Ms. Marlene H. Dortch
Secretary, Federal Communications
Commission
445 12 Street SW
Washington, DC 20554

Re: Reply comments in the matter of Accelerating Network Modernization, Docket No. WC 26-125 (released May 22, 2026).

Dear Ms. Dortch,

The American Consumer Institute (ACI) is a nonprofit 501(c)(3) education and research organization. Its mission is to promote consumer welfare by enhancing the understanding and impact of public policies and regulations on consumers in a free market.

Network Modernization is Pro-Consumer

Network modernization is pro-consumer. ACI research demonstrates that companies must spend as much as $6 billion annually to deliver copper telephone service to locations already served by modern alternatives—often at similar prices for inferior services.[1] Since providers offer national services, regulatory roadblocks in one state can frustrate efforts to modernize network in others.[2] The pro-consumer policy path is one that accelerates network modernization efforts.

CPUC's Fundamental Flaw

Comments from California Public Utilities Commission (CPUC) turn on the assumption that its rules "apply on a technology-neutral basis." Under CPUC's view, all technologies must meet the same standards for basic service. A through-line of expert opinion rebuts that claim. The CPUC's position may appear neutral in-text, but its enforcement has been clearly prohibitory, slowing the transition to modern methods of communication. As comments from the Washington Legal Foundation explain, the CPUC has "bolted on" copper-specific demands and demonstrated that "wireless can never be a full substitute."[3] AT&T has created a "more reliable and less expensive" alternative—the AT&T Phone Advanced (AP-A)—that the Commission has found an "adequate replacement," despite CPUC questions on substitutability.[4] The CPUC may or may not have intended to create uneven application of its carrier of last resort (COLR) rules, but it has created that uneven application, nonetheless.

[1] Nate Karren, "First Steps to Future-Proofing the Broadband Ecosystem for Artificial Intelligence," American Consumer Institute, February 2026, https://shorturl.at/XDxds.
[2] Jeffrey Westling, "Comments of Jeffrey Westling," Last visited July 20, 2026, https://shorturl.at/iXnTX.
[3] Washington Legal Foundation, "In Support of AT&T Services, Inc., Petition for Preemption and Declaratory Ruling," WC Docket No. 26-125, July 7, 2026, https://tinyurl.com/4ve3ecsa.
[4] Randloph J. May and Andrew Long, "Comments of the Free State Foundation," WC Docket No. 26-125, https://tinyurl.com/3jexe5b4.

Evolving Economics Highlight Need for Reform

California's COLR rules no longer align with modern economic realities.[5] California dictates that AT&T spend $1 billion dollars annually to serve less than 3 percent of California residents—a number that continues to shrink as consumers switch to modern alternatives.[6] As demand for Plain Old Telephone Service (POTS) has fallen, per-customer costs have risen as fixed costs are spread "over fewer lines"—leading one group to label the COLR rule an economic liability.[7] A state of affairs worsened by copper theft and increasingly expensive labor costs.[8] State subsidies cover some of the gap, but are in a perpetual state of decline—down to $5 million from a $352 million peak.[9] That imbalance makes the whole system unsustainable. COLR regulations waste resources that could be redeployed into the transition to modern networks.

Broad Legal Agreement Drives the Case for Preemption

A majority of legal expert comments favor granting AT&T's petition. The Free State Foundation calls AT&T's petition "the most expected and least controversial request for declaratory relief," and urges an "expeditious grant."[10] The Washington Legal Foundation (WLF) finds the COLR regime "pre-empted three times over": 1) express preemption; 2) impossibility-exception preemption; and 3) conflict preemption.[11] The FCC has authority for express pre-emption given the jurisdictionally mixed nature of copper telephone service.[12] Still, preemption should be "narrowly tailored."[13] University of Pennsylvania legal scholars detail an appropriate framework: "The right response is narrowly tailored preemption that displaces only the conflicting mandate while preserving the State's legitimate roles, coupled with conditions ensuring no customer is stranded."[14] This approach respects federalism while preempting the rules that frustrate or conflict with the Network Modernization Order.

[5] James Erwin, "Reply Comments on the Petition," Digital Liberty, https://shorturl.at/G44uQ; and Ellis Scherer and Elizabeth L. Sanchez, "Comments of ITIF," Information Technology & Innovation Foundation, July 7, 2026, https://shorturl.at/yQMI .
[6] Jeffrey Westling and Kristian Stout, "Comments of the International Center for Law & Economics," Jul 6, 2026, https://tinyurl.com/yc9rc3xt; and Joel Thayer, "Comments of the Digital Progress Institute," https://tinyurl.com/485hzmrt.
[7] Joel Thayer, "Comments of the Digital Progress Institute."; and Christopher S. Yoo and Justin (Gus) Hurwitz, "Comments in Support of the Petition (WC Docket No. 25-125) and Reply Comments (WC Docket Nos 25-311 and 25-208), https://tinyurl.com/mrykyrmp.
[8] Joel Thayer, "Comments of the Digital Progress Institute."; and James Erwin, "Reply Comments on the Petition."
[9] Joel Thayer, "Comments of the Digital Progress Institute."
[10] Randloph J. May and Andrew Long, "Comments of the Free State Foundation."
[11] Washington Legal Foundation, "In Support of AT&T Services Petition for Preemption and Declaratory Ruling."
[12] Ibid; and Nirali Patel, "Comments of US Telecom—The Broadband Association," WC Docket No. 26-125 and WC Docket No. 26-123, https://shorturl.at/PVe6A.
[13] Lindsay Brown, "Opening Comments of the People of the State of California and the California Public Utilities Commission, CPUC, July 7, 2026, https://tinyurl.com/r3wbb3th.
[14] Christopher S. Yoo and Justin (Gus) Hurwitz, "Comments in Support of the Petition."

Conclusion

The economic case for preemption is clear: network modernization is pro-consumer. The economic transition has laid bare the many ways COLR restrictions in California frustrate—and conflict—with federal law. California has slowed the transition and impeded national objectives to the tune of billions of dollars in waste. As an overwhelming majority of comments show, the FCC is in a strong legal position to pre-empt California's COLR rules and grant AT&T's petition. The Commission should waste no time in furthering that pro-consumer objective.

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