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Order Instituting Rulemaking Proceeding to Consider Changes to the Commission's Carrier of Last Resort Rules.	Rulemaking 24-06-012 (Filed June 20, 2024)

COMMENTS OF THE UTILITY REFORM NETWORK, THE COMMUNICATIONS WORKERS OF AMERICA, DISTRICT 9, AND THE CENTER FOR ACCESSIBLE TECHNOLOGY ON INITIAL PARTY PROPOSALS

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I. INTRODUCTION

In accordance with the schedule set forth in the Order Instituting Rulemaking (OIR) to Consider Changes to the Commission's Carrier of Last Resort (COLR) Rules, The Utility Reform Network (TURN), the Communications Workers of America (CWA), District 9, and Center for Accessible Technology (CforAT), collectively Joint Commenters, submit these reply comments addressing parties' initial proposals and opening filings. Joint Commenters reply to select proposals and legal and policy arguments by other parties to offer feedback to inform their revised proposals and the Commission's deliberation on these issues.

As a general matter, parties were directed to submit "proposals" responsive to the detailed questions set forth in the OIR regarding proposed revisions to the COLR rules.[1] Joint Commenters note that some providers[2] are not offering comprehensive discussion or proposals to address all the issues identified in the OIR. Joint Commenters suggest that the Commission request further input from these providers on the points they have not addressed—potentially through opportunities for briefing, testimony, or further filings on specific issues—prior to the time set aside for all parties to submit revisions to their initial proposals.

II. DISCUSSION

A. Any Proposed Revisions to the COLR Requirements Must Preserve Universal Service.

A number of providers' and industry associations' proposals argue that it is necessary for the Commission to eliminate COLR requirements to accelerate the technology transition, i.e., the move

[1] Order Instituting Rulemaking (June 20, 2024) at p. 4.
[2] For simplicity, these comments will refer to providers and industry associations as simply "providers" unless otherwise indicated.

from legacy copper networks to newer, more advanced technologies.[3] While those providers may reference the need for an expedient technology transition, their proposals demonstrate that their only real interest is in a *deregulatory* transition. The Commission should reject these self-serving arguments and maintain the COLR rules to uphold the long-standing and critical regulatory objective of identifying and addressing instances of market failure in the provision of telecommunications services. The history and evolution of the public switched telephone network into a broadband-capable Internet Protocol network demonstrates that network facilities deployment has never been ubiquitous and uniform across the country. From the earliest days of telecommunications services, network facilities were first deployed in more densely populated areas then extended beyond those areas based on expected profitability. New and expanding networks did not reach all customers and generally left the least populated markets unserved.[4] Competitive forces in the "free market" generally failed to provide telephone services to rural and sparsely populated areas, thus requiring regulatory policy intervention to ensure universal service coverage.

Universal service policies have been part of the country's telecommunications laws from almost the beginning of telephone network development, including in the Communications Act of 1934. There, Congress directed the newly created Federal Communications Commission, along with state utility commissions, to pursue these policies to support economic and community development

[3] *See* AT&T California's Opening Comments (AT&T Opening Comments) (Sept. 30, 2024) at p. 4; 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 Opening Comments) (Sept. 30, 2024), at p. 1; Response of USTelecom - The Broadband Association on the Order Instituting Rulemaking Proceeding to Consider Changes to Carrier of Last Resort Rules (USTelecom Response) (Sept. 30, 2024) at p. 4.

[4] Joint Commenters note that network facilities deployment often ignored low-income communities and historically redlined communities. Amended Initial Proposal of Joint Commenters Regarding the Order Instituting Rulemaking to Consider Changes to the Commission's Carrier of Last Resort Rules (Joint Commenters Amended Initial Proposal) (Oct. 17, 2024) at p. 12.

and public safety.[5] Subsequent major regulatory and policy developments to universal service include the creation and funding of the telephone loan program in the Rural Electrification Administration (now Rural Utilities Service) to fund extension of telephone service in rural areas, use of state and federal ratemaking practices to support high cost areas through separations and settlements, and the adoption of universal service requirements including explicit subsidies for a new Universal Service Fund contained in Section 254 of the 1996 Telecommunications Act. The CPUC acted in concert with the 1996 Act to adopt Carrier of Last Resort rules to further support universal service in California through a transparent and explicit regulatory framework. These rules remain necessary to address market failure in California, where the smallest and least populated areas still do not have ubiquitous alternative providers of basic telephone service.

History and a review of current service options in California show that COLR requirements remain necessary due to the continued failure of competitive markets to provide adequate, reliable, and affordable basic service to all customers. The providers' proposals to do away with COLR requirements are based on two incorrect assumptions: that creating an advanced communications network requires eliminating universal service requirements, and that competition is sufficient everywhere in California to ensure that everyone is able to obtain sufficient service where they live, travel, and work. Joint Commenters address each of these flawed arguments below.

[5] 47 U.S.C. § 151 states the FCC was created "for the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available so far as possible to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges,… for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication . . . ."

1. In Light of the Controversy Over the Commission's Jurisdiction to Require Wireless and VoIP Providers to Serve as COLRs, Providers Should Revise Their Proposals to Require that Every Person in California Be Served by at Least One COLR.

Parties continue to take divergent positions on the extent of the Commission's jurisdiction over wireless and VoIP providers, and some providers assert that their interpretations of the limits of state jurisdiction over wireless and VoIP providers support the elimination of the COLR requirements Providers' incorrect assertions that the Commission lacks jurisdiction further serve as the basis for their further incorrect assertions about universal service and competition. The Commission should reject industry arguments that jurisdictional issues support the Commission's elimination of universal service requirements.

a. The Commission Has Jurisdiction to Uphold California's Universal Service Policies.

Parties generally agree that there are no legal or regulatory barriers preventing VoIP or Wireless providers from serving as COLRs, as long as the service those providers offer meets minimum basic service requirements.[6] The various party proposals also appear to broadly agree that COLR eligibility should be "technologically neutral," i.e., a COLR may provide service using any form of technology, as long as the COLR's service meets minimum basic service requirements.[7] These views are consistent with prior Commission decisions finding that an existing COLR may upgrade its network using wireless or VoIP technology.[8] Accordingly, it appears that parties generally agree that the Commission has the authority to grant COLR status to VoIP and wireless providers that meet the COLR requirements.

[6] Amended Opening Comments of Small LECs (Small LECs Opening Comments) (Oct. 3, 2023) at p. 8; Opening Comments of Frontier on Order Instituting Rulemaking Proceeding to Consider Changes to the Commission's Carrier of Last Resort Rules (Frontier Opening Comments) (Sept. 30, 2024) at p. 5.
[7] *See, e.g.,* CalBroadband Opening Comments at p. 9; Frontier Opening Comments at p. 5.
[8] *See* D.12-12-038 at OP 5.

There is, however, uncertainty regarding the Commission's ability to *require* that a particular VoIP or wireless provider serve as a COLR. As Joint Commenters noted in our initial proposal, this issue is complicated and needs additional analysis and consideration by the Commission and stakeholders.[9] Unfortunately, providers and industry associations do not seriously engage with this question, instead falling back on overbroad claims that the Commission has no authority to regulate wireless or VoIP providers whatsoever and, therefore, that it is prohibited from requiring these providers to be COLRs. For example, while the providers make sweeping contentions about the Commission's entire COLR framework, none of the providers address the specific issue of whether the Commission can impose specific, individual COLR requirements on wireless or VoIP providers. Similarly, while wireless providers argue that the Commission cannot require wireless providers to serve as COLRs because federal law preempts state regulation of wireless rates and market entry, they do not explain how such preemption (in the context of accepted joint state/federal authority) would prohibit the Commission's regulation of public safety service standards or market *exit*, i.e., requiring Commission approval to discontinue service.[10]

Joint Commenters' initial proposal discussed the universal service goal that all customers in California must have access to at least one provider that:

- Is required to provide service that is functionally equivalent to copper landlines and that includes the basic service elements to anyone in its service territory that requests it;
- Is required to offer LifeLine service and other mandatory low-cost services to every qualifying household in its service territory;
- Meets service quality metrics 100 percent of the time; and
- Cannot discontinue service without Commission approval, which cannot be granted unless there is another provider that meets these requirements.[11]

[9] Joint Commenters Amended Initial Proposal at p. 30.
[10] Comments of CTIA on Order Instituting Rulemaking (CTIA Opening Comments) (Sept. 30, 2024) at p. 5.
[11] Joint Commenters Amended Initial Proposal at pp. 2, 4-6.

Joint Commenters also brought forward the goal to replace legacy technologies with newer technology that offers basic service *and* provides future-proof access to the newest communications technologies like broadband (e.g., fiber).[12]

Some provider parties make the unsupported argument that these two goals conflict or are incompatible, and that the technology transition goal should trump the Commission's universal service goals. This argument also contains an underlying implication that more advanced networks cannot be regulated or treated as if they provide both voice and broadband service, despite the fact that newer networks are capable of providing both services and that providers maximize profit by bundling and providing both services to end users over the same network.[13] This argument implicitly devalues the importance of universal service even where network technology has evolved, and it handwaves away the need for both voice and broadband services to support economic and social development as well as communication resiliency during natural disasters and other emergencies. The Commission should reject proposals that claim to presume that the goal of providing everyone in California with advanced communication services necessarily justifies or requires elimination of long-standing universal service goals that ensure public safety, health, and welfare.

Finally, some providers argue that COLR rules are unnecessary because only a small number of homes, businesses, and customers rely on service provided over the legacy copper network. For example, USTelecom argues that "there are only a small number of premises with traditional telephone lines.[14] The number of customers that use services that rely on older technology switching, such as TDM services, or rely on the copper network is irrelevant to whether those customers should be guaranteed access to basic communications service. Those customers may be relying on Plain Old

[12] Joint Commenters Amended Initial Proposal at pp. 18-19.
[13] This assumption flies in the face of economic logic which recognizes that the networks are designed to support multiple services and that a carrier can maximize its revenue by doing so.
[14] USTelecom Response at p. 2.

Telephone Service (POTS) service or Digital Subscriber Line (DSL) for internet over a copper network because that is their *only* choice.[15] The COLR requirements exist exactly *because* a small number of customers would not otherwise have access to basic service. Also, this line of reasoning violates the principles of technological neutrality that underlie the COLR rules. Regardless of whether a customer is served by copper, fiber, or other technology, the goals of universal service and the COLR rules dictate that service is to be provided to anyone in the service area who requests it.

b. Providers Should Revise Their Proposals to Acknowledge that Unless the Commission can Enforce COLR Requirements on Providers Using those New Technologies, the Technology Transition will be Delayed.

As noted in Joint Commenters' initial proposal, the issue of the Commission's jurisdiction to require a wireless or VoIP provider to act as a COLR needs more study and may be impacted by the outcome of pending FCC and federal court proceedings. Regardless, it is critical for the Commission's universal service goals to require existing COLRs to continue to fulfill their obligations. Therefore, the Commission must be clear that any upgrades to an existing COLR's, including work that supports use of VoIP or wireless services over that network, does not justify the elimination of that provider's COLR obligations.

Because the Commission has previously determined that COLR service can be provided through any form of technology, and because there are no prohibitions to investment in the networks of COLR providers, the primary cause of delays in the technology transition is not, as providers so

[15] Whether a customer has a competitive option is entirely location dependent based on what infrastructure is or is not deployed. The services a customer has available at the premises are dictated by the infrastructure placed by the telecommunications provider. For example, some premises are served only by copper network facilities which limit broadband options to Digital Subscriber Line, and then higher speeds considered to be "broadband" only within 5000 feet of the Digital Subscriber Line Access Multiplexer (DSLAM). If this premise is also not served by fiber optic cable, the customer does not have a competitive choice and may not even have adequate broadband.

often claim, so-called "burdensome" regulation,[16] or economic infeasibility.[17] Rather, the delays are often the result of VoIP and wireless providers' refusing to upgrade their networks or offer new services while they oppose and present barriers to the Commission's lawful exercise of its jurisdiction over these networks and services offered over those networks. The Commission should not allow VoIP and wireless providers to use this stonewalling as leverage to avoid complying with universal service requirements using newer technologies where enforcement of those requirements is squarely within the Commission's jurisdiction.

The Commission should address the possible scenario that, at some point, if an existing COLR is approved to exit a community, the only providers serving the area and available to take the exiting provider's place may exclusively offer VoIP and/or wireless services. In that circumstance, it will be necessary for the Commission to designate at least one of those providers as a COLR and to require that COLR to provide service that meets the functional criteria of basic service and other COLR obligations.

Joint Commenters note that this issue may arise in the foreseeable future. Verizon Communications Inc. (Verizon), which primarily focuses on wireless service and is not a COLR in California, recently filed an application at the Commission to acquire Frontier California, Inc. (Frontier) and related affiliates.[18] Frontier serves as a COLR throughout its service territory in California. While the Application states that Verizon plans to retain Frontier's COLR obligations,

[16] *See* Response of Consolidated Communications Company of California on Order Instituting Rulemaking Proceeding to Consider Changes to the Commission's Carrier of Last Resort Rules (Consolidated Response) at p. 2.
[17] *See* AT&T Opening Comments at p. 11.
[18] Joint Application of Verizon Communications, Inc and Frontier Communications Parent (and affiliates) for Approval of the Transfer of Control of Frontier California Inc., Citizens Telecommunications Company of California Inc., Frontier Communications of the Southwest Inc., Frontier Communications Online and Long Distance Inc., and Frontier Communications of America Inc Pursuant to California Public Utilities Code Section 854 (Public Version) (Verizon/Frontier Application) (A.24-10-006) (Oct. 18, 2024).

the Application also makes the point that this proceeding is pending and may result in changes to those obligations.[19] If the Commission approves that transaction and, at the same time, weakens COLR rules here, Verizon could propose replacing some or all of Frontier's COLR wireline service with wireless service, despite the significant technical challenges for Verizon's wireless service to meet minimum standards for basic service and COLR obligations. While Joint Commenters believe that a change in technology would not prevent Verizon from assuming and complying with Frontier's obligations as a COLR, Joint Commenters are concerned that this proposed acquisition could lead to disputes over the Commission's jurisdiction related to Frontier's obligations as the second largest COLR in California unless the Commission clearly commits to ongoing and strong COLR obligations.

Verizon should be familiar with the Commission's COLR rules, having served as a COLR for years prior to its 2015 exit of the California wireline market. Joint Commenters find it noteworthy, therefore, that Verizon has chosen not to become a party to this proceeding,[20] especially given the proceeding's implications on the COLR obligations that Verizon would assume if its proposed acquisition of Frontier is approved. Joint Commenters urge the Commission to make Verizon a party to this proceeding to ensure its participation in discussions regarding this and other issues the proposed acquisition raises for state COLR requirements.

c. VoIP Providers Should Revise Their Proposals to Acknowledge that the Commission has Previously Asserted Jurisdiction over VoIP Providers and Acknowledge that Preemption Analysis is a Fact-Specific Inquiry.

Providers make a number of arguments that ignore the fact that the Commission has already confirmed its jurisdiction over VoIP providers. For example, several providers falsely argue that the

[19] Verizon/Frontier Application at p. 8.
[20] As of October 30, 2024, only the three Verizon affiliates with CPCNs, but no residential customers, are parties to the proceeding. Other Verizon representatives are listed as Information Only on the service list.

Commission has never designated VoIP providers as telephone corporations. Frontier argues that "[f]or the Commission to assert jurisdiction over a VoIP provider, it would have to be deemed a 'telephone corporation' under the Public Utilities Code, and designation as a 'telephone corporation' depends on 'owning, controlling, operating or managing any telephone line.'"[21] This argument fails to acknowledge that the Commission has considered this issue and determined that fixed VoIP providers are telephone corporations.[22] CalBroadband argues that "no court" has affirmed the PUC's declaration that VoIP providers are telephone corporations.[23] However, nothing in Article XII of the California Constitution or the California Public Utilities Code requires that the Commission obtain a court's approval of the Commission's interpretation of "telephone corporation." Additionally, California courts have affirmed the Commission's broad interpretation of that term:

> The definition of "telephone corporations" for purposes of section 7901 is not limited to those entities utilizing technology invented at the time section 7901 or its prior iterations in the Civil Code were enacted. If an entity owns, controls, operates, or manages telephone lines in connection with telephone communication, the entity is a "telephone corporation" under section 7901.[24]

Providers appear to argue that VoIP providers do not meet the statutory definition of a telephone corporation because of federal preemption. Contrary to this claim, the FCC has never preempted states with respect to fixed VoIP.[25] However, whether a VoIP provider is a "telephone corporation," and whether the Commission has jurisdiction over the services a VoIP provider offers are two separate questions. The Commission should reject proposals that conflate these two issues.

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[21] Frontier Opening Comments at p. 4; *see* Consolidated Response at pp. 6-7; Small LECs Opening Comments at p. 7.
[22] *See* Pub. Util. Code §§ 216, 233-234; *see also* D.19-08-025 at COL 17, as affirmed in D.20-09-012 at pp. 30-39; *see also* D.22-10-021 at pp. 68-69.
[23] CalBroadband Comments at p. 10.
[24] City of Huntington Beach v. Pub. Util. Comm'n, 214 Cal. App.4th 566, 587 (2013).
[25] The FCC's Vonage order only preempted state regulation of purely nomadic VoIP. Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, WC Docket No. 03-211, Memorandum Opinion and Order (Nov. 12, 2004) at ¶¶ 5, 23.

Similarly, providers re-offer broad claims that they have repeatedly made before the Commission in support of their argument that the FCC has preempted states from requiring wireless or VoIP providers to serve as COLRs.[26] For example, CalBroadband claims the Commission cannot designate a VoIP provider a COLR because the FCC has preempted "common-carrier obligations associated with economic regulation of public utilities."[27] CTIA argues that that requiring wireless providers to be COLRs constitutes "both rate and entry regulation."[28] However, neither CalBroadband nor CTIA acknowledges that preemption inquiries are fact-specific and dependent on the details of the federal and state laws at issue.[29] While the Commission should further consider whether it is preempted from imposing the entire regulatory COLR framework on a wireless or VoIP provider, it is clear from Commission precedent that it can enforce specific must-serve, service quality, public safety, and consumer protection rules on alternative technology providers that become COLRs in a specifically defined service territory. Any arguments that attempt to apply preemption standards broadly are improper.

Even when providers make specific arguments targeting a Commission action that is squarely within the Commission's jurisdiction, they improperly rely on general pronouncements regarding preemption. For example, when opposing requirements regarding surcharges, public safety, or registration, among others, providers cite unrelated or tangentially related authority that involves rulings on unrelated preemption claims to support the faulty assertion and their logical leap that the Commission is preempted from regulating *any* aspect of a provider's service. For example, CTIA argues that the Commission is preempted from regulating market entry of wireless services and leaps

[26] CalBroadband Comments at p. 10; Small LECs Opening Comments at pp. 7-8; CTIA Opening Comments at pp. 2-6.
[27] CalBroadband Comments at p. 10.
[28] CTIA Comments at p. 3.
[29] Mozilla v. Fed. Comm. Comm'n., 940 F. 3d 1 at pp. 136-137 (D.C. Cir., 2019).

from that to a claim that any order by the Commission requiring a wireless provider to serve as a COLR would "be effectively ordering the provider to offer a Commission-prescribed tier of basic service . . . in a Commission-prescribed area without regard to whether the service area designated by the Commission corresponds with the area where the wireless provider has chosen to provide service, is licensed to provide service, or can provide service."[30] However, this argument does not address the issue whether the Commission could order a wireless provider to serve as a COLR in that providers' *existing* service area, which would not necessarily involve the installation of additional equipment to utilize spectrum, or include entry into any new markets. Instead, CTIA's characterization of COLR obligations ignores the service area where a wireless carrier would most likely receive a COLR obligation, i.e., where it already serves. Even if wireless providers' claim that the Commission is preempted from ordering a wireless provider to serve as a COLR, CTIA's reliance on general statements regarding preemption are not sufficient legal authority to support that claim. CTIA should revise its proposal to identify specific legal authority, if there is any, that supports its preemption claims.

Overall, wireless and VoIP providers spend a great deal of time arguing preemption generally, but they do not address whether the FCC has preempted state authority over any specific, individual COLR requirements. Without that fact-specific inquiry, the Commission cannot determine whether there are genuine issues of federal preemption. Accordingly, the Commission should reject proposals that argue that the Commission is broadly preempted from imposing individual COLR requirements on wireless or VoIP providers.

[30] CTIA Opening Comments at pp. 3-4; *see* Frontier Opening Comments at p. 4, fn. 7.

2. AT&T Should Revise Its Proposal to Acknowledge that a Providers' COLR Obligation is Technology-Neutral.

In its proposal, AT&T erroneously presents its COLR obligations as though it is obligated to fulfill them using legacy landline service. AT&T devotes significant portions of its filing to trends in its wireline subscribership, issues specific to its legacy infrastructure, and the misleading argument that its COLR obligations prevent it from investing in broadband.[31] AT&T recycled this material from its rejected application to relinquish its COLR obligations.[32] As the Commission found in rejecting AT&T's application, COLR obligations are technology neutral:

> AT&T's public arguments paint the picture that the Commission's COLR Rules require AT&T to retain outdated copper-based landline facilities that are expensive to maintain, or that AT&T needs Commission approval in order to be able to retire copper facilities and instead, invest in more modern technologies such as VoIP, wireless, and fiber . . .
>
> These arguments are not accurate.
>
> The Commission does not have rules preventing AT&T from retiring copper facilities. Furthermore, the Commission does not have rules preventing AT&T from investing in fiber or other facilities/technologies to improve its network . . . . [T]he Commission defines a COLR as a local exchange carrier, the COLR Rules do not distinguish between the voice services offered (VoIP vs. POTS).[33]

It is the *functional capabilities* of a technology that matter in determining whether a provider can use it to provider COLR service, not the type of technology.[34] As such, parties' proposals should be consistent with the Commission's policy of technology neutrality rather than presume that that COLR service is synonymous with landline service.

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[31] AT&T Opening Comments at pp. 10-16, Attachment B at pp. 24-29.
[32] *Compare* AT&T Opening Comments *with* Application of AT&T California for Targeted Relief from its Carrier of Last Resort Obligation and Certain Associated Tariff Obligations (A.23-03-003) (Mar. 3, 2023).
[33] D.24-06-024 at pp. 22-23 (citations omitted); *See also* D.12-12-038 at p. 2, FOFs 5, 6, COL 5 ("The adopted basic service elements are designed to apply on a technology-neutral basis to all forms of communications technology that may be utilized, including wireline, wireless, and Voice over Internet Protocol (VoIP) or any other future technology that may be used in the provision of telephone service.") .
[34] Joint Commenters Amended Initial Proposal at pp. 8-10.

B. Providers Should Revise Their Proposals to Acknowledge that Competition is Not Effective in Guaranteeing Universal Service.

1. Competition Does Not End the Need for Robust COLR Requirements.

Providers make the argument that COLR requirements are no longer necessary because the communications market is competitive.[35] However, none of the providers explain *how* competition will accomplish the universal service goal of ensuring that every person has access to communications services that meet minimum basic service requirements at nondiscriminatory, just and reasonable rates and can participate in income-qualified programs. Nor do they address the history of telecommunications that demonstrate repeatedly that markets have not successfully accomplished this task. Instead, providers' arguments rely on misunderstandings, or outright distortions, of economic analysis and Commission policies.

As a threshold issue, none of the providers address the issue that universal service policies, including COLR requirements, exist precisely because of persistent market failure where competition has been insufficient to guarantee everyone access to service. For example, the High Cost Fund-B, which the Commission is reviewing in this proceeding, was created to "keep basic telephone service affordable and to meet the Commission's universal service goal" in areas where costs to build and operate a network are high and demand may be low because of limited population density.[36]

Providers further fail to acknowledge that economic analysis is a predictive tool, i.e, economic analysis estimates that a particular outcome is likely to occur, but it does not guarantee that outcome. For example, the Commission's 1996 Universal Service decision predicted that

[35] AT&T Comments at p. 21; CalBroadband Opening Comments at p. 11; CTIA Opening Comments at p. 2; Consolidated Proposal at p. 9; Frontier Opening Comments at pp. 5-6; Small LECs Opening Comments at p. 7; USTelecom Response at p. 2.

[36] California High-Cost Fund-B Administrative Committee, CHCF-B Annual Report (Sept. 30, 2022), *available at* https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/high-cost-support-and-surcharges/chcf-b/final---chcf-b-2021-2022-annual-report.pdf (last accessed Oct. 25, 2024).

competition would motivate multiple providers to become COLRs.[37] However, as the Commission noted in its decision rejecting AT&T's application to relinquish its COLR status, there are no current alternative COLRs in AT&T's territory.[38] Given that economic analysis, even properly applied, cannot guarantee outcomes, such analysis is inappropriate as a tool to ensure that everyone in a service area will be served. Relatedly, providers fail to acknowledge that economic analysis is fallible. For example, economists failed to predict the 2008 global financial crisis.[39] Similarly, in the Sprint/T-Mobile merger proceeding, industry expert Dr. Mark Israel predicted that the merger would result in lower prices for consumers.[40] This did not materialize, and the Sprint/T-Mobile merger did not prevent U.S. mobile prices from being among the most expensive in the world.[41]

AT&T effectively asks the Commission to abandon its universal service goals based on the idea that free market economic policy will provide adequate results, which admittedly may not include universal service. AT&T's expert, Mark Israel, states that "[u]niversal access to voice services is an important policy goal, but, even as that goal is pursued, it is important to recognize that regulation comes with both benefits and costs."[42] Dr. Israel then argues that there are areas in

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[37] Rulemaking on Comm'n's Own Motion into Universal Serv. & To Comply with the Mandates of Assembly Bill 3643, D.96-10-066, 1996 Cal. PUC LEXIS 1046, at *468–72 app. B (Universal Service Rules 6.D–E) (Oct. 25, 1996)

[38] Rulemaking on Comm'n's Own Motion into Universal Serv. & To Comply with the Mandates of Assembly Bill 3643, D.96-10-066, 1996 Cal. PUC LEXIS 1046, at *468–72 app. B (Universal Service Rules 6.D–E) (Oct. 25, 1996); D.24-06-024 at pp. 18, 21.

[39] *See* David Colander, Hans Föllmer, Armin Haas, Michael Goldberg, Katarina Juselius, Alan Kirman, Thomas Lux, & Birgitte Sloth, The Financial Crisis and the Systemic Failure of Academic Economics (April 2009), https://www.econstor.eu/bitstream/10419/24885/1/593508424.PDF.

[40] *See* Joint Applicants Brief at p. 15, A.18-07-011 and A.18-07-012 (Dec. 20, 2019).

[41] Competition theory is based on the principle that businesses want to generate the most profit using the least effort, and that competition forces competitors to work harder to capture more sales (and therefore more profit). However, competition theory has always held that the "optimal" state of competition ensures that the greatest number of consumers have access to a product, not that all consumers have access to a product. Economics has never claimed to be able to predict individual outcomes. *See also* Rewheel Research, The State of Mobile and Broadband Pricing, 2024)https://research.rewheel.fi/downloads/The_state_of_mobile_and_broadband_pricing_1H2024_PUBLIC_REDACTED_VERSION.pdf (last accessed Oct. 30).

[42] AT&T Opening Comments at Appendix A, p. 3.

California where universal service does not make "economic sense."[43] In other words, Dr. Israel argues that there are some areas in California where universal access to emergency services is *not* worth the cost of providing that service.

In its initial filing, AT&T appears to go even a step beyond its expert's analysis to argue that providers should not be required to serve customers that are not sufficiently profitable, stating that "any remaining gaps [in infrastructure deployment] will require further public resources."[44] Neither AT&T nor Dr. Israel quantifies the necessary "public resources" nor do they quantify how much they believe access to emergency services for customers in those areas is worth. Nevertheless the indication that it is somehow appropriate to assign a monetary value to, for example, service for a person on the top floor of a burning building or a pregnant woman on bed rest, is disturbing. Joint Commenters specifically urge the Commission to put these economic arguments in the context of its historic and current policies on equity and universal service, and on that basis to reject these proposals.[45] Proposals that argue that universal service—including universal access to emergency services during natural disasters and other scenarios—should be subject to a strict cost-benefit analysis, or that some individuals are more economically worthy of service than others, have no place among the Commission's strong policies and objectives of equity and universal service.[46]

Finally, in support of their economic arguments, the Commission should note that providers appear to rely on inappropriate data. For example, while AT&T states that its proposal "[bears] in

[43] AT&T Opening Comments at Appendix A, p. 3.
[44] AT&T Opening Comments at p. 7.
[45] Joint Commenters Proposal at pp. 10-13.
[46] *See, e.g.,* D.96-10-066 (R.95-01-020) at pp. 54-55 ("Universal service policies have always had two focuses. The first is to improve the number of households who have telephones in areas that are currently served by a telephone service provider. The second is to ensure that telephone service is available over wide geographic areas . . . . Expanding the geographic availability of telephone service will improve the public's health, safety, and well being of those who live in or travel through these areas. In addition, the economic vitality of the area will be improved as a result."); CPUC, Environmental & Social Justice Action Plan Version 2.0 (April 7, 2022), https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/news-office/key-issues/esj/esj-action-plan-v2jw.pdf.

mind the lessons from its 2023 COLR Application,"[47] AT&T's proposal in this rulemaking is based on the same analysis, and the same data sources, that AT&T relied on in its 2023 COLR Application. This includes the Commission's Broadband Mapping Data as a data source.[48] As TURN noted in the AT&T ETC proceeding, that data was not designed to determine where a carrier can withdraw service, and reliance on that data is inappropriate.[49] Similarly, CalBroadband cites to FCC Form 477 data,[50] which is also unreliable.[51] Inappropriate data only increases the unreliability of arguments based on economic policy along.

2. Providers Should Revise Their Proposals to Eliminate the Recommendation that the Commission Relieve Providers of Their COLR Obligations "Where Competition Exists."

Cal Broadband argues that the COLR obligation should be eliminated in areas "that do not lack competition for voice service."[52] Frontier echoes this position, claiming that the COLR obligation should only be retained in areas which "lack sufficient competition."[53] Frontier then claims that in areas where there is a wireline competitor with "substantial coverage of an ILEC's footprint and the same area has broadband access to each of the three major wireless carrier's service platforms these conditions present an easy case for COLR relief."[54] Similarly, AT&T argues that for areas that are "well-served with broadband," voice service is ubiquitously available and a COLR is not necessary to provide basic service.[55]

[47] AT&T Opening Comments at p. 2.
[48] AT&T Opening Comments at p. B-4.
[49] Reply Brief of TURN (A.23-03-002) (Sept. 27, 2024), at pp. 30-32.
[50] CalBroadband Opening Comments at pp. 6-8.
[51] Joint Commenters Amended Initial Proposal at p. 34. Additionally, it appears that CalBroadband's analysis includes satellite coverage. *See* CalBroadband Opening Comments at p. 8.
[52] CalBroadband Opening Comments at p. 9.
[53] Frontier Opening Comments at p. 3.
[54] Frontier Opening Comments at p. 3.
[55] AT&T Opening Comments at p. 27.

Neither Frontier nor Cal Broadband offer a specific proposal or standard for the Commission to use in determining whether there is "sufficient competition" to eliminate the COLR obligation. Contrary to Frontier's claim, there are no "easy case[s] for COLR relief" when looking at competitive alternatives in a particular area.[56] For example, there appears to be some dispute among providers whether wireless and wireline providers compete with one another. In Verizon's recent application to acquire Frontier, Verizon, primarily a wireless provider in California, argues that "Verizon and Frontier do not materially compete and have no plans to do so."[57]

As the record in A.23-03-003 (AT&T's application to withdraw as a COLR) demonstrates, and as the Commission found, the presence of wireless carriers in an area does not equate to reliable COLR service for all customers within an ILEC's footprint, whether in rural or urban areas.[58] Moreover, if a competitive wireline carrier is present and only serving the partial footprint of an ILEC, that means some customers will necessarily be unable to receive service from that wireline carrier.[59] Further, as Cal Advocates rightly points out, the COLR requirements are "designed to

[56] Frontier Opening Comments at p. 3.
[57] Verizon/Frontier Application at p. 3. *See also* Verizon/Frontier Application at p. 14 ("This Transaction will not reduce competition because Verizon is not an incumbent local exchange carrier anywhere in California, and Frontier is not a wireless carrier anywhere in California").
[58] D.24-06-024 at p. 18-19; *see also, e.g.,* Clovis Public Participation Hearing (A.23-03-002 and A.23-03-003) (Feb. 6, 2024), Public Comment of Kevin Miller, Tr. 37:6-23 ("I'm the District Director of Enterprise and Architecture for State Center Community College District, serve about 70,000 students -- Fresno, Madera, Tulare and Kings County . . . . I think everybody here today has covered, much better than I can, the issues around public safety, particularly in rural areas where -- where cell service is not adequate or reliable, but I want to draw attention to some of the other residents that are poorly served by this, and that is our urban poorer and areas of high density and historical underinvestment. Cell service in those areas is -- is quite poor as well. You can take a driving tour and areas of affluence have way more bars than areas that do not; and so, that is a challenge."); Indio Public Participation Hearing Transcript (A.23-03-002 and A.23-03-003), Public Comment of Scott Armstrong, Tr. 330:20-331:5 ("In addition to causing hardships for a thousand or so residents who live up and down the valley, and as mentioned, we have 1.7 million visitors to Death Valley every year, at least when it's open, AT&T's request [to relinquish its ETC and COLR obligations] also raises significant safety concerns for these communities; and those communities has -- have been historically at risk because of natural disasters, and often experience power outages. Cell phone service and Internet service in the valley are notoriously unreliable, at best, but they're generally unavailable, in general.");
[59] D.24-06-024 at p. 18 ("[C]able company may need to build out its network in order to meet the requirement of offering service to any potential customers that request service.")

ensure that at least one legal entity carriers a legal obligation to provide basic service to *all customers* upon request within a COLR's designated service area."[60] A wireless carrier that is not a COLR would have no such obligation.

Additionally, piecemeal removal of COLR requirements in various areas of California would result in a fragmented regulatory structure that would create an economic incentive for providers who have been relieved of their COLR obligations in a location to offer service only to the most profitable customers in that location. Accordingly, that provider might stop providing service in less profitable parts of the area were COLR requirements are lifted, or they may discontinue maintenance of infrastructure in less profitable parts of the location, or only upgrade its network in the most profitable areas of the location. This scenario is the embodiment of "cream skimming," and prohibiting that cream-skimming is one of the reasons the Commission implemented existing duty-to-serve requirements in the first place.[61] The COLR requirement ensures that any customer, including any future customer, is guaranteed the ability to obtain reliable basic service at a reasonable price. There is no evidence that the competition in California can otherwise meet this standard so as to justify eliminating the COLR obligation.

AT&T's specific argument that no COLR should be required to provide basic service in areas served by broadband is similarly myopic. Under this proposal, there would be no guarantee that broadband service alone would provide customers with essential communications functionality,

[60] Initial Proposal of Cal Advocates on the Order Instituting Rulemaking to Consider Changes to the Commission's Carrier of Last Resort Rules (Cal Advocates Initial Proposal) (Sept. 30, 2024) at p. 68 (emphasis added).

[61] *See, e.g.,* D.20-08-011 (R.11-11-007), FOF 5-6, ("CLECs may 'cream skim' profitable customers rather than serve significant portions of Small LEC service territories, particularly customers whose costs to serve are high.") (requiring competitive providers that enter the market to serve in Small LEC territory to adopt a "must serve" obligation throughout their specifically defined service areas); Cal Advocates Initial Proposal at pp. 45, 52.

including the ability to support technology neutral,[62] interconnected two-way communications anywhere in the nation. Absent regulatory protections, it is also unlikely that AT&T's proposal would guarantee that customers would have reliable access to 911 service and emergency alerts. For example, both rural and urban areas are subject to earthquakes that can cause a power outage for days, rendering communications networks that rely on commercial power non-functional unless those networks are in the limited areas subject to the CPUC's network resiliency requirements.[63]

Furthermore, as discussed in Joint Commenters' initial proposal, the presence of broadband service does not guarantee affordable service for customers.[64] Customers in ESJ communities have relatively low adoption rates for broadband, indicating limited access to basic service even if broadband is available via multiple platforms.[65] There currently is no subsidized broadband affordability program for low income customers beyond the providers' voluntary programs, which consumers widely recognize as substandard. Removing the COLR obligation with the justification that broadband is an adequate substitute ignores affordability considerations, would eliminate the most affordable service options, and would jeopardize public safety.

Once again, AT&T trots out the arguments that it presented to support its COLR relinquishment application in A.23-03-003 and its ETC relinquishment application in A.23-03-002, claiming that there are "at least 3 facilities-based fixed or mobile broadband providers in more than

[62] Here, "technology neutral" refers to service regardless of the underlying network technology (e.g. fiber, coax, wireless) or the communications device (e.g. handset, telephone, computer, tablet),
[63] *See, e.g.,* National Research Council, Practical Lessons from the Loma Prieta Earthquake, Washington, D.C. The National Academies Press (1994), at p. 13. *https://doi.org/10.17226/2269* ("Lesson 27: Power outages in downtown San Francisco lasted several days following the earthquake due to the need for time-consuming inspections of major buildings for gas leaks and ignition sources prior to energizing the downtown power grid. This was the largest single source of business interruption resulting from the Loma Prieta earthquake."); D.21-09-029 at OP 4 (setting backup power requirements for wireline providers); D.20-07-011 at OP 2 (setting the same for wireless providers).
[64] Joint Commenters Amended Initial Proposal at p. 11.
[65] *See* Joint Commenters Amended Initial Proposal, Appendix A.

99 percent of the locations in AT&T's territory."[66] Contrary to AT&T's claim, the record in A.23-03-003, including the public comments from multiple public participation hearings and those submitted to the docket card, demonstrated that this claim is misleading and overstated. Multiple speakers and commenters (including elected representatives and community leaders) cited instances where the supposedly available wireless service simply did not work.[67] Multiple speakers, commenters and parties pointed out that in a lengthy power outage, the legacy network could be relied upon to allow customers to contact first responders and receive essential emergency information.[68] The competition alleged by AT&T is simply not sufficient to justify eliminating the COLR obligation.

AT&T also argues that it is unnecessary to enforce or require COLR obligations in areas where there is currently no population because if the area becomes populated a service provider will

[66] AT&T Opening Comments at p. 29.

[67] *See, e.g.,* Ukiah Public Participation Hearing Transcript, Public Comment of Bob Matson, Tr. 189:25-192:11 ("I asked [AT&T] what the alternative [to landlines] was and they said, 'Well, the alternative is cell phones,' . . . . So, they put me through to a salesman, and I said, 'You know, AT&T cell phone coverage in our area is really sketchy,' . . . . He assured me the phones would work, told me where the cell phone towers were. I said they're nowhere close to me, and he said, "No, I think they'll work," so they pulled our landlines, sent us two smart phones, and for 7 months, we put up with it; and what happened was our customers started to say, gosh, we can't get through to you. What's going on with your phones? And half the time the phones would work as they were supposed to, but the other 50 percent of the time, the call was either dropped or it went to voicemail . . . .")

[68] *See, e.g.* Clovis Public Participation Hearing Transcript, Public Comment of Matias Bombal, Tr. 44:20-45:10 ("I just want to say, this is not just an issue in rural areas, as far as keeping landline service and both items on this agenda today. I drove here from Sacramento to be here today. Where, in a major city and the capitol of our state, we had a storm that knocked out power for two days, and I was only able to reach my uncle via my 1928 Western Electric rotary dial phone still connected to a POTS system on a copper line. Because the power was out, I couldn't charge the phone, trees had blocked access to my car -- luckily didn't lose it -- so I couldn't charge the phone in the car showing you that the AT&T great POTS system is still valuable and vital at times of emergency . . . ."); Virtual Public Participation Hearing Transcript, Public Comment of Clara Cooper, Tr. 624:18-25 ("We recently lost power for three days due to a windstorm. My VoIP phone didn't work anymore. My cell phone battery died, but my landline reliably worked the entire time. During this time, one of my children in college on the east coast had a medical emergency. Luckily, they were able to reach us because we have a landline. I cannot imagine what would have happened had we been unreachable.").

either be economically motivated to deploy broadband or "appropriately funded government programs can ensure deployment of broadband service."[69] Joint Commenters disagree.

As an initial matter, Joint Commenters are not proposing that the Commission require carriers to build networks where there are no people. Today, there are areas with minimal population within the service territory of AT&T, Frontier, and the Small LECs where current network facilities do not exist. However, it is not enough to "assume" that competition or government funded programs will build in those rural and difficult to reach areas as population increases. The COLR rules ensure that residents of unserved areas can request new service that meets their needs.

Without the COLR requirement, any new facilities that may be built by AT&T or other providers in order to meet new demand would not be held to any particular standard. If AT&T or any other provider builds infrastructure to serve these areas, using any form of technology, that network must be designed to be capable of supporting reliable, technology neutral two way voice services and providing access to 911, including meeting the Commission's service quality standards. It should be noted that the FCC has imposed a voice service requirement in similar circumstances. For example, the provision of voice service is a requirement for broadband projects supported by RDOF funds.[70]

If a providers' network is to be approved as a replacement for COLR service, there must be a guarantee that the provider will be able to offer reliable, affordable voice service, capable of supporting 911 service and meeting the functional requirements established in these rules. COLRs using new networks constructed to serve previously unpopulated areas should be obligated to provide service under equal terms and conditions to every customer currently served by the network. A

[69] AT&T Opening Comments at p. 30.
[70] In re Rural Digital Opportunity Fund, Connect America Fund (*RDOF Report and Order*), WC Docket Nos. 19-126 and 10-90, Report and Order, 35 FCC Rcd 686 (2020).

carrier should not be able to pick and choose to serve some, but not all, customers on newly constructed network facilities, including those funded with public money.

C. Providers Should Revise Their Proposals to Include an Updated Definition of Basic Service.

1. Providers' Proposals Should Recommend Revisions to Some Elements of the Definition of Basic Service.

In the OIR's preliminary scoping of issues, the Commission asks if it should revise the requirements of basic service in its COLR rules and if so, what should those revisions be.[71] While Joint Commenters' initial proposal acknowledges that specific service elements could benefit from language modernizing or updating those elements, it also concludes that each of the basic service elements remain critical and necessary to ensure that all customers, regardless of location, income, or demographics, have access to service which is needed not only for communication, but for public safety and disaster preparedness.[72] Joint Commenters urge the Commission to update the definition while maintaining the fundamental elements of basic service, including the requirement to provide a technology-neutral voice-grade connection from a customer's residence and the ability to place and receive voice-grade calls over all distances with a nondiscriminatory stand-alone service, access to the most current array of emergency communications capabilities, access to directory services (including published directories upon request),[73] participation in LifeLine service as updated by the Commission, unlimited calls to 800 and 8YY toll-free numbers with no additional usage charges, and free access to modernized and/or updated relay services and/or other disability access services.

[71] Order Instituting Rulemaking Proceeding to Consider Changes to the Commission's Carrier of Last Resort Rules (June 28, 2024), at p. 5.
[72] Joint Commenters Amended Initial Proposal at p. 8. The initial proposal includes a redline revision to the basic service elements to show recommended modernizations for these elements. Joint Commenters Amended Initial Proposal at Appendix B.
[73] TURN is currently collecting consumer feedback regarding the need for printed directories and may have specific recommendations after that process is complete.

Joint Commenters also proposed that the Commission (1) require providers to report when they refuse to provide voice-grade basic service to a requesting customer and (2) require provisions for Disaster Relief Consumer Protections as part of its definition of basic service.[74]

Most of the filed comments from other parties contain a general recognition that the definition of basic service should be revised and updated, as discussed below, although the specific proposed revisions differ among the parties, and not all parties made specific proposals. AT&T California proposes simply dispensing with the question as moot because AT&T plans to withdraw as a COLR for most of its service territory.[75] Some parties propose limiting the basic service definition in some fashion such as only including a voice grade connection and E911 support,[76] or "streamlining" the basic service elements "by limiting them to the provision of "voice-grade service," a commitment to provide E911, access to "8YY" service, access to telephone relay, and access to LifeLine service."[77] Small LECs similarly propose deleting certain requirements as "archaic"[78] or "outdated"[79] and the Lifeline element as "surplusage."[80] These proposals are not sufficiently developed or justified, and they should not be adopted.

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[74] Joint Commenters Amended Initial Proposal at pp. 36-38, Appendix B. *See also* D.19-08-025 (R.18-03-011), Decision Adopting an Emergency Disaster Relief Program for Communications Service Provider Customers.

[75] "AT&T California does not believe the Commission and parties should expend resources to revise the definition for the limited areas where AT&T California would remain the COLR." AT&T Opening Comments, at p. 29, fn. 110.

[76] Frontier Opening Comments, at p. 5. Consolidated also proposes limiting basic service to "a voice grade connection with access to E911." Consolidated Response at p. 8.

[77] Opening Comments and Initial Proposal of the TDS Companies on Order Instituting Rulemaking Proceeding to Consider Changes to the Commission's Carrier of Last Resort Rules (TDS Initial Proposal) (Sept. 30, 2024), at p. 9. EQUAL proposes removing some requirements "that are now antiquated or competitively available to make it feasible for smaller competitors to serve as a replacement COLR for a portion of an existing COLR's service area (e.g., providing operator services, directory assistance, white pages directory, etc.)." Proposal of Empowering Quality Utility Access for Isolated Localities for Changes to Carrier of Last Resort Rules in Order Instituting Rulemaking Proceeding (EQUAL Proposal) (Sept. 30, 2024), at p. 16.

[78] Small LECs Opening Comments, at p. 9.

[79] Small LECs Opening Comments, at p. 9.

[80] Small LECs Opening Comments, at p. 10.

2. Small LECs Should Revise their Proposals to Eliminate Proposed Modifications and Keep Most of the Elements of Basic Service.

As an initial matter, the Commission should note that the community of current COLRs does not universally agree on the need to revise basic service elements or the details of those revisions. For example, some COLRs propose keeping existing elements while other COLRs urge the Commission to remove those requirements.[81] Joint Commenters respectfully suggest that the Commission avoid revising or eliminating those requirements without more input from stakeholders.

Small LECs offer a number of revisions to the basic service elements. However, these proposals generally fail to recognize that the key basic service elements are critical and necessary to ensure that all customers, regardless of location, income, or demographics, have access to service needed not only for communication in general, but for public safety and disaster preparedness specifically. Accordingly, the Commission should reject Small LECs' proposed revisions.

a. Small LECs Should Revise their Proposals to Eliminate Proposed Changes to the Basic Service Billing Provisions.

Small LECs seek to eliminate various service elements that remain necessary for their customers. For example, Small LECs propose major revisions to the "billing provisions" or Section 4 of the elements of basic service as defined by the Commission. Specifically, Small LECs recommend that the Commission eliminate the requirement that carriers offering basic service provide a flat rate option for unlimited outgoing calls that "mirrors the local exchange or an equivalent or larger sized local calling area in which the basic service customer resides."[82] Small LECs' proposal could be interpreted to result in a replacement COLR's local calling area covering a smaller territory that was covered by the prior COLR, resulting in some customers being excluded from the replacement COLR's service territory, or remaining customers having a smaller local calling area. Absent

[81] *Compare* Frontier Opening Comments at p. 5 *with* AT&T Opening Comments at pp. 27-28 *and* TDS Comments at pp. 8-9.
[82] Small LECs Opening Comments at p. 10, Appendix A.

clarification, Joint Commenters oppose this proposal. As explained in our opening comments, it is crucial that the service provided by a replacement COLR does not diminish the calling area provided to a customer.[83] Eliminating this language would undermine that objective.

Similarly, Small LECs propose that the Commission eliminate the requirements that service providers (1) offer LifeLine rate on a nondiscriminatory basis to any LifeLine eligible customer in a service territory, (2) offer an option with monthly rates without a contract or early termination penalty, and (3) are prohibited from requiring customers to subscribe to a bundle of basic service and additional and/or enhanced services elements as a condition of receiving basic service.[84] Small LECs argue that because LifeLine customers are protected by the LifeLine rules established in General Order (GO) 153, there is no need to include them as a COLR requirement. Joint Commenters believe that Small LECs have missed the point. GO 153 is not enough: it is important to specify *in the COLR rules* that a COLR is obligated to offer LifeLine service to all eligible customers in its service territory. Small LECs offer no explanation about why these elements should be eliminated other than the unsupported assertion that the elements are "archaic and inoperative."[85] Joint Commenters believe that they provide important consumer protections, for instance ensuring that customers are indeed able to purchase "basic service" without paying costly charges for services they may have a hard time affording. These provisions should be retained.

b. Small LECs Should Revise Their Proposals to Eliminate Proposed Changes to Provisions Regarding Operator Services and Directory Assistance.

Joint Commenters oppose eliminating the requirement for operator services or directory assistance at this time. Many people still depend on those services. For example, some people with

[83] Joint Commenters Amended Initial Proposal at p. 29.
[84] Small LECs Opening Comments at p. 10.
[85] Small LECs Opening Comments at p. 10.

disabilities still need access to operator service and/or directory assistance, including individuals with mobility restrictions who use a "pillow switch" which they can activate by tapping, typically with their head.[86] When activated, these devices usually dial an operator directly, because individuals using pillow switches typically lack the necessary mobility to dial full numbers. Accordingly, operator service and directory service are still necessary for many individuals with disabilities,[87] and removal of this requirement would result in denial of service to some customers.

c. Small LECs Should Revise Their Proposals to Eliminate Proposed Changes to Provisions Regarding One-Time Free Blocking of 900/976 Numbers.

Small LECs justify their proposal to eliminate the one-time free blocking of 900/976 numbers because they claim the requests are rare, consumers are protected from unauthorized charges by existing consumer protection rules, and there is no reason to impose this requirement uniquely on COLRs.[88] Joint Commenters oppose this proposal. While cell phone users generally can easily block 900/976 calls, the same is not necessarily true for landline customers using basic telephone service. While Joint Commenters wholeheartedly support consumer protection rules limiting exposure to unauthorized charges, from the perspective of consumers, it is more efficient to simply block unwanted 900/976 calls up front than it is to address charges after the fact through regulatory or legal channels. Small LECs have presented no evidence that retaining the 900/976 one-time free block harms or disadvantages COLRs.

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[86] *See* CAConnect.org, Equipment and Services, https://caconnect.org/equipment/pillow-switch/ (last accessed Oct. 23, 2024).

[87] If the Commission determines that it is not necessary for the Commission to preserve operator service and directory service as part of basic service, it should consider how to ensure that people with various disabilities are still able to communicate by telephone. Joint Commenters respectfully recommend that the Commission take up this issue in its existing Deaf and Disabled Telecommunication Program, R.23-11-001.

[88] Small LECs Opening Comments at p. 9.

3. Joint Commenters Support Small LECs' Proposed Revisions to the requirement for "voice grade service."

Small LECs propose that for the purposes of the COLR obligation, the Commission should continue to require that providers "must offer customers the ability to place and receive voice-grade calls over all distances utilizing the public switched telephone network or a successor network," as set forth in D.12-12-038.[89] Joint Commenters support retaining this requirement in the definition of a COLR's basic service. The ability to place and receive voice-grade calls using any technology, including the unfettered ability to contact emergency services and receive vital information, is a fundamental element of universal service and a cornerstone of telecommunications policy. As discussed in Joint Commenters' initial proposal, this definition does not prevent COLRs from deploying advanced networks capable of providing voice communications, broadband, and data services,[90] and the language of D.12-12-038 specifically contemplates a successor network to the public switched network.

Joint Commenters further agree with the Small LECs that the Commission should adopt the latency standard that the FCC uses to define "voice grade" service for the purposes of the federal broadband data collection.[91] This latency standard and the reliance on a "voice grade" definition are appropriate transmission qualities for a network used to provide both voice and broadband service.

Joint Commenters note that a 100 milliseconds or less standard is consistent with the engineering analysis underlying our recommendation for VoIP service quality standards in docket

[89] Small LECs Opening Comments at p. 6, citing D.12-012-038, Appendix A.
[90] Joint Commenters Amended Initial Proposal at pp. 31-32.
[91] Small LECs Opening Comments at p. 6, fn. 20, (citing *In re Deployment of Advanced Telecommunications Capability for All Americans, et. al.,* GN Docket No. 22-270, 2024 Section 706 Report, FCC 24-27 (rel. March 18, 2024) at ¶ 120, n. 367 (setting the FCC latency standard at 100 milliseconds or less in 'round-trip' network signaling speed)).

R.22-03-016.[92] As the Small LECs point out, the FCC mandates that "95 percent of latency measurements be at or below 100 milliseconds round-trip time" for carriers participating in most, if not all, federal broadband and telecommunications universal service funds.[93] As Joint Commenters argued in our initial proposal, these funds are supporting the piece-by-piece construction of the network providing both voice and broadband that will serve us for the foreseeable future. It makes sense to reference this federal standard in California.

4. Providers Should Revise their Proposals to Address the Issue of Including Broadband As Part of Basic Service.

Small Business Utility Advocates (SBUA) states "the Commission should recognize broadband and wireless telephone service as essential service, revise the requirements of basic service as applicable, and take into account technical metrics that assess the quality of broadband and wireless service, as appropriate."[94] Similarly the Public Advocates Office ("Cal Advocates") proposes to add broadband to the definition of basic service.[95] Cal Advocates proposes that a provider applying to withdraw as a COLR should be required to demonstrate that it is able to provide broadband basic service across the service area for which the COLR is requesting relief from its COLR obligation.[96] Cal Advocates observes that "regulators have long recognized that the services that constitute 'basic service' will change over time with the changing needs and expectations of the public . . . . [T]he question of whether it is feasible to adopt a broadband basic service component is

[92] Comments of The Utility Reform Network, the Communications Workers of America, and the Center for Accessible Technology on the Order Instituting Rulemaking to Consider Amendments to General Order 133, (R.22-03-026) (May 9, 2022), at pp. 11-12, supported by the attached Declaration of Steven McKinnon, at p. A-4 ("Latency is the time it takes for a data packet to travel from point-to-point on the network. Each step your data packet travels through the network will add to its latency. Latency high than 150 milliseconds (ms) will cause unnatural delays in an audio conversation. On a video call, high latency could create a disconnect between the audio and the video. If latency becomes too high, users can experience periods of no audio or video at all.").
[93] Small LECs Opening Comments at p. 6, fn. 20.
[94] Proposal of Small Business Utility Advocates (Sept. 30, 2024), at p. 7.
[95] Cal Advocates Initial Proposal at pp. 11-18.
[96] Cal Advocates Initial Proposal at pp. 11-12.

ripe for another look."[97] Cal Advocates further lays out why broadband service is essential for participation in modern society,[98] that over 65% of residential customers in California subscribe to broadband service at home,[99] that the Commission has already implicitly determined the benefits of adding broadband as a basic service outweigh the costs,[100] and that the availability of broadband service will not increase without intervention.[101]

Joint Commenters agree with Cal Advocates and SBUA that the inclusion of broadband services is ripe for consideration but reiterate that there are several important issues that must be addressed in order to adopt this proposal, which the Commission should consider in a separate track in this proceeding.[102] Providing universal broadband connectivity is costly, though efforts have begun to address this challenge through federal and state funding programs such as FFA, BEAD, and RDOF. Inclusion of broadband in basic service could suggest the CHCF-B fund would need to be updated to fund broadband as a COLR obligation, which has significant implications that the Commission would need to investigate.

There are also important affordability considerations to such a decision, including a potential need for requiring continued availability of à la carte voice service, especially for low-income households in rural areas where broadband at minimum standard speeds or above (e.g., above 100/20 Mbps) is prohibitively expensive.[103] Relatedly, the demise of the Affordable Connectivity Program earlier in the year has constrained the availability of broadband-only subsidies. Thus, inclusion of

[97] Cal Advocates Initial Proposal at p. 14.
[98] Cal Advocates Initial Proposal at pp. 16-18.
[99] Cal Advocates Initial Proposal at pp. 18-20.
[100] Cal Advocates Initial Proposal at pp. 20-21.
[101] Cal Advocates Initial Proposal at pp. 21-22.
[102] Joint Commenters Amended Initial Proposal, at pp. 38-39.
[103] Joint Commenters Amended Initial Proposal, at pp. 10-11. *See also* Surabhi Karambelkar et al., FOCUS: Pricing Trends for California's Small Local Exchange Carriers, Cal Advocates (Jan. 2023), https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/press-room/reports-and-analyses/230510-cal-advocates-broadband-pricing-small-lecs-focus-paper.pdf.

broadband services in basic service is an important goal, but there are fundamental issues that the Commission and stakeholders must first address before it is viable.

D. Providers Should Revise Their Proposals to Address Rates and Subsidies.

1. Providers Should Revise Their Proposals to Clarify that the COLR Rules Should Continue to Include a Benchmark for Reasonable High Cost Area Rates.

Small LECs propose to eliminate the requirement that COLRs serving high cost areas certify that the basic rate in a designated high cost area does not exceed 150% of the highest basic rate charged by a COLR outside of a high cost area.[104] Small LECs correctly point out that in D.14-12-084, the Commission opted not to rely exclusively on the 150% non-high cost area rate standard for developing basic rates for Small LECs that draw from the CHCF-A.[105] However, the Commission did not abandon the concept of benchmarks for determining a reasonable basic rate.

The Commission changed the standard for Small LECs, with the support of parties such as TURN, Cal Advocates (then the Office of Ratepayer Advocates (ORA)) and the Small LECs themselves because the prior standard was largely pegged to AT&T's rates, due to the fact that AT&T is the largest California ILEC.[106] Since AT&T's rate design was no longer subject to regulatory reasonableness review, the benchmark was deemed inappropriate as a basis for rates in high cost areas.[107] The Commission considered the FCC's Access Charge Recovery (ARC) residential rate ceiling as an alternative benchmark. The use of this benchmark as a ceiling for high cost area rates was supported by TURN and ORA, and the Small LECs supported using the ARC ceiling and relying on individual rate cases to develop rates for each Small LEC.[108]

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[104] Small LECs Opening Comments at p. 10.
[105] Small LECS Opening Comments at p. 10.
[106] D. 14-12-084 at pp. 64-65.
[107] D.14-12-084 at p. 64.
[108] The Commission decided to use the FCC ARC as a floor rather than a ceiling, with the specific rates for each Small LEC considered in individual rate cases (D.14-12-084, Ordering Paragraph 9).

In their opening comments to this proceeding, the Small LECs argue that the 150% benchmark should be eliminated but do not propose replacing it with any alternative benchmark. Small LECs cite D.14-12-084, Conclusion of Law 11 to support the argument that the Commission adopted a range of reasonableness in lieu of the 150% benchmark,[109] implying that this supports the argument that the 150% standard should be eliminated from the COLR rules. This citation is somewhat misleading. Conclusion of Law 11 states that it is reasonable to set a specific basic rate floor and basic rate ceiling for Small LECs "because this range is consistent with the ARC benchmark and the 150% urban rates benchmark."[110]

The COLR rules should include *some* rate benchmark for COLRs serving high cost areas. Retaining a benchmark will support regulatory certainty, because providers will know that rates that comply with the benchmark are reasonable. Determining reasonable end user rates for basic service is necessary to calculate draws from subsidy funds. These carriers will be receiving high cost subsidy support, either from the CHCF-A or the CHCF-B. It would not be reasonable to provide subsidy funding with no cap on prices. The COLR rules apply to all COLRs, including those that are not subject to price controls and general rate cases. One goal of universal service policy is to ensure that service rates are affordable. Determining reasonable rates for a COLR's basic service is a key element of a subsidy mechanism utilizing either a cost model or a reverse auction. The rate benchmark may need to be revised, but the Commission should not eliminate it. The Commission may wish to take further comment on this issue.

[109] Small LECs Opening Comments at p. 10, fn. 29.
[110] RD.14-12-084, at COL 11.

2. Providers Should Revise Their Proposals to Include Reasonable Recommendations Regarding Subsidies and Calculations.

a. Providers Should Revise Their Proposals to Request that the Commission Collect More Data Regarding the Need to Modify the CHCF-B.

Very few parties responded to the Commission's question asking whether the subsidy amount offered for participation in the CHCF-B should be revised, and how the subsidy amount should be calculated. Cal Advocates argues that the Commission should modernize the CHCF-B fund to include support for broadband basic service at a minimum of 100/20 Mbps to encourage broadband deployment and affordability in high-cost areas.[111] Cal Advocates also suggests that B-Fund modernization include support for operation and maintenance costs.[112] AT&T believes that the CHCF-B is currently inadequate to attract willing participants because the fund is only available in high-cost areas, only available for residential lines, and the fund has substantially declined in size since it was established in 1996.[113]

As discussed in our initial proposal, Joint Commenters agree that the CHCF-B is insufficient as an integral component of the Commission's infrastructure investment policies and should be revised. The Commission should ensure that those investment policies provide a greater incentive for carriers to serve as COLRs in high cost areas. Joint Commenters agree with Cal Advocates that, as a matter of policy, telecommunications infrastructure serving high cost areas should be able to support voice and broadband at 100/20 Mbps, but it is not clear to Joint Commenters whether this standard is currently feasible in all cases, as it may require significant subsidies and/or further advances in technologies such as fixed wireless. Joint Commenters are also concerned that the level of private investment (and the funding required to support broadband speeds of 100/20Mbps) may result in

[111] Cal Advocates Initial Proposal at p. 57.
[112] Cal Advocates Initial Proposal at p. 78.
[113] AT&T Opening Comments at pp. 32-33.

service that is unaffordable for customers, particularly since many high-cost communities are also disadvantaged communities.[114] While further analysis may be needed to consider broad application of Cal Advocates' recommendations, Joint Commenters agree that it would be appropriate to require providers to ensure broadband speeds of 100/20Mbps with an affordable service in areas where infrastructure is newly constructed by a COLR and where it is upgraded with public funding.

AT&T's argument that the CHCF-B is inadequate because the fund only supports residential lines also deserves further consideration. Should the Commission decide to revise the CHCF-B, it should include the question of whether the fund should support non-residential lines, including single business lines (1MB) and other types of facilities that are capable of supporting broadband or data services. Joint Commenters also believe that Cal Advocates' suggestion that the CHCF-B be modified to include operational and maintenance costs for COLRs has merit. However, the Commission would need to carefully consider these two proposals, including with an in-depth analysis including cost impact that has not been presented by any party to date.

In order to conduct the additional analysis necessary to realistically consider the proposals put forward by Cal Advocates and AT&T, the Commission would need to collect data to assess the likely size of the fund with and without operational and maintenance expenses and the inclusion and

[114] *See, e.g.,* California Energy Commission, Low-Income or Disadvantaged Communities Designated by California https://cecgis-caenergy.opendata.arcgis.com/datasets/CAEnergy::low-income-or-disadvantaged-communities-designated-by-california-1/explore (last accessed Oct. 30, 2024) ("This layer shows census tracts that meet the following definitions: Census tracts with median household incomes at or below 80 percent of the statewide median income or with median household incomes at or below the threshold designated as low income by the Department of Housing and Community Development's list of state income limits adopted under Healthy and Safety Code section 50093 and/or Census tracts receiving the highest 25 percent of overall scores in CalEnviroScreen 4.0 or Census tracts lacking overall scores in CalEnviroScreen 4.0 due to data gaps, but receiving the highest 5 percent of CalEnviroScreen 4.0 cumulative population burden scores or Census tracts identified in the 2017 DAC designation as disadvantaged, regardless of their scores in CalEnviroScreen 4.0 or Lands under the control of federally recognized Tribes."). Many of these census tracts cover areas that are considered high cost areas for telecommunications service.

exclusion of different classes of business lines. The Commission would also have to consider how this larger fund would be sustained.

In R.21-03-022, which reviewed the surcharge mechanism for communications public purpose programs, the Commission raised the concern that the funding mechanism was "not sustainable due to the continuing decline of intrastate revenue billing base being reported by service providers."[115] The Commission determined that the existing surcharge mechanism, which required provider to calculate and remit surcharges based on their revenues from providing intrastate phone service, was "no longer adequate to support our universal service programs.[116] Accordingly, the Commission switched from a revenue-based to an access line-based mechanism, which requires providers to collect and remit surcharges based on the number of access lines (defined as wired or wireless connections that provide real-time voce communications service) in service.[117]

Joint Commenters are concerned that the existing surcharge mechanism only collects surcharges for voice service. Accordingly, if the Commission expands universal service programs to include broadband services, there is a risk that using surcharges on voice services to subsidize broadband services would render funding unsustainable.[118] While Joint Commenters believe that broadband access is essential and that there is an urgent need to provide subsidized broadband to households that cannot afford it, the Commission must be mindful of the potential impacts on the Fund and on ratepayers.

[115] OIR (R.21-03-002) (Mar. 11, 2021), at p. 1.
[116] D.22-10-021 at p. 33.
[117] D.22-10-021 at p. 59.
[118] *See, e.g.,* Reply Comments of TURN on the Administrative Law Judge's Ruling on Subsidy and Service Stanadards Staff Proposal (R.20-02-008) (Feb. 16, 2024), at pp. 26-27.

E. Providers Should Revise Their Proposals to Clarify that COLR's Withdrawal Requirements Should Ensure that All Current and Future Customers in the Withdrawing COLR's Service Area Can Receive Functional, Reliable, and Affordable Voice Service and Cannot be Denied Service.

As Joint Commenters have previously noted, any COLR withdrawal is likely to be confusing and disruptive to customers. For that reason, the Commission must closely oversee the process for withdrawal, including notice to affected customers in conjunction with any authorized withdrawal.[119]

1. Providers Should Revise Their Proposals to Acknowledge that Withdrawal Requires the Existence of a Replacement COLR.

Joint Commenters maintain that both existing law and communications policy require that a the Commission may only grant a provider relief from its COLR obligations in territory that is served by another COLR.[120] This principle guarantees that all current and future customers in that COLR's service area will continue to have assurances that they can obtain functional, reliable, and affordable voice service, and that they cannot be denied service. While Joint Commenters also support expanded access to broadband service, the specific requirement that COLRs must provide voice service and related elements of basic service remains crucial.

Because voice service remains critical for Californians, Joint Commenters are concerned about the implication of Cal Advocates' recommendation which would allow COLR withdrawal if an existing COLR can demonstrate that it has deployed broadband to 100% of its COLR service area.[121] While Joint Commenters support appropriate incentives to promote broadband deployment, the elimination of universal service obligations would be an improper incentive. As the Commission found in D.24-06-024, maintaining COLR obligations and investing in broadband is not a zero-sum game.[122] A COLR that deploys or expands a broadband network can offer both voice and broadband

[119] Cal Advocates Initial Proposal at p. 57.
[120] Joint Commenters Amended Initial Proposal at pp. 29, 44-46.
[121] Cal Advocates Initial Proposal at p. 54.
[122] *See* Section A(2), supra.

service, so a provider's expansion of its broadband network does not justify relief from COLR obligations.

2. Providers Should Revise Their Proposals to Include Reasonable Conditions on COLR Withdrawal.

Joint Commenters agree with Cal Advocates that any proposed COLR withdrawal area must be well-defined, and within that well-defined area, a provider requesting to withdraw should be required to identify any ESJ communities, high-fire threat areas, and areas at risk of earthquakes or floods in its withdrawal area. This would allow the Commission to appropriately consider equity and public safety concerns in the context of a proposed withdrawal.[123] Joint Commenters also support Cal Advocates' proposed requirement for the Commission to conduct a granular inquiry and review of devices and services that are reliant on the COLR's basic service (such as medical or security devices), which could be an effective first step in ensuring that any replacement service is compatible with those devices and services.[124]

Additionally, Joint Commenters recommend the Commission require that any authorized withdrawal that would affect a significant number of customers[125] be implemented incrementally. An incremental transition over time would allow both the withdrawing COLR and the new COLR (or COLRs) to address any problems before they become widespread and would provide opportunities for stakeholders and the Commission to ensure that notices to consumers are effective. In this way, an incremental process would make it more likely that the transition would run smoothly for affected customers.

[123] Cal Advocates Initial Proposal at p. 54.
[124] Cal Advocates Initial Proposal at p. 54; *see* Joint Commenters Amended Initial Proposal at pp. 8-10, 19-21.
[125] Joint Commenters propose a threshold of 2000 customers.

3. Providers Should Revise Their Proposals to Require Reasonable Customer Notice of COLR Withdrawals.

Joint Commenters agree with Cal Advocates on the need to specifically notify local governments, affected customers, and the general public of an application for a COLR withdrawal,[126] and we have previously noted the need to do so in multiple languages and accessible formats.[127] Joint Commenters included a draft customer notice of COLR withdrawal with our initial proposal that includes an explanation of COLR obligations, a description of the areas that would be affected, an explanation of what would happen to affected customers, and instructions on how to participate in the withdrawal proceeding.[128] Joint Commenters support Cal Advocates' additional proposed notice requirements for additional information, including (1) a statement on whether the withdrawing COLR intends to discontinue landline service, (2) an enclosed map of the affected area, and (3) a link to an interactive map of the affected area with an address-level search function.[129]

If a COLR intends to withdraw landline service, it is vital to provide that information to customers so they can understand how their COLR's withdrawal would affect their service options. This critical requirement should also be expanded to require a COLR to explain whether they are planning to discontinue any type of residential or business service in the affected area if their application is approved. The two map-related requirements proposed by Cal Advocates[130] would also assist customers in determining if an application directly affects them. Additionally, Joint Commenters recommend two additional requirements to ensure that information on any change of COLR be as accessible as possible to customers. First, a withdrawing COLR should provide an easy-to-find display on its website that conveys address-level information on the area under review in a

[126] Cal Advocates Initial Proposal at pp. 65-66.
[127] Joint Commenters Amended Initial Proposal at pp. 52-54.
[128] Joint Commenters Amended Initial Proposal, Attachment C.
[129] Cal Advocates Initial Proposal at pp. 66-67.
[130] Cal Advocates Initial Proposal at p. 67.

way that is accessible to people with visual impairments, such as a written statement that appears with the address search result stating whether or not a location is in the affected area. Second, both the withdrawing COLR and the replacement COLR or COLRs should maintain and publicize a toll-free number devoted exclusively to assisting customers with questions about the withdrawal.

Finally, Joint Commenters support Cal Advocates' proposal to send notices at two specific points in the withdrawal proceeding: a general notice of the COLR withdrawal application, and a notice before scheduled Public Participation Hearings (PPHs).[131] Joint Commenters recommend giving notice to all customers for virtual PPHs but limiting the scope of in-person PPH notices to customers located within a 50-mile radius of the PPH location to best target customers who would likely be able to attend and reduce notification fatigue for customers living outside that area.

4. Providers Should Revise Their Proposals to Include Reasonable Requirements Regarding Network Infrastructure and Copper Retirement.

Joint Commenters have previously noted that there is interplay between copper retirement (as part of the technology transition) and COLR withdrawal. Cal Advocates' proposed copper retirement migration plan would appropriately require an ILEC to identify the affected areas and voice and broadband alternatives.[132] Joint Commenters recommend that Cal Advocates update its proposed plan to add consideration of the customer experience and continued access to essential service during and after any customer migration off copper. If a carrier that proposes to retire copper facilities is not also proposing to withdraw as a COLR, the Commission should separately require the provider to report on customers that are reliant on landline-dependent devices and services, with a "time for transitions, a list of devices that may or may not be compatible, and information related to testing of

[131] Cal Advocates Initial Proposal at p. 65.
[132] Cal Advocates Initial Proposal at pp. 60-62.

equipment."[133] If the provider will continue to offer all services and comply with COLR obligations over other technologies in the affected area, it should also report on whether those remaining services are compatible with identified landline-dependent devices and services.

5. Providers Should Revise their Proposals to Consider the Post-Withdrawal Treatment of a COLR's Infrastructure, Pole Space, and Rights of Way.

Any proposal seeking COLR withdrawal will require consideration of potential implications for pole access and conduit space. Without access to poles and rights of way, a potential replacement COLR may not be able to take on the service obligations of the withdrawing COLR. Additionally, wholesale access to these facilities could be impacted if the COLR relinquishes its obligations and the replacement COLR is unable to access poles and rights of way.

It will be important for the Commission to expressly consider whether a provider request to withdraw from COLR status includes plans to cease using specific infrastructure to serve the withdrawal area, whether the provider plans to cease serving that area entirely, and whether the withdrawing COLR intends to continue using pole space and public rights of way. Joint Commenters propose that if a COLR with existing rights of way is unwilling to serve everyone (i.e., wishes to give up its COLR obligation), it must give up or share its pole access rights and its access to rights of way to ensure wholesale access to those facilities by any provider. As discussed further below, EQUAL's proposal to assign or transfer assets to a replacement COLR is a potential solution to the challenge of finding a replacement COLR, particularly one with a service territory that would match the withdrawing COLR's service territory.

a. Providers Should Revise Their Proposals to Include EQUAL's Transfer of Assets Proposal.

Joint Commenters support Empowering Quality Utility Access for Isolated Localities' (EQUAL's) proposal to allow a COLR to withdraw if it enters into an agreement with a replacement

[133] Cal Advocates Initial Proposal at p. 55.

COLR to "assign or otherwise transfer use of" the withdrawing COLR's infrastructure, facilities, and rights of way "for a nominal amount."[134] Joint Commenters' proposal similarly discussed the need for the Commission to consider pole ownership and pole space when revising the COLR rules.[135] A process authorizing such an exit through transfer would support efforts to ensure the ongoing presence of a provider with sufficient resources to serve all customers. It would also provide a potential public interest alternative to a past private interest pattern which has taken place in California and in the northeastern United States, in which an incumbent wireline provider allows its network to fall into disrepair, seeks to exit the market, yet manages to sell its infrastructure at a premium (to a buyer that takes on debt), only to have the buyer subsequently enter bankruptcy. In California, this happened after Verizon sold its wireline infrastructure to Frontier.[136] In Maine, New Hampshire, and Vermont, this same scenario occurred after Verizon sold its wireline infrastructure to FairPoint.[137] In contrast, a sale or transfer of infrastructure to a replacement COLR at or near net book value with transition assistance[138] would reduce the financial risk for the replacement COLR[139]—which, by extension, would protect consumers and universal service. It would also

[134] EQUAL Proposal at p. 7.
[135] Joint Commenters Amended Initial Proposal at p. 17.
[136] Stephen Hardy, Verizon to sell certain wireline assets to Frontier, lease wireless tower rights, Lightwave (Feb. 9, 2015), https://www.lightwaveonline.com/business/mergers-acquisitions/article/16651780/verizon-to-sell-certain-wireline-assets-to-frontier-lease-wireless-tower-rights; Mike Robuck, Frontier Communications drops into Chapter 11 bankruptcy, Fierce Network (Apr. 15, 2020), https://www.fierce-network.com/telecom/frontier-communications-drops-into-chapter-11-bankruptcy.
[137] Redacted Direct Testimony of David Brevitz on Behalf of the Maine Public Advocate Office (Docket No. 2013-00340) (Mar. 14, 2014), https://mpuc-cms.maine.gov/CQM.Public.WebUI/Common/ViewDoc.aspx?DocRefId={0B21BC4B-29C7-4ED7-8917-82DD50943C68}&DocExt=pdf&DocName={0B21BC4B-29C7-4ED7-8917-82DD50943C68}.pdf, at pp. 4-6, 10.
[138] EQUAL Proposal at p. 7.
[139] A crucial aspect of EQUAL's proposal would require the withdrawing COLR to be in full compliance with POTS service quality standards—this is another condition that prevents a replacement COLR for overpaying for a network that it cannot afford to bring into compliance.[139] EQUAL Proposal at pp. 13-15. Cal Advocates also makes GO 133-D compliance a pre-requisite for COLR relinquishment. Cal Advocates Initial Proposal at p. 54.

facilitate the exiting COLR's withdrawal and disposition of unwanted infrastructure, ensuring that those facilities were put to good use.

Such an option supporting COLR exit by transfer or sale while avoiding sale premiums would increase opportunities for non-traditional providers, such as local governments and Tribes, to become COLRs in the areas where their constituents and members live. In the Frontier Bankruptcy proceeding overseen by the Commission (A.20-05-010), the Commission granted Tribes a right of first refusal should Frontier sell assets located in their jurisdictions.[140] The Commission could similarly prioritize local governments and Tribes as potential replacement COLRs where a withdrawing COLR seeks to sell or transfer its infrastructure.[141]

b. Providers Should Revise Their Proposals to Require Additional Review if a COLR Seeks to Transfers Infrastructure to an Affiliate.

Many providers have multiple affiliates that handle different aspects of the total company's business, both within and outside of California. For example, AT&T offers its COLR service through AT&T California, while other AT&T affiliates offer wireless or fiber. If the Commission were to grant an application by AT&T California to relinquish its COLR status, there is a high risk that AT&T California would transfer useful infrastructure (e.g., the infrastructure it has upgraded to fiber) to another affiliate, while abandoning its less useful infrastructure (e.g., copper lines). As a result, AT&T could end up converting some publicly-funded infrastructure into private assets, while

[140] D.21-04-008 at pp. 35-36.

[141] To develop an COLR exit-by-transfer pathway, the Commission and parties will need to consider issues related to the sale of infrastructure, especially legacy infrastructure, for net book value. First, sale or transfer of legacy infrastructure is likely to involve lead cables in varying states of usage and repair. *See, e.g.,* Susan Pulliam et al., America is Wrapped in Miles of Toxic Lead Cables, Wall Street Journal (July 9, 2023), https://www.wsj.com/articles/lead-cables-telecoms-att-toxic-5b34408b. There should be clear expectations in place for which party would be responsible for mitigation measures or removing lead cables no longer in use. The Commission and parties should consider whether lead mitigation or removal should be a prerequisite for sale or transfer of infrastructure, either in all cases or for specific transactions. For transparency and public safety, however, a full accounting of necessary mitigation measures should be a prerequisite in every case where relevant.

abandoning the remaining publicly-funded infrastructure that could potentially be put to use by another provider. As part of any withdrawal process, the Commission should ensure that a COLR does not end up with ownership of publicly supported assets, and also that it does not simply abandon infrastructure that can be used to ensure universal service.

In any application to withdraw as a COLR, the Commission should require the applicant to include a proposal for the disposition of its assets and rights of way in the area where withdrawal is proposed. This proposal should include an accounting of all equipment the withdrawing COLR uses to provide basic service, with information on whether that equipment is used for any other services, and, if so, a list of those services. Additionally, the proposal should include an accounting of resellers and other utility pole occupants who would be affected by its withdrawal. Finally, any proposal to transfer COLR assets to an affiliate should trigger additional Commission review similar to the public interest review requirements in Public Utilities Code Sections 851 and 854.

F. Responses to Additional Party Proposals

1. The Commission Should Reject Small LECs and TDS's Proposals to Modify the Definition of COLR.

TDS and the Small LECs argue that the COLR definition should be modified to include language from Public Utilities Code Section 275.6(b)(1) stating that "a COLR is a telephone corporation that is required to fulfill all reasonable requests for service within its service territory."[142] TDS interprets this language as providing "clarification" that there are "some locations that cannot be reached without exorbitant expense." Joint Commenters oppose this recommendation.

The proposal from Small LECs and TDS is a narrow interpretation of the Commission's rules and the State's policies that could leave customers unserved. Public Utilities Code Section 275.6(b)(1) was adopted in 1999 for the limited purpose of setting the framework for the California

[142] Small LECs Opening Comments at p. 6.

Administrative Committee Fund program (CHCF-A) to provide universal service support for the Small LECs.[143] The language was intended to ensure that carriers receiving CHCF-A subsidy funds could not unreasonably deny service. The TDS/Small LEC proposal would turn this goal on its head. If the Commission were to adopt the TDS/Small LEC proposal, it would not only allow carriers to deny service extensions to new customers but also potentially allow them to cease providing service entirely in areas where they claim it would be too expensive to maintain a network, regardless of the fact that they may have been serving customers there for years with CHCF-A and other universal service support. Existing regulations already permit rate of return regulated carriers, for whom this language was crafted, to charge customers for line extensions to provide service in situations where the telephone company facilities do not reach a customer's property or premises.[144] The TDS/Small LECs' proposal is unnecessary and would undermine the Commission's efforts to craft reasonable COLR rules.

2. TDS Should Revise Its Proposal to Remove Its Recommendation Regarding High Cost Funding and Opting in to the Uniform Regulatory Framework.

The OIR asked parties to address whether the Commission should update subsidy amounts offered for participation in the CHCF-B. TDS points out that the CHCF-B is based on a cost proxy model, which did not include TDS' service territories.[145] TDS does not draw from either the CHCF-A or CHCF-B, and asks the Commission to confirm in this proceeding that TDS carriers are eligible to draw from the CHCF-B. As an interim measure, and subject to revisions to the CHCF-B support mechanism, TDS suggests that the TDS Companies' CHCF-B draw should be established based on

[143] Cal. Pub. Util. Code § 275.6. (a)-(b).
[144] *See*, e.g., Hornitos Telephone Company, tariff Schedule A-9, Line Extension and Service Connection Charges, In Suburban Areas, https://tdstelecom.com/tariffs/california/hornitos.html; Happy Valley Telephone Company, tariff Schedule A-11, https://tdstelecom.com/tariffs/california/happy-valley.html; and Winterhaven Telephone Company, tariff Schedule A-8, retrieved from https://tdstelecom.com/tariffs/california/winterhaven.html.
[145] TDS Initial Proposal at p. 9.

the statewide per-access line average for all CHCF-B eligible lines. TDS proposes that if any TDS company declines to draw from either the CHCF-A or CHCF-B, that the carrier should be relieved of its COLR obligation and permitted to opt into URF through a Tier 3 Advice Letter. Joint Commenters strongly oppose TDS' proposals.

TDS has chosen not to draw from the CHCF-A and offers no evidence to suggest that the COLR obligation has harmed TDS in any way. TDS' proposal to eliminate the COLR requirement based on an ILEC's own decision to decline to draw from the high cost funds would open the door for wholesale abandonment of COLR obligations across the state, regardless of whether there are acceptable alternative services available to customers in a service territory. The Commission should reject this proposal out of hand. The COLR obligation applies throughout the state, regardless of whether a carrier is serving a high-cost area. As discussed above, the Commission should not presume that every non-high cost area has adequate competitive alternatives.

TDS' proposal to opt into the Uniform Regulatory Framework (URF) via a Tier 3 Advice Letter should also be rejected. The Commission's rules, including those in General Order 96, specify what issues are appropriate consideration through a Tier 3 Advice Letter, including rules specific to URF carriers.[146] However, the URF carrier rules only cover providers already categorized as such as part of a Commission proceeding. Moreover, General Order 96 specifically requires any provider, including an URF carrier, to submit an application (not an advice letter) when withdrawing a basic service tariff. A provider seeking withdrawal of its COLR obligations, would most likely also seek to

[146] General Order 96-B, Telecommunications Industry Rule 7.3. These include negotiated interconnection agreements, general rate cases (GRC) ILEC exchange boundary realignments that result in a rate increase or reduction in service to customers, changes to a GRC rate, charge, term, or condition, changes in a GRC ILEC's draw from the CHCF-A, GRC ILEC promotional platforms involving a tariff for promotional offerings, and requests from an URF carrier to modify or cancel a provision, condition or requirement imposed by the Commission in a proceeding.

withdraw its basic service tariffs, which, under GO 96, would require an application.[147] The suggestion that TDS should be able to "opt in" to URF goes far beyond what is appropriate for a Tier 3 advice letter process.

One reason that an advice letter process would be fundamentally inappropriate for authorizing URF status for a provider is that an URF designation would remove price restrictions from providers that are currently rate-of-return ILECs, which could result in unfettered price increases for their customers. There have been two instances where GRC ILECS sought to be classified as carriers under the New Regulatory Framework (the predecessor to URF), both of which were submitted as applications.[148] If the TDS telephone companies wish to file for URF regulatory treatment, they should similarly be required to submit applications and go through the full regulatory process for consideration of their request.

TDS telephone companies are not currently URF carriers and, as such, are not permitted to draw from the CHCF-B. The Commission should not authorize a draw for the TDS carriers from the CHCF-B in this proceeding. If the TDS telephone companies are permitted to operate under the URF regulatory scheme, Joint Commenters do not object to TDS' proposal that the interim CHCF-B draw be established at the statewide per-access line average for all CHCF-B eligible lines.

3. CalBroadband Should Revise Its Proposal to More Accurately Describe the Impacts of Other States' COLR Policies.

To support its proposed COLR moratorium, CalBroadband's proposal claims that neither the industry association nor its members are aware of "any instances of consumers being unable to obtain voice service in places where COLR obligations have been limited or eliminated."[149] However, a

[147] General Order 96-B Rule 5, Rule 8.5.
[148] *See* D. 95-11-024 (A. 93-12-005) (Nov. 14, 1995). *See also* D. 96-12-074 (A. 05-05-030 and I.95-09-001) (Dec. 20, 1996).
[149] CalBroadband Opening Comments at p. 5.

purported absence of specific examples is not evidence that denial of service has never taken place in any of the states that have limited or eliminated COLR obligations.

Moreover, many of the states that CalBroadband cites as having limited or eliminated COLR obligations also have significantly reduced or eliminated other telecommunications regulations.[150] Joint Commenters' initial proposal also include examples of states that have limited their COLR obligations as part of broader deregulatory initiatives.[151] In multiple instances, this deregulation also limited the ability of state public utility commissions to gather information relevant to cases of denial of service or makes denial of service by providers more likely, especially in areas that are difficult or expensive to serve. Among the states discussed by Joint Commenters and CalBroadband:

- Texas does not require telecommunications providers to extend service to an area if doing so would "impose unreasonable costs on or require unreasonable investments by" the provider, when compared to the public interest of serving that area.[152]
- Colorado has exempted VoIP, cable, and wireless service and providers from its public utilities regulations and does not even require them to obtain a certificate of public convenience and necessity to operate in the state, leaving the state unable to track the providers' operations.[153]
- Illinois passed deregulatory legislation in 2010—six years prior to HB1811[154]—that reduced the Illinois Commerce Commission's oversight of telecommunications terms and conditions, rates, service quality, and service availability and reduced its obligations to gather data on state progress toward universal service.[155]

[150] CalBroadband Opening Comments at pp. 3-5.
[151] Amended Initial Proposal of Joint Commenters Regarding the Order Instituting Rulemaking to Consider Changes to the Commission's Carrier of Last Resort Rules (Joint Commenters' Amended Initial Proposal) (Oct. 17, 2024), at pp. 23-25.
[152] Texas Utilities Code § 52.109(b).
[153] Colo. Rev. Stat. §§ 40-15-401, 40-15-402(2).
[154] *See* Joint Commenters' Amended Initial Proposal at pp. 23-24.
[155] Ill. Pub. Act 096-0927, 96th Gen. Asm. (Ill. 2010).

- The Florida Public Service Commission only has jurisdiction over limited, specific categories of customer complaints.[156]

Each of these selected actions demonstrate a distinct approach to deregulation, yet each can also increase the likelihood that a customer will be denied service where it is most difficult to serve and customers are most in need of reliable communications, while also reducing the ability of that state's public utility commission to collect information about a denial of service or investigate related customer complaints. It follows, then, that reports of denial of service in states that have deregulated telecommunications would be harder to obtain *because* of that deregulation. Therefore, Cal Broadband's claim about an absence of such reports from these states is unpersuasive, as it rests on circular reasoning that prevents any real analysis of data. It is also unpersuasive and strains logic considering that even in California, where strong COLR rules remain, numerous customers, community representatives, and local elected officers have made public comment to the Commission in Public Participation Hearings and the docket cards in A.23-03-002 and A.23-03-003 that people

[156] *See, e.g.,* Florida Public Service Commission, When to Call The Florida Public Service Commission (Aug. 2024), https://www.floridapsc.com/pscfiles/website-files//PDF/Publications/Consumer/Brochure/When_to_Call_the_PSC.pdf at p. 2. The Florida Public Service Commission retains its obligation to annually report to the state legislature on the state of telecommunications competition and consumers' access to service. Florida Statutes § 364.386. For the past seven years, the rates of telephone subscription in Florida have lagged behind the national average by 3-6%. Between 2017 and 2023, Florida did not meet the Commission's universal service goal of 95% subscribership for a single year, whereas the national average exceeded it every year. Florida Public Service Commission, Report on the Status of Competition in the Telecommunications Industry as of December 31, 2023, at p. 28, https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/Telecommunication/TelecommunicationIndustry/2024.pdf. This data suggests that deregulation is not the approach the Commission should take to attain its universal service goal.

have been either denied service by AT&T or that AT&T refused to repair their telephone lines, in violation of the Commission's COLR Rules.[157]

4. Small LECs and TDS Companies Should Revise Their Proposals to Support the Categorization of this Proceeding as Ratesetting.

In their initial proposals, the Small LECs and TDS Companies object to the preliminary categorization of this proceeding as ratesetting.[158] Joint Commenters disagree. Ratemaking concerns are not "incidental" to this proceeding, and the preliminary scope implicates them in ways other than potential changes to the California High-Cost Fund B.[159] Current COLR obligations include requirements to participate in California LifeLine and other rate-related obligations.[160] Potential changes to those obligations necessarily require the Commission and parties to address questions of

[157] *See, e.g.,* Ukiah Public Participation Hearing Transcript (A.23-03-002 and A.23-03-003) (Feb. 22, 2024), Public Comment of John Teller, Tr. 154:3-14 ("I have been having experiences with AT&T that started last November when water apparently got into the wine [sic], and about three days after I complained to the PUC about unability (sic) to get repair service, I got a visit from the Fort Bragg Police Department telling me that I had an open 9-1-1 line. I told the officers that my phone had been out of order for three weeks. The next thing that happened was my phone was disconnected. No notice. No -- my phone was paid. AT&T just turned it off. Now, I have gotten it turned back on, but it was a call to the FCC that, I think, accomplished that."); Public Comment of Margaret Jean Hooker, Tr. 253:23-254:14 ("A number of years ago, AT&T sent out a letter . . . giving us a great rate . . . . I called them up . . . . They came. And they started taking out my landline. I said: Wait. That wasn't in the letter . . . . You can't take away my landline. Since that time, I have not been able to call out from my phone in town, and I have been paying my full bill because I knew there would come a day when I could speak and I want the person from AT&T to back up the years, figure out when that happened, pay me the difference, and I want my phone back . . . ."). Virtual Public Participation Hearing Transcript (A.23-03-002 and A.23-03-003) (Mar. 19, 2024), Public Comment of Alfred Sattler, Tr. 561:19-562:1 ("We live in an upper-middle class suburban neighborhood in LA County, not a rural area. We frequently have poor cell phone service here. We had DSL internet from AT&T. And after a couple of outages lasting a week, I was told that DSL was old technology. That AT&T could not get new equipment for it. That they were not taking new customers for it . . . . [W]e do not want to start hearing from AT&T "Well, [your landline is] old. We can't get new equipment for it. We're not taking new customers for it.""")

[158] TDS Initial Proposal at pp. 4-5; Small LECs Opening Comments at pp. 4-5.

[159] Small LECs Opening Comments at p. 4.

[160] Sections C and D, supra. *See also* CTIA Opening Comments at p. 3 ("Rate regulation has always been a key element of COLR regulation.").

rates and service offerings.[161] LifeLine rates and service offerings are directly dependent on the elements of basic service, which this proceeding is also reviewing. In sum, this proceeding encompasses a variety of interrelated issues, many of which are directly or indirectly related to rates. Its scope warrants the ratesetting classification.

Moreover, a classification as ratesetting triggers stricter ex parte reporting and disclosure rules.[162] Given the breadth and potential impact of this proceeding and the number of parties already participating, Joint Commenters believe that these reporting requirements will create transparency and facilitate party participation by encouraging stakeholders to seek ex parte meetings on important issues.[163] Alternatively, if the Commission were to categorizes this proceeding as quasi-legislative, the Assigned Commissioner should issue a ruling imposing reporting requirements on ex parte communications.[164]

[conclusion and signature block on next page]

[161] TDS Initial Proposal, at p. 5, notes that the Commission's CHCF-A proceeding and public purpose programs are categorized as quasi-legislative as support for its proposal here. But it fails to note that the providers subject to CHCF-A and the results of that proceeding would go on to have specific ratesetting reviews, while here the potential outcome is a further deregulation and changing of specific tariff obligations for basic service that directly implicate the rates that would be paid and services received.
[162] Commission Rules of Practice and Procedure, Rule 8.2.
[163] *See* Commission Rules of Practice and Procedure, Rule 8.2(c)(2)(A).
[164] *See* Commission Rules of Practice and Procedure, Rule 8.2(d).

III. CONCLUSION

Joint Commenters appreciate this opportunity to respond to other parties' filings and look forward to updating our initial proposal based on stakeholder input.

Respectfully submitted,

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Authorized to sign on behalf of Joint Commenters