



California Association of
Competitive Telecommunications Companies

Communications, Commerce, Community

November 1, 2017

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Written Ex Parte Letter
WC Docket No. 17-84: Accelerating Wireline Broadband Deployment by
Removing Barriers to Infrastructure Investment: Force Majeure Limited
Exemptions for Copper Retirement Notices

Dear Ms. Dortch,

As noted in a number of footnotes¹ in the Draft Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking (“Draft Order”) in the above-named proceeding, CALTEL is supportive of some but not all of the proposed revisions to the Commission’s copper retirement rules. In particular, CALTEL continues to believe that the 180-day notice period for retirements that directly affect one or more interconnecting carriers should not be shortened to 90 days because “the planning cycle for fiber deployments and copper retirements is already much longer than 180 days.”²

One of the instances in which the Draft Order relies on CALTEL support is with regard to limited exemptions to the rules to deal with emergency conditions as a result of natural disasters or acts of terrorism.³ While CALTEL continues to support the need for rule flexibility to deal with truly exigent circumstances, the proposed *force majeure* exemption creates a number of problems and unanswered questions that should have the benefit of further comment before being adopted.

California ILECs such as AT&T California and Frontier California already issue *Force Majeure* notices to CLECs pursuant to Section 252 Interconnection Agreements. The purpose of these notices is to advise wholesale customers that an event has or is expected to have a negative impact on the ILEC’s ability to meet normal installation and repair intervals as required by wholesale performance measurements and/or penalty plans under the Agreements.

¹ See, e.g., Draft Order at fns 124, 133, 135, 136, 218, 225, 231, 249, 382, 386.

² Draft Order at ¶64, fn 225.

³ *Id.* at ¶72, fn 249.

These notices are often declared for many months in duration and across a widespread geographical area. For example, AT&T California declared a Force Majeure condition from December 9, 2016 through March 11, 2017 for 50 of California's 58 counties due to winter storm and flood damage.⁴ CALTEL is not aware that AT&T filed any type of "disaster recovery plan" for this extended and extensive Force Majeure event.

Since the notices contemplated in the proposed rule will also be called *Force Majeure* notices, and will most likely be disseminated to interconnecting carriers in the same manner as the current notices (e.g. via AT&T Accessible Letters), it is unclear if and how affected CLECs will be able to differentiate between the two types of notices. And even though the proposed rule limits actual retirement exemptions to those that "result in or are necessitated as a direct result of the *force majeure* event,"⁵ it is not clear that ILECs are prohibited from employing the current notices to preemptively suspend notice requirements in a much broader context than the rule is actually intended to cover.

Therefore, CALTEL recommends that the proposed rule, C.F.R. §51.333(g): Limited Exemption from Advance Notice and Timing Requirements for Copper Retirements, be moved from the Draft Order to the Notice of Proposed Rulemaking (NPRM) in order to make necessary clarifications and ensure that it achieves the desired objectives.

Respectfully submitted,

By: _____/S/_____
Sarah DeYoung

Sarah DeYoung
Executive Director – CALTEL

⁴ See Attachment 1: AT&T Accessible Letters CLECC17-002 (Force Majeure – AT&T California) dated January 26, 2017, and CLEC17-005 (Force Majeure Lift – AT&T California), dated March 11, 2017.

⁵ Draft Order at ¶75.