many consumers prefer”); Reply Comments of USTelecom – The Broadband Association on the Order Instituting Rulemaking Proceeding to Consider Changes to the Commission’s Carrier of Last Resort Rules (“USTelecom Reply Comments”) at 5 (Oct. 30, 2024) (“The fact is that the vast majority of California is a competitive telecommunications marketplace.”).

<sup>5</sup> See, e.g., Reply Comments of the Rural County Representatives of California to Initial Proposals to Consider Changes to the Commission’s Carrier of Last Resort Rules at 6 (Oct. 30, 2024) (“COLR obligations must continue to protect underserved and rural areas where market competition is insufficient.”).

<sup>6</sup> See, e.g., Reply Comments of Comcast Phone of California, LLC (U-5698-C) on Order Instituting Rulemaking Proceeding to Consider Changes to the Commission’s Carrier of Last Resort Rules (“Comcast

broadly support eliminating COLR obligations where there is competition for voice services and maintaining the obligations of existing COLRs where competition has not yet developed.<sup>7</sup> CalBroadband’s proposal ensures that all Californians continue to have access to voice services either through one of several competitive options in the area or the existing COLR where still needed and is thus consistent with the public interest.

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Reply Comments”) at 3 (Oct. 30, 2024) (“Competition has resulted in wider service availability, improved quality, and competitive pricing without regulatory mandates.”); USTelecom Reply Comments at 2 (“traditional telephone service is now a very small part of the communications marketplace,” undermining the need for COLR designations in areas with competition for voice services). Even the Small Business Utility Advocates (“SBUA”) agrees with CalBroadband that COLR obligations can be made obsolete by technological advancements “one day.” Reply of Small Business Utility Advocates to Proposals Responding to the Questions in the Rulemaking Proceeding to Consider Changes to the Commission’s Carrier of Last Resort Rules (“SBUA Reply Comments”) at 5 (Oct. 30, 2024).

<sup>7</sup> See, e.g., Opening Comments of Frontier California Inc. (U 1002 C) et al. on Order Instituting Rulemaking Proceeding to Consider Changes to the Commission’s Carrier of Last Resort Rules (“Frontier Comments”) at 1, 5 (Sept. 30, 2024) (COLR requirements should be “eliminated or significantly scaled back,” especially in “urban and suburban markets,” which host “extensive” voice competition.); Amended Opening Comments of Calaveras Telephone Company (U 1004 C) et al. on Order Instituting Rulemaking Proceeding to Consider Changes to the Commission’s Carrier of Last Resort Rules (“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.”); Opening Comments and Initial Proposals of Happy Valley Telephone Company (U 1010 C) et al. on Order Instituting Rulemaking Proceeding to Consider Changes to the Commission’s Carrier of Last Resort Rules (“TDS Companies Comments”) at 11 (Sept. 30, 2024) (withdrawal of a COLR should be driven by existence of competitive alternatives); Opening 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 (“Consolidated Comments”) at 5, 8-9 (Sept. 30, 2024) (describing how the COLR construct is “outdated”); Response of USTelecom – The Broadband Association on the Order Instituting Rulemaking Proceeding to Consider Changes to Carrier of Last Resort Rules at 2-4 (Sept. 30, 2024) (describing how COLR rules are “no longer necessary”); see also Comcast Reply Comments at 7 (“Due to widespread competition, COLR obligations no longer make sense on a statewide or service-area-wide basis.”); TDS Companies Reply Comments at 4 (“As all carriers agree, reasonable and prompt COLR relief should be available in service areas with sufficient competition.”). Cf. Pacific Bell Telephone Company d/b/a AT&T California’s (U 1001 C) Opening Comments at 14 (Sept. 30, 2024) (“Ultimately, California’s residents lose from prolonging the COLR obligation where it is unnecessary for the communications safety net. Removing it would promote competition, further investment in new broadband technologies, job creation, and better environmental outcomes.”).

As CalBroadband has previously explained, many other states have reduced or eliminated COLR requirements without adverse impacts on consumers.<sup>8</sup> CalBroadband’s review of state statutes, rules, orders, and proceedings did not reveal any complaints or proceedings regarding access to voice service in places where COLR obligations have been limited or eliminated. The Commission should thus reject Joint Commenters’ unfounded speculation to the contrary.<sup>9</sup> Indeed, Joint Commenters presented no evidence of negative impacts in other states that adopted rules similar to CalBroadband’s proposed approach. Instead, Joint Commenters would have CalBroadband prove a negative by suggesting that hypothetical harms may not be apparent today “because of . . . deregulation.”<sup>10</sup> CalBroadband’s proposal requires no revisions, as it acknowledges that competition is still developing in certain parts of the state and, until there is sufficient competition in these areas, the existing COLRs have a role and serve the public interest.

## **II. BROAD CONSENSUS ON KEY ISSUES SUPPORTS CALBROADBAND’S PROPOSED APPROACH.**

CalBroadband also takes the opportunity to highlight two other key points of consensus in the record: (1) mandating VoIP providers to be COLRs lacks both legal and policy support and would face implementation challenges; and (2) adding broadband to the definition of “basic service” or extending COLR obligations to broadband providers is outside the scope of this proceeding, would exceed the Commission’s jurisdiction, and would be subject to federal preemption. These points of consensus further support the adoption of CalBroadband’s proposal.

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<sup>8</sup> See CalBroadband Comments at 3-5.

<sup>9</sup> See Joint Commenters Reply Comments at 46-49.

<sup>10</sup> *Id.* at 48 (emphasis omitted).

**A. Parties Agree That the Commission Cannot and Should Not Mandate That VoIP Providers Become COLRs.**

Commenters broadly agree on legal and public policy grounds that the Commission cannot and should not mandate that VoIP providers become COLRs.

First, Joint Commenters are right to caution against such a mandate, finding that the issue is “complicated and needs additional analysis and consideration.”<sup>11</sup> As several commenters explain, a COLR mandate in this context exceeds the Commission’s authority under state law and would be preempted under federal law.<sup>12</sup> Setting aside whether the Commission may have authority to regulate certain aspects of VoIP providers’ service as a general matter, the question of “whether the Commission can *require* a VoIP provider” to act as a COLR is a “much thornier question,” as Joint Commenters acknowledge.<sup>13</sup>

Second, simply asserting that the Commission has authority to require VoIP providers to serve as COLRs does not explain *why* such COLR obligations would be necessary or beneficial to

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<sup>11</sup> Joint Commenters Reply Comments at 5.

<sup>12</sup> See 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 “at 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 & n.15 (“[T]he Commission cannot lawfully assert jurisdiction over VoIP providers” 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.). See also Comcast Reply Comments at 8 (“The record reflects broad agreement that the Commission lacks authority to mandate that VoIP providers act as COLRs.”); AT&T Reply Comments at 19-21.

<sup>13</sup> Amended Initial Proposal of The Utility Reform Network, the Communications Workers of America, District 9, and the Center for Accessible Technology Regarding the Order Instituting Rulemaking Proceeding to Consider Changes to the Commission’s Carrier of Last Resort Rules at 30 (Oct. 17, 2024).

consumers.<sup>14</sup> Repeating flawed arguments that the Commission *can* regulate in a particular area does not answer the more fundamental question of whether there is any problem to be solved or benefit to be obtained through such regulation. Only Joint Commenters—despite their well-grounded reservations as to the Commission’s scope of authority to regulate VoIP providers—and SBUA affirmatively advocate for designation of VoIP providers as COLRs,<sup>15</sup> yet neither adequately explains how those providers would fit into a modernized COLR framework—or why doing so would be in the public interest.<sup>16</sup> That is not surprising because there is no plausible economic or consumer protection rationale to designate new or additional COLRs in any given area, or to arbitrarily impose basic service requirements on competitive VoIP providers.<sup>17</sup>

Finally, such a mandated designation would be technically challenging to implement. As Empowering Quality Utility Access for Isolated Localities (“EQUAL”) explains, the sheer variety of VoIP providers and technologies—including those that are not regulated by the Commission—precludes a one-size-fits-all approach.<sup>18</sup> Correctly understanding and navigating these technical

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<sup>14</sup> See TDS Companies Comments at 7 (“Even if the Commission did have jurisdiction to apply COLR obligations to VoIP providers, it should not do so, as VoIP providers operate in a highly competitive market.”).

<sup>15</sup> See *supra* note 14; Proposal of Small Business Utility Advocates in Response to the Questions in the Rulemaking Proceeding to Consider Changes to the Commission’s Carrier of Last Resort Rules (“SBUA Comments”) at 6 (Sept. 30, 2024).

<sup>16</sup> See Joint Commenters Reply Comments at 4-13 (arguing that only VoIP and wireless providers would be available in the area to take an existing ILEC provider’s place, but without acknowledging that these areas are by definition competitive due to marketplace decisions rather than regulatory mandates); see also SBUA Comments at 6 (arguing for designating VoIP providers as COLRs to “shrink the digital divide” and “ensure...equitable access” without explaining how mandated designations would achieve these ends).

<sup>17</sup> Notably, Cal Advocates does not support mandatory COLR designation for VoIP or wireless providers. Cal Advocates Reply Comments at 33 (“Cal Advocates takes no position on mandated COLR service for entities that are not already COLRs, including VoIP and wireless carriers.” (footnote omitted)).

<sup>18</sup> See Proposal of Empowering Quality Utility Access for Isolated Localities (“EQUAL”) for Changes to Carrier of Last Resort Rules in Order Instituting Rulemaking Proceedings at 18 (Sept. 30, 2024).

complexities merely risks “conflict and delay” when these efforts are better directed to promoting market competition.<sup>19</sup>

For these reasons and others set forth by parties in this proceeding, the Commission should refrain from mandating VoIP providers to be COLRs and move forward with CalBroadband’s proposal. Doing so would be consistent with the driving force behind this proceeding: determining if and when it is appropriate to relieve an existing COLR from its obligations in an increasingly competitive communications marketplace.

**B. Parties Agree That Including Broadband in the Definition of “Basic Service” or Imposing COLR Obligations on Broadband Providers Would Exceed the Commission’s Authority and the Scope of this Proceeding.**

Numerous parties have persuasively argued that adding broadband to the definition of “basic service” or extending COLR obligations to broadband providers would exceed the scope of this proceeding<sup>20</sup> and the Commission’s jurisdiction,<sup>21</sup> and be subject to federal preemption.<sup>22</sup> Public policy considerations also counsel against adopting these proposals. Regulating broadband as a “basic service” or forcing buildout where it is not economically sustainable would harm competition and discourage broadband investment.<sup>23</sup>

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<sup>19</sup> *Id.*

<sup>20</sup> *See, e.g.*, 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 (“Consolidated Reply Comments”) at 2 (Oct. 30, 2024); TDS Companies Reply Comments at 5-8; Reply Comments of Frontier California Inc. (U 1002 C) et al. on Order Instituting Rulemaking Proceeding to Consider Changes to the Commission’s Carrier of Last Resort Rules (“Frontier Reply Comments”) at 2 (Oct. 30, 2024).

<sup>21</sup> *See, e.g.*, Frontier Reply Comments at 3-4; Comcast Reply Comments at 8 & n.26; TDS Companies Reply Comments at 6.

<sup>22</sup> *See, e.g.*, TDS Reply Comments at 6-8; Consolidated Reply Comments at 3; Frontier Reply Comments at 3-4.

<sup>23</sup> *See* AT&T Reply Comments, Attachment A at 7-17.



Proposals to force existing COLRs to build out broadband networks or offer broadband as an element of basic service<sup>24</sup> fail to consider whether other providers may willingly or more efficiently be able to provide broadband in unserved areas of California. These proposals also ignore that multiple federal and state programs, including the Broadband, Equity, Access and Deployment and Federal Funding Account grant programs, are already focused on achieving broadband affordability and universal broadband deployment.

### III. CONCLUSION

CalBroadband's proposal ensures that all Californians continue to have access to voice services through one of several competitive options in the area or the existing COLR where needed. To designate VoIP providers as new or additional COLRs, expand the definition of basic service to incorporate broadband, or extend COLR obligations to broadband providers would be inconsistent with the law, would not further the public interest, and would exceed the scope of this proceeding. Accordingly, CalBroadband respectfully requests the Commission adopt the recommendations set forth herein and in its prior comments.

Respectfully submitted,

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<sup>24</sup> See Cal Advocates Reply Comments at 3-6; Joint Commenters Reply Comments at 29-31; SBUA Reply Comments at 3.