FILED
10/30/24
04:59 PM
R2406012

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Proceeding to Consider Changes to the Commission's Carrier of Last Resort Rules.	R. 24-06-012

REPLY COMMENTS OF

CALAVERAS TELEPHONE COMPANY (U 1004 C)
CAL-ORE TELEPHONE CO. (U 1006 C)
DUCOR TELEPHONE COMPANY (U 1007 C)
FORESTHILL TELEPHONE CO. (U 1009 C)
KERMAN TELEPHONE CO. (U 1012 C)
PINNACLES TELEPHONE CO. (U 1013 C)
THE PONDEROSA TELEPHONE CO. (U 1014 C)
SIERRA TELEPHONE COMPANY, INC. (U 1016 C)
THE SISKIYOU TELEPHONE COMPANY (U 1017 C)
VOLCANO TELEPHONE COMPANY (U 1019 C)
("INDEPENDENT SMALL LECS")

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

Sarah J. Banola
Chan Q. Vu
BRB Law LLP
492 9th Street, Suite 220
Oakland, CA 94607
Phone: (510) 955-1087
Email: qc@brblawgroup.com

Attorney for the Independent Small LECs

October 30, 2024

I. INTRODUCTION.

Pursuant to Rule 6.2 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure ("Rules") and the procedural schedule outlined in the Order Instituting Rulemaking ("OIR") that initiated this proceeding, Calaveras Telephone Company (U 1004 C), Cal-Ore Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co. (U 1009 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou Telephone Company (U 1017 C), and Volcano Telephone Company (U 1019 C), (collectively, the "Independent Small LECs") submit these reply comments addressing issues raised in the opening comments of the parties on the OIR.[1]

The consumer groups' Opening Comments reflect an improper effort to transform this OIR into a generic telecommunications industry reexamination docket and impose extensive copper migration rules and broadband service regulations on Carriers of Last Resort ("COLRs").[2] Not only would these proposals conflict with the Commission's express intent in adopting specific questions in the OIR that relate to COLR status and basic *voice* service, but they would also impose exorbitant costs and burdens on the parties, particularly the Independent Small LECs. The Independent Small LECs are small, rural telephone companies with limited resources and Commission-imposed caps on cost-recovery.[3] They all participate and rely upon the California High Cost Fund-A ("CHCF-A") program and have no plans to pursue relief from their COLR obligations so they should not be subject to the wide-ranging proposals being

[1] The following parties filed opening comments: California Farm Bureau Federation ("Farm Bureau"); the Center for Accessible Technology ("CforAT"), the Communications Workers of America ("CWA") District 9, and The Utility Reform Network ("TURN") (collectively, the "Joint Commenters");Consolidated Communications of California Company ("Consolidated"); CTIA – The Wireless Association ("CTIA"); EMF Safety Network; Empowering Quality Utility Access for Isolated Localities ("EQUAL"); Frontier California Inc., Citizens Telecommunications Company of California Inc., Frontier Communications of the Southwest Inc. (collectively, "Frontier"); Happy Valley Telephone Company, Hornitos Telephone Company, Winterhaven Telephone Company (collectively, the "TDS Companies"); Pacific Bell Telephone Company ("AT&T"); Public Advocates Office ("Cal Advocates"); Small Business Utility Advocates ("SBUA"); and USTelecom - The Broadband Association ("USTelecom").

[2] *Joint Commenters Opening Comments* at 1-5, 10-13, 19-21, 25-28, 36-39; *Cal Advocates Opening Comments* at 1-4, 6-9, 11-23, 43-64, 69-71; *SBUA Opening Comments* at 4-5, 7.

[3] *See* D.21-06-004 at 43 (OPs 6-7).

pursued by the consumer groups. The parties' comments also demonstrate that these proposals are unnecessary to address in this OIR as many other proceedings are addressing broadband accessibility, affordability and service quality.[4] In addition, the consumer groups' proposed broadband service rules exceed the Commission's jurisdiction and would be subject to federal preemption. Cal Advocates' proposed copper migration rules are also unnecessary as copper migrations are governed by rules of the Federal Communications Commission ("FCC"). In addition, the Commission has previously rejected Cal Advocates' proposals to impose more extensive copper migration rules on ILECs. Rather than adopt the consumer groups' proposals, the Commission should modernize its definition of "basic service" as suggested in the Independent Small LECs' and other carriers' opening comments.[5]

II. THE COMMISSION SHOULD MODERNIZE AND SIMPLIFY THE DEFINITION OF "BASIC SERVICE."

As recommended in the Independent Small LECs' and other parties' opening comments, the Commission should update and simply its definition of "basic service" to remove unnecessary and outdated elements.[6] Joint Commenters argue that all of the elements should be maintained because they are "critical and necessary to ensure that all customers, regardless of location, income, or demographics, have access to service which is critical not only for communication in general, but for public safety and disaster preparedness specifically."[7] However, Joint Commenters fail to explain how each element is "critical and necessary" and admit that "the specifics of each of these elements may be up for debate."[8] The Independent Small LECs and several other parties have shown that multiple elements should be eliminated because they are outdated and no longer necessary or applicable, such as directory service and operator service.[9] While Joint Commenters and Cal Advocates urge that all elements should be

[4] *See, e.g.*, *Joint Commenters Opening Comments* at 13-18; *AT&T Opening Comments* at 5-6; *CalBroadband Opening Comments* at 12; *US Telecom Opening Comments* at 5.
[5] *See, e.g.*, *Small LECs Amended Opening Comments* at 2-3, 9, Appendix A; *Frontier Opening Comments* at 5; *AT&T Opening Comments* at 27-28.
[6] *Id*.
[7] *Joint Commenters Opening Comments* at 7-8.
[8] *Id*.
[9] *Independent Small LECs Opening Comments* at 2-3, 9, Appendix A; *AT&T Opening Comments* at 27-28; *Consolidated Opening Comments* at 8.

maintained, they fail to justify the continued need for these elements.[10] In addition, Joint Commenters assert that the Commission "should modernize the basic service requirements," and propose specific revisions to the basic service elements, which were last revised in 2012.[11] Their proposed revisions, however, include outdated and inapplicable elements that the Independent Small LECs and other parties have shown should be stricken, such as directory assistance and one-time fee blocking.[12] The Small LECs do not oppose Joint Commenters' proposed updates to basic service element 2 (911 access) to include Enhanced (E) or Next Generation (NG) 911 and other N11 emergency services.[13] Because Decision 19-08-025 already governs disaster relief consumer protections for COLRs and other telecommunications providers it is not necessary to incorporate these protections as part of the basic service definition. Cal Advocates and SBUA also propose that the basic service elements include broadband,[14] which the Independent Small LECs oppose for the reasons discussed in Section III.

III. THIS OIR SHOULD EXCLUDE CONSIDERATION OF THE CONSUMER GROUPS' BROADBAND PROPOSALS FROM THE SCOPE OF THIS OIR, BECAUSE THEIR PROPOSALS ARE UNNECESSARY AND WOULD EXCEED THE COMMISSION'S JURISDICTION AND BE SUBJECT TO FEDERAL PREEMPTION.

The consumer groups' proposed broadband service obligations for COLRs would greatly expand the scope of this proceeding beyond its intended purpose[15] and would impose unnecessary costs on the parties. The consumer groups fail to justify the inclusion of broadband regulations in this OIR, particularly since many other Commission proceedings are addressing the broadband accessibility, service quality and affordability issues they seek to include in this OIR.[16] In the Independent Small LECs' rate cases, Cal Advocates has also repeatedly sought to

[10] *Cal Advocates Opening Comments* at 9; *SBUA Opening Comments* at 7.
[11] *Joint Commenters* at 35, Appendix B.
[12] *Id*.; *Independent Small LECs Opening Comments* at 2-3, 9, Appendix A; *AT&T Opening Comments* at 27-28; *Consolidated Opening Comments* at 8.
[13] *Joint Commenters* at 35, Appendix B.
[14] *Independent Small LECs Opening Comments* at 2-3, 9, Appendix A; *AT&T Opening Comments* at 27-28; *Consolidated Opening Comments* at 8.
[15] *OIR* at 4-6.
[16] *See, e.g.*, *Joint Commenters Opening Comments* at 13-18; *AT&T Opening Comments* at 5-6; *CalBroadband Opening Comments* at 12; *US Telecom Opening Comments* at 5.

impose broadband service quality and affordability requirements on the Independent Small LECs' affiliate Internet Service Provider ("ISP") operations.[17] In support of Cal Advocates' proposal to condition provisional authorization to end COLR obligations on complete deployment of "broadband basic service" at 100/20 Mbps across the COLR's service area for which the COLR is seeking to withdraw, it claims that the CHCF-A Program "allows small rural telephone companies to invest in broadband capable networks."[18] Cal Advocates fails to acknowledge, however, that it has strongly opposed the Independent Small LECs' proposed broadband-capable investments in the Independent Small LECs' rate cases.[19] The consumer groups' proposals to impose disparate broadband service regulations on COLRs would be discriminatory to the Small LECs and other existing COLRs and violate their equal protection rights.[20]

Cal Advocates' portrayal of broadband coverage is also inaccurate. Cal Advocates identifies an area as "unserved" merely because the area is unserved by a specific technology, such as DSL, fiber, cable modem, fixed wireless, or mobile wireless.[21] This fact does not mean the area is unserved. In addition, Cal Advocates' depiction of broadband deployment in the Independent Small LECs' service area appears inaccurate and significantly understates broadband deployment in at least some of the companies' service areas. This error is likely due to Cal Advocates' reliance on the Commission's Interactive Broadband Map data as of December 31, 2021, which is based on census block data as opposed to serviceable location data.[22] Use of the serviceable location data which the Independent Small LECs submit to the Commission as part of the Commission's annual broadband data collection would have resulted

---

[17] *See, e.g.*, D.24-01-030 at 30-34 (addressing Cal Advocates' broadband service and affordability proposals in Kerman's rate case); D.24-01-031 at 30-34 (same in Foresthill's rate case).
[18] *Cal Advocates Opening Comments* at 54-57.
[19] *See, e.g.*, D.24-01-030 at 26 (noting Cal Advocates' proposed disallowance of Kerman's proposed broadband-capable plant investments); D.24-01-031 at 26 (same for Foresthill).
[20] *See, e.g.*, *Walgreen Co. v. City & Cty. of San Francisco,* 185 Cal.App.4th 424, 443–44 (2010); *United States Steel Corp. v. Pub. Utilities Comm'n*, 29 Cal.3d 603, 610 (1981).
[21] *See Cal Advocates Opening Comments* at 23-42.
[22] *Id.* at 23, n.84; *see also CPUC Frequently Asked Questions (FAQs) California Interactive Broadband Map*, available at https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/broadband-mapping/docs-uploaded-2023/faqs-2023-ca-interactive-broadband-map-41023.pdf.

in higher percentages of broadband deployment. In addition, use of more recent broadband deployment data as of December 31, 2023 would also result in higher percentages of broadband deployment, particularly fiber deployment.

In addition, the consumer groups' proposals would exceed the Commission's jurisdiction, which is limited to the intrastate regulated activities of California public utilities, and it does not include Internet Service Providers or broadband services.[23] Cal Advocates admits that the "Commission generally lacks a mechanism to compel a broadband provider to deploy broadband service to a specific location or area," but incorrectly argues that the Commission may compel a COLR to do so as a condition to seeking relief from its COLR obligations.[24] Even if the Commission had authority under state law to impose onerous common carrier regulations on broadband services—which it does not—mandating COLRs or their ISP affiliates to comply with broadband deployment, speed, pricing and service quality regulations would be subject to federal preemption. The FCC recently adopted a tailored regulatory framework for broadband services designed to avoid "unnecessarily stifling investment and innovation."[25] The FCC's *Title II Order* is under judicial review, and a stay has been imposed by the Sixth Circuit, making the "Title II" framework provisionally inoperative.[26] Under either a "Title I" or the "Title II" classification, it would be unlawful for the Commission to impose onerous broadband service requirements on broadband operations that the Commission does not regulate.

---

[23] *See* Pub. Util. Code § 234(a) (limiting authority over "telephone corporations" to companies that own, control, operate, or manage a "telephone line" "within this state"), 216 (defining public utility with reference to "telephone corporations"); Cal. Const., art. XII, §§ 3 (defining public utilities that are "subject to control by the Legislature"), 6 (the CPUC "may fix rates . . . for all *public utilities subject to its jurisdiction*.") (emphasis added); *see also City & County of San Francisco v. W. Air Lines, Inc.*, 204 Cal.App.2d 105, 131 (1962) ("Unless the enterprise or activity in question is a public utility as defined in the Constitution or Public Utilities Code, it is not subject to the jurisdiction of such commission.") (citing *Television Transmission v. Public Util. Comm'n.,* 47 Cal.2d 82, 84 (1956)); *United States v. Costanzo* (9th Cir. 2020) 956 F.3d 1088, 1092 (The Ninth Circuit "ha[s] long recognized that the Internet and the nation's vast network of telephone lines are instrumentalities of and intimately related to interstate commerce.").).

[24] *Cal Advocates Opening Comments* at 13.

[25] *See In the Matter of Safeguarding and Securing the Open Internet Restoring Internet Freedom*, WC Docket 23-320, *Report and Order, et al.,* FCC 24-52, ¶ 6 (rel. May 7, 2024) ("*Title II Order*").

[26] *In re MCP No. 185*, No. 24-7000, 2024 U.S. App. LEXIS 19815 (6th Cir. Aug. 1, 2024) (stay imposed in "per curiam" opinion).

If broadband is a "Title I" service, the consumer groups' proposed broadband service regulations would impermissibly conflict with the FCC's determinations that broadband should be free of "public utility-type" regulations.[27] While the Ninth Circuit rejected preemption arguments in an interlocutory appeal from the denial of a preliminary injunction in a case challenging a California "net neutrality" statute,[28] the legislation there merely "touche[d] on interstate communications."[29] Unlike the generic policy to encourage an open Internet by prohibiting content prioritization, throttling, and blocking, the consumer groups' proposals would impose costly and burdensome broadband deployment, speed, pricing and service quality regulations on COLRs.

Alternatively, if broadband is a "Title II" service, the FCC's extensive forbearance and preemption provisions invoke express and conflict preemption as to state commission attempts to regulate broadband service.[30] In support of this regulatory approach, the FCC adopted broad regulatory forbearance directives,[31] which would preclude state commissions from applying or

---

[27] *See In the Matter of Restoring Internet Freedom*, WC Docket No. 17-108, *Declaratory Ruling, Report and Order, and Order*, FCC 17-166 (rel. Jan. 4, 2018) ("*Restoring Internet Freedom Order*"), ¶¶ 1, 20, 100 (adopting classification of broadband as an "information service" under "Title I" of the Telecommunications Act, and confirming that that ISPs must be free of "utility style regulation."), *vacated in part on other grounds by Mozilla Corp. v. Fed. Commc'ns Comm'n*, 940 F.3d 1, 35 (D.C. Cir. 2019) (upholding the FCC's classification of broadband Internet access as an "information service"); *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 873 (2000) (citing *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941) ("a "state law" will be preempted if it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."); *see Mozilla, supra,* 940 F.3d at 81-82, 86 (preserving conflict preemption as a possibility if there are future "particular state law[s]" that "conflict with the 2018 Order.").

[28] *ACA Connects-America's Communs. Ass'n v. Bonta*, 24 F.4th 1233 (9th Cir. 2022).

[29] *Id*. at 1247 (dismissing plaintiffs' arguments by explaining that not everything that "touches on interstate communications . . . impermissibly regulates in that field.").

[30] *Title II Order*, FCC 24-52 at ¶ 426 (noting that the FCC forbears "from all *ex ante* and *ex post* rate regulation, tariffing, and related recordkeeping and reporting requirements insofar as they would arise from our classification of BIAS."); 47 U.S.C. § 160(e) ("A State commission may not continue to apply or enforce any provision of this chapter that the Commission has determined to forbear from applying . . . ."); *see also Title II Order,* FCC 24-52 at ¶ 267 ("Because our Order today restores and rests on the broad regulatory authority conferred on the Commission by Title II, *Mozilla* does not cast any doubt on the Commission's power, under the impossibility exception as well as ordinary principles of conflict preemption, to preempt state law when exercising—or when forbearing from—our affirmative regulatory authority over broadband.").

[31] *Title II Order* at ¶ 383.

enforcing any provision that are within the scope of the FCC's forbearance.[32] The consumer groups' proposed broadband service regulations would be precluded by the FCC's broad forbearance from "all ex ante and ex post rate regulation."[33] In addition, these proposals would interfere with or undermine the FCC's restrained and carefully-configured federal regulatory framework for broadband services, so conflict preemption would also apply.[34]

IV. THE COMMISSION SHOULD ALSO EXCLUDE CAL ADVOCATES' PROPOSED COPPER MIGRATION RULES FROM THE SCOPE OF THIS OIR BECAUSE SUCH RULES ARE UNNECESSARY AND WOULD CONFLICT WITH FEDERAL AND STATE POLICY.

Cal Advocates proposes burdensome and exhaustive copper retirement and customer migration plans for all ILECs "regardless of the ILEC's COLR status or any intention to change COLR status."[35] This proposal exceeds the scope of this COLR OIR, and Cal Advocates admits that "copper retirements have and will continue to occur largely *outside* the context of changes in COLR obligations."[36] In addition, Cal Advocates notes that FCC rules apply to ILECs' copper migrations.[37] Moreover, Cal Advocates acknowledges that the Commission itself adopted limited copper migration rules for CLECs and ILECs but declined to adopt additional copper migration regulations.[38] Indeed, the Commission rejected Cal Advocates' and other parties' proposals to impose more onerous copper migration rules based on the lack of evidence of any harm caused by ILECs' copper retirements, the FCC's existing requirements, and federal and state policies to encourage investments in broadband-capable fiber networks.[39] For these same reasons, the Commission should reject Cal Advocates' improper proposal for the Commission to again consider more expansive copper migration rules.

---

[32] 47 U.S.C. § 160(e).
[33] *Title II Order* at ¶ 426 (noting that the FCC forbears "from all *ex ante* and *ex post* rate regulation, tariffing, and related recordkeeping and reporting requirements insofar as they would arise from our classification of BIAS."); 47 U.S.C. § 160(e) ("A State commission may not continue to apply or enforce any provision of this chapter that the Commission has determined to forbear from applying . . . .").
[34] *Title II Order* at ¶¶ 265-267.
[35] *Cal Advocates Opening Comments* at 57-64.
[36] *Id.* at 57 (emphasis added).
[37] *Id.* at 59; *see also* 41 C.F.R. § 51.333 *et. seq*.
[38] *Id.* at 57-58, *citing* D.08-11-033 and D.10-07-024.
[39] D.08-11-033 at 32-33.

V. CONCLUSION.

The Commission should reject the consumer groups' proposals to transform this COLR OIR into a wide-ranging examination of broadband deployment, service quality, affordability, and copper migration rules, which would impose unjustified and unrecoverable regulatory costs on the Independent Small LECs. The Commission should maintain a narrow focus in this OIR and consider reasonable revisions to update the definition of "basic service," as proposed in the Independent Small LECs' Opening Comments.

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

Sarah J. Banola
Chan Q. Vu
BRB Law LLP
492 9th Street, Suite 220
Oakland, CA 94607
Phone: (510) 955-1087
Email: qc@brblawgroup.com

By */s/ Chan Q. Vu*
Chan Q. Vu

Attorneys for the Independent Small LECs