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	)	

REPLY COMMENTS OF
THE FREE STATE FOUNDATION*

I. Introduction and Summary

The Free State Foundation ("FSF") hereby submits these reply comments in response to the Wireline Competition Bureau's request for comment[1] on the Petition for Preemption and Declaratory Ruling (Petition) filed by AT&T Services, Inc. (AT&T) on May 20, 2026.[2]

The record in this proceeding lays bare a clash of two widely divergent perspectives. The numerous filings that acknowledge the clear federal policy set forth in the *Network Modernization Order* – and, more broadly, the critical role that policy plays

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* 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*); *see also* Order Granting Extensions of Time, *In the Matter of Petition of AT&T for Preemption and Declaratory Ruling Regarding California's Carrier of Last Resort and Related Requirements, Petition of AT&T for Forbearance Under 47 U.S.C. § 160(c) from Requirements Imposed on Eligible Telecommunications Carriers by 47 U.S.C. § 214(e)*, WC Docket Nos. 26-125, 26-123 (released June 16, 2026), available at https://docs.fcc.gov/public/attachments/DA-26-598A1.pdf.

[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).

in Chairman Brendan Carr's "Build America Agenda" – appropriately view California's "Carrier of Last Resort" (COLR) rules, and the California Public Utilities Commission's (CPUC) interpretation thereof, as an antiquated obstacle impeding the timely transition to all-IP networks. Not surprisingly, those filings agree with the Free State Foundation that the Commission should do precisely what it previewed: deliver "a determination … that the state requirement is preempted."[3]

The CPUC's filing, meanwhile, pretends that the *Network Modernization Order* did not actually announce the federal policy that "where the Commission has exercised its section 214 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."[4] Moreover, it wrongly clings to the fiction that "California does not require carriers to maintain copper facilities,"[5] a claim belied in practice. The CPUC's convoluted, multilayered definition of "basic service" effectively requires a copper line network; no other carrier is willing to step into AT&T's COLR shoes, and understandably so; ergo AT&T cannot retire its copper line network even with FCC approval to do so.

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[3] *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), available at https://docs.fcc.gov/public/attachments/FCC-26-19A1.pdf (Network Modernization Order), at 61. *See also* Comments of the Free State Foundation, *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 July 7, 2026), available at https://freestatefoundation.org/wp-content/uploads/2026/07/FSF-Comments-Preemption-of-CA-COLR-and-Related-Requirements-070726.pdf (Free State Foundation Comments), at 7 ("AT&T's Petition … represents perhaps the most expected and least controversial request for declaratory relief pursuant to the *Network Modernization Order* – and therefore deserves an expeditious grant.") (citation omitted).
[4] *Network Modernization Order* at 60.
[5] Opening Comments of the People of the State of California and the California Public Utilities Commission, *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 July 7, 2026), available at https://www.fcc.gov/ecfs/document/26109998546/1 (Comments of the CPUC), at 3.

The FCC recognized in its *Network Modernization Order* that it's time for practical realities to prevail over fictions that impede IP-based network modernization efforts able to benefit all of California's consumers. As Free State Foundation scholars have long suggested, in today's multi-platform competitive communications marketplace, the whole notion of a "carrier of last resort" is a fiction that needs to be buried.

II. The Record Exposes the Excessive and Unnecessary Waste Caused by California's COLR Regime

For over a decade, both the FCC and Free State Foundation scholars have promoted the pro-consumer transition to all-IP networks,[6] the former most recently in a statement released on July 14 by the Office of Chairman Brendan Carr touting agency "action reduc[ing] regulatory burdens and effectively free[ing] up tens of billions of dollars annually for the roll out of upgraded, high-speed networks to more Americans on a faster timeline."[7] California's "Carrier of Last Resort" regime negates those efforts by forcing (in this instance) AT&T to allocate money and other limited resources to maintain copper line networks when, in the words of the Advanced Communications

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[6] *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].").

[7] News Release, "FCC's Build America Agenda Makes Great Progress in First Year" (released July 14, 2026), available at https://docs.fcc.gov/public/attachments/DOC-423046A1.pdf ("Today, Chairman Brendan Carr highlighted some key wins under the FCC's 'Build America Agenda' since it was first launched last July in Sioux Falls, South Dakota.").

Law & Policy Institute at New York Law School (ACLP), "there is no 'last resort' in California."[8]

According to AT&T, the annual cost to maintain its copper line network in California is $1 billion,[9] money that it otherwise could and would invest in IP-based networks capable of delivering voice, text, video, and more.[10] Significantly, consumers overwhelmingly prefer such networks: as AT&T noted in its Petition, just 3 percent of California households still rely upon Plain Old Telephone Service (POTS).[11]

Multiple commenters echoed these points. ACLP cautioned that, "without Commission action, a single state, or even a tiny cadre of stubborn POTS customers, will continue to wield extraordinary power to shape the national communications market."[12] This is so despite the fact that, according to ACLP, after factoring in fixed wireless access (FWA), Broadband Equity Access and Deployment (BEAD) Program commitments, 4G and 5G mobile, and low-Earth orbit (LEO) satellite, only 284 housing units out of a total of 13.4 million – a mere 0.0021 percent – lack access to a broadband connection over which voice service reliably may be delivered.[13]

The Wireless Infrastructure Association pointed out that "[w]ireless communications – mobile and fixed – has become the dominant means of connecting for

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[8] Comments of the Advanced Communications Law & Policy Institute at New York Law School (ACLP), *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 July 7, 2026), available at https://www.fcc.gov/ecfs/document/26109998348/1 (Comments of ACLP), at 5.
[9] Petition at 1.
[10] *Id*. at 3.
[11] *Id*. at 1.
[12] Comments of ACLP at 2-3.
[13] *Id*. at 6. *See also id*. at 5 ("[C]ompetition in 'voice' services is nearly limitless, and prices for many of these offerings are very low, if not free in plans that bundle voice, data, and texting, the price of which primarily varies based on data. As such, consumers have a universe of choices to meet their every 'voice' communications need.")

the American public with '79 percent of American adults liv[ing] in households that rely solely on cell phones for voice calling.'"[14]

The International Center for Law & Economics (ICLE) argued that "[t]he case for copper retirement is, at bottom, an argument about waste. California's COLR regime requires AT&T to pour finite capital into infrastructure whose costs are large and rising, even as its benefits approach zero."[15] Similar to the point made by the Free State Foundation in our initial comments regarding rampant copper theft,[16] ICLE noted that "[a]cross the industry, roughly 15,540 theft-and-sabotage incidents between mid-2024 and mid-2025 disrupted service for an estimated 9.5 million customers."[17] And on the topic of "replacement parts and experienced workers [that] are in short supply,"[18] ICLE referenced an instance where no-longer-manufactured switches had to be sourced from eBay.[19]

USTelecom – The Broadband Association (USTelecom) noted that "mobile wireless, VoIP, fiber, cable fixed wireless, and satellite services provide modern voice

[14] Comments of the Wireless Infrastructure Association, *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 July 7, 2026), available at https://www.fcc.gov/ecfs/document/26109999194/1, at 4 (citation omitted).
[15] Comments of the International Center for Law & Economics (ICLE), *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 July 6, 2026), available at https://www.fcc.gov/ecfs/document/26109987333/1 (Comments of ICLE), at 4. *See also id*. at 2 ("Consumers have left legacy voice service in overwhelming numbers. Yet carriers must still maintain costly, aging copper networks for a small and shrinking group of subscribers.").
[16] *See* Comments of the Free State Foundation at 3 (pointing out that "the price of copper itself is sufficiently high enough to inspire rampant theft and vandalism").
[17] Comments of ICLE at 5.
[18] Comments of the Free State Foundation at 3.
[19] *See* Comments of ICLE at 5. *See also id*. ("The core Class 5 switches that anchor the network … have not been manufactured in decades, forcing carriers to scavenge replacement parts on secondary markets.") (citations omitted).

options" and drew attention to the fact that "[t]he Commission has found all these services are, or can be, adequate replacements for POTS."[20]

III. The CPUC Ignores Both the Express Intent of the *Network Modernization Order* and the Practical, Prohibitive Effect of Its COLR Regime on AT&T's Ability to Retire Obsolete Copper Line Networks

With the above as the factual predicate, it is incumbent upon the Commission to follow through on its promise in the *Network Modernization Order* to reach "a determination … that the state requirement is preempted."[21] Otherwise resources will be wasted, the deployment of IP-based network infrastructure will be delayed, and overall consumer welfare will be constrained. This is especially the case given that, despite the CPUC's protestations, its COLR regime as a practical matter does in fact require AT&T to maintain its copper line network even with Commission authorization to discontinue service pursuant to Section 214(c) of the Communications Act of 1934.[22]

In its Petition, AT&T made two relevant claims. One, that "California has made clear that it will not allow AT&T to relinquish its COLR obligations unless another carrier first agrees to become a COLR." (On this point, the CPUC in its comments

[20] Comments of USTelecom – The Broadband Association (USTelecom), *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 July 7, 2026), available at https://www.fcc.gov/ecfs/document/26109998522/1 (Comments of USTelecom), at 6-7. *See also id*. at 2-3 (highlighting the ubiquity of "modern alternatives, including wireless services that the Commission has recognized – and that consumers have shown by their own marketplace choices – are adequate replacements for legacy POTS").
[21] *Network Modernization Order* at 61.
[22] *See* 47 U.S.C. § 214(c). According to press reports, the Commission recently authorized AT&T to discontinue POTS service in California to approximately 184,000 customers – "a subset of AT&T customers who are still using copper based service" – as early as June 1, 2027. Jeff Baumgartner, "AT&T's copper shutdown in California takes a step forward," *Light Reading* (July 7, 2026), available at https://www.lightreading.com/regulatory-politics/at-t-s-copper-shutdown-in-california-takes-a-step-forward.

agreed.[23]) Two, that California's rules "effectively dictate that [it] can satisfy its COLR obligation only by offering POTS."[24]

The CPUC took issue with this second point, purportedly assuring the Commission that its multipart "definition of basic service and the associated COLR rules are explicitly ***technology-neutral***" (emphasis in original).[25] It continued: "it does not matter whether the carrier uses copper wire, wireless, fiber, Voice over Internet Protocol ("VoIP"), or any other type of technology, *so long as that service offered meets the standard for basic service*" (emphasis added).

Therein lies the rub. As the CPUC acknowledged, its definition of "basic service" includes "nine basic service elements, most with multiple sub-elements." On top of that, "basic service must be provided consistent with five additional requirements."[26] The CPUC insisted more than once that each of these obligations must be considered "in their particulars,"[27] citing the *Network Modernization Order* in a manner that misses the forest for the trees.[28]

Specifically, the CPUC insisted that "AT&T improperly conflates *services* (which are the subject of the COLR rules) with *facilities* (which are not)" (emphasis in

[23] *See* Comments of the CPUC at 4-5 ("Under the existing COLR rules, as AT&T was aware, the CPUC could not grant a COLR relinquishment application without finding a replacement carrier to serve as a COLR. AT&T, however, did not present the CPUC with an alternative COLR provider, thus requiring the CPUC to deny the application.").
[24] Petition at 12.
[25] *But see* Comments of USTelecom at 5 ("As AT&T explains, the so-called 'technological neutrality' of the CPUC's COLR rules is fictional.").
[26] Comments of the CPUC at 2.
[27] *Id*. at 1, 22.
[28] *Network Modernization Order* at 61.

original).[29] It does so out of necessity; otherwise, it could not escape the impossibility exception to the general presumption against preemption.

For as USTelecom pointed out, "[i]n the *Network Modernization Order,* the Commission found that state requirements are preempted when they impose additional conditions that have the practical effect of requiring continued provision of a jurisdictionally mixed service. California's COLR requirement fits that description entirely."[30] Further, "those POTS services are practically inseverable – particularly in the discontinuance context…. AT&T cannot complete its discontinuance of interstate service, which includes decommissioning the network facilities that used to provide it, if it must also maintain the network facilities used for intrastate service – they are one and the same."[31]

The clear federal policy embodied by the *Network Modernization Order* – and disregarded altogether by the CPUC in its comments – is that state-level requirements regarding outdated copper line networks *and/or* the inevitably jurisdictionally mixed services that are delivered over those networks should not nullify Commission efforts to expedite the retirement *of those networks* through the grant of discontinuance. As ACLP made plain in its comments, "state requirements that compel continued operation of those legacy facilities interfere with the Commission's federal policy favoring retirement of obsolete networks and transition to modern, all-IP infrastructure."[32]

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[29] Comments of the CPUC at 13.
[30] Comments of USTelecom at 6.
[31] *Id*. at 4-5.
[32] Comments of ACLP at 8. *See also* Comments of USTelecom at 6 ("California's COLR regime thus deprives AT&T of the benefit of federal discontinuance authority by requiring it to keep operating the same legacy facilities that support the discontinued service, thereby impeding modernization of such facilities.") (citation omitted).

IV. Conclusion

The record in this proceeding, which includes the Free State Foundation's initial comments, provides ample support for the relief sought by AT&T. As evidenced by its reluctance to acknowledge the federal policy to promote and expedite the transition to all-IP networks set forth in the *Network Modernization Order*, the CPUC's protestations are perhaps more appropriately directed at the item itself, not AT&T. As it happens, on June 22, 2026, the CPUC petitioned the Ninth Circuit for review of the *Network Modernization Order*.[33]

Respectfully submitted,

Randolph J. May
President

Andrew Long
Senior Fellow

Free State Foundation
P.O. Box 60680
Potomac, MD 20854

July 22, 2026

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[33] *See* Jeff Baumgartner, "California PUC challenges FCC copper retirement rules," *Light Reading* (June 26, 2026), available at https://www.lightreading.com/regulatory-politics/california-puc-challenges-fcc-copper-retirement-rules.