

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of AT&T for Preemption and)	
Declaratory Ruling Regarding)	WC Docket No. 26-125
California's Carrier of Last Resort)	
and Related Requirements)	

**COMMENTS OF
THE FREE STATE FOUNDATION**

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I. Introduction and Summary

The Free State Foundation ("FSF") hereby responds to the Wireline Competition Bureau's request for comment¹ on the Petition for Preemption and Declaratory Ruling (Petition) filed by AT&T Services, Inc. (AT&T) on May 20, 2026.² The Petition stands as one of multiple fronts in AT&T's concerted campaign to free itself from California's burdensome and outdated "Carrier of Last Resort" (COLR) rules.³ According to AT&T, those rules "effectively dictate that [it] can satisfy its COLR obligation only by offering"

* These comments express the views of Randolph J. May, President of the Free State Foundation, and Andrew Long, Senior Fellow. The views expressed do not necessarily represent the views of others associated with the Free State Foundation. The Free State Foundation is an independent, nonpartisan free market-oriented think tank.

¹ See generally Public Notice, *Wireline Competition Bureau Seeks Comment on AT&T's Petition for Preemption and Declaratory Ruling*, WC Docket No. 26-125, DA 26-520 (released May 22, 2026), available at <https://docs.fcc.gov/public/attachments/DA-26-520A1.pdf> (Public Notice).

² Petition for Preemption and Declaratory Ruling, *In the Matter of Petition of AT&T for Preemption and Declaratory Ruling Regarding California's Carrier of Last Resort and Related Requirements*, WC Docket No. 26-125 (filed May 20, 2026), available at <https://www.fcc.gov/ecfs/document/1052056507747/1> (Petition).

³ See, e.g., Christopher Cole, "AT&T Pushes Feds to Preempt Calif. Copper Network Rules," *Law360* (June 8, 2026), available at <https://www.law360.com/articles/2486947/at-t-pushes-feds-to-preempt-calif-copper-network-rules> (AT&T "has both petitioned the FCC and sued in federal court to get out from under state regulations blocking [it] from retiring copper lines even in areas where it claims there are multiple service alternatives" and has "filed applications with the FCC to discontinue legacy services where it says more modern services are available, as well as a pair of petitions to end its carrier of last resort and [Eligible Telecommunications Carrier (ETC)] obligations.") (subscription required).

Plain Old Telephone Service (POTS).⁴ Consequently, they require it to squander \$1 billion annually to maintain a copper line network that is little used (currently by only 3 percent of households, a figure that is trending steadily lower), supports only legacy (primarily voice) services, increasingly entices vandalism and theft, and performs worse than modern broadband- and mobile-based alternatives. And, absent the declaration of preemption sought by the Petition, those rules would continue to require AT&T to maintain its copper line networks even after receiving authority from the FCC to discontinue service, potentially for years to come.

This result would not be good for California's consumers. Indeed, by maintaining a backward-facing posture, it would affirmatively harm them by delaying and impeding the goal of achieving greater broadband connectivity for all.

II. Obligations to Maintain Legacy Copper Infrastructure Impose Unnecessary Costs and Delay the Transition to All-IP Networks

California's COLR regime diverts capital, other resources, and attention away from the construction of, and migration to, all-IP networks, a goal vociferously supported by Free State Foundation scholars for well over a decade.⁵

As detailed in "Forbearance: The Fast Lane to Implementing Modern All-IP Networks," an October 2025 *Perspectives from FSF Scholars*,⁶ there are a number of

⁴ *Petition* at 12.

⁵ See, e.g., Comments of the Free State Foundation, *In the Matter of AT&T and NTCA Petitions on Transition from Legacy Transmission Platforms to Services Based on Internet Protocol*, GN Docket No. 12-353, DA 12-1999 (filed January 18, 2013), available at <https://freestatefoundation.org/wp-content/uploads/2019/08/Transition-from-Legacy-Transmission-Platforms-to-Services-Based-on-IP-Comments-012813.pdf>, at 3 ("An agency process for facilitating [the] transition to all-IP voice services should be established and earnestly pursued to ensure the timely end of the [public switched telephone network].").

⁶ See generally Andrew Long, "Forbearance: The Fast Lane to Implementing Modern All-IP Networks," *Perspectives from FSF Scholars*, Vol. 20, No. 43 (October 25, 2025), available at <https://freestatefoundation.org/wp-content/uploads/2025/10/Forbearance-The-Fast-Lane-to-Implementing-Modern-All-IP-Networks-102425.pdf>.

unjustified costs associated with legacy copper line networks. For starters, both replacement parts and experienced workers are in short supply, rendering repairs and routine maintenance prohibitively expensive. In addition, the price of copper itself is sufficiently high enough to inspire rampant theft and vandalism, prompting Commissioner Olivia Trusty to declare recently that "[c]opper theft is an attack theft on American infrastructure."⁷ And, finally:

From a technical perspective, all-IP networks are far superior to legacy copper-based voice networks. IP infrastructure supports the high-speed transmission of voice, video, and data packets; allows for dynamic resource allocation, virtualization, and innovative offerings (e.g., network slicing); simplifies scaling; and reduces operating expenses. From a consumer welfare perspective, they deliver lower costs and accelerate innovation.⁸

It is also important to point out that regulatory obligations to maintain copper line networks, such as California's COLR regime, thwart the broader policy goal of universal broadband connectivity, a bipartisan priority at the heart of Chairman Carr's Build America Agenda,⁹ the \$42.45 billion Broadband Equity, Access, and Deployment

⁷ Nick Langan, "Copper Theft Is an Attack on American Infrastructure, FCC's Trusty Says," *Radio World* (June 6, 2026), available at <https://www.radioworld.com/news-and-business/business-and-law/copper-theft-is-an-attack-on-american-infrastructure-fccs-trusty-says>. See also *id.* (reporting that Trusty "urged Congress to act on" the "Stopping Theft and Destruction of Broadband Act," legislation that "would extend federal criminal protections to privately owned communications networks"); NCTA, "Attacks on Critical Communications Infrastructure Hit Record Highs in 2025" (June 4, 2026), available at <https://www.ncta.com/news/attacks-critical-communications-infrastructure-hit-record-highs-2025> ("[O]ver 18,000 incidents struck communications networks in 2025, disrupting service for nearly 12 million customers across the country." This represents a "59% increase since 2024.") (emphasis omitted); Michael O-Rielly, "National Broadband Theft and Vandalism: A Sample of Destructive Acts Since January," *Perspectives from FSF Scholars*, Vol. 20, No. 25 (June 4, 2025), available at <https://www.ncta.com/news/attacks-critical-communications-infrastructure-hit-record-highs-2025>.

⁸ Andrew Long, "Forbearance: The Fast Lane to Implementing Modern All-IP Networks," *Perspectives from FSF Scholars*, Vol. 20, No. 43 (October 25, 2025), available at <https://freestatefoundation.org/wp-content/uploads/2025/10/Forbearance-The-Fast-Lane-to-Implementing-Modern-All-IP-Networks-102425.pdf>, at 3.

⁹ See, e.g. Public Notice, "FCC Takes Action to Speed Up Rollout of Modern, High-Speed Networks" (March 26, 2026), available at <https://docs.fcc.gov/public/attachments/DOC-420132A1.pdf> ("Today's actions will allow providers to retire their decades-old and increasingly expensive copper line networks, freeing up tens of billions of dollars annually for the roll out of upgraded, high-speed networks to more Americans. This marks another step forward in the FCC's Build America Agenda."); *id.* ("In accordance

(BEAD) Program, the Universal Service Fund, and countless other costly federal, state, and local initiatives.

III. California's COLR Rules Are Unreasonably Burdensome and, Pursuant to a Recent Commission Decision, Stand in Direct Conflict With Federal Law

As AT&T details in its Petition, California's COLR rules would require it to continue to provide POTS "regardless of the available alternatives" until the California Public Utilities Commission (CPUC) *also* grants it permission to do so.¹⁰ Based upon its experience to date, AT&T contends that the CPUC's "byzantine requirements ensure that any effort to modernize will be delayed indefinitely."¹¹

As of March of this year, however, California's COLR regime doesn't merely impede the transition to all-IP networks. It also stands squarely at odds with the Commission's explicit and unqualified determination in its *Network Modernization Order* that, pursuant to Section 214(c) of the Communications Act of 1934,¹² "after a carrier obtains Commission authorization to discontinue a service, it need not obtain *any* additional authorizations before implementing that discontinuance of service" (emphasis added).¹³

with the FCC's 'Delete, Delete, Delete' effort, today's actions also eliminate other rule provisions rendered irrelevant."); Chairman Brendan Carr, "Now Is the Time to Build" (July 2, 2025), available at <https://www.fcc.gov/news-events/blog/2025/07/02/now-time-build> ("We are going to put the Build America Agenda to work right away at the FCC.... First, we will be seeking comment on ways to **accelerate the upgrade from old copper line networks to modern ones**. The proposal ensures that providers can roll out upgraded networks more quickly and no longer expend resources on maintaining decades-old and costly copper line networks or on lengthy and burdensome regulatory processes that divert resources away from infrastructure work.") (emphasis in original).

¹⁰ *Petition* at 4.

¹¹ *Id.* at 5. *See also id.* at 4 ("To discontinue POTS, AT&T must navigate years-long proceedings, obtain multiple layers of approval, and satisfy extensive notice and customer-migration requirements."). After one such proceeding, the CPUC "directed AT&T not to ask again for at least a year."; *id.* ("California has made clear that will not allow AT&T to relinquish its COLR obligations unless another carrier first agrees to become a COLR. Unsurprisingly, no other carrier is willing to assume AT&T's outdated obligations.").

¹² *See* 47 U.S.C. § 214(c).

¹³ *In the Matter of Reducing Barriers to Network Improvements and Service Changes, Accelerating Network Modernization*, WC Docket Nos. 25-209, 25-208, Report and Order (adopted March 26, 2026),

As such, it is difficult to contemplate a more straightforward scenario for the agency to resolve than the one presented here. Indeed, AT&T's decision to file its Petition appears to be inspired, if not compelled, by the *Network Modernization Order*, which declared in broad terms that, "where the Commission has exercised its section 214 discontinuance authority ... to allow a carrier to discontinue legacy voice service, state requirements that operate to require the carrier to continue providing those services conflict with federal law."¹⁴

The *Network Modernization Order* stopped short of "evaluat[ing] individual state requirements in their particulars, or to determine whether they conflict with federal law."¹⁵ Had it done so, then the COLR regime in California – the most populated state in the nation, and thereby the state where contradictory rules have the most significant deleterious impact – almost certainly would have been the first to reach the chopping block.

Even the CPUC seems to recognize this, soliciting comment on May 28 "on whether the FCC's revised rules impact [its COLR rules] and, *if yes*, to provide a detailed explanation of how the FCC's revised rules impact the Commission's COLR Rules" (emphasis added).¹⁶

available at <https://docs.fcc.gov/public/attachments/FCC-26-19A1.pdf> (*Network Modernization Order*), at 4.

¹⁴ *Id.* at 60.

¹⁵ *Id.* at 61.

¹⁶ Administrative Law Judge's Ruling Soliciting Comments on FCC Section 214 Service Discontinuance Rules Change Impact, Rulemaking 24-06-012 (filed May 28, 2026), available at <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M607/K356/607356434.PDF>, at 1.

Instead, the *Network Modernization Order* invited carriers "to seek a determination from the Commission that the state requirement is preempted,"¹⁷ as AT&T has done by filing the Petition.

The relevant facts here present a compelling case. According to the Petition and as noted above, AT&T currently spends \$1 billion each year to maintain a copper line network used by only 3 percent of California households,¹⁸ money that it otherwise could and would spend on modernized, all-IP networks.¹⁹ In the Petition, AT&T asserts that the vast majority of those households have access to other options, both wireline and mobile: "all of AT&T's existing POTS customers ... in the areas covered by the Discontinuance Application ... have an alternative provider of high-quality voice service, and 99.9 percent have access to at least two others beyond AT&T" (emphasis in original).²⁰

In addition, AT&T notes that it has specifically designed a product, AT&T Phone Advanced (AP-A), for those accustomed to "Plain Old Telephone Service" (POTS). AP-A is more reliable (thanks to a 24-hour back-up battery) and generally less expensive – and, as the Petition points out, "the Commission has already declared it an adequate replacement for POTS."²¹

¹⁷ *Network Modernization Order* at 61.

¹⁸ *See Petition* at 1.

¹⁹ *See id.* at 3 ("All that spending diverts finite resources from the modern technologies that could be used to provide consumers what they actually want – fiber and wireless.").

²⁰ *Id.* at 10. *See also id.* ("Of the over five million serviceable locations in those 360 wire centers [covered by the Discontinuance Application], more than 99.9 percent have access to at least two of the national mobile voice providers and three or more facilities-based, terrestrial fixed broadband or mobile voice providers.") (citation omitted); *Network Modernization Order* at 2-3 ("[T]he record shows that certain state and local requirements have been unduly prolonging the use of legacy networks and actually preventing providers from building modern ones by limiting the types of services that may qualify as adequate replacements when carriers seek to discontinue legacy telecommunications services.").

²¹ *Id.* at 5. *See also id.* ("In short, [AT&T Phone Advanced] is better than POTS – and usually cheaper too.").

Discontinuance pursuant to Section 214 therefore is appropriate, and once granted, should not be negated by California's conflicting COLR rules, as the FCC made plain in the *Network Modernization Order*. Accordingly, a declaration of preemption appears justified.

IV. Conclusion

Through the Build America Agenda, the "Delete, Delete, Delete" initiative, and other related deregulatory efforts stretching back to 2012, the Commission has been appropriately aggressive in its efforts to expedite the transition to all-IP networks. The *Network Modernization Order* enacted the latest round of reforms at the federal level, while at the same time anticipating the need to formally preempt legacy state-level requirements that contravene its intentions. AT&T's Petition, which assures that "no customer will be left behind in AT&T's transition to modern technologies,"²² represents perhaps the most expected and least controversial request for declaratory relief pursuant to the *Network Modernization Order* – and therefore deserves an expeditious grant.

Respectfully submitted,

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²² *Id.*