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REPLY COMMENTS OF THE PUBLIC ADVOCATES OFFICE ON THE ORDER INSTITUTING RULEMAKING PROCEEDING TO CONSIDER CHANGES TO THE COMMISSION'S CARRIER OF LAST RESORT RULES

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I. INTRODUCTION

The Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits these reply comments pursuant to the June 20, 2024, *Order Instituting Rulemaking Proceeding to Consider Changes To The Commission's Carrier Of Last Resort Rules* (OIR). These reply comments respond to select opening comments filed by industry parties on September 30, 2024, and recognize parties' comments that reinforce Cal Advocates' position.

Some opening comments incorrectly put forward the proposition that the Carrier of Last Resort (COLR) obligation is a "relic"[1] of a former era, one which is now "outdated and incompatible with the modern telecommunications marketplace."[2] In reality, the COLR concept remains essential to the guarantee of universal service, but must be updated to reflect the state's transformed telecommunications landscape.[3] The Commission should update its COLR rules to reflect the reality of modern day telecommunications networks, while maintaining its commitment to universal service.[4]

Cal Advocates' forward-looking policy recommendation to update the COLR obligation is in sharp contrast to comments that would seek to eliminate it altogether. Cal Advocates' position is based on the three guiding principles for modernization and

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[1] *Opening Comments of Consolidated Communications of California Company (U 1015 C) On Order Instituting Rulemaking Proceeding to Consider Changes to the Commission's Carrier of Last Resort Rules*, September 30, 2024 (Opening Comments of Consolidated) at 1 ("Consolidated remains subject to the archaic requirements of the Commission's Carrier of Last Resort ("COLR") designation, which is a relic of a regulation-focused, as opposed to market-based, approach to monitoring voice providers dating back to the earliest days of local competition, as reflected in Decision ("D.") 96-10-066.").

[2] *Opening Comments of Frontier California Inc on Order Instituting Rulemaking Proceeding to Consider Changes to the Commission's Carrier of Last Resort,* September 30, 2024 (Opening Comments of Frontier) at 1 ("The concept of COLR is outdated, and incompatible with the modern telecommunications marketplace, in which there are numerous options for wireless and wireline service that are economic and functional substitutes for Frontier's traditional voice service.").

[3] The Commission established COLR rules in Decision (D.) 96-10-066, *Re Universal Service and Compliance with the Mandates of Assembly Bill 3643,* and amended them in D.12-12-038, *Decision Adopting Basic Telephone Service Revisions*.

[4] Section 1(a) of AB 3643 states, "The longstanding cornerstone of state and federal telecommunications policy is universal service, which requires that telephone service be affordable and ubiquitously available." Stats. 1994, Ch. 278 (Polanco and Moore).

consumer migration provided in its Initial Proposal.[5] These guiding principles ensure that as COLRs modernize their networks, they continue to provide necessary communication services. Therefore, Cal Advocates recommends that the Commission adopt Cal Advocates' "Principles for Modernization and Consumer Migration: Legacy Networks to Modern Broadband Networks" in its update of the COLR Rules:

1) Universal Access to Reliable, Quality and Affordable Essential Communications Services, Including Broadband Services.

All Californians must have access to reliable, quality, and affordable essential communications services that include broadband service in addition to voice service. These essential communications services must be technology-neutral and support access to emergency services.

2) Technology Transitions to a Modern Communications Network Must be Transparent, Meet Customers' Communications Needs, Ensure Public Safety, Not Adversely Impact the Environment, and Not Leave Any Customer Behind.

A technology transition to a modern communications network must ensure that no customer is abandoned with inferior service or no service at all, whether they are a residential customer, an anchor institution, a first responder, or a business. A transition must also be transparent, meet customers' communications needs on a technology-neutral basis, and ensure public safety. A technology transition must also ensure compliance with all environmental regulations as existing infrastructure is maintained, upgraded to new facilities, or decommissioned. Changes to the communications network infrastructure must also avoid or mitigate significant environmental impacts in accordance with the California Environmental Quality Act (CEQA).

3) Customer Migrations Must be Transparent, Accessible to the Customer, and Mitigate any Impact to Customers.

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[5] *Initial Proposal of The Public Advocates Office on The Order Instituting Rulemaking Proceeding to Consider Changes to The Commission's Carrier of Last Resort Rules*, September 30, 2024 (Initial Proposal of Cal Advocates) at 6-7.

Customer migration must be transparent and accessible to the customer. Accessibility includes pre-planned multilingual public education programs. Customer migration must also mitigate any impact to the customer. Impacts to the customer include the price the customer pays for existing and new service, and the terms and conditions of those services.

II. DISCUSSION

A. The Commission should include broadband in the definition of basic service and reject claims that COLR obligations should focus only on voice.

1. The basic service definition should be updated to include broadband.

Consolidated Communications,[6] Frontier,[7] TDS Companies,[8] and the Independent Small LECs[9] argue that COLR obligations should focus only on voice. AT&T, Joint

[6] Opening Comments of Consolidated at 8 (stating that it would be reasonable to limit "basic service" to just the first two elements from D.12-12-038; 1. The ability to place and receive voice-grade calls over all distances utilizing the public switched telephone network or its successor network; and 2. Free Access to 911/Enhanced 911 service).

[7] Opening Comments of Frontier at 5 (supporting streamlining of the elements to focus on the delivery of a "voice-grade" connection and E911 support).

[8] *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*, September 30, 2024 (Opening Comments of TDS Companies) at 9 (the Commission should streamline basic service elements by limiting them to provision of "voice-grade service", E911 support, and access to "8YY" service, telephone relay, and LifeLine service).

[9] *Opening Comments of Independent Small LECs on Order Instituting Rulemaking Proceeding to Consider Changes to the Commission's Carrier of Last Resort Rules*, September 30, 2024 (Opening Comments of Small LECs) at 3; Opening Comments of TDS Companies at 4 (asking the Commission to limit the scope of this rulemaking to questions concerning COLR obligations to provide basic *voice service* and claiming that Cal Advocates' broadband related discovery has no relevance to this proceeding).

Commenters,[10] and Small Business Utility Advocates (SBUA),[11] agree on the importance of broadband[12] but have different approaches on to how to integrate broadband into the regulatory framework.

It is undeniable that California is committed to universal access to broadband.[13] Commenters' attempts to limit the proceeding's scope by retaining the "voice only" approach to the COLR obligation should be rejected. As stated in Cal Advocates' Initial Proposal, the definition of "basic telephone service" should be updated to include broadband, at a minimum speed of 100 Megabits per second (Mbps) download, and 20 Mbps upload (100/20 Mbps) to bring the COLR obligation up to the current definition of broadband established in March 2024 by the Federal Communications Commission (FCC) in its 2024 Section 706 Report.[14] In the report, the FCC states, "With respect to physical deployment, we adopt a new, long overdue, benchmark for defining advanced

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[10] *Initial Proposal of the Utility Reform Network, the Communications Workers of America District 9, and the Center for Accessible Technology Regarding the Order Instituting Rulemaking to Consider Changes to the Commission's Carrier of Last Resort Rules,* September 30, 2024, (Initial Proposal of Joint Commenters) at 35 (the Commission should consider adding broadband service as an element of basic service).

[11] *Proposal of Small Business Utility Advocates in Response to the Questions in the Rulemaking Proceeding to Consider Changes to the Commission's Carrier of Last Resort Rules*, September 30, 2024 (Proposal of Small Business Utility Advocates) at 7 (stating that the Commission should recognize broadband and wireless telephone service as essential service and revise the requirements of basic service as applicable).

[12] *Pacific Bell Telephone Company D/B/A AT&T California's (U 1001 C) Opening Comments*, September 30, 2024 (Opening Comments of AT&T) at 4 ("The goal [of the COLR concept] is that all Californians have access to broadband service, which also enables many available voice services."); and Proposal of Small Business Utility Advocates at 7 (stating that the Commission should recognize broadband and wireless telephone service as essential services, revise the requirements of basic service as applicable).

[13] The primary goal of the California Broadband Action Plan is to ensure that "[a]ll Californians have high-performance broadband available at home, schools, libraries, and businesses." California Broadband Action Plan at 22 (2020), available at https://broadbandcouncil.ca.gov/wpcontent/uploads/sites/68/2020/12/BB4All-Action-Plan-Final.pdf. Furthermore, by accepting Broadband Equity, Access, and Deployment (BEAD) program funding, the Commission has committed to ensuring that affordable, reliable, high-speed internet is accessible at every location within its jurisdiction. National Telecommunications and Information Administration (NTIA), BEAD Notice of Funding Opportunity, May 2022 at 8.

[14] *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, GN Docket No. 22-270,* 2024 Section 706 Report, March 14, 2024 (FCC 2024 Section 706 Report).

telecommunications capability for fixed broadband of 100 megabits per second (Mbps) download speed paired with 20 Mbps upload speed."[15]

The federal standard is consistent with Executive Order N-73-20 signed by Governor Newsom in August 2020,[16] which directs state agencies "to pursue a minimum broadband speed goal of 100 megabits per second download speed to guide infrastructure investments and program implementation to benefit all Californians."[17] The Governor's Executive Order not only established the broadband speed goal of at least 100 Mbps download over three years before the standard was established at the national level, it set in motion California's multi-agency Broadband for All program.[18] The Governor designated the CPUC to administer an aggressive "last mile" broadband infrastructure deployment effort as part of the program. The CPUC-administered element is comprised of the Last Mile Federal Funding Account (FFA), funded by $2 billion[19] of federal and state funds, and the California Broadband Equity, Access and Deployment (BEAD)[20] Program funded with $1.896 billion from the National Telecommunications and Information Administration (NTIA). There is an unprecedented level of funding for broadband network infrastructure now underway across the state.

To support California's goal of ubiquitous broadband, the Commission should "update the basic service definition to include a broadband component applicable to COLRs at the time of withdrawal."[21]

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[15] FCC 2024 Section 706 Report at 2.

[16] Executive Order N-73-20, Broadband for All, Executive Order. Available at: https://broadbandforall.cdt.ca.gov/executive-order/.

[17] Executive Order N-73-20 at 2.

[18] The California Broadband for All program is administered by the California Department of Technology, and the Communications Division of CPUC. Information is available at: https://broadbandforall.cdt.ca.gov/.

[19] Information on the CPUC's Last Mile Federal Funding Account is available at: https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/broadband-implementation-for-california/last-mile-federal-funding-account.

[20] Information on the CPUC's BEAD Program is available at: https://www.cpuc.ca.gov/beadprogram.

[21] Initial Proposal of Cal Advocates at 11.

2. The Commission should recognize VoIP as a modern element of the voice requirement in the basic service definition.

Cal Advocates agrees with USTelecom that "[a]ny remaining COLR obligation should come with the flexibility for a provider to use Voice over Internet Protocol (VoIP), wireless, or other reliable technologies to ensure the availability of voice."[22] When the Commission defined the core requirements of universal service in 1995, it recognized reliable voice service as the central feature of basic telephone service.[23] Along with expanding the definition of basic service to include broadband service, the Commission must also recognize that most state residents and businesses now receive voice service via VoIP, or wireless technology.[24] The requirements of basic service are technology-neutral, so the delivery of voice service via VoIP satisfies the COLR obligation.

B. The Commission should update the telecommunications service quality standards to cover modern digital services.

Joint Commenters state that basic service standards require that all telephone corporations offer reliable and well-maintained services to their customers.[25] Cal Advocates' Initial Proposal also recommends that the Commission update telecommunications service quality standards. The update should guarantee that all Californians receive essential telecommunications service that is reliable and resilient,

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[22] *Response of USTelecom – the Broadband Association on the Order Instituting Rulemaking Proceeding to Consider Changes to Carrier of Last Resort Rules*, September 30, 2024 (Response of USTelecom) at 6.

[23] Decision (D).95-07-050, *Universal Service and Compliance with the Mandates of Assembly Bill 3643* at 49.

[24] See *Staff Report – Part 2* issued in Rulemaking (R.) 21-03-002, *Order Instituting Rulemaking to Update Surcharge Mechanisms to Ensure Equity and Transparency of Fees, Taxes and Surcharges Assessed on Customers of Telecommunications Services in California*, October 2021 at 5 ("As of June 30, 2020, FCC 477 data and the 2021 Scoping Memo DR responses confirm that that there were more than 56 million lines in California subject to surcharges (excluding Lifeline subscribers). Specifically, there were approximately 4.2 million POTS lines, 8.3 million VoIP lines, and 44.4 million mobile voice lines in California.").

[25] Initial Proposal of Joint Commenters at 14.

even during emergencies.[26] Cal Advocates' position on service quality matters is explained in its opening comments in the current service quality proceeding.[27]

In Decision (D.)12-12-038, *Decision Adopting Basic Telephone Service Revisions*, the Commission updated the requirements for basic service elements. The Commission stated that these elements are "designed to apply on a technology-neutral basis to all forms of communications technology that may be utilized, including wireline, wireless, and VoIP or *any other future technology* that may be used in the provision of telephone service."[28] This decision also emphasized the Commission's statutory duty to ensure that telephone corporations serve customers based on statewide service quality standards, which include network technical quality, customer service, installation, repair and billing.[29]

D.12-12-038 deferred the adoption of service quality standards applicable to COLRs to future proceedings. For providers offering basic service via anything besides traditional wireline telephone technology, the Commission required providers to file a Tier 3 advice letter indicating the extent of:

> GO 133-C service quality measurements and reporting procedures it can comply with, those it can provide functionally equivalent reports for and lastly what measurement and reporting requirements are not applicable to the technology it is using to provide basic service.[30]

In 2016, the Commission reaffirmed its commitment to modernize service quality standards in D.16-08-021, *Decision Adopting General Order 133-D*.[31] This decision

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[26] Initial Proposal of Cal Advocates at 2-3.

[27] *Comments of the Public Advocates Office on the Administrative Law Judge's Ruling Issuing Staff Proposal*, September 3, 2024, R.22-03-016, *Order Instituting Rulemaking Proceeding to Consider Amendments to General Order 133*.

[28] D.12-12-038 at 2-3 (emphasis added).

[29] D.12-12-038 at 41.

[30] D.12-12-038 at 56.

[31] D.16-08-021, *Decision Adopting General Order 133-D*, issued in R.11-12-001, *Order Instituting Rulemaking to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modifications to Service Quality Rules* (GO 133 OIR).

adopted General Order 133-D and updated minimum standards of service in the operation of public utility telephone corporations.[32]

The Commission is currently considering amendments to GO 133-D.[33] Cal Advocates filed comments to revise and adopt comprehensive service quality metrics for traditional voice telephone service and more modern communication services such as VoIP, wireless, and broadband, that now serve as the dominant forms of communication used by Californians.[34] In the GO 133 OIR, the Communications Division agreed with Cal Advocates and recommended extending service quality metrics to VoIP and wireless services.[35] The next phase of that proceeding will address service quality for broadband services.

Furthermore, in D.20-07-011, *Decision Adopting Wireless Provider Resiliency Strategies*, the Commission addressed the unprecedented climate emergency that Californians face. The Commission adopted requirements to maintain operative service sites (such as central offices, nodes, and cell towers) in Tier 2 and 3 High Fire Threat Districts (HFTDs) that provide service when power is lost.[36] Network reliability and resiliency are critical components of basic service, especially during emergencies like floods and wildfires. As explained in Cal Advocates' Initial Proposal, a substantial number of Californians live in HFTDs, including 10.39% of households in AT&T's COLR service area, 11.96% in Frontier's, and 88.66% in the Small LECs'.[37]

The Commission must incorporate and adopt comprehensive service quality standards in this proceeding to reflect the modern telecommunications landscape and

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[32] *General Order 133-D Rules Governing Telecommunications Services* (General Order 133-D) at 1.

[33] See R.22-03-016, *Order Instituting Rulemaking Proceeding to Consider Amendments to General Order 133* at 2.

[34] *Comments of the Public Advocates Office on the Administrative Law Judge's Ruling Issuing Staff Proposal*, submitted in R.22-03-016 at 1-2.

[35] *Phase One Staff Proposal – Communications Division* issued in R.22-03-016 at 5.

[36] D.20-07-011, *Decision Adopting Wireless Provider Resiliency Strategies* at 13.

[37] Initial Proposal of Cal Advocates at 10-11.

ensure that all Californians have access to communications services that ensure customer protections and promote public safety.[38]

C. The Commission should reaffirm its commitment to universal service on a technology-neutral basis.

The COLR Rules should remain as a primary instrument for the Commission to achieve universal service of voice and broadband services on a technology-neutral basis across California regardless of linguistic, cultural, ethnic, physical, geographic, or income considerations.

1. The Commission should reject claims that more than 99% of Californians within AT&T's service territory have access to multiple choices of facilities-based broadband providers.

AT&T incorrectly states that 99.9% of the people within AT&T's POTS service territory have at least one alternative facilities-based broadband (and hence voice) option, 99.7% have at least two alternative facilities-based options, and 99.2% have at least three alternative facilities-based options.[39] A&T's coverage analysis is based on its definition of broadband as "availability of data service of at least 200 (K)bps (Kilobits per second) in at least one direction."[40]

It is true that both the FCC[41] and CPUC[42] collected broadband data starting at this 200 Kbps threshold. However, Cal Advocates is not aware of current broadband reports

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[38] Public Utilities Code (Pub. Util. Code), § 451 ("Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.").

[39] Opening Comments of AT&T, Attachment B at 15.

[40] Opening Comments of AT&T, Attachment B, Footnote 21 at 13 ("Voice services can be provided over broadband, and broadband providers frequently provide stand-alone voice service as well; 'broadband' is simply availability of data service of at least 200 [K]bps in at least one direction.").

[41] Fixed Broadband Deployment Data from FCC Form 477. Available at: https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477.

[42] California Broadband Data Processing and Validation Data as of December 31, 2020. Available at:

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that present analysis based only on 200 Kbps. This may be because the 200 Kbps standard is inadequate. Most broadband usage (i.e., general browsing and email, streaming video, videoconference, gaming) requires speeds in the range of Megabits per second (Mbps),[43] as do household broadband needs (aggregating broadband usage by multiple users, devices and application).[44] Because the 200 Kbps speed is inadequate to support broadband usage and household needs, such a standard would compromise customers' and the state's ability to cope with the next pandemic when broadband access substitutes for in-person participation in modern life.

Currently, the state (25/3 Mbps)[45] and federal (100/20 Mbps)[46] broadband standards are commonly used to describe relevant broadband service coverage, along with 10/1 Mbps and 1Gbps/500Mbps.[47] [48] AT&T's position is unsupported by Cal Advocates' analysis[49] that quantifies the availability of facilities-based broadband service providers in the AT&T COLR service territory at these speeds over three technologies:

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https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/broadband-mapping/california-broadband-data-processing-and-validation--2021-v22.pdf.

[43] FCC's Broadband Speed Guide. Available at: https://www.fcc.gov/consumers/guides/broadband-speed-guide.

[44] Household Broadband Guide. Available at: https://www.fcc.gov/consumers/guides/household-broadband-guide.

[45] Pub. Util. Code § 281(b)(1)(B)(ii)(I) ("'[U]nserved area' means an area for which there is no facility-based broadband provider offering at least one tier of broadband service at speeds of at least 25 Mbps downstream, 3 Mbps upstream, and a latency that is sufficiently low to allow real time interactive applications, considering updated federal and state broadband mapping data.")

[46] FCC 2024 Section 706 Report at 2.

[47] FCC's Internet Access Services: Status as of December 31, 2023. Available at: https://docs.fcc.gov/public/attachments/DOC-405488A1.pdf.

[48] CPUC Annual Collected Broadband Data, Served Status by County. Available at: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/broadband-mapping/docs-uploaded-2023/household-deployment-by-county-as-of-dec-31-2021.pdf.

[49] CPUC Annual Collected Broadband Data. Data as of December 31, 2021. This is the latest CPUC publicly available data release. Current broadband deployment might differ from this latest release.

(1) non-legacy[50] wireline technologies,[51] (2) non-legacy wireline and fixed wireless, and (3) non-legacy wireline, fixed wireless and mobile wireless. Cal Advocates' analysis[52] indicates that the availability of facilities-based broadband service providers within AT&T's service area is much lower than stated in AT&T's Opening Comments when broadband speed standards (25/3 Mbps and 100/200 Mbps) are applied, and legacy technologies (DSL technologies, and DOCSIS 2.0 or earlier) are excluded from the analysis. The speed thresholds also filter out legacy (Third Generation or 3G) mobile broadband services.[53] The following points summarize Cal Advocates' analysis for the AT&T COLR service area:[54]

- **For non-legacy wireline technologies** (DOCSIS 3.0 or later, or fiber)[55] for speeds of both at least 25/3 Mbps and at least 100/20 Mbps, only 26% of the population has the choice of more than one provider, around 3% has the choice of more than two providers, and 0.2% has the choice of more than three providers.
- **For non-legacy wireline and fixed wireless technologies** (NTIA describes fixed wireless reliability as lower in adverse weather, over longer distances, or with line-of-sight

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[50] Cal Advocates defines "non-legacy technologies" as technologies capable of providing broadband speeds in the range of hundreds of Mbps and/or even Gigabits, which, in the case of wireline technologies, include cable modem (DOCSIS 3.0 or later) and fiber optics. In contrast, legacy technologies include DSL and cable modem (DOCSIS 2.0 or earlier) technologies due to the limited capability to provide broadband speeds mostly in the ranges of tens of Mbps.

[51] D.22-04-055, *Decision Adopting Federal Funding Account Rules* at 13 (referring to legacy technologies such as copper telephone lines, typically using Digital Subscriber Line technology, or early versions of cable system technology, DOCSIS 2.0 or earlier). See also California Interactive Broadband Map, Wireline Consumer Served Status – No Legacy Tech, non-legacy wireline technologies such as Cable Modem (DOCSIS 3.0 or later) and Fiber. Available at: https://www.broadbandmap.ca.gov.

[52] The complete results of Cal Advocates' analysis are presented in Appendix A.

[53] FCC's Tech Code 85 (CDMA and EVDO/EVDO Rev A) and Tech Code 86 (GSM, WCDMA/UMTS/HSPA, and HSPA+). Available at: https://www.fcc.gov/actual-area-data#:~:text=Starting%20with%20the%20July%202020%20FCC%20Form%20477,5G-NR%20technology%3B%20Technology%20code%200%20is%20Other%20technology.

[54] The complete results of Cal Advocates' analysis are presented in Appendix A.

[55] Described by NTIA as technologies with high reliability and performance (speed and latency). NTIA's Broadband Network Deployment Engineering – An Overview. Available at: https://broadbandusa.ntia.doc.gov/sites/default/files/2022-03/Broadband%20Network%20Deployment%20Engineering%20PDF.pdf.

obstructions),[56] available choices slightly increase. For speeds of at least 25/3 Mbps, 37% of the population has the choice of more than one provider, 8% has the choice of more than two providers, and 1.2% has the choice of more than three providers. For speeds of at least 100/20 Mbps, 31% of the population has the choice of more than one provider, 5% has the choice of more than two providers, and 0.5% has the choice of more than three providers.

- **For non-legacy wireline, fixed wireless and mobile broadband technologies**, available choices increase for speeds of at least 25/3 Mbps, where 97.6% of the population has the choice of more than one provider, 83% has the choice of more than two providers, and 35% has the choice of more than three providers. There are no mobile broadband coverage speeds of at least 100/20 Mbps.

These results are aligned to Cal Advocates' statements in its Initial Proposal that most households are not served by multiple non-legacy wireline and fixed wireless broadband service alternatives.[57]

In its Initial Proposal, Cal Advocates stresses that it is critical for communities in California to have access to essential communications services provided by COLRs, which includes both voice and broadband services. As COLRs modernize their networks, no one should be abandoned with inferior service or no service at all. Cal Advocates recommends ensuring access to these essential services by requiring 100% deployment of broadband service (on a technology-neutral basis) at speeds of at least 100/20 Mbps in areas where a COLR requests or applies for COLR obligation withdrawal (at least at the

[56] NTIA's Broadband Network Deployment Engineering – An Overview. Available at: https://broadbandusa.ntia.doc.gov/sites/default/files/2022-03/Broadband%20Network%20Deployment%20Engineering%20PDF.pdf.

[57] Initial Proposal of Cal Advocates at 3 ("Both a fiber and a cable provider do not serve 75% of aggregated households in the 16 COLR service areas; a fiber, a cable and a fixed wireless provider does not serve 97.82% of households; at least three cable or fiber providers do not serve 96.79% of households; and at least four cable, fiber or fixed providers do not serve 95.55% of households.").

Census Block Group level).[58] These additional deployment options should provide customers with more choices.

2. The Commission should reject claims that COLR rules require copper networks.

Contrary to statements from carriers,[59] COLR rules do not require copper networks or services to provide basic service to consumers. D.12-12-038 updates the basic service elements and states that these elements are designed to apply on a technology-neutral basis and include communication technologies such as wireline, wireless, and VoIP, or any other future technology that may be used in the provision of telephone service.[60] This determination recognizes the increasing diversity of choices among communications technologies since the 1990s and promotes competition by technological neutrality while preserving essential consumer protections.[61] Furthermore, a revised basic service definition offers the potential to expand the range of providers offering basic service and increase the range of service choices for consumers.[62]

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[58] Initial Proposal of Cal Advocates at 54, COLR Withdrawal Conditions, Condition 2 ("The COLR must have met the New Basic Service Definition (voice and broadband at speeds of at least 100/20 Mbps) by achieving deployment of such service to 100% of its COLR service area on a technology-neutral basis. The broadband service should not include data caps as they may be an indication that the underlying network capacity is insufficient.").

[59] Response of USTelecom at 2-3 (stating that requiring companies to maintain an old copper network that uses and relies on equipment that can be 50 years old does not make sense when the states and policy makers are urging the deployment of and adoption of more advanced technologies, especially given customers prefer alternative networks that are already available.); See also Opening Comments of AT&T at 11-13 ("First, the COLR obligation, where it is unnecessary, harms residents and businesses by diverting resources from investment in broadband to maintenance of TDM networks and related services, which fewer and fewer customers even want. . .Second, as Dr. Israel explains, consumers suffer because the COLR obligation reduces competitive intensity for modern communications services by arbitrarily constraining ILECs alone. . .Third, copper networks consume massive amounts of electricity.").

[60] 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 VoIP or any other future technology that may be used in the provision of telephone service. D.12-12-038 at 2.

[61] D.12-12-038 at 5.

[62] D.12-12-038 at 48.

Therefore, Cal Advocates recommends broadband deployment (at speeds of at least 100/20 Mbps) on a technology-neutral basis in areas where a COLR requests or applies for COLR obligation withdrawal.[63]

3. To prevent redlining outcomes, the Commission should establish non-discriminatory guidelines for the application of the "reasonableness limitation."

Carriers state that the "reasonableness limitation" should apply to COLR obligations because some locations cannot be reached without exorbitant expense.[64] Cal Advocates recommends that any COLR rule revision that applies the reasonableness limitation to a COLR obligation requirement (e.g. network deployment) should include procedures that prevent the exclusion of vulnerable communities.[65] Such exclusion could occur as a result of a COLR's internal financial models and return on investment (ROI) thresholds. In the context of broadband, Cal Advocates defines this exclusionary practice as "resulting in redlining outcomes."[66] To continue its commitment to universal

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[63] Initial Proposal of Cal Advocates at 54 ("The COLR must have met the New Basic Service Definition (voice and broadband at speeds of at least 100/20 Mbps) by achieving deployment of such service to 100% of its COLR service area on a technology-neutral basis. The broadband service should not include data caps as they may be an indication that the underlying network capacity is insufficient.").

[64] Opening Comments of Consolidated at 5 (stating to the extent that COLR obligations are retained, the Commission should confirm that reasonableness limitations apply to COLR responsibilities); Opening Comments of TDS Companies at 6; Opening Comments of Frontier at 2 (stating that the Commission should update the definition of COLR from D.96-10-066 with the more recent Legislatively defined term in Public Utilities Code Section 275.6(b)(1), which confirms that a COLR is "a telephone corporation that is required to fulfill all reasonable requests for service within its service territory.") The reasonableness clarification reflects the reality that there are some locations that simply cannot be reached without exorbitant expense as the Commission has recognized.

[65] Including but not limited to low-income, rural, disadvantaged, or ESJ communities and HFTD areas.

[66] R.20-09-001, *Opening Comments of The Public Advocates Office on the May 28, 2021 Administrative Law Judge Ruling*, July 2, 2021 at 10 ("Redlining refers to practices in which private or public entities limit investments in the installation, expansion, or upgrading of internet service infrastructure within specific geographic areas, including, but not limited to, areas with predominantly low-income residents and communities of color. Redlining also includes practices in which private and public entities limit broadband availability or adoption in specific areas, for example Redlining could include pricing practices that make broadband less affordable, or marketing practices that under promote broadband services in particular areas. Redlining practices limit broadband access, impact service quality, and make broadband services less affordable to specific communities. These practices can contribute to socioeconomic disparities between low-income and high-income communities, and communities of color and predominantly white communities.").

telecommunications service provided at affordable prices to all Californians, regardless of linguistic, cultural, ethnic, physical, geographic, or income considerations, the Commission should adopt Cal Advocates' recommendation.

4. The Commission should consider removing COLR obligations in unpopulated areas after receiving input from relevant stakeholders.

Cal Advocates does not oppose an evaluation of AT&T's proposal to relieve COLR obligations in areas where there is no population, no current COLR basic telephone service customers, and no serviceable locations according to the FCC's National Broadband Map.[67] The Commission's evaluation should include an assessment of: (1) zoning and parcel classification, which considers input from communities on future development plans, and (2) emergency response sites, which includes input from emergency response agencies.

D. The Commission should reestablish the COLR geographies based on national standards, and for the purpose of broadband availability reporting, analysis, and monitoring at a granular level.

Consolidated, TDS Companies, Frontier, Cal Broadband, and USTelecom recommend that COLR service territories should be changed based on competition in the area, while the Small LECs recommend that service territories should be defined according to exchange boundaries.[68] AT&T proposes that the Commission should relieve

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[67] See Opening Comments of AT&T at 2 ("AT&T recommends that the Commission reevaluate the one-size-fits-all COLR rules and refine them for three distinct categories of communities in the state: (i) areas that are well-served with broadband today because consumers with broadband service have access to voice services; (ii) areas where there are no population, no current COLR basic telephone service customers, and no serviceable locations according to the FCC's National Broadband Map; and (iii) populated areas without broadband service today and, thus, no provider of voice service other than the existing COLR. It generally will be appropriate to end the COLR obligation promptly for categories (i) and (ii) while still ensuring those who rely on a voice-service safety net have one; category (iii) is more complex.").

[68] Opening Comments of Consolidated at 6 (COLR requirements should only be applied in a service territory that is non- competitive); Opening Comments of TDS Companies at 6 (COLR obligations should be retained where there are no other competitive options); Opening Comments of Frontier at 3 (COLR

(continued on next page)

COLR obligations in unpopulated census blocks.[69] [70] As stated in its Initial Proposal,[71] Cal Advocates recommends the Commission establish new geographic definitions of the 16 COLR service areas in California, based on the geographies used across the nation, as established by the FCC, and the US Census Bureau. Cal Advocates believes that the public, the Commission, and COLRs will benefit from the use of these nationally accepted geographies for the definition of ILEC service areas. Moreover, the Commission should revise the COLR withdrawal area at the census block group level to prevent "cherry picking"[72] of specific profitable census blocks.

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should be retained only in rural areas where there is little to no competition); *Comments of the California Broadband & Video Association on Order Instituting Rulemaking Proceeding to Consider Changes to the Commission's Carrier of Last Resort Rules*, September 30, 2024 (Opening Comments of CalBroadband) at 9; Response of USTelecom at 5 (stating the answer is competition); Opening Comments of Small LECs at 7.

[69] Opening Comments of AT&T at 30 ("As an illustrative matter, approximately 17 percent of the census blocks in AT&T California's service territory have no population according to the U.S. Census Bureau, no current basic telephone service (*i.e.*, POTS) subscribers, *and* no FCC-reported serviceable locations. Removing the COLR obligation in such areas would harm no one.").

[70] AT&T's recent application to relinquish its COLR obligation also focused on census blocks. Application (A.) 23-03-003, *Amended Application of Pacific Bell Telephone Company D/B/A AT&T California (U 1001 C) for Targeted Relief from its Carrier of Last Resort Obligation and Certain Associated Tariff Obligations*, May 17, 2023 at 42 ("In particular, [the Application] proposes that the Commission remove the COLR obligation only in census blocks where there is a demonstrated voice alternative to AT&T California's POTS service.").

[71] Initial Proposal of Cal Advocates at 54.

[72] "Cherry-picking" means to choose to serve only the most lucrative areas in a COLR service territory. See, for example: *Comments of the California Center for Rural Policy on Draft Resolution T-17443 Implementation of New Timelines for CASF Applicants*, June 2014 ("Although CCRP is pleased with the timeline suggested in the draft resolution, we have some concerns about existing providers stating intent to upgrade but not following through and existing providers "cherry picking" underserved areas or anchor tenants making remaining areas and households costly."); see also *Inland Empire Regional Broadband Consortium (IERBC) Preferred Scenario for Unserved Households in the Inland Empire*, October 2020, ("CETF underscored to the CPUC that it is essential to harness the power of 'economies of scale' in infrastructure construction to accurately determine the percentage of CASF subsidy required to achieve the 98% goal and to avoid cherry-picking by ISPs of the most lucrative unserved communities for CASF applications without helping the region understand more detailed information and needs of the unserved households, the challenges to provide broadband service to them, and determine the most cost-effective strategies to serve them in order to help achieve the 98% goal.").

1. The Commission should require COLR reporting at the census block level.

Cal Advocates' Initial Proposal recommends that COLRs seeking to withdraw must report basic service deployment, subscribership data, and availability of alternative communication providers at the census block and serviceable location levels.[73]

Carriers such as TDS Companies and the Small LECs claim that Cal Advocates' data requests that seek granular information related to basic telephone service, VoIP, and broadband availability are overly broad, burdensome, and exceed the preliminary scope of the OIR and the Commission's jurisdiction.[74] However, as Administrative Law Judge Thomas Glegola (ALJ Glegola) notes in his October 29, 2024 *Administrative Law Judge's Ruling Granting Motion to Compel Discovery* which decided Cal Advocates' October 11, 2024 *Motion of the Public Advocates Office for an Order Compelling Data Request Responses from Consolidated Communications of California Company*,[75] these "legal and factual arguments regarding jurisdiction are not supported."[76] In fact, "the Commission has commonly validated broadband deployment data using broadband subscriber data,"[77] "the presence of broadband providers is within the scope of this proceeding,"[78] and "Cal Advocates' Data Request is within the Initial Scope of this proceeding and is necessary to perform its duties."[79]

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[73] Initial Proposal of Cal Advocates at 54-56.

[74] See Opening Comments of TDS Companies at 4 ("TDS Companies have already been subject to overly broad, burdensome and costly data requests by the Public Advocates Office which far exceed the preliminary scope of the OIR and the Commission's jurisdiction."); and Opening Comments of Small LECs at 3 (based on "aggressive discovery tactics and expansive data requests from Cal Advocates in the early stages of this proceeding, the Small LECs are concerned that this proceeding will be used as a generic telecom industry reexamination docket.").

[75] *Motion of the Public Advocates Office for an Order Compelling Data Request Responses from Consolidated Communications of California Company*, October 11, 2024; *Administrative Law Judge's Ruling Granting Motion to Compel Discovery*, October 29, 2024.

[76] *Administrative Law Judge's Ruling Granting Motion to Compel Discovery*, October 29, 2024 at 12.

[77] *Administrative Law Judge's Ruling Granting Motion to Compel Discovery*, October 29, 2024 at 8.

[78] *Administrative Law Judge's Ruling Granting Motion to Compel Discovery*, October 29, 2024 at 9.

[79] *Administrative Law Judge's Ruling Granting Motion to Compel Discovery*, October 29, 2024 at 10.

In response to Cal Advocates' data requests seeking information at the census block level, TDS Companies, the Small LECs, and Consolidated responded that they do not maintain or report certain data at the census block level and were only willing to provide the information at the census tract level.[80] However, less than two years ago, until December 31, 2022, these carriers (through operating, parent, or affiliated company filings) *did* collect and submit broadband data at the census block level[81] since census block collection was added to Form 477 in 2013.[82]

Furthermore, in D.16-12-025,[83] the Commission ordered communications providers registered with the CPUC that also file Form 477 with the FCC to submit voice and broadband subscriber and deployment data at the census block level. ALJ Glegola notes in his October 29, 2024 ruling:

> Consolidated. . .does possess subscriber data at the census block level or has data that could be used to create subscriber data at the census block level. That data has been submitted to the Commission on a[n] annual basis since 2017. . .Since Consolidated possesses the data it claims it does not. . .its contentions regarding the onerous nature of complying with the Data Request are not supported.[84]

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[80] According to TDS Companies, the Small LECs, and Consolidated, the census tract data was already available because it was gathered for FCC Broadband Data Collection (BDC) reports. See for example *Motion of the Public Advocates Office for an Order Compelling Data Request Responses from Happy Valley Telephone Company, Hornitos Telephone Company, and Winterhaven Telephone Company*, September 16, 2024 at Exhibit D; *Motion of the Public Advocates Office for an Order Compelling Data Request Responses from Consolidated Communications of California Company*, October 11, 2024 at Exhibit D.

[81] See California Interactive Broadband Map, Zoom to Provider feature. Available at: https://www.broadbandmap.ca.gov/.

[82] From June 27, 2013 to December 9, 2022, the FCC required census block level reporting for Form 477. Census block level reporting was incorporated into Form 477 on June 27, 2013 and was ordered to sunset on December 9, 2022. See FCC 13-87 at ¶ 3 and FCC 22-93 at ¶ 1.

[83] D.16-12-025, *Decision Analyzing the California Telecommunications Market and Directing Staff to Continue Data Gathering, Monitoring and Reporting on the Market*, December 1, 2016.

[84] *Administrative Law Judge's Ruling Granting Motion to Compel Discovery*, October 29, 2024 at 4-5.

Cal Advocates data requests were reasonable and lawful. In contrast, ALJ Glegola found that, "Consolidated's Response contains numerous glaring factual and legal inaccuracies, as well as unsupported quasi-legal opinions, all of which render Consolidated's objections meritless."[85] By failing to provide this information absent the filing of a Motion to Compel[86] (or delaying the provision of the information until after a time-consuming meet and confer process), Consolidated, TDS Companies, Frontier, and the Small LECs[87] have obstructed Cal Advocates from analyzing the information needed to develop a comprehensive proposal in this rulemaking and the Commission from developing the record it needs to update the COLR rules.

Despite carrier arguments to the contrary and failed objections to related discovery issued by Cal Advocates, the Commission can and should require COLRs to report data related to voice and broadband deployment and subscribership at the census block level.

E. The Commission should establish a planned process that existing COLRs must comply with to satisfy the COLR obligation.

Frontier claims that the Commission should eliminate or scale back COLR requirements, and/or provide opportunities for COLR relief where voice competition exists. USTelecom, TDS Companies, Consolidated, and Cal Broadband claim that

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[85] *Administrative Law Judge's Ruling Granting Motion to Compel Discovery*, October 29, 2024 at 15.

[86] See *Motion of the Public Advocates Office for an Order Compelling Data Request Responses from Happy Valley Telephone Company, Hornitos Telephone Company, and Winterhaven Telephone Company,* September 16, 2024; *Administrative Law Judge's Ruling Granting the Public Advocates Office Motion to Shorten Time to Respond to Motion to Compel Response to Data Requests and Granting the Public Advocates Office Motion to Compel Data Requests,* September 26, 2024; *Motion of the Public Advocates Office for an Order Compelling Data Request Responses from Consolidated Communications of California Company,* October 11, 2024; *Administrative Law Judge's Ruling Granting Motion to Compel Discovery,* October 29, 2024.

[87] As discussed in Section I. below, the BRB Law Group represents 15 out of the 16 COLRs in this proceeding, all COLRs except for AT&T, which are grouped into the parties identified herein as Frontier, Consolidated, TDS Companies, and the Small LECs. As such, the conduct of counsel in one law firm has the potential to disproportionately and adversely impact this proceeding.

COLR obligations should be relinquished where there is competition.[88] None of these comments provide a thoroughly planned process. The Commission should allow existing COLRs to petition for withdrawal from the COLR obligation via compliance with a planned process which requires specific steps in an ordered sequence, under Commission oversight and compliance monitoring.

1. The Commission should establish a planned COLR withdrawal process and reject the unclear and vague approaches proposed by carriers.

AT&T, USTelecom, TDS Companies, Frontier, Consolidated, and Small LECs, do not propose a planned process with ordered stages for COLR withdrawal. Instead, they provide general suggestions,[89] withdrawal methods through advice letters,[90] short customer notice periods,[91] and no customer transition plans.[92]

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[88] Opening Comments of Frontier at 2 (stating that it is appropriate to "significantly scale back or eliminate" COLR requirements and provide relief where voice competition exists); Response of USTelecom at 7 (stating the Commission should eliminate the COLR framework and update the rules that so there is no COLR obligation in areas where customers have access to alternative voice services); Opening Comments of TDS Companies at 6 (stating that the Commission should authorize relief from COLR Obligations via a Tier 3 advice letter where 80% of carriers' customers have access to another provider); Opening Comments of Consolidated at 2 (stating there are so many options and no need for a 'default' carrier); and Opening Comments of Cal Broadband at 1 (stating that COLR obligations should exist in increasingly small number of areas in California that lack competition).

[89] Opening Comments of AT&T at 34 (stating "that this proceeding should adopt rules to remove COLR obligations" in well-served areas) and Response of USTelecom at 6 (discussing filing a section 214 discontinuance application to withdraw basic telephone service).

[90] Opening Comments of TDS Companies at 10 (a "Tier 3 advice letter procedure should be sufficient to confirm factual basis for COLR relief.") and Opening Comments of Frontier at 6 (discussing that COLR requirements should be lifted through a mix of Tier 2 and Tier 3 advice letters).

[91] Opening Comments of Consolidated at 9 (suggesting a 30-day notice in customer bills); Opening Comments of TDS Companies at 10 (suggesting a notice in the form of a bill message or insert); and Opening Comments of Frontier at 6 (suggesting a simple notice in the form of a bill message and COLR relief implemented within 120 days of the notice).

[92] Opening Comments of Consolidated at 10 (suggesting there is no need for a transition period); Opening Comments of TDS Companies at 11 (stating that the transition of customers from one carrier to another is unnecessary and inappropriate); Opening Comments of Frontier at 6 (stating that a customer transition reflects a misunderstanding about the nature of the COLR designation); and Opening Comments of Small LECs at 11 (stating that there is no reason to expect a migration of customers).

Cal Advocates' Initial Proposal describes a planned seven-stage COLR withdrawal process,[93] which includes ten specific requirements for a COLR to meet prior to submitting a withdrawal application. For a COLR to apply to withdraw from its COLR obligation, it must submit a checklist and documentation meeting the ten COLR withdrawal obligation requirements (Stage 1).[94] The Commission then reviews the checklist and, if the COLR meets the requirements, the COLR may submit the withdrawal application which includes customer notices and a proposed calendar for Public Participation Hearings (Stage 2). The review and approval of the withdrawal application (Stage 3) enables the COLR to enter the 36-month provisional withdrawal period where the Commission assesses the impact of the COLR withdrawal on customers in the COLR service area (Stage 4). After the 36-month period, the Commission conducts an impact assessment (Stage 5) which leads to accepting or rejecting a permanent COLR obligation withdrawal (Stage 6).[95] Finally, the Commission continues to monitor the carrier, while the carrier continues ongoing reports (Stage 7).

2. The Commission should establish a planned process of identifying areas that do not need a COLR and reject unclear and vague approaches.

AT&T, TDS Companies, and Frontier state that there are areas of California that no longer require a COLR, and a carrier should be permitted to relinquish its COLR status where there are sufficient alternative providers or competition.[96] However, these carriers do not propose a specific methodology, metrics, or process to identify and

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[93] Initial Proposal of Cal Advocates at 54-57 and Appendix A.

[94] The ten conditions ensure alternative service is available to customers, customers are aware of transition plans and customer migration plans, and COLRs comply with service quality standards and meet requirements of the new basic service definition.

[95] Initial Proposal of Cal Advocates at 54-57 and Appendix A.

[96] Opening Comments of AT&T at 26-27 (stating that COLR requirements should be relinquished in areas that are well served with broadband and areas where there is no population); Opening Comments of TDS Companies at 10 (stating that a carrier should be permitted to relinquish its COLR status where there is at least one alternative service provider in 80% of the area); and Opening Comments of Frontier at 6 (stating that the Commission should permit COLR withdrawal where there is access to an alternative wireline option and where sufficient competition exists).

determine areas that do not need a COLR. For example, TDS Companies argue that a COLR should be permitted to relinquish COLR status upon showing that 80% or more of the area in which it seeks to lift COLR designation has access to service by at least one alternative service provider.[97] Nevertheless, the carriers do not propose a methodology, data, or metrics to identify providers (or provider coverage) or concepts of what constitutes an alternative service provider or an alternative service.

AT&T argues that a COLR is unnecessary in areas well-served with broadband service, and points to the National Broadband Map and CPUC broadband data to demonstrate the availability of facilities-based broadband providers.[98] AT&T also recommends workshops to address issues which include "what qualifies an area as well-served with broadband?," and "what data source(s) should be used to determine if an area is well-served?," among other relevant issues.[99] On this topic, Cal Advocates' Initial Proposal recommends comprehensive assessment criteria to evaluate coverage and alternative providers, and to determine if a COLR is no longer needed in an area. The criteria include assessment of: (1) universal (ubiquitous) service (on a technology-neutral basis) which includes broadband deployment (or availability) based on federal and state data, and validation of actual service; (2) reliable service which incorporates technical metrics to evaluate each technology type and environmental factors impacting service delivery, and backbone redundancy (or diversity); (3) quality service based on comprehensive technical metrics (i.e., GO 133-D); and (4) affordable service to ensure that pricing is not a barrier when migrating to alternative providers or services.[100] Cal Advocates agrees with AT&T that workshops with communities and stakeholders will provide critical local input specific to communities or regions. This input could be incorporated as metrics into the 4-point assessment criteria.

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[97] Opening Comments of TDS Companies at 10.

[98] Opening Comments of AT&T at 26-29.

[99] Opening Comments of AT&T at 34.

[100] Initial Proposal of Cal Advocates at 42-53.

3. The Commission should adopt Cal Advocate's COLR relief approval process and reject carrier's suggestions of Tier 2 and Tier 3 advice letters.

TDS Companies and Frontier suggest that Tier 2 or 3 advice letter (AL) procedures are sufficient to confirm the factual basis that could justify the relinquishment of the COLR obligation.[101] However, the AL process is not a public notice process that informs communities impacted by a possible COLR obligation withdrawal. ALs are served to certain CPUC service lists. They are reviewed by the CPUC Communications Division staff, but they are not distributed to the residents and businesses in a given ILEC service area. A Tier 2 AL requires only staff approval and, if it is not suspended by the end of the 30-calendar-day initial review period, it is deemed approved.[102] While a Tier 3 AL requires Commission approval,[103] it does not require the type of thorough notification of the potentially impacted public in the proposed COLR withdrawal area which Cal Advocates recommends. Nor does it require the Commission to conduct an established procedure for the evaluation of the possible negative impacts to a local economy, disadvantaged populations, or the public safety alert and warning capabilities of a specific area.

Under the AL process recommended by the TDS Companies and Frontier, the Commission and stakeholders would not be given sufficient opportunity to assess the impact of a COLR withdrawal, nor would they receive notification of existing alternative services in the same area. The Commission should reject the AL route as a COLR withdrawal process and adopt Cal Advocates' comprehensive COLR withdrawal process to ensure that customers are correctly notified and protected against the loss of service.

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[101] Opening Comments of TDS Companies at 10 (discussing the use of a Tier 3 advice letter) and Opening Comments of Frontier at 6 (discussing the use of a Tier 2 advice letter where there is sufficient competition and a Tier 3 advice letter in more rural areas).

[102] General Order 96-B Telecommunication Industry Rules at 7.

[103] General Order 96-B Telecommunication Industry Rules at 7.

4. The Commission should adopt Cal Advocates' customer notification process and reject carriers' short customer notice periods.

Consolidated, TDS Companies, Frontier, and the Small LECs provide insufficient customer notice periods and no guidelines for customer transition plans which are essential to ensure customer protection.[104] Consolidated recommends a 30-day notice inserted into customer bills as sufficient notification to withdraw from the COLR obligation.[105] TDS Companies also recommend a customer notice in the form of a bill message filed with the Tier 3 advice letter and another bill message mailed no later than 45 days after a resolution grants the advice letter.[106] Frontier recommends a bill message notice sent to customers impacted by a COLR obligation withdrawal and COLR relief could be implemented within 120 days of the notice.[107] AT&T does not provide details on customer notices for COLR withdrawal. Additionally, Consolidated, TDS Companies, Frontier, and the Independent Small LECs claim that there is no need for customer transition periods and do not provide a customer transition plan.[108]

In contrast, Cal Advocates' and Joint Commenters' recommendations propose meaningful and detailed customer protections implemented through a planned process with widespread public visibility. For COLR withdrawal customer notices, Cal Advocates proposes that applicants post notice or send notice to affected customers, relevant public officials, and the public as soon as practicable, and no more than 45 days

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[104] Opening Comments of Consolidated at 9-10 (stating that a simple 30-day notice in customers' bills is sufficient and there is no need for a transition period); Opening Comments of TDS Companies at 10-11 (stating that a customer notice in the form of a bill message or insert is sufficient and a customer transition is not necessary); Opening Comments of Frontier at 6 (stating that a notice in a bill message is sufficient with COLR relief implemented within 120 days of notice and a customer transition would not be needed); and Opening Comments of Small LECs at 11 (stating that there is no reason to expect a customer migration).

[105] Opening Comments of Consolidated at 9.

[106] Opening Comments of TDS Companies at 10.

[107] Opening Comments of Frontier at 6.

[108] Opening Comments of Consolidated at 10; Opening Comments of TDS Companies at 11; Opening Comments of Frontier at 6; and Opening Comments of Small LECs at 11.

after the application has been posted, and at least five days before public participation hearings are scheduled to occur.[109] Cal Advocates' recommendations also identify the relevant information that should be included in the application and public participation hearing notices.

F. The Commission should implement planned environmentally compliant and transparent network migration and decommissioning regulations.

Most carriers and parties do not propose planned network migration or network decommissioning processes.[110] USTelecom notes that at the federal level, a provider is already required to file a Section 214 "discontinuance" application to withdraw basic telephone service in areas with existing customers. USTelecom states that the FCC reviews that application to ensure that the withdrawal is in the public interest, potentially by determining whether a proposed replacement service meets the FCC's stringent Alternative Replacement Test.

AT&T argues that relief from the COLR obligation where it is unnecessary would allow AT&T to invest in broadband rather than spend funds on TDM network maintenance (referring to legacy copper networks).[111] Cal Advocates' Initial Proposal supports investments in modern communication and broadband networks, as current COLR rules apply on a technology-neutral basis. Furthermore, it proposes broadband network deployments (100/20 Mbps) as a condition of COLR obligation withdrawal. In this context of future network migration and decommissioning, Cal Advocates' Initial Proposal recommends that such changes must avoid or mitigate significant environmental

[109] Initial Proposal of Cal Advocates at 65.

[110] Only Response of USTelecom mentions filing a Section 214 "discontinuance" application to withdraw basic telephone service in areas with existing customers, at 6.

[111] Opening Comments of AT&T at 11.

impact, and therefore, should include mandatory compliance with CEQA regulations.[112] [113] [114]

Pursuant to CEQA, the Commission must identify and avoid or mitigate the significant environmental impacts of its actions.[115] Revision of the COLR rules relates to the retirement of lead-clad copper cable infrastructure, which might cause significant environmental and public health impacts because unmaintained lead-clad cables can leach lead into the environment. Throughout the United States, including in California,[116] from the late 1800s through the 1950s, telecommunications companies hung, buried, or placed under water extensive networks of lead-clad cables, some of which are still in place.[117] The United States Environmental Protection Agency's testing of soil samples contaminated by lead-clad telecommunications cables in multiple states has found lead concentrations that exceed screening levels.[118] Further, an Oregon study of contaminated moss samples found that "elevated lead consistently accompanies these

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[112] Initial Proposal of Cal Advocates at 55.

[113] Initial Proposal of Cal Advocates at 7.

[114] See California Public Utilities Commission (CPUC) Rules of Practice and Procedure, Rule 2.4 CEQA Compliance; and California Public Resource Code (Pub. Res. Code) sections 21080, subd. (a); 21065; and 2100, *et seq*.

[115] See CPUC Rules of Practice and Procedure, Rule 2.4 CEQA Compliance; and Pub. Res. Code sections 21080, subd. (a); 21065; and 2100, et seq.

[116] For example, on September 18, 2024, AT&T settled an environmental lawsuit and agreed to remove eight miles of abandoned lead-clad cables from Lake Tahoe. According to the lawsuit plaintiff, the California Sportsfishing Protection Alliance, AT&T will remove over 107,000 pounds of lead. Available at: AT&T to remove 8 miles of lead cables in Lake Tahoe after legal battle (sfgate.com).

[117] See Congressional Research Service Legacy Lead-Sheathed Telecommunications Cables: Status and Issues for Congress, December 26, 2023. Available at: https://crsreports.congress.gov/product/pdf/IF/IF12559.

[118] See, for example: The United States Environmental Protection Agency (US EPA), On-Scene Coordinator (OSC), California and Coal Center Lead, Available at: Site Profile - California and Coal Center Lead - EPA OSC Response; and US EPA, OSC, Louisiana Lead Cable, Available at: Site Profile - Louisiana Lead Cable - EPA OSC Response.

cables and provides evidence that relic lead-sheathed telecommunication cables are releasing lead into residential neighborhoods."[119]

Based on these critical and reported environmental issues, the Commission should include CEQA compliance obligations in this proceeding, particularly to evaluate COLR withdrawal (which might include future network migration and decommissioning) from a service territory. In particular, the Commission should consider the potential of significant environmental impacts caused by unmaintained lead-clad copper cables.

G. The Commission should reform the California High-Cost Fund B (CHCF-B) to encourage service providers to take on the COLR obligation in high-cost areas.

Cal Advocates agrees with the Joint Commenters' Initial Proposal that the CHCF-B should be revised to encourage COLR participation in high-cost areas. Joint Commenters state that the Commission should consider proposals for how to revise the subsidy amount and whether the rules should eliminate the reverse auction process.[120] Joint Commenters' general recommendation suggests either a revised reverse auction process that incorporates lessons learned from the FCC's Rural Digital Opportunity Fund (RDOF) auction process, or a revised cost model based on current broadband service.[121] Cal Advocates agrees that revisions to CHCF-B should modernize the fund to support the expansion and accessibility of broadband service in high-cost areas by: (1) existing COLRs, or (2) alternative providers attracted by operating subsidies which assist with increased network maintenance costs in these challenging regions.[122] Any revisions to the CHCF-B should be made to support COLR providers in offering service that meets current or future basic service requirements. The Commission should also ensure that

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[119] Shiel, A.E., Jovan, S. & Murphy, C.J. Lead-sheathed telecom cables and historic leaded gasoline emissions substantially raise environmental lead levels in Portland, Oregon. *Commun Earth Environ* 5, 384 (2024) at Conclusions. Available at: https://doi.org/10.1038/s43247-024-01534-0.

[120] Initial Proposal of Joint Commenters at 39-40.

[121] Initial Proposal of Joint Commenters at 39-40.

[122] Initial Proposal of Cal Advocates at 57.

any revisions made which increase the CHCF-B do not result in windfall profits to COLR providers.

Cal Advocates does not oppose AT&T's proposal that the Commission should consider reforming the CHCF-B to incentivize service providers to seek COLR status in high-cost areas. AT&T states that the fund does not offer enough support where it is needed, and it does not sufficiently attract carriers to take on the COLR obligation.[123]

The TDS Companies' Opening Comments state that "the methodology for computing CHCF-B is outdated and should be updated."[124] The TDS Companies highlight the fact that the CHCF-B is based on cost proxy data from 1996, the model of which is no longer readily available, and does not consider TDS Companies' service territories.[125] Cal Advocates does not oppose the TDS Companies' general claim that the process to determine CHCF-B funds should be revised and modernized. However, Cal Advocates disagrees with the TDS Companies' statement recommending they be relieved of their COLR obligation and authorized to opt into URF status via a Tier 3 advice letter if they elect not to receive CHCF-A or CHCF-B support.[126]

Cal Advocates foresees that FFA and BEAD grant awardees will fund broadband deployment to locations which are above the federal high-cost and extremely high-cost thresholds for California over the next several years. As those funding programs are implemented, Cal Advocates believes that the Commission will have access to a wealth of new data. This information should be used by the Commission to assess the operating costs for COLR-provided services in these areas, and the operating subsidies necessary for providers to offer affordable services.

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[123] Opening Comments of AT&T at 32-33.

[124] Opening Comments of TDS Companies at 9.

[125] D.12-12-038 at 7.

[126] Opening Comments of TDS Companies at 9.

H. The Commission should reject carriers' assertions and establish customer migration regulations that are based on public notice, transparency, multi-community outreach requirements, and commission oversight.

The Commission should update its *Customer Migration Guidelines*[127] to require in-language public notices and community outreach requirements which notify customers living in a COLR withdrawal area. Most importantly, the updated guidelines must specify the overall sequence of required steps for a COLR to withdraw with Commission authorization.[128]

1. COLR withdrawal notices must be comprehensive for customer migration and transparent network transitions.

Consolidated, TDS Companies and Frontier state that customers should be notified of an application for COLR withdrawal.[129] However, these recommendations for public notice are inadequate. Joint Commenters and several other non-profit organizations submitted comments that call for adequate notice and planned network transitions.[130] No telecom carrier or trade association identified a comprehensive plan for customer migration or transparent network transitions. Consolidated, TDS Companies, and Frontier suggest that a 30-day notice inserted into customer bills should be sufficient to

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[127] Mass Migration Guidelines (Revised 2010). D.10-07-024, *Decision Adopting Guidelines for Competitive Local Exchange Carriers (CLEC) Involuntary Exits and Principles and Procedures for CLEC End-User Migrations and Modifying Mass Migration Guidelines*, July 29, 2010, Attachment 3.

[128] COLRs seeking to withdraw from COLR Obligations must submit a provisional withdrawal application that is reviewed by the Commission and, if approved, can enter the 36-month provisional withdrawal period with commission oversight. Initial Proposal of Cal Advocates at 54-57 and Appendix A.

[129] Opening Comments of Consolidated at 9 (suggesting a 30-day notice in customer bills); Opening Comments of TDS Companies at 10 (suggesting a customer notice in the form of a bill message or bill insert); and Opening Comments of Frontier at 6 (suggesting a simple notice in the form of a bill message).

[130] Initial Proposal of Joint Commenters at 51-52 (suggesting that withdrawing COLRs should submit an initial notice of its intent to apply to withdraw at least 60 days prior to its submission application to the Commission); *Comments of EMF Safety Network*, September 30, 2024 (Opening Comments of EMF Safety Network) at 4 (suggesting three to six months' notice); and *Comments of the California Farm Bureau Federation on the Order Instituting Rulemaking Proceeding to Consider Changes to the Commission's Carrier of Last Resort Rules*, September 30, 2024 (Opening Comments of CFBF) at 8 (suggesting one year of notice).

signal withdrawal from the COLR obligation.[131] AT&T does not suggest a substantial plan or notice requirements and instead advises the Commission to convene workshops to address notice requirements.[132] The Commission should adopt the COLR withdrawal requirements described in Cal Advocates' Initial Proposal that establishes notice requirements for COLR withdrawal customer notices.[133] The Commission must oversee COLR withdrawal for the minimum 36-month timeframe to support the migration of customers off legacy networks as they are decommissioned to modern networks of the customers' choice.[134]

COLRs should be required to submit COLR withdrawal notices that are transparent to customers. TDS Companies comment that COLR withdrawal should not confuse customers regarding the ongoing availability of services following a COLR transition or copper retirement.[135] Similarly, other parties, including California Farm Bureau Federation, Small Business Utility Advocates (SBUA), and EMF Safety Network, appear to misunderstand what actions by a COLR could result in service changes.[136] These concerns should be addressed by providing customers with more information, rather than less.

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[131] Opening Comments of Consolidated at 9; Opening Comments of TDS Companies at 10; and Opening Comments of Frontier at 6.

[132] Opening Comments of AT&T at 34.

[133] COLR withdrawal notices must be submitted to the Commission for COLR withdrawal review, and if approved for provisional COLR withdrawal, the withdrawal notices will be sent out to affected customers no more than 45 days after the application is posted on the Commission's website. Initial Proposal of Cal Advocates at 65.

[134] Initial Proposal of Cal Advocates at 53.

[135] Opening Comments of TDS Companies at 10 (stating that "significant customer confusion could result if the notice incorrectly suggests that the carrier is withdrawing as a service provider just because it is seeking COLR relief.").

[136] See Opening Comments of CFBF at 8 (suggesting that customer services will be impacted by virtue of COLR withdrawal: "The study that Farm Bureau recommends be conducted should also include an analysis of the optimum method to reach out to customers whose services will be impacted."); Proposal of Small Business Utility Advocates at 8 (recommending customer notice of a change in COLR because "Any disruption in service without proper notification could have severe economic consequences for these businesses, potentially leading to lost revenue, decreased customer satisfaction, and operational

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2. The Commission should adopt copper retirement notice plans.

TDS Companies identify potential customer confusion around the ongoing availability of services when COLR withdrawal applications or copper retirements occur.[137] While COLR withdrawal does not necessarily mean that copper will be retired,[138] there is reason to believe COLR withdrawal may be a precursor to such retirement.[139] The Commission's authorization for COLR withdrawal might have a significant impact on a COLR's legacy networks. AT&T argues that relief from the COLR obligation where it is unnecessary would allow AT&T, and presumably other COLRs, to invest in broadband rather than spending funds on TDM network maintenance.[140] In past and present filings, AT&T has specified that by "TDM networks," it means those underlying POTS that are comprised of copper lines.[141]

Further, while copper retirement does not necessarily entail a service discontinuance, there is the potential for customer confusion on that point. The

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challenges."); and Opening Comments of EMF Safety Network at 4 (suggesting that a change in COLR requires customer information regarding potential rate changes).

[137] Opening Comments of TDS Companies at 10 ("significant customer confusion could result if the notice incorrectly suggests that the carrier is withdrawing as a service provider just because it is seeking COLR relief.").

[138] See Opening Comments of Small LECs at 11 (OIR preliminary issue (l) "appears to contemplate a migration of customers, and there is no reason to expect such a step just because a new provider receives a "COLR" designation. As the Independent Small LECs understand the COLR framework, any withdrawal of COLR service would not be tantamount to a withdrawal from the market.").

[139] Initial Proposal of Joint Commenters at 19.

[140] Opening Comments of AT&T at 11.

[141] Opening Comments of AT&T at Attachment B, *Declaration of Mark A. Israel on Behalf of AT&T*, paragraph 53 at 27 (". . .[C]arriers subject to historical COLR requirements are inefficiently investing in legacy networks that market forces would otherwise be retiring (the TDM networks that underlie POTS) in favor of the newer networks and technologies. This reduces investment in the new networks and technologies and slows overall technological progress, to the detriment of all in the long-run."). See also A.23-03-003 at 25 ("To satisfy its COLR obligation to provide basic telephone service, AT&T California still operates a legacy TDM network composed of copper lines and antiquated circuit switches.") See also *AT&T's Notice of Ex Parte Communication*, filed November 6, 2023 in the A.23-03-003 proceeding at 1 (AT&T California and Pacific States President Mark Blakeman discusses "AT&T California's transition from its narrow band copper network to its future proof fiber and wireless broadband network," and "shutting down AT&T California's copper network.").

Commission must recognize the parallel federal requirements for copper infrastructure retirement in ILEC networks, and the additional complexity that business and residential customers may face as a result. The FCC notes that ILECs must provide customers with notice of copper retirement in the normal course of business and that state commissions have a role to ensure customer education occurs.[142] So, as a starting point, the Commission should adopt notice plan requirements to ensure those notices are timely and complete.

While the FCC does not require it,[143] the Commission should require direct customer notice[144] of copper retirements to prevent confusion over whether such changes will result in service discontinuances.[145] Additionally, the Commission should adopt copper retirement customer migration plan requirements and include listings of all available communications services in each area, with clear schedules for legacy network shutdowns, and customer support contact telephone numbers for the COLR and its competitors.[146]

3. The Commission should adopt COLR withdrawal customer transition plans and reject carriers' assertions that there is no need for customer transition plans.

COLRs must provide COLR withdrawal customer transition plans. Consolidated, TDS Companies, Frontier, and the Small LECs claim that there is no need for customer transition periods and therefore do not provide a customer transition plan.[147]

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[142] FCC 18-74, ¶¶27-28.

[143] See FCC 17-154 at ¶45 (eliminating the copper retirement direct notice requirement for retail customers).

[144] Direct customer notices mean a notice sent directly to customers instead of posted online.

[145] See Initial Proposal of Joint Commenters at 54-55; Opening Comments of TDS Companies at 10; and Opening Comments of Small LECs at 11 (suggesting that not mentioning the status of the continued availability of services in notices of applications to withdraw from COLR obligations is the solution to customer confusion on this point).

[146] Initial Proposal of Cal Advocates at 60.

[147] Opening Comments of Consolidated at 10; Opening Comments of TDS Companies at 11; Opening Comments of Frontier at 6; and Opening Comments of Small LECs at 11.

Consolidated claims that in highly competitive markets, there is no need for a "new" COLR and therefore no need for a "transition period."[148] However, COLR withdrawal customer transition plans are necessary to ensure that customers are aware of a change in a legal obligation that exists for their benefit and protection. Adoption of COLR withdrawal customer transition plan requirements will ensure that customers subject to a COLR change or withdrawal are aware of the changes triggered by the withdrawal or change and are specifically aware that they are a member of the public affected by the change or withdrawal of a COLR.[149]

I. Provider arguments that the Commission does not have authority or jurisdiction to regulate VoIP or wireless service are without merit.

Cal Advocates takes no position on mandated COLR service for entities that are not already COLRs, including VoIP[150] and wireless carriers.[151] As long as all applicable requirements are met, Cal Advocates supports: (1) voluntary assumption of the COLR obligation by VoIP and wireless carriers,[152] and (2) currently designated COLRs' choice to fulfill the COLR obligation on a technology-neutral basis. However, Cal Advocates strongly disagrees with multiple parties' comments, which ignore the current state of the law and disparage the Commission's general authority to regulate and exercise jurisdiction over VoIP and wireless carriers.

The BRB Law Group represents 15 out of the 16 COLRs in this proceeding, all COLRs except for AT&T.[153] Frontier, Consolidated, TDS Companies, and the Small LECs (the BRB Client Companies), submit substantially the same comments in resistance

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[148] Opening Comments of Consolidated at 10.

[149] Initial Proposal of Cal Advocates at 68.

[150] All references are to "VoIP" herein are to fixed interconnected voice over internet protocol service unless otherwise specified.

[151] See OIR at 5 (questions e. through g.).

[152] See OIR at 5 (question g.).

[153] AT&T did not comment on the Commission's authority to regulate VoIP.

to the Commission's authority to regulate VoIP. The BRB Client Companies claim that: (1) the Commission lacks authority under state statute to regulate VoIP, (2) the Commission's authority is preempted under federal law because VoIP is an "information service," and (3) the Commission's authority is preempted under federal law because of the "interstate" nature of VoIP.

As discussed below, these arguments are without merit and should be rejected. The Commission's jurisdiction to regulate VoIP is clearly delineated and a VoIP provider seeking to become a COLR would be subject to the Commission's COLR rules.

1. State law authorizes the Commission to regulate VoIP.

The BRB Client Companies argue that VoIP service is not provided over a telephone line and thus, a VoIP provider could never be a telephone corporation or a regulated public utility.[154] However, for the reasons discussed at length in Cal Advocate's Initial Proposal[155] and below, this is simply untrue. The Commission has repeatedly found that it has jurisdiction over interconnected VoIP service providers as public utility telephone corporations pursuant to California law.[156] The BRB Client

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[154] Opening Comments of Frontier at 4 ("For 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.' Therefore, as a matter of state law, the Commission cannot regulate VoIP."); Opening Comments of Consolidated at 6-7 ("VoIP providers do not own, control, operate or manage "telephone lines," so they cannot be "telephone corporations" and are thus not "public utilities" under the Public Utilities Code."); Opening Comments of TDS Companies at 7 ("Because VoIP services operate over underlying broadband-capable facilities, VoIP operations do not qualify as a 'corporation or person owning, controlling, operating or managing any telephone line.' Therefore, VoIP providers are not 'telephone corporations' or 'public utilities' under the Public Utilities Code."); Opening Comments of Small LECs at 7 ("By their nature, VoIP services do not involve 'owning, controlling, operating or managing any telephone line,' so VoIP providers cannot reasonably be regarded as 'telephone corporations' or 'public utilities' under state law.").

[155] Initial Proposal of Cal Advocates at 74-75.

[156] Proposed Decision of Commissioner John Reynolds in R.22-08-008, *Decision Establishing Regulatory Framework for Telephone Corporations Providing Interconnected Voice Over Internet Protocol Service* citing to Pub. Util. Code §§ 216, 233-234; D.19-08-025, *Decision Adopting an Emergency Disaster Relief Program for Communications Service Provider Customers* at COL 17 ("VoIP providers clearly fit within the plain language of the definition of a public utility "telephone corporation."), as affirmed in

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Companies' relitigation of this failed point wastes the resources of Cal Advocates and others, including member-supported public interest organizations.[157] The Commission should reject the BRB Client Companies' contentions, which fail to represent the state of the law accurately.[158]

The September 13, 2024, Proposed Decision of Commissioner John Reynolds in Rulemaking (R.) 22-08-008, *Decision Establishing Regulatory Framework for Telephone Corporations Providing Interconnected Voice Over Internet Protocol Service* recounts:

> As we have explained, "[b]y its very terms, Section 239 demonstrates that VoIP service constitutes a service that is provided over a 'telephone line' because it 'facilitates communication by telephone, whether such communication is

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D.20-09-012, *Order Modifying Decision (D.) 19-08-025, and Denying Rehearing of Decision, As Modified* at 30-39; see also Decision D.22-10-021, *Decision Updating the Mechanism for Surcharges to Support Public Purpose Programs* at 68-69 ("As VoIP carriers are public utility telephone corporations, the Commission no longer needed to rely on Section 285 as the basis for its authority to require VoIP carriers to contribute to the state's PPP funds.").

[157] See The Utility Reform Network, About Us ("Member support allows TURN to advocate for affordable and dependable utility services, and to stand up for consumers across the state as an independent and unbiased voice. TURN's effectiveness is largely due to the fact that we are not beholden to any corporate or government funding sources."). Available at: About TURN — TURN.

[158] A pattern of inaccurately representing the state of the law to the Commission is not legitimate zealous advocacy. See:

- The CPUC's Rules of Practice and Procedure, Rule 1.1 Ethics ("Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act. . .agrees to. . .never to mislead the Commission or its staff by an artifice or false statement of fact or law.");
- *Administrative Law Judge's Ruling Granting Motion to Compel Discovery*, October 29, 2024 at 15 ("Consolidated's Response contains numerous glaring factual and legal inaccuracies, as well as unsupported quasi-legal opinions, all of which render Consolidated's objections meritless.");
- Initial Proposal of Joint Commenters at 31 (". . . the Commission's greatest challenge will likely be VoIP providers continuing to claim that the Commission has no jurisdiction over them, despite the ample authority contradicting this claim. The Commission should be prepared to deal with, and reject, VoIP providers' attempts to use oft repeated and faulty arguments to delay the Commission.");
- The BRB Client Companies reliance on stale caselaw and legal reasoning (*Minnesota PUC v. FCC* (8th Cir. 2007) 483 F.3d 570 and *Charter Advanced Servs. (MN), LLC v. Lange* (8th Cir. 2018) 903 F.3d 715, 718 [citing to *Minnesota PUC v. FCC*]) and omission of more recent appellate caselaw adverse to their position (*ACA Connects v. Bonta* (9th Cir. 2022) 24 F.4th 1233; *Mozilla v. FCC* (D.C. Cir. 2019) 940 F.3d 1) as discussed in section I.3 below.

> had with or without the use of transmission wires.'"[159] Specifically, interconnected VoIP service facilitates communication by telephone because it "enable[s] real-time, two-way, voice communication that originates from, or terminates at, the user's location in Internet Protocol or a successor protocol." Moreover, "the means by which a telephone corporation provides service — analog, wireless technology or Internet protocol (IP) technology — does not affect whether the provider is a public utility telephone corporation."[160] In other words, "the fact that VoIP service requires a broadband connection is immaterial to the analysis here; utilizing a broadband connection does not exclude a service from being provided over a 'telephone line' as defined in Section 233."[161] Thus, as "telephone corporations," interconnected VoIP service providers are subject to laws and regulations applicable to other wireline and wireless telephone corporations, unless otherwise exempt by the CPUC, state law, or federal law. . .[162]

The BRB Client Companies ask the Commission to disregard the proposed decision.[163] However, doing so would ignore the body of law that comprises the Commission's jurisprudence on the regulation of VoIP, and upon which the proposed decision relies. Thus, even though the proposed decision has not yet been adopted by the Commission,

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[159] Citing to D.20-09-012 at 36.

[160] Citing to D.20-09-012 at 37.

[161] Citing to D.20-09-012 at 37.

[162] Proposed Decision of Commissioner John Reynolds in R.22-08-008, *Decision Establishing Regulatory Framework for Telephone Corporations Providing Interconnected Voice Over Internet Protocol Service*.

[163] Opening Comments of Frontier at 4 ("Frontier is aware of the pending proposed decision in R.22-08-008 that reaches some contrary conclusions, but that proposed decision is misguided for the same reasons set forth here."); Opening Comments of Consolidated at 7 ("Consolidated is aware of the pending proposed decision in the VoIP proceeding, R.22-08-008, which would assert intrastate jurisdiction over fixed interconnected VoIP. Consolidated will be pointing out the legal infirmities with that proposed decision in due course, but even if the proposed decision is ultimately adopted, it would be a further legal error to designate an interstate service provider as a COLR."); Opening Comments of TDS Companies at 7 ("The TDS Companies are aware of the pending proposed decision in the VoIP proceeding, R.22-08-008, but the conclusions in that proposed decision are misguided for the same reasons stated herein."); Opening Comments of Small LECs at 8 ("The Independent Small LECs are aware of the pending proposed decision in R.22-08-008 that reaches some contrary conclusions, but the foundation of that proposed decision is incorrect for the same reasons stated herein.").

the underlying authorities supporting its conclusions are in effect and not subject to dispute.[164]

2. The FCC's "Information Service" label has no express preemptive effect.

Classification as a "Title I Information Service" does not preempt the Commission from regulating VoIP.[165] As the courts have found in the past, the FCC's designation of broadband as an "information service" does not, in and of itself, preempt the Commission from regulating broadband service. The mere labeling of a service as an "information service" does not have an express preemptive effect.[166] The FCC applied its de-regulatory policy in its 2018 Internet Order by abdicating its regulatory authority over broadband, and if the FCC has no authority to regulate, it cannot preempt the Commission.[167]

Further, the Ninth Circuit's 2022 decision *ACA Connects v. Bonta*,[168] reviewed Senate Bill 822,[169] a net-neutrality law passed by California in 2018. Internet service

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[164] See footnotes 147, 150-153.

[165] See Opening Comments of Frontier at 4 ("Likewise, the FCC has deemed VoIP an interstate service, and at least one appellate court has designated VoIP as an 'information service.'"); Opening Comments of Consolidated at 7 (In support of the statement that VoIP is interstate, footnote 10 cites to *Charter Advanced Services, LLC v. Lange*, 903 F.3d 715, 719 (8th Cir. 2018), ("[i]n the absence of direct guidance from the FCC," interconnected VoIP service should be treated as an "information service."), cert. denied, 140 S.Ct. 6 (2019); Opening Comments of TDS Companies at 7 ("Moreover, at least one circuit court has found that interconnected VoIP is an information service."); Opening Comments of Small LECs at 8 (In support of the statement that VoIP is interstate, footnote 22 cites to *Charter Advanced Services, LLC v. Lange*, 903 F.3d 715, 719 (8th Cir. 2018), ("[i]n the absence of direct guidance from the FCC," interconnected VoIP service should be treated as an "information service."), cert. denied, 140 S.Ct. 6 (2019).).

[166] *ACA Connects v. Bonta* (9th Cir. 2022) 24 F.4th 1233; *Mozilla v. FCC* (D.C. Cir. 2019) 940 F.3d 1.

[167] *Mozilla v. FCC, supra,* 940 F.3d 1, 98 ("[I]n any area where the [FCC] Lacks the authority to regulate, it equally lacks the power to preempt state law.").

[168] *ACA Connects v. Bonta, supra,* 24 F.4th 1233.

[169] Senate Bill (SB) 822, California Internet Consumer Protection and Net Neutrality Act of 2018. Stats. 2018, Ch. 976 (Wiener) codified as Civil Code Section 3100, et seq.

providers[170] challenged the law, making the same arguments asserted here.[171] The internet service providers pointed out that the FCC's 2018 Internet Order classified broadband as a Title I information service. The providers also argued that the 2018 Internet Order intended to take a "light-touch" de-regulatory approach to broadband internet regulation, and California's SB 822 would conflict with that intent.[172] The Ninth Circuit disagreed[173] and upheld a decision by the Eastern District of California, which rejected these preemption arguments.[174] The court relied heavily on the persuasive precedent set forth by the D.C. Circuit in *Mozilla,*[175] which also clashed with the internet service providers' preemption arguments. The court's ruling focused on the assertion that California is preempted from regulating broadband because of the FCC's policy of de-regulation in the 2018 Internet Order. The Ninth Circuit noted that the legal result of

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[170] The law was challenged by the internet provider trade association "American Communications Association."

[171] *ACA Connects v. Bonta, supra,* 24 F.4th 1233, 1237 ("The service providers here nevertheless contend that the California statute is preempted on the basis of both conflict and field preemption. They argue first that SB 822 is preempted because it conflicts with the policy underlying the FCC's reclassification decision; that policy was to eliminate all net neutrality regulation of broadband services, not to replace federal regulations with what could become a checkerboard of state regulations. The service providers additionally contend that SB-822 is preempted because it conflicts with the Communications Act itself and its limitations on federal government. They argue as well that even if there is no preemption by virtue of any identifiable conflict, federal law occupies the field of interstate services and therefore preempts state laws regulating intrastate services that intrude upon the field of interstate services.").

[172] *ACA Connects v. Bonta, supra,* 24 F.4th 1233, 1237 ("[The service providers] point out that the FCC made the reclassification decision in reliance on its policy judgement that a light-touch regulatory framework would be most effective. They contend that, because the D.C. Circuit upheld these policy-based grounds for the FCC's decision, the FCC's policy behind the decision forms a valid predicate for conflict preemption.").

[173] *ACA Connects v. Bonta, supra,* 24 F.4th 1233, 1243 ("Yet the Supreme Court has expressly rejected the argument that an agency's policy preferences can preempt state action in the absence of federal statutory regulatory authority. The Supreme court warned that to permit preemption on the basis of policy rather than legislation would allow a federal agency to confer power upon itself and override the power of congress. As the Supreme Court said, '[t]his we are both unwilling and unable to do.'" Citing *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374-375.).

[174] *ACA Connects v. Bonta, supra,* 24 F.4th 1233, 1237 ("We conclude the district court correctly denied the preliminary injunction. This is because only the invocation of federal regulatory authority can preempt state regulatory authority.).

[175] *ACA Connects v. Bonta, supra,* 24 F.4th 1233, 1241 ("Neither party challenges the validity or finality of *Mozilla*, so we look to the D.C. Circuit's analysis to guide our own.").

the reclassification of broadband as an "information service" diminished only the FCC's own authority to regulate broadband.[176] In reducing the FCC's own authority to regulate broadband, the FCC also diminished its authority to preempt states from regulating broadband.[177]

3. VoIP service is subject to state regulation and not federal preemption.

The BRB Client Companies also claim that the Commission's authority is preempted under federal law because of the "interstate" nature of VoIP.[178] Contrary to their claim, the Commission does not intend to regulate VoIP service in other states. Further, the notion that any state regulation that impacts interstate communication service is the exclusive jurisdiction of the FCC is also wrong. As noted in 2019 by the D.C. Circuit in *Mozilla Corp. v. FCC*, Congress envisioned the Communications Act of 1934 as part of "dual federal-state authority and cooperation" in the regulation of communication services.[179] To see this dual authority in action, one only needs to look at section 706 of the Telecommunications Act of 1996, which gives state commissions the authority to encourage the deployment of advanced communications services[180] that

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[176] *ACA Connects v. Bonta, supra,* 24 F.4th 1233, 1245 ("The legal effect of the reclassification, and the adoption of the Transparency Rule, was to diminish federal authority.").

[177] *ACA Connects v. Bonta, supra,* 24 F.4th 1233, 1245 ("As a result. . ., the agency no longer had the requisite authority to adopt federal net neutrality rules and could not preempt states from adopting them.").

[178] Opening Comments of Frontier at 4 ("Likewise, the FCC has deemed VoIP an interstate service, and at least one appellate court has designated VoIP as an 'information service.'"); Opening Comments of Consolidated at 7 ("Similarly, federal law confirms that VoIP is interstate and subject to a federal policy of preemption as to contrary state laws that would seek to regulate the service."); Opening Comments of TDS Companies at 7 ("Likewise, the FCC has determined that VoIP is an interstate service and that state commission regulation 'produces a direct conflict with our federal law and policies, and impermissibly encroaches on our exclusive jurisdiction over interstate services.'"); Opening Comments of Small LECs at 7-8 ("Likewise, as a matter of federal law, VoIP service is classified as interstate, and is subject to the FCC's authority, not the jurisdiction of this Commission.").

[179] *Mozilla v. FCC, supra,* 940 F.3d 1, 104.

[180] 47 U.S. Code § 1302 (d)(1) ("The term 'advanced telecommunications capability is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.").

enable services, including VoIP and broadband service.[181] Section 253, which empowers states to safeguard the "rights of consumers" of telecommunications services also illustrates the role of states in the regulation of communications services.[182] These sections demonstrate that Congress intended states to play a role in communications services regulation. In 2022, the Ninth Circuit's *ACA Connects v. Bonta* decision rejected the argument that the FCC has exclusive jurisdiction over communications services.[183] The Ninth Circuit explains that "[i]f Congress had intended the Communications Act to preempt state regulation touching on any interstate communications, there would be no need for any express preemption provisions."[184]

In support of their argument, the BRB Client Companies rely on a 2004 FCC Order, *In Re the Matter of Vonage Holdings Corporation's Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission* (Vonage Order);[185] a 2007 Eighth Circuit decision affirming the Vonage Order*, Minnesota PUC v. FCC*;[186] and a 2018 Eighth Circuit decision that quotes directly from the 2007 decision, *Charter Advanced Servs. (MN), LLC v. Lange.*[187] These authorities predate both *Mozilla* and *ACA Connects*. The reasoning upon which *Minnesota PUC* and *Charter Advanced Servs.* both depend is 17 years old. Further, the Vonage Order applied to a specific technology, nomadic interconnected VoIP service.[188] While it is true that the

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[181] 47 U.S.C. § 1302. Section 706 of the Telecommunications Act of 1996, Pub. L. 104-104, title VII, § 706, Feb. 8, 1996, 110 Stat. 153 (codified 47 U.S.C. § 1302)).

[182] 47 U.S.C. § 253.

[183] *ACA Connects v. Bonta, supra,* 24 F.4th 1233, 1248.

[184] *ACA Connects v. Bonta, supra,* 24 F.4th 1233, 1248.

[185] *In Re the Matter of Vonage Holdings Corporation's Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission* (WC Docket No. 03-211)(2004) 19 FCC Rcd 22404 (Vonage Order).

[186] *Minnesota PUC v. FCC* (8th Cir. 2007) 483 F.3d 570.

[187] *Charter Advanced Servs. (MN), LLC v. Lange* (8th Cir. 2018) 903 F.3d 715, 718 ("By contrast, 'any state regulation of an information service conflicts with the federal policy of nonregulation,' so that such regulation is preempted by federal law.").

[188] Vonage Order.

Commission's authority to regulate nomadic interconnected VoIP service has been limited by the Vonage Order, the Commission's authority to regulate fixed interconnected VoIP service providers is not. The Vonage Order does not apply to fixed interconnected VoIP service providers due to their capacity to track intrastate and interstate calls.[189]

States clearly have a role in regulating communications service. As such, the Commission has the authority to regulate VoIP providers within the regulatory framework of the COLR context.

4. CTIA's and the BRB Client Companies' anti-regulation arguments pertaining to wireless providers fail.

CTIA – The Wireless Association® (CTIA) relies on 47 U.S.C. § 332(c)(3)(A) for proposition that:

> . . ."no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service." This is a "broad preemption clause" that "completely preempt[s] the regulation of rates and market entry."[190]

CTIA's interpretation of section 332, which the BRB Client Companies appear to share,[191] is a half-truth, at best, and it goes much too far. A complete read of section 332

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[189] *Universal Service Contribution Methodology Proceeding, Report and Order of Proposed Rulemaking* (WC Docket No. 06-122) (2006) 21 FCC Rcd 7518 at ¶ 56.

[190] *Comments of CTIA on Order Instituting Rulemaking,* September 30, 2024 (Opening Comments of CTIA) at 2.

[191] The following BRB Client Companies' comments all cite to 47 U.S.C. § 332(c)(3)(A) as the underlying legal authority. Opening Comments of Consolidated at 7 ("There may be significant legal problems with applying COLR obligations to wireless carriers. . .")(the footnote appears misplaced on previous sentence); Opening Comments of TDS Companies at 8 ("Insofar as this question requests jurisdictional information regarding the extent to which the Commission could order wireless providers to serve as COLRs, the TDS Companies understand that there are likely to be significant legal limitations on such a policy."); Opening Comments of Small LECs at 8 ("The Independent Small LECs are not mobile wireless providers, but the companies understand that there would be significant legal obstacles to classifying cellular or mobile wireless carriers as COLRs."); Opening Comments of Frontier at 4 (Frontier's comments go slightly farther than the other BRB Client Companies to note that it is "generally

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contradicts CTIA's interpretation. The plain text of section 332 omitted by CTIA allows the states to regulate "other terms and conditions of commercial mobile services," and to impose requirements shared by all providers of telecommunications services that are "necessary to ensure the universal availability of telecommunications service at affordable rates."[192]

In support of its interpretation of section 332, CTIA cites to *In re Apple iPhone 3G Prods. Liab. Litig.*,[193] wherein the court directly quoted from *Bastien v. AT & T Wireless Servs., Inc*.[194] CTIA argues that the Commission regulates rates through the COLR construct in a manner that would violate section 332, and that the application of COLR regulations to wireless providers would constitute preempted entry regulation.[195]

In D.21-10-015, the Commission addressed a similarly facially incorrect interpretation of section 332[196] and an incorrect reliance on *Bastien*.[197] In that decision, the Commission states:

> On its face, Section 332(c)(A)(3) preempts only state attempts to prevent new mobile service carriers from entering the market or to regulate rates charged for wireless services; any other state regulation of mobile services providers remain unaffected.[198] Whether a particular regulation falls under the meaning of "market entry," "rates," or "other terms and conditions" is fact-specific, requiring a case-by-case

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aware of restrictions on the Commission's authority over mobile wireless providers, which may present an obstacle to designating wireless providers as COLRs.").

[192] 47 U.S.C. § 332(c)(3)(A).

[193] *In re Apple iPhone 3G Prods. Liab. Litig.* (N.D. Cal. 2010) 728 F. Supp. 2d 1065, 1070.

[194] *Bastien v. AT & T Wireless Servs., Inc.* (7th Cir.2000) 205 F.3d 983, 987.

[195] Opening Comments of CTIA at 2-4.

[196] D.21-10-015, *Order Instituting Rulemaking Regarding Emergency Disaster Relief Program*, October 7, 2021; issued in R.18-03-011 at 3-5.

[197] D.21-10-015 at 7-9.

[198] Citing to *Centennial P.R. License Corp. v. Telecomms. Regulatory Bd.* (1st Cir.) 634 F.3d 17, cert. denied (2011) 565 U.S. 826.

> determination.[199]. . .The scope of Section 332's preemptive language is limited to regulations that directly and explicitly control rates, prevent market entry, or require a determination of the reasonableness of rates.[200] The CPUC still retains the clear authority to regulate "other terms and conditions of service."[201]

D.21-10-015 points out that an interpretation of *Bastien* similar to that which CTIA urges here is much broader than the court decision allows; indeed, the Commission rejected the argument that *Bastien* stands for a complete preemption of state law.[202]

D.21-10-015 also highlights the Commission's police power authority in regulating wireless services, and police power is "unquestionably an area of traditional State control."[203] The decision states, "The California Constitution and California statutory law designate the CPUC as the principal body through which the State exercises its police power in the case of essential utility network services."[204] The decision continues:

> Pursuant to the police power authority vested in it by the California Constitution and the Public Utilities Code, and acting as the State's expert agency in matters of public utility infrastructure, the Commission articulated Health and Safety Rules that apply in whole or in part to wireless networks, and to the wired networks on which wireless networks depend."[205]

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[199] Citing to *Telesaurus VPC, LLC v Power* (9th Cir., 2010) 623 F.3d 998, 1007 ("the FCC rejected this per se approach, adopting instead a case-by-case analysis for preemption of state tort actions"); *Shroyer v AT&T* ("the FCC rejected this per se [preemption] argument in *In re Wireless Consumers Alliance*, and so do we.").

[200] Citing to *Spielholz v. Superior Court* (2001) 86 Cal. App. 4th 1366; *Fedor v. Cingular Wireless* (7th Cir. 2004) 355 F.3d 1069, 1074.

[201] D.21-10-015, *Order Instituting Rulemaking Regarding Emergency Disaster Relief Program*, October 7, 2021; issued in R.18-03-011 at 5.

[202] D.21-10-015 at 7 ("Instead, by relying on the *Bastien* case, Wireless Carriers erroneously contend that our interpretation of Section 332(c)(3)(A) is too narrow.").

[203] D.21-10-015 at 7 (citing *Raich v. Gonzalez*, 500 F3d 850, 866-67 (9th Cir., 2006), the decision continues, "[t]he California Constitution and California statutory law designate the CPUC as the principal body through which the State exercises its police power in the case of essential utility network service.").

[204] D.21-10-015 at 7.

[205] D.21-10-015 at 7.

Similar considerations involving the State's police powers, and its entitlement to regulate "other terms and conditions of commercial mobile services," and to impose requirements shared with all providers of telecommunications services that are "necessary to ensure the universal availability of telecommunications service at affordable rates"[206] are at play here.

CTIA's Comments overlook D.21-10-105 and ignore the police power interests reserved by the Tenth Amendment of the U.S. Constitution.[207] [208] The Commission must extend its jurisdiction over wireless providers within the COLR construct as necessary to ensure universal service and protect Californians' health and safety. As noted in Cal Advocates' initial proposal, "COLRs provide basic service to customers in High Fire Threat Districts (HFTDs), Floodplains, Tsunami Hazard areas, disadvantaged communities, tribal areas, and areas where the median household income level is below 80% of the state average."[209] Notably, 10.39% of the households in AT&T's service area, 11.96% of the households located in Frontier's service area, and 88.66% of the households located in the Independent Small LECs' service areas are located in HFTDs.[210] HFTDs are "areas where environmental conditions pose an elevated risk for utility-associated wildfires and are identified on a CPUC Fire-threat map. . ."[211] The

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[206] 47 U.S.C. § 332(c)(3)(A).

[207] U.S. Const., 10th Amend. ("[P]owers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.").

[208] After the text that CTIA cites above, from *In re Apple iPhone 3G Prods. Liab. Litig.* (N.D. Cal. 2010) 728 F. Supp. 2d 1065, 1070, the *In re Apple iPhone* court continues, quoting to the 7th Circuit's *Batien* decision, "However, the FCA also contains a savings clause that 'allow[s] claims that do not touch on the areas of rates or market entry': 'Nothing in this chapter shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies.' *Id.* (citing 47 U.S.C. § 414). The two clauses read together create separate spheres of responsibility, one exclusively federal and the other allowing concurrent state and federal regulation. Cases that involve 'the entry of or the rates charged by any commercial mobile service or any private mobile service' are the province of federal regulators and courts. The states remain free to regulate 'other terms and conditions' of mobile telephone service. *Id.* (citations omitted)."

[209] Initial Proposal of Cal Advocates at 10.

[210] Initial Proposal of Cal Advocates at 10.

[211] Initial Proposal of Cal Advocates at Appendix C.

Commission's police powers, exercised within the COLR construct, are of paramount importance in communities that face the threat of devastating wildfires.

In the context of the COLR construct, there is an overwhelming need for the Commission to exercise its police powers over wireless carriers. D.24-06-024, *Decision Dismissing with Prejudice the Application of AT&T California to Withdraw as a Carrier of Last Resort*, notes the gaps in wireless providers' coverage "due to changes in terrain, dense foliage, geographic or structural obstacles and other characteristics that limit wireless signal propagation," that the public brought to light in massive numbers during public participation hearings and on the proceeding's Docket Card.[212] The decision further notes, "The Commission has made similar observations regarding wireless eligible telecommunication carriers not being able to serve everywhere in their claimed service territories."[213] Such observations of inadequate service provided by the decision describe in detail a concern that customers would be unable to complete emergency calls.[214] [215]

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[212] D.24-06-024, *Decision Dismissing with Prejudice the Application of AT&T California to Withdraw as a Carrier of Last Resort* at 18-20.

[213] D.24-06-024 at 20, FN 49. ("See, e.g., Resolution T-17437, which conditionally approved the ETC application of TAG Mobile, LLC at 15, Resolution T-17436, which conditionally approved the ETC application of Boomerang Wireless, LLC at 15, Resolution T-17466, which conditionally approved the ETC application of Global Connection, Inc. of America, doing business as "Stand Up Wireless," at 14.

[214] D.24-06-024 at 20, FN 49, citing Resolution T-17448 at 17, conditionally granting the ETC application of Air Voice Wireless, LLC. ("Although wireless phone service offers great mobility for consumers, there are safety concerns related to wireless mobile phone service and E-911 and/or 911 connection limitations. Where there is a lack of coverage, poor signal strength, or atmospheric or terrain conditions that affect connections, emergency calls may not be completed. In rural areas, for example, with spotty connectivity or interference (e.g. due to geographic or structural obstacles), wireless mobile resellers of wholesale facilities service cannot guarantee full, accessible emergency connections for their own direct customers.").

[215] D.24-06-024 at 20, FN 49, citing Resolution T-17473 at 18, conditionally approving the ETC application of Blue Jay Wireless, LLC. ("CD staff has safety concerns in two main areas of wireless phone service: the coverage of wireless mobile phone service and the ability of emergency first responders to find the location of the caller when using a mobile phone. Where there is a lack of coverage, poor signal strength, or atmospheric or terrain conditions that affect connections, emergency calls may not be completed. In rural areas, for example, with spotty connectivity or interference (e.g. due to geographic or structural obstacles), wireless mobile resellers of wholesale facilities service cannot guarantee full, accessible emergency connections for their own customers. An incomplete emergency call can have devastating results.").

Whether or not the Commission ultimately decides to mandate wireless providers to serve as COLRs, the record of this proceeding should accurately reflect the Commission's authority to regulate wireless providers within the context of the COLR regulatory framework. Within the COLR context, the Commission is well within the state and federal constitutions, the California Public Utilities Code, case law, and the federal Communications Act to regulate terms and conditions that do not directly and explicitly control rates, prevent market entry, or determine the reasonableness of rates, but instead allow the state to protect its residents pursuant to its police powers.

J. The proceeding categorization must maintain stringent ex parte reporting requirements.

Consolidated, TDS Companies, and the Small LECs state that the proceeding should be recategorized as quasi-legislative under Rule 1.3(f) because it concerns changes to the COLR rules that impact a class of industry entities.[216] They argue that any changes to the CHCF-B will be rule-related and thus quasi-legislative, with only an incidental impact on ratepayer costs.

Cal Advocates supports the OIR's determination "that this proceeding is ratesetting because some of the issues in Section 2, Initial Scope, may require changes to basic service requirements or impact the collection and expenditure of ratepayer monies, including the California High Cost Fund-B."[217] Cal Advocates strongly supports the OIR's mandate that, in accordance with that determination, ex parte communications are restricted and must be reported pursuant to Article 8 of the Commission's Rules of Practice and Procedure.[218]

Contrary to Consolidated's, TDS Companies', and the Small LECs' arguments, Cal Advocates disagrees that changes to basic service requirements and/or the CHCF-B,

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[216] Opening Comments of Consolidated at 10-11; Opening Comments of TDS Companies at 4-5; Opening Comments of Small LECs at 4-5.

[217] R.24-06-012 at 6.

[218] R.24-06-012 at 6.

which once totaled $352 million,[219] are guaranteed to only have an "incidental impact" on ratepayer costs. Even if the proceeding reflected some quasi-legislative aspects and other ratesetting characteristics, which Cal Advocates does not concede, it would remain as ratesetting. The default is for non-conforming proceedings to be conducted as ratesetting proceedings, unless and until the Commission determines that the rules applicable to one of the other categories, or some hybrid of the rules, are best suited to the proceeding.[220]

If the Commission would determine that some hybrid of the rules was best suited to the proceeding, Cal Advocates would urge the Commission to adopt Article 8's restrictions and reporting requirements on ex parte communications applicable to ratesetting proceedings. Rule 8.2(a), in contrast, allows ex parte communications without restrictions or reporting requirements in quasi-legislative proceedings. Thus, parties would have no knowledge of other parties' communications with decision-makers, and no reasonable opportunity to respond. Adopting the more stringent reporting requirements for ratesetting proceedings would ensure that no party gains an unfair advantage over another in this contested matter,[221] and that all parties in the proceeding have notice of any ex parte communications and the opportunity to respond.

III. CONCLUSION

For the reasons stated above, Cal Advocates recommends that the Commission adopt the recommendations contained in its Initial Proposal and these reply comments.

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[219] R.24-06-012 at 5.

[220] CPUC Rules of Practice and Procedure, Rule 7.1 Categorization, subd. (e)(2) ("When a proceeding does not clearly fit into any of the categories as defined in Rules 1.3(a), (b), (f) and (g), the proceeding will be conducted under the rules applicable to the ratesetting category unless and until the Commission determines that the rules applicable to one of the other categories, or some hybrid of the rules, are best suited to the proceeding.").

[221] Behles, Deborah, and Weissman, Steven, Ex Parte Requirements at the California Public Utility Commission: A Comparative Analysis and Recommended Changes at 4. Available at: Analysis_and_Recommendations_Related_to_CPUC_Ex_Parte_Practice_1.16.15.pdf (berkeley.edu).

Respectfully submitted,

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APPENDIX A: Cal Advocates' Analysis of Broadband Service Providers Availability in AT&T's Service Territory

AT&T's Analysis
Table Segment from Facilities-Based Fixed and Mobile Broadband Coverage of AT&T's POTS Service Territory.
(From AT&T Opening Comments – Attachment B at 16, Table 1)

	Population	
	#	%
Total AT&T Service Territory	29,603,944	100.0%
Fixed or Mobile Broadband Carriers Other than AT&T POTS		
1+	29,568,225	99.9%
2+	29,511,126	99.7%
3+	26,360,517	99.2%

Cal Advocates Analysis[1]
1) Wireline Non-legacy Technologies (DOCSIS 3.0 or Later, or Fiber) at Least 25/3 Mbps and 100/20 Mbps

	Population	
	#	%
Total AT&T Service Territory	29,426,272	100.0%
1.1) Wireline Non-legacy Carriers including AT&T **(at Least 25/3 Mbps)**		
1+	7,637,068	26.0%
2+	984,815	3.0%
3+	58,732	0.2%
1.2) Wireline Non-legacy Carriers including AT&T **(at Least 100/20 Mbps)**		
1+	7,634,992	25.9%
2+	983,436	3.3%
3+	57,865	0.2%

[1] Based on CPUC Annual Collected Broadband Data. Available at: https://www.cpuc.ca.gov/industries-andtopics/ internet-and-phone/broadband-mapping-program/cpuc-annual-collected-broadband-data. (Data as of December 31, 2021. This is the latest CPUC publicly available data release. Current broadband deployment might differ from this latest release.).

2) Wireline Non-legacy Technologies and Fixed Wireless at Least 25/3 Mbps and 100/20 Mbps

2.1) Wireline Non-legacy (including AT&T) and Fixed Wireless Carriers **(at Least 25/3 Mbps)**

1+	10,832,785	36.8%
2+	2,370,830	8.1%
3+	340,709	1.2%

2.2) Wireline Non-legacy (including AT&T) and Fixed Wireless Carriers **(at Least 100/20 Mbps)**

1+	9,002,792	30.6%
2+	1,533,192	5.2%
3+	150,894	0.5%

3) Wireline Non-legacy Technologies, Fixed Wireless and Mobile Wireless at Least 25/3 Mbps and 100/20 Mbps

3.1) Wireline Non-legacy (including AT&T), Fixed Wireless and Mobile Wireless Carriers **(at Least 25/3 Mbps)**

1+	28,720,612	97.6%
2+	24,392,582	82.9%
3+	10,227,416	34.8%

3.2) Wireline Non-legacy (including AT&T) , Fixed Wireless and Mobile Wireless Carriers **(at Least 100/20 Mbps)**

1+	9,002,792	30.6%
2+	1,533,192	5.2%
3+	150,894	0.5%