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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding
Emergency Disaster Relief Program.

Rulemaking 18-03-011

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING AN ORDER TO SHOW CAUSE**

By this Ruling, the California Public Utilities Commission (Commission or CPUC) orders Respondents AT&T California (U1001C) and AT&T Corporation (U5002C)¹ to appear for an Order to Show Cause Evidentiary Hearing and to show cause, if any, why Respondents should not be:

1. Found in contempt of Decision (D.) 19-08-025.
2. Found in violation of the Public Utilities (Pub. Util.) Code and General Order (GO) 96-B.
3. Fined, penalized, or have other sanctions imposed for failing to comply with a Commission decision, GO 96-B, and the Public Utilities Code.

1. The Respondents

AT&T California is a Uniform Regulatory Framework (URF) incumbent local exchange carrier (ILEC) and Carrier of Last Resort (COLR) in many areas of California. AT&T Corporation is a Competitive Local Exchange Carrier (CLEC) with a certificate of public convenience and necessity (CPCN) to provide competitive local exchange services in certain areas in California. Both parties currently provide 911 service in California.

¹ Previously known as AT&T Communications.

1.1. Background

1.1.1. Decision 19-08-025

Decision 19-08-025, recently issued in this proceeding, Rulemaking (R.) 18-03-011, created a permanent disaster relief program to ensure continuity of service, predictability and consistency in times of crisis for customers of communication service providers including the carriers named herein.² In addition, D.19-08-025 directed carriers to establish systems and procedures necessary to provide swift and substantive assistance to affected customers of disasters.³ As part of ensuring continuity of service in times of crisis, the carriers are required by D.19-08-025 to comply with and maintain 911 tariffs on file with the Commission.⁴

1.1.2. Transition to Next Generation 911

The California Office of Emergency Services' (CalOES), which is responsible for the 911 network under state law,⁵ has designed and procured new services called Next Generation (Next Gen or NG) 911. During the period this new system is being introduced, both the existing system and Next Gen 911 will be operating simultaneously until the old system is phased out.

CalOES had engaged the California Department of Technologies to publish a Request for Proposal (RFP) to service providers which specifies the functions and services of the Next Generation 911 system. CalOES is currently in contract with qualified service provider(s) for NG 911 services. The contracts have a period of five years during which CalOES will purchase NG 911 services from

² D.19-08-025 at 7.

³ *Id.*

⁴ *Id.* at 14, 56-57, COL 24.

⁵ Government Code §§ 53100-53121.

providers' tariffs.⁶ Current E911 services are procured via tariffs that are approved by the CPUC.

Tariffs are a non-discriminatory offer of service with specified terms and conditions. Under CPUC rules, a service provider with a CPCN or a franchise, and which provides 911 services, is required to file tariffs with the Commission because 911 services are, as described below, a component of "basic telephone service."⁷ Because CalOES will be replacing existing 911 services and procuring new 911 services, Respondents are required to update their tariffs to comply with GO 96-B, Industry Rules §§ 8.3 (New Service) and 8.4 (Changes to Tariffed Rate, Change, Term or Condition).

1.1.3. AT&T California and AT&T Corporation's Refusal to File 911 Tariffs

On April 15, 2019, the Director of the Communications Division, Cynthia Walker, sent a letter to Mr. Mark Berry, Regulatory Director at AT&T California, informing AT&T of the need to update to the company's existing 911 tariff to meet the requirements of new Next Gen 911 infrastructure. The letter included a due date of June 7, 2019.⁸ AT&T did not respond to this letter within the requested timeframe.

⁶ See RFP 6026-2018 For Next Generation 911 Services – Prime and Regions, issued by State of California Governor's Office of Emergency Services (CalOES), April 1, 2019.

⁷ The CPUC has updated its original decision establishing basic service several times, most recently in D.12-12-038, issued in December 2012. The Commission affirmed that 911 is a component of basic service, even for VoIP providers, in this proceeding in D.19-08-025. (See D.19-08-025 at 14-15, 56 (Conclusion of Law (COL) 24), 57 (COL 27).)

⁸ See Attachment A. On April 26, 2019, Director Walker sent an update to correct a typographical error in the original letter.

On June 12, 2019,⁹ Mr. Berry spoke with Consumer Division (CD) staff and relayed the following in response to the question of why AT&T had not filed an advice letter:

- a. AT&T does not offer the services referred to in the letter and even if it did offer these services, AT&T does not agree that the CPUC can require a tariff because under Pub. Util. Code § 710, the CPUC does not have authority to regulate IP-enabled services.
- b. If AT&T offers Next Gen 911 services in the future, it will not file tariffs because the CPUC does not have authority over these services.
- c. AT&T filed a lawsuit claiming that the tariff is illegal and the “not-to-exceed” pricing in CalOES’ RFP (CalOES RFP 6026-2018) is arbitrary and capricious.¹⁰

On June 17, 2019, Director Walker sent a second letter to AT&T addressed to Mr. Peter Hayes, Assistant Vice President of Regulatory Affairs, directing AT&T California to file an updated up tariff.¹¹ In the letter, Director Walker stated she expected a response within five days. AT&T did not respond to this letter within the requested time.

On September 18, 2019, Director Walker sent a third letter to AT&T addressed to Mr. Hayes, instructing the company to file tariffs for the existing Pasadena Regional Integrated Next Generation (RING) project and associated projects.¹² On October 1, 2019, Director Walker participated in a phone call with

⁹ On June 11, 2019, at 6:27 p.m. a CD staff member left a voicemail with Mr. Berry, inquiring about the status of the advice letter for new 911 tariff.

¹⁰ See *AT&T Corp. v. California Governor’s Office of Emergency Services*, Verified Petition and Complaint for Injunctive and Declaratory Relief, May 16, 2019, Case No. 34-2019-80003146, Superior Court, State of California, County of Sacramento. (Mr. Berry added that AT&T would not be bidding on the CalOES RFP due to the tariff filing requirement.)

¹¹ See Attachment B.

¹² See Attachment C.

AT&T in which AT&T representatives stated that they would provide a response by the end of the week.

On October 4, 2019, AT&T filed Advice Letter 4336 with the CPUC.¹³ AT&T's advice letter filing does not address the questions posed by the previous three letters from Director Walker and contains the following errors, omissions and general non-compliance issues:

- a. The advice letter was filed on behalf of AT&T Corporation (U5002C), the CLEC but the letter enclosed in the filing lists "U1001C" in the heading which is AT&T California, the ILEC and Carrier of Last Resort.
- b. The advice letter is in response to the September 18, 2019, letter regarding Pasadena RING and does not address nor comply with the original two letters which referenced request for updates to AT&T California's COLR tariffs.
- c. AT&T Corporation's advice letter did not comply with GO 96-B. AT&T's advice letter consists of a Title Page, a Table of Contents, an Explanation of Symbols, General Regulations, and a List of Contracts, but not a tariff. AT&T's advice letter does not provide an actual tariff per GO 96-B § 9. There is no pricing or listing of services as requested in the multiple letters sent to AT&T.
- d. AT&T California, the ILEC provides 911 service over tariffs today over existing technology. The letter from Director Walker informed AT&T California that since the existing platform is going away and being replaced with a NG 911 platform, AT&T California must file new NG 911 tariffs to update the existing, and soon to be outdated, tariffs. AT&T California has refused to file new tariffs.
- e. AT&T Corporation is carrying NG 911 traffic over the AT&T turnkey NG 911 Emergency Services IP Network (ESInet) solution to at least eight PSAPS in the Pasadena RING Project.

¹³ See Attachment D.

- f. Both AT&T California and AT&T Corporation need to file updated tariffs, AT&T California must file as a COLR to provide local exchange service in its service territory and AT&T Corporation, the CLEC, must file tariffs in order to provide NG 911 service outside of its service territory, which it is doing, for example, through the Pasadena RING project.

For these reasons, CPUC staff rejected AT&T's advice letter on October 23, 2019.

On November 5, 2019, AT&T finally provided a written response to Director Walker's three letters from April, June, and September 2019.¹⁴ In AT&T's letter it claims that "AT&T California does not offer a [sic] NG 911 Trunk Services in California, and therefore does not have a NG 911 Trunk Service to tariff at this time."¹⁵ AT&T further claims that the 911 service AT&T Corporation, a CLEC, provides to "Pasadena RING" "is not a generally-available service appropriate for placement in a tariff."¹⁶

2. Discussion

2.1. Legal Authority

The Commission has broad jurisdiction over public utilities¹⁷ and telephone corporations.¹⁸ A public utility includes every telephone corporation

¹⁴ See Attachment E.

¹⁵ November 5, 2019 letter from Mr. Hayes to Director Walker re: NG 911 Services. AT&T Corporation is carrying NG 911 traffic over the AT&T turnkey NG 911 ESInet solution to at least eight PSAPs in the Pasadena RING Project. (<https://www.caloes.ca.gov/PublicSafetyCommunicationsSite/Documents/9-1-1%20Fact%20Sheet-Ring%20Next%20Generation%209-1-1%20Project.pdf>.) Two out of the eight PSAPs are in Frontier territory, where the service is provided by the CLEC. There are at least 20 PSAPs in four other counties (Mendocino, Imperial, Butte, Santa Clara) where either the ILEC or the CLEC is carrying non-tariffed NG 911 traffic over what are called "non-standard CPE Configurations" using a special "AVPN" which stands for "AT&T Virtual Private Network." These are NG 911 network elements which must be tariffed.

¹⁶ *Id.*

¹⁷ Pub. Util. Code § 216.

¹⁸ Pub. Util. Code § 234.

where a service is performed, or a commodity is delivered to the public or any portion thereof. A telephone corporation includes every corporation or person owning, controlling, operating, or managing a telephone line for compensation in this state.¹⁹ A “‘telephone line’ includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned or controlled in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires.”²⁰ Virtually all telephone companies are public utilities.²¹

The Public Utilities Code states that all telephone corporations operating in California must have a CPCN pursuant to Public Code § 1001 or must be registered under Pub. Util. Code § 1013.²² Section 1001 establishes the Commission’s exclusive authority to grant a CPCN to a public utility seeking to operate in California. Section 1013 provides that the Commission may exempt a telephone corporation from the CPCN requirements of § 1001 and “instead subject them to registration as the commission may determine.”²³ The means by which service is provided, whether it be traditional landline telephone service,²⁴

¹⁹ *Id.*

²⁰ Pub. Util. Code § 233.

²¹ See, e.g., D.01-07-030, Appendix A, *Interim Rules Governing Non-Communications-Related Charges on Telephone Bills*, at 1, 6.

²² Pub. Util. Code § 1001.

²³ Pub. Util. Code § 1013(a).

²⁴ This is sometimes referred to as Plain Old Telephone Service (POTS), which is a landline service that historically used copper wiring to make and receive calls. Today, POTS can be, but generally is not, provided over broadband facilities.

Respondents to file advice letters containing updated 911 tariffs with the Commission, contrary to Respondents' claim.

2.2. Requirement to Provide 911 Service Under Statute

All carriers, including traditional landline, VoIP, and wireless carriers, are required to offer 911 services under both state and federal law. The Commission's oversight of 911 service is contained in several sections of the Public Utilities Code: § 742 (911 for public telephones); § 2883 (911 service and "warm lines"); § 2889.6 (information to customers regarding 911); and § 2892 (requiring wireless carriers to provide access to 911 service). Furthermore, the Warren-9-1-1-Emergency Assistance Act established "911" as the primary emergency telephone number for use in California.³¹ This Act addresses the roles of local public agencies, the Public Safety Communication Division, within CalOES, and the Attorney General. While the Commission recognizes the primary role of CalOES to implement the 911 system, as the agency with primary jurisdiction over telephone corporations, the Commission, has the authority to enforce and implement requirements over the 911 service.³²

The CPUC requires CPCN holders providing "local exchange"³³ telephone service to offer their customers access to 911 services as a component of that local service because 911 services are inherently intrastate services.³⁴ Neither the Federal Communications Commission (FCC) nor any federal court has found

³¹ Government Code §§ 53100-53121.

³² *Id.*

³³ Local exchange service is a CPCN condition of service, which AT&T California has as a franchise and AT&T Corporation has from its CPCN.

³⁴ *See* D.96-10-066 and D.12-12-038. All 911 calls originate and terminate within California, so they fall explicitly under CPUC jurisdiction.

that the authority over 911 calls of states generally, or California in particular, is preempted by any provision of federal law or in FCC rules.

Section 495.7(b) of the Public Utilities Code reads, in relevant part, as follows:

The commission may, by rule or order, partially or completely exempt certain telecommunications services, *except basic exchange service offered by telephone or telegraph corporations*, from the tariffing requirements of Sections 454, 489, 491, and 495.³⁵

Thus, pursuant to § 495.7(b), the CPUC is statutorily prohibited from detariffing anything it defines as “basic service” and telephone service providers, including Respondents, are required to maintain and update 911 tariffs on file with the Commission.

2.3. Requirement to Provide 911 in Commission Decisions

911 service has been a component of basic telephone service in California for over 20 years. The Commission included 911 in the definition of basic service in D.96-10-066.³⁶ In D.12-12-038, the Commission chose to keep 911 as part of the definition of basic service, noting that “[a]ccess to emergency services is essential to all consumers.”³⁷ The Commission recently affirmed this holding in D.19-08-025.³⁸ The CPUC has never distinguished its jurisdiction over 911 calls based on the technology platform used to provide the service.³⁹ For example, in

³⁵ Pub. Util. Code § 495.7(b).

³⁶ See D.96-10-066 adopting a definition of “basic service”, Appendix B § 4(B)(5), 1996 CALPUC LEXIS 1046, *458.

³⁷ D.12-12-038, pp. 22-23, adopting a definition of “basic service”; see also Appendix A.

³⁸ D.19-08-025 at 56-57, COL 24.

³⁹ See, e.g., D.12-12-038 at 22-23 (“We do not dictate the use of any particular technology or network design for the purpose of satisfying the basic service requirement for 911/E911 access, but recognize that a carrier must comply with applicable state and federal laws pertaining to 911/E911 access.”).

D.12-12-038, the Commission reiterated that the requirement to provide 911 is technology-neutral,⁴⁰ and it made the same pronouncement in D.19-08-025.⁴¹

There are also 911 obligations imposed on COLRs. The purpose of the COLR idea is to ensure that there is a public utility which is obligated to serve all the customers in its service area who request service.⁴² D.96-10-066 defined a COLR as “[a] carrier who provides local exchange service, and stands ready to provide basic service to any customer requesting such service within a specified area. To be a COLR, the provider must meet Commission-approved qualifications.”⁴³ Under D.12-12-038, the requirement that a COLR be ready to provide basic service, including 911, remains unchanged. As a COLR, AT&T California is required to provide 911 within its service territory. A COLR may choose to also offer basic services outside of its service territories through competitive local carrier affiliates. AT&T California’s CLEC affiliate, AT&T Corporation carries NG 911 traffic in California over the Pasadena RING and other projects in the State without the appropriate tariffs.

D.19-08-025 adopts an emergency disaster relief program for customers of communications service providers. This emergency disaster relief program is “designed to ensure that communications service provider customers who experience a housing or financial crisis due to a disaster keep vital services and receive support in the wake of a disaster.”⁴⁴ The Commission stated in D.19-08-25, issued only a few months ago, that:

⁴⁰ D.12-12-038 at 22-24.

⁴¹ D.19-08-025 at 14.

⁴² See D.96-10-066.

⁴³ D.96-10-066, Appendix B § 1(F), 1996 CALPUC LEXIS 1046, *454.

⁴⁴ D.19-08-025 at 2.

911 service is a component of basic service as the CPUC has defined it for over 25 years, and as such, providers are required to maintain 911 tariffs on file with the CPUC, citing D.12-12-038 [decision adopting revisions to “basic service” definition] and Section 495.7(b) [“The commission may, by rule or order, partially or completely exempt certain telecommunications services, *except basic exchange service offered by telephone or telegraph corporations*, from the tariffing requirements of Sections 454, 489, 491, and 495.” (Emphasis added.)].⁴⁵

The decision also determined that “VoIP [voice over Internet protocol] providers are required to offer 911 services under both state and federal law.”⁴⁶ Despite this recent directive from the Commission in a proceeding that AT&T is a party to, Respondents still refuse to comply with the Commission’s direction to update their 911 tariffs.

2.4. General Order 96-B

General Order 96-B includes industry-wide rules for telecommunications providers and services. In D.07-09-018, a decision that clarified the advice letter process and adopted detariffing rules for GO 96-B,⁴⁷ the Commission stated that “[t]he 911 system provides the public an important public service that must be available to all phone customers *and must not be detariffed.*”⁴⁸ GO 96-B Telecommunications Industry Rule 5 likewise emphasizes that 911 must remain

⁴⁵ *Id.* at 56-57, COL 24.

⁴⁶ *Id.* at 56, COL 23. *See also id.* at COL 26 & 27.

⁴⁷ In order to consolidate issues between the two proceedings, the Commission consolidated the URF proceeding (R.05-04-005) and the GO 96-B proceeding (R.98-07-038) and issued two companion decisions in those consolidated proceeding: D.07-09-018 and D.07-09-019. D.07-09-018 clarified the advice letter procedures and established detariffing requirements for carriers subject to the URF rules. D.07-09-19 established the Telecommunications Industry Rules as part of GO 96-B, which relies on the URF record and incorporates the new advice letter and detariffing requirements that the Commission adopted in D.07-09-018.

⁴⁸ D.07-09-018 at 88, Finding of Fact 34 (emphasis added).

part of carriers' tariffs, stating: "An URF Carrier may cancel by advice letter any retail tariff currently in effect except for the following: Basic Service; 911 or e-911 service . . ." ⁴⁹

GO 96-B also contains specific rules about advice letter filings requesting approval of a new service or requesting a change of a tariffed rate, charge, term, or condition:

8.3 New Service

An advice letter requesting approval of a New Service must attest that the proposed service would:

- (1) comply with all applicable provisions of the Public Utilities Code, including without limitation Sections 2891 to 2894.10, and with the applicable consumer protection rules adopted by the Commission;
- (2) not result in a degradation in quality of other service provided by the Utility submitting the advice letter; and
- (3) not be activated for a particular customer unless affirmatively requested by the customer.

An advice letter by a GRC-LEC requesting approval of a New Service must show that the rate or charge set for the New Service is at or above cost. Cost data provided in support of the New Service may be submitted under seal together with a request for confidential treatment. (*See* General Rule 9.) ⁵⁰

8.4 Change to Tariffed Rate, Charge, Term, or Condition

An advice letter requesting approval of a change to a tariffed rate, charge, term, or condition, if the change is required to be submitted for review and disposition by Tier 3 advice letter, must demonstrate that the rate, charge, term, or condition, as proposed to be changed, would be just and reasonable. If Staff determines that a change requested by an advice letter to a rate, charge, term, or condition requires a hearing or otherwise requires review in a

⁴⁹ GO 96-B Industry Rule 5 (emphasis added).

⁵⁰ GO 96-B § 8.3.

formal proceeding, Staff will reject the advice letter without prejudice. (*See* General Rule 5.3.)⁵¹

Further, GO 96-B contains a specific process that must be followed for a telecommunications service provider to cease offering an element of basic service or basic service all together. Under GO 96-B § 8.5, the provider must file an application with the Commission to obtain approval to cease offering an element of basic service or all basic service within its service area. Neither AT&T California, nor AT&T Corporation nor any of its subsidiaries have filed an application to cease offering 911 service pursuant to GO 96-B § 8.5.

The CPUC informed Respondents in three letters from Director Walker that the CPUC requires Respondents to update their tariffs in accordance with GO 96-B, Industry Rules 8.3 for New Service and 8.4 for Changes to Tariffed Rate, Charge, Term or Condition. Eight months after the Commission sent Respondents its first letter regarding updating their tariffs, Respondents still refuse to file updated 911 tariffs covering the use of NG 911 technology to provision these services.

2.5. Remedies

Based on these preliminarily determined facts, which may be modified or corrected through further investigation, there is a reasonable basis to conclude that Respondents, through their failure to file updated 911 tariffs, have a violated Commission decision, GO 96-B, and applicable law.

Traditionally, the Commission pursues monetary fines for violation of its Rules and orders. If a violation is found, the Commission may levy fines upon AT&T directly. Pub. Util. Code § 2107 provides for a penalty of not less than \$500 and not more than \$50,000 for a utility's failure or neglect to comply with

⁵¹ GO 96-B § 8.4.

“any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the [C]ommission.”⁵² Pub. Util. Code § 2108 provides that every violation of any order, decision, decree, rule, direction, demand or requirement of the Commission “is a separate and distinct offense, and in case of a continuing violation each day’s continuance thereof shall be a separate and distinct offense.”⁵³

Furthermore, Pub. Util. Code § 2113 states that a utility, corporation, or person which fails to comply with any part of any order, decision, rule, regulation, direction, demand, or requirement of the Commission or any Commissioner is “in contempt of the [C]ommission,” and may be punished by the Commission “in the same manner and to the same extent as contempt is punished by courts of record.”⁵⁴

In addition to imposing monetary fines, penalties, and holding a utility in contempt, the Commission can do all things necessary and convenient in the exercise of its power and jurisdiction.⁵⁵ Thus, the Commission may impose, fines, penalties, hold Respondents in contempt, and/or impose any other punishments on Respondents consistent with the Public Utilities Code.

3. Categorization of Proceeding

As provided in Rule 1.3(a) and 8.2(b) of the Commission’s Rules of Practice and Procedure, the Order to Show Cause (OSC) portion of this proceeding, including the OSC hearing, is categorized as adjudicatory and *ex parte*

⁵² Pub. Util. Code § 2107.

⁵³ Pub. Util. Code § 2108.

⁵⁴ Pub. Util. Code § 2013.

⁵⁵ Pub. Util. Code § 701.

communications are prohibited. The determination as to category is appealable pursuant to Rule 7.6 of the Commission's Rules of Practice and Procedure.

IT IS RULED that:

1. Respondents are ordered to appear at an Order to Show Cause Evidentiary Hearing to be scheduled as described below, and there to show cause why the California Public Utilities Commission (Commission) should not adjudge Respondents in contempt of the Commission, for failing to comply with the Commission's orders in Decision 19-08-025, and/or for failing to comply with the Public Utilities Code and General Order 96-B.

2. Respondents shall appear and show cause why they should not be sanctioned, fined, or otherwise penalized, or have their license to operate revoked or suspended, at the following evidentiary hearing:

Date: January 23, 2020

Place: 505 Van Ness Avenue, San Francisco, CA 94102

Time: 10:00 a.m.

3. A quorum of the Commission may attend the hearing.

4. At the hearing, Respondents shall cause to appear a senior executive capable of addressing the alleged violations in this Ruling, as well as any other officers, employees, or agents necessary to explain and address all of the above allegations. Such witnesses shall be placed under oath and subject to cross-examination. Respondents may provide other competent witnesses to provide relevant testimony.

5. No later than January 6, 2020, Respondents shall file and serve a verified statement responding to the allegations contained in this Ruling.

6. This Ruling constitutes the Notice of Opportunity to Be Heard pursuant to Public Utilities Code Section 2113. Respondents must appear at the hearing.

Should Respondents fail to appear, the allegations in this Ruling will be deemed

admitted although the assigned Administrative Law Judge may allow additional evidence or information.

7. This Order to Show Cause (OSC) portion of the proceeding, including the OSC hearing, is categorized as adjudicatory and *ex parte* contacts are prohibited. The determination as to category is appealable pursuant to Rule 7.6 of the Commission's Rules of Practice and Procedure.

8. This Ruling shall be served on the mailing list for this proceeding. Additionally, the Executive Director shall send by certified mail, return receipt requested, a copy of this Ruling to the Respondents at the following addresses:

**AT&T California
AT&T Corporation
ATT: Peter Hayes
430 Bush Street, 5th Floor
San Francisco, CA 94108-3735**

This Ruling is effective today.

Dated December 20, 2019, at San Francisco, California.

/s/ KARL J. BEMESDERFER

Karl J. Bemesderfer
Administrative Law Judge