

Decision 20-08-037 August 27, 2020

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking
Regarding Emergency Disaster Relief
Program.

Rulemaking 18-03-011

**MODIFIED PRESIDING OFFICER'S DECISION SANCTIONING
AT&T CALIFORNIA (U1001C) AND AT&T CORPORATION (U5002C)
FOR VIOLATIONS OF COMMISSION RULE 1.1, GENERAL ORDER 96-B,
AND DECISION 19-08-025**

Summary

In the course of dealing with the California Public Utilities Commission (CPUC or Commission), Respondents AT&T California and AT&T Corporation (collectively AT&T, unless individually specified) have violated Commission Rule 1.1,¹ General Order 96-B, Decision (D.) 19-08-025, and applicable law for which they are fined \$3,750,000 and required to submit tariffs for Next Generation 911 service no later than thirty (30) days after the date of issuance of

¹ Both the Presiding Officer's Decision (POD) and AT&T's Appeal referred to Rule 1.1 as it is commonly known in Commission practice, i.e., "Rule 1."

this decision. This Modified Presiding Officer's Decision responds to AT&T's Appeal.

1. Background

As used herein, “911” applies to all types of 911 services; “original 911” refers to the 911 system as first developed;² “E 911” refers to “enhanced” 911 service;³ “legacy 911” refers to the original 911 and E 911, as the systems were often offered side-by-side; and NG 911 refers to Next Generation 911, both as it has existed in the Pasadena Regional Integrated Next Generation (RING) 911 network,⁴ and as it is being implemented by the Governor’s Office of Emergency Services (Cal OES) pursuant to Govt Code §53121.⁵

Under CPUC rules, utility companies are licensed to provide service in the State of California. Along with the benefits of these licenses⁶ come

² AT&T first made the digits “9-1-1” available nationally for wireline access to emergency services in 1965, and the first 911 call was made in 1968. Basic 911 service transmits only the voice call to the Public Service Access Point (PSAP) from which a dispatcher routes the call to the appropriate emergency service. See *In re IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, 10248, and fn 13 (*In re IP-Enabled Services*); FCC Report re Legal & Regulatory Framework for NG 911, *supra*, to Congress re Legal and Regulatory Framework for NG 911 Services (2014), available at <https://www.fcc.gov/document/legal-and-regulatory-framework-NG-911-services-report-congress> (FCC Report re Legal & Regulatory Framework for NG 911), at 3.1.1.

³ E 911 service expands on basic 911 service by transmitting the caller’s call-back number and location along with the voice call and delivering the call to the appropriate PSAP. It is considered a creature of the Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, at Sec. 3 (FCC “shall encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure ... [including] enhanced wireless 9-1-1 service”), available at <https://www.congress.gov/106/plaws/publ81/PLAW-106publ81.pdf>, although the FCC [apparently] first addressed the issue in its E 911 First Report and Order, 11 FCC Rcd 18676 (1996). See FCC Report re Legal and Regulatory Framework for NG 911, *supra*.

⁴ As explained below, the Pasadena RING 911 is believed to be the first instance of AT&T NG 911 network deployment in California. It was a Cal OES pilot project designed to test a NG 911 system in a real-world setting, and was deployed in 2018-2020 (and is possibly continuing). As

responsibilities. Pertinent to this decision, is the responsibility of licensed telephone corporations offering 911 service or supplying any of its elements to assure the proper provisioning of the 911 system through the submission of tariffs. Tariffs are the central mechanism by which public accountability and the utility's compliance with regulatory and statutory mandates are assured.⁷

Respondents AT&T California and AT&T Corporation are both licensed telephone corporations subject to this requirement.⁸

AT&T California is an Incumbent Local Exchange Carrier (ILEC), which means it holds a historic monopoly franchise license. With the privilege of this license comes an obligation to serve as the Carrier of Last Resort (COLR) in its service territory, and to provide "Basic Service," which is the minimum level of

with the legacy network, AT&T carried the 911 traffic all the way from its last-mile customers to the PSAPs, but did so using NG 911 technology.

⁵ "Instead of using dedicated trunks, selective routers, and ANI and ALI databases, NG 911 will use IP-based hardware and software to provide call identification, location determination, call routing, and call signaling for emergency calls...NG-capable PSAPs will receive and process incoming calls by means of IP-based networks called Emergency Services IP Networks (ESInets)." FCC Report re Legal and Regulatory Framework for NG 911, *supra*, at 3.1.2. Congress authorized the FCC to help implement NG 911 with the Next Generation 9-1-1 Advancement Act of 2012 as part of the Middle Class Tax Relief and Job Creation Act of 2012 (NG 911 Act). Although NG 911 lines are not "dedicated" as they were in the legacy system, physical transport (sometimes referred to as "trunks") remain necessary to transport the NG 911 call across the network, as reflected by multiple references to trunk service in the Cal OES Request for Proposals (RFP) for NG 911 network providers (OSC Exhibit 1).

⁶ Certificated telephone utilities gain access to streets and public rights of way, to utility poles and conduits, to a pool of telephone numbers, as well as the right to compel interconnection with other carriers.

⁷ "A 'tariff' is a public document setting forth the services of the [telecommunications] carrier being offered, the rates and charges with respect to the services and the governing rules, regulations and practices relating to those services." *International Tel & Tel Corp v United Tel. Co.*

service that must be provided to its customers.⁹ Explicitly included as a component of Basic Service is the obligation to provide tariffed 911 service.

AT&T Corporation is a Competitive Local Exchange Carrier (CLEC), which means it holds a certificate of public convenience and necessity (CPCN) to provide competitive local exchange services. With this privilege comes the obligation to provide 911 service, as enumerated in the decision permitting competition in “local exchange” telephone services.¹⁰ Further, the Commission, in determining the regulatory obligations of incumbent and competitive carriers alike, explicitly found that the “911 system provides the public an important public service that must be available to all phone customers *and must not be de-tariffed,*” and that de-tariffing of 911 or other emergency services is not in the public interest.¹¹ The submission of updated tariffs is a central mechanism by which accountability and compliance with regulatory and statutory mandates is assured.¹² The confusion and misdirection apparent in the record of this

of Fla., (M.D. Fla 1975) 433 F.Supp 352, 357, n4; *AT&T v. BellSouth* (11th Cir., 2001) 268 F.3d 1294, 1297.

⁸ AT&T California is the successor entity to Pacific Telephone & Telegraph, which obtained a franchise many decades ago from the CPUC to provide service; that franchise was “grandfathered” when the California Legislature enacted Public Utilities Code § 1001, which requires service providers to obtain a license from the CPUC. AT&T Corporation, an affiliate of AT&T California, obtained a CPCN after the CPUC authorized competition in the local telephone market in 1995.

⁹ See Decision 96-10-066 as revised by Decision 12-12-038.

¹⁰ Decision 95-07-054

¹¹ Decision 07-09-018, Finding of Fact 34, Conclusion of Law 22, and Ordering Paragraph 3.

¹² Accountability is essential given the disastrous effects of failure in early NG 911 technology, such as California, Washington state, and other states experienced in the 2014 Intrado failure.

proceeding could have been largely avoided had AT&T provided tariff schedules that clearly itemized and described the service elements of NG 911 networks, as directed.

Cal OES is responsible for the 911 network under state law. Cal OES has developed an updated 911 service delivery design and procured new services for the NG 911 system. Procurement began with a Request for Proposals (RFP) on April 1, 2019. The RFP requires that any company submitting a proposal obtain a CPCN from, and submit a tariff with, the CPUC for the services being proposed.¹³

GO 96-B, Industry Rules §§ 8.3 (New Service) and 8.4 (Changes to Tariffed Rate, Change, Term or Condition) require telephone utilities, including existing 911 service providers like Respondents, to update their tariffs when their service offerings change. On April 15, 2019, the Director of the Commission's Communications Division, Cynthia Walker,¹⁴ sent a letter to Mr. Mark Berry, Regulatory Director at AT&T California, informing AT&T of the need to update the company's existing 911 tariff to comport with the requirements of the new NG 911 infrastructure. The letter included a response date of June 7, 2019. AT&T did not respond to the letter within the specified timeframe.

See <https://www.fcc.gov/document/april-2014-multistate-911-outage-report>, at for example at 1, 13-14.

¹³ OSC Exhibit 1, Cal OES RFP, at sub-Exhibits 21 and 23, Requirements 21.3.11 and 23.3.1 (the NG 911 "Service Provider and any subcontractor providing aggregation services must have a CPCN and tariff filing").

¹⁴ Cynthia Walker retired earlier this year. The new Communications Division Director is Robert Osborn.

On May 16, 2019, AT&T Corporation filed a lawsuit against Cal OES in Sacramento County Superior Court, claiming that the requirement to submit a tariff as a prerequisite of responding to the NG 911 RFP was illegal.¹⁵ AT&T challenged the RFP, in pertinent part, on the grounds that Public Utilities Code § 710 prevents the Commission from regulating Voice over Internet Protocol (VoIP) and other IP-enabled services, all of which are essential parts of an NG 911 system. The California Department of Justice, Cal OES, the California Department of Technology, and the Commission each contributed to the defense of the tariffing requirement. On June 3, 2019 the Court denied AT&T's Petition for a Temporary Restraining Order against Cal OES.¹⁶ AT&T subsequently dismissed the lawsuit.

Tariffs are essential to ensuring a sound 911 system because Cal OES cannot rely solely on contract remedies to ensure 911 services are available 24 hours a day, seven days a week, and 365 days a year. In most cases, the harshest contract remedy for nonperformance is to terminate the contract. For 911 services, terminating the contract is not a viable option because 911 services cannot fail. Californians' health, welfare, and safety and in many cases, their lives, are dependent on a fully functional 911 service. Administering a procurement process to transition from one type of 911 service to another can be

¹⁵ *AT&T Corp. v. California Governor's Office of Emergency Services*, Sacramento Superior Court Case No. 34-2019-80003146.

¹⁶ June 3, 2019 Minute Order, The Hon. James Arguelles presiding (Dept. 17).

a 12-to-18-month process and the 911 system must remain functional throughout that period.

AT&T's Mr. Berry testified that he spoke with unnamed Communications Division (CD) staff on June 12, 2019; in response to the question of why AT&T California had not submitted updated tariffs as directed by Director Walker, he stated that AT&T California does not offer the services referred to in the letter.¹⁷ Mr. Berry also suggested that, even if it did offer these services, AT&T California 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.¹⁸

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

On September 18, 2019, Director Walker sent a third letter, this one addressed to Mark Berry, instructing the company to submit tariffs for services it was providing to the *existing* Pasadena Regional Integrated Next Generation (RING) project. On October 1, 2019, Director Walker participated in a phone call with AT&T California in which AT&T California representatives stated that they would provide a response by the end of the week.

¹⁷ January 23, 2020 OSC Transcript (Transcript), at 74:6-17.

¹⁸ *Id.* at 75:15-76:24, citing and quoting from Exhibit 25, a June 14, 2019 letter from the Legislative Counsel Bureau.

On October 4, 2019, AT&T Corporation submitted Advice Letter (AL) 4336 with the CPUC.¹⁹ On October 23, 2019, CPUC staff rejected the AL 4336 filing for the following errors, omissions, and non-compliance issues:

- a. AL 4336 does not address the questions posed in the three letters from Director Walker.
- b. AL 4336 does not comply with GO 96-B, § 9. It consists of a Title Page, a Table of Contents, an Explanation of Symbols, General Regulations, and a List of Contracts, but it contains no pricing or listing of services as required by GO 96-B and as requested in the multiple letters sent to AT&T California..
- c. AL 4336 does not comply with GO 96-B's Industry Rules 8.3 for New Service and 8.4 for changes to Tariffed Rate, Charge, Term or Condition. Director Walker's letters had noted that AT&T California provided tariffed 911 and NG 911 service using existing technology, and that since the existing platform was being replaced with an NG 911 platform, AT&T California must submit new NG 911 tariffs to update its existing, and soon to be outdated, tariffs.
- d. AL 4336 is internally inconsistent. It purports to be submitted on behalf of AT&T Corporation (U5002C) the CLEC; but its header indicates that the filer is "U1001C" which is the utility number for AT&T California, the ILEC and COLR.
- e. AL 4336 purports to respond to Director Walker's September 18, 2019, letter regarding the Pasadena RING 911 project, but does not address nor comply with Director Walker's original two letters which directed

¹⁹ OSC Exhibit 14,

AT&T to submit tariffs related to NG 911 services offered anywhere in the State.

- f. As to the Pasadena RING 911 project, AL 4336 fails to list the non-recurring and monthly recurring charges for the AT&T turnkey NG 911 Emergency Services Network (ESInet) then (and still) deployed to at least eight PSAPs in the Pasadena RING Project, as well as future ESInet deployments. (ESInet uses IP-enabled service to carry and deliver NG 911 calls.)²⁰

On November 5, 2019, AT&T California finally provided a written response to Director Walker's letters. In the response, AT&T California claimed that it "does not offer a [sic] NG 911 Trunk²¹ Services in California, and therefore does not have a NG 911 Trunk Service to tariff at this time." AT&T California further claimed that the 911 service AT&T Corporation provides to "Pasadena RING" "is not a generally-available service appropriate for placement in a tariff."²²

On December 20, 2019 the Presiding Officer issued an order to show cause (OSC) to Respondents directing them to appear and explain why they should not be fined or otherwise sanctioned for their refusal to submit NG 911 tariffs as directed by Director Walker and other conduct in violation of Commission rules and regulations, Commission decisions, and applicable law. On January 23, 2020 an evidentiary hearing was held in response to the OSC. At the hearing,

²⁰ OSC Exhibit 15, October 24, 2019 email from staff member Louise Fischer to Mark Berry at AT&T Regulatory.

²¹ A trunk is a cable that carries voice traffic

²² OSC Exhibit 15 (Fischer October 24, 2019 email to AT&T's Mark Berry).

AT&T offered multiple excuses for its failures to respond to Director Walker's letters or to submit tariffs as she directed.

2. Discussion and Analysis

At issue in this proceeding are two general questions. First, are Respondents required to submit tariffs for NG 911 service? Second, have Respondents behaved in a manner that calls for a fine and, if so, how large should that fine be?

2.1 Are Respondents required to submit NG 911 tariffs?

Yes. The Commission requires AT&T Corporation (the CLEC) to offer 911 services to its customers and not to de-tariff those services.²³ The Commission also requires AT&T California (the ILEC) to provide Basic Service – also known as “basic exchange service” – to its customers. Tariffed 911 services are necessarily included in Basic Service and AT&T California may not de-tariff them²⁴ Pursuant to Section 495.7(b) of the Public Utilities Code, services may only be de-tariffed by “rule or order,” and Basic Service may not be de-tariffed at all:

The commission may, by rule or order, partially or completely exempt certain telecommunications services, *except basic exchange service offered by telephone or telegraph*

²³ Decision 95-07-054; Decision 07-09-018, Finding of Fact 34 (“The 911 system provides the public an important public service that must be available to all phone customers and must not be de-tariffed”), Conclusion of Law 22 (“De-tariffing of 911 services is not in the public interest”), and Ordering Paragraph 3(c).

²⁴ D.07-09-018, *supra*.

corporations, from the tariffing requirements of Sections 454, 489, 491, and 495.35.²⁵

The Commission has never issued a rule or order de-tariffing any part of 911 services. Indeed, by subsequent decisions discussed below, the Commission has made clear that the duty to tariff extends to the 911 “system,” including its transport elements. It was those transport elements that the CPUC Communications Director three times directed AT&T to tariff.

Decision 19-08-025, issued earlier in this proceeding, created a permanent disaster relief program to ensure continuity of service, predictability and consistency in times of crisis for customers of communication service providers.²⁶ In addition, it directed carriers to establish systems and procedures necessary to provide swift and substantive assistance to affected customers of disasters.²⁷ As part of ensuring continuity of service in times of crisis, the carriers are required by D.19-08-025 to comply with maintaining 911 tariffs on file with the Commission.²⁸

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 per Decision 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

²⁵ Pub. Util. Code § 495.7(b).

²⁶ Decision 19-08-025 at 7.

²⁷ *Id.*

²⁸ *Id.* at 14, 56-57, Conclusion of Law 24

telecommunications services, *except basic exchange service offered by telephone or telegraph corporations*, from the tariffing requirements of Sections 454, 489, 491, and 495.”].²⁹

Despite this recent directive from the Commission in a proceeding that they are parties to, and at a time when AT&T is offering *both* Basic Service and an end-to-end 911 network (including in some instances NG 911 elements), Respondents have refused to update their 911 tariffs. Prior to this dispute with Respondents, no licensed carrier had argued that it was excused from its obligation to deliver tariffed 911 service if the underlying technology of the telephone system changed from analog to digital or, as in its latest incarnation, was made up in whole or in part of routers and other equipment configured to handle IP-enabled traffic. On the contrary, in response to a question from the Presiding Officer during the evidentiary hearing on January 23, 2020, Respondents’ witness Neinast conceded that the obligation to offer tariffed 911 service is technology indifferent.³⁰

Notwithstanding their recognition that the obligation to offer tariffed 911 service is technology indifferent, Respondents argued in response to the letters from Director Walker and in the evidentiary hearing, that because NG 911

²⁹ *Id.* (emphasis added.)

³⁰ Transcript at 62-63:

Q (by ALJ Bemesderfer): Is there any reason from your perspective as an engineer that 911 calls should be limited to any particular technology? Why shouldn’t the obligation to deliver 911 be technologically indifferent?

A (by Mr. Neinast): I think it is technologically indifferent. I really do.

incorporates IP-enabled technology, they are relieved of their obligation to tariff the 911 service they provide.³¹ In support of this position, Respondents cited Public Utilities Code § 710 which explicitly exempted IP-enabled traffic from Commission regulation. But reliance on § 710 in this context is mistaken in at least two major respects.

First, while § 710 prohibited the Commission from exercising regulatory authority over IP-enabled services, sub-section (e) preserved the Commission's jurisdiction over basic service:

(e) This section does not affect any existing regulation or proceeding governing, or existing commission authority over non-VoIP and other non-IP-enabled wireline or wireless service, including regulations governing universal service and the offering of basic service and lifeline service, and obligations to offer basic service."

Respondents interpret this provision as making the obligation to offer 911 service dependent on the technology used to provide it. Further, relying on the language in § 710 that limited the CPUC's ability to exercise regulatory jurisdiction over any IP-enabled service, and reading it as they would have us read it, § 710 would exempt from CPUC oversight 911 service delivered by all carriers if they modernize the delivery of 911 service from any traditional

³¹ See, e.g., Transcript at 76:18-24.

technology to any IP-based technology.^{32,33} But this reading is perverse. It not only does away with the obligation to offer 911 service, but taken literally, it **would excuse carriers who upgrade their equipment from providing 911 service at all.** Whatever the legislature may have intended in adopting § 710, surely it was not that.

In other words, so long as Respondents are licensed carriers, they remain obligated to provide 911 service, regardless of the technology employed to deliver that service. Even in an NG 911 world, AT&T will still provide Basic Service to residential customers, as well as elements of, or inputs to, the NG 911 transport system. Indeed, AT&T has long maintained a tariff (the A9 tariff) that separately describes and prices these transport service elements. In short, 911 service has always been a tariffed service and so long as AT&T provides it, they must tariff it.

Second, while § 710 prohibited state agencies broadly from exercising regulatory authority over IP-enabled services, sub-section (c)(8) specifically preserved the Commission's and Cal OES's oversight of the 911 system:

(c) This section does not affect or supersede any of the following:
[...]

³² Former PU Code § 710 read in relevant part as follows: “(a) The commission shall not exercise regulatory jurisdiction or control over ... Internet Protocol enabled services...”, with certain exceptions.

³³ Traditional land line technology (Time Division Multiplexing [TDM]) and traditional mobile phone technology (Code Division Multiple Access [CDMA] and Global System for Mobile Communication [GSM]) must all be converted to IP-enabled technology in an NG 911 network.

(8) The Warren-911-Emergency Assistance Act (Article 6 (commencing with Section 53100) of Chapter 1.5 of Part 1 of Division 2 of Title 5 of the Government Code).

To put it bluntly, § 710 itself refutes Respondents' reliance on it as excusing them from their obligation to tariff their NG 911 offerings.

Beyond relying on § 710, Respondents offered another novel argument. Cal OES selected four core service providers to manage the delivery of a 911 call to a PSAP from the point at which the originating carrier hands off the call to one of them. Cal OES did not select either of the AT&T companies as a core service provider. Therefore, Respondents argue, their obligations to provide tariffed 911 service cease at the point of handoff. But while this argument may describe how Respondents will handle 911 calls that they originate, it ignores the 911 traffic Respondents will transport on behalf of the core service providers, and any other services that Respondents will provide to the NG 911 system being established by Cal OES, all of which must be tariffed.

2.2 Have Respondents made misrepresentations or engaged in other conduct meriting a fine?

During the evidentiary hearing, Respondents first claimed that they did not deliver IP-enabled traffic to any PSAP³⁴, but later conceded that they are able

³⁴ Transcript at 36-37:

Q (by Mr. Discher) Does AT&T California offer any kind of NG 911 service to PSAPs?

A (by Mr. Neinast): No...

Q Now, focusing on AT&T Corp, does AT&T Corp provide NG 911 service to PSAPs?

A Yes, it does.

to do so at multiple locations.³⁵ Respondents also conceded that they supply trunks to the core service providers such that a call handed off to a core service provider may, in turn, be handed off to one of Respondents for delivery to the PSAP.³⁶

In addition to making these misrepresentations regarding delivery of IP-enabled traffic to PSAPs, Respondents repeatedly ignored Director Walker's letters and refused to submit an NG 911 tariff. At the evidentiary hearing, counsel for the Respondents claimed that a phone call from a staff member at AT&T California to a staff member at the Commission constituted an adequate response to Director Walker's multiple written directives to senior officers of AT&T California, a claim that the Presiding Officer found without merit.³⁷

Q In California

A In California, no, it does not any longer.

³⁵ See generally Transcript at 56-60 establishing that AT&T Corp. though its AVPN service, is able to deliver IP-enabled calls to multiple PSAPs in California.

³⁶ Transcript at 26-27:

Q (by ALJ Bemesderfer) And who is providing that transit [from the point of aggregation] to the PSAP?

A (by Mr. Neinast) Either they [the core service providers] are or they are getting it from a third party.

Q And the third party could be...

A Could be anybody. Could be Comcast. It could be AT&T

Q Could it be AT&T California or AT&T Corporation?

A. AT&T California has TDM equipment like T1s and they can do that. You can actually encapsulate an IP signal over the TDM network.

³⁷ At the Evidentiary Hearing, ALJ Bemesderfer stated: "Director Walker asked for an answer and Director Walker got no answer, then or later. I think it is important to be clear about this

Coupled with the non-responsive AL 4336, AT&T's conduct can best be described as willful refusal to comply with a Commission directive.

We conclude that by their deliberate and repeated refusals to respond appropriately to the letters from Director Walker, their misrepresentations regarding their handling of 911 traffic, and their deliberate ignoring of D.19-08-025, GO 96-B, and applicable law, Respondents have engaged in conduct that merits a fine. Public Utilities Code § 2107 authorizes the Commission to impose fines ranging from \$500 to \$100,000 for such conduct.³⁸ Public Utilities Code § 2108 makes each day that such conduct continues a separate offense under § 2107.³⁹

In seeking to fix the amount of the fine, we have considered both the severity of Respondents' misconduct and its duration. Ignoring a written directive from a Commission Division Director is a serious matter if engaged in once. In this case, the seriousness was compounded by AT&T California's

point. If a Vice President of AT&T were to send a request to a Commissioner and someone down in the bowels of the Commission were to have a conversation with someone down in the bowels of AT&T, I don't think that would qualify as a response...." (Transcript at 62-63.)

³⁸ Pub. Util. Code § 2107 states: "Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand or requirement of the commission in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500)/ nor more than one hundred thousand dollars (\$100,00), for each offense."

³⁹ Pub. Util. Code § 2108 states: Every violation of the provision of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission by any corporation or person 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.

repeated refusal to respond to multiple letters from Director Walker. Ignoring a decision of the Commission entered in this proceeding is also a serious matter.

We conclude that Respondents' conduct is not so egregious as to merit a maximum fine nor so excusable as to merit a minimum fine; accordingly, we find that a daily fine of \$15,000, composed of two elements, is appropriate. For their repeated refusal to respond to the letters from Director Walker we will impose a fine of \$10,000 per day. For their misrepresentations regarding the handling of 911 traffic and their deliberate disregard of D.19-08-025, we will impose a fine of \$5000 a day. As for duration, approximately 250 days elapsed between Director Walker's first letter and the filing of the Order to Show Cause, resulting in a total fine of \$3,750,000.

In addition to imposing this fine for past misconduct, we direct Respondents to submit NG 911 tariffs within thirty (30) days of the effective date of this decision. If they fail to do so, the \$15,000 fine daily imposed herein will be continued until such tariffs are submitted.

3. Assignment of Proceeding

Marybel Batjer is the Assigned Commissioner in this case and Karl J. Bemesderfer is the assigned Administrative Law Judge.

4. Appeal of Presiding Officer's Decision

On May 4, 2020 Respondents AT&T California and AT&T Corp. jointly appealed the Presiding Officer's Decision ("POD"). We affirm the POD and accept its conclusion that Respondents violated Commission Rule 1.1, General Order 96-B, Decision (D.) 19-08-025, and applicable law, for which a fine of \$3,750,000 is appropriate. Respondents are required to submit tariffs for Next

Generation 911 service no later than thirty (30) days after the date of issuance of this decision.

In responding to AT&T's Appeal we take official notice of relevant public information that AT&T could have presented at the OSC hearing but did not. Such public information demonstrates that AT&T's presentation at the hearing was misleading and fell short of the standards of conduct embodied in Rule 1.1. We do not assess additional penalties for such conduct. Instead we describe the missing information in order to: provide a fuller description of NG 911 and related services provide fuller context for our decision to fine AT&T for its violations of Commission Rule 1.1 and General Order 66-B identified in the POD. The public information of which we take official notice is set out in Attachment A to this decision.

In their Appeal, the AT&T entities allege that the POD "rests on four fundamental reversible errors."⁴⁰ The alleged errors may be summarized as follows:

1. AT&T's witnesses at the OSC hearing did not make any false statements. Therefore, the POD errs in fining AT&T for their alleged misrepresentations.
2. AT&T is not required to tariff NG 911 (or, apparently, any 911 service). Therefore, the POD errs in fining AT&T for violation of a requirement that does not exist.

⁴⁰ *AT&T California's (U 1001 C) and AT&T Corp.'s (U 5002 C) Appeal of Presiding Officer's Decision Sanctioning AT&T California and AT&T Corp. for Violations of Rule 1, General Order 96-B and Decision 19-08-025 ("Appeal")* at 2.

3. AT&T is not required to respond to letters from the Director of the Communications Division within any specific period. Therefore, the POD errs in fining AT&T for its failures to respond promptly to the letters from the Director.
4. The fine was imposed without consideration of required factors and, in any case, the period for which the fine was imposed is excessive.

Before addressing these specific objections, we believe it is useful and will lead to greater clarity of understanding if we review the background and the basic elements of the 911 system, both as it currently exists and as it will exist when NG 911 is fully implemented. We believe this review is especially appropriate in view of AT&T's persistent conflation of, on the one hand, a telephone company offering 911 access to its local exchange customers with, on the other hand, a telephone company providing essential components of the 911 system to public agencies or other entities responsible for the operation of the system. Traditionally, AT&T has provided both.

The need for a next generation emergency calling system.

Prior to the introduction of Voice over Internet Protocol (VoIP) telephony and the modern mobile phone, the 911 emergency calling system made use of the fact that each land line is assigned a telephone number that is tied to a specific location.⁴¹ Enhancements to the system over time made it possible for a

⁴¹ In 2005, in an initial attempt to solve the location problem (for interconnected VoIP only), the FCC relied on consumer self-reporting. *In re IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, par. 2.

dispatcher at a PSAP to see on a computer screen the address from which a 911 call originated and to send appropriate resources to respond to the emergency.⁴²

NG 911 service promises to continue that progress. Because mobile phones are not tied to a specific address, NG 911 networks use the geo-location capability of modern mobile phones to identify the location of the caller. NG 911 networks also take advantage of the ability of modern mobile phones and wireless networks to transmit text, photo and video files along with voice communications.⁴³ As AT& T's witness Neinast testified, this permits, at least in theory, someone calling into a NG 911 network to show the dispatcher photographs or video of the emergency (fire, automobile accident, mudslide, etc.).⁴⁴

How does California's NG 911 system work?

Cal OES is the public agency charged with developing the statewide and long-term NG 911 system. After reviewing responses to its RFP, Cal OES selected four respondents, three Regional Network Service Providers (RNSPs) and one Core Network Service Provider (CNSP) to build and administer the new network. Each RNSP is responsible for administering the NG 911 network in a separate area of California; the CNSP operates statewide. Each of the selected

⁴² See, e.g., Transcript at 15:17-28.

⁴³ See, e.g., https://www.911.gov/NG_911movie.html. The FCC and industry are still working on a location solution for nomadic VoIP. See, e.g., *In the Matter of Implementing Kari's Law and Section 506 of RAY BAUM'S Act, etc*, PS Docket No. 18-261, Release FCC 19-76, 33 FCC Rcd 6607, at pars 157, 178 ff.

⁴⁴ Transcript at 15:7:16

companies entered into a contract with Cal OES to develop NG 911 software to route calls originating from any landline or mobile phone over the existing physical network of wires, routers and switches to the appropriate PSAP. Here's how Synergem, the RNSP for Northern California, including the San Francisco Bay area, describes its service offerings:

“SynergemNET™ has three service elements:

- i3-Interconnect™ provides connections for telecom carriers to route both legacy and IP traffic into the SynergemNET™ cloud. It can accept 9-1-1 calls from anywhere in the country and will perform conversion from legacy traffic to i3 format.
- i3-Route™ provides turnkey NG9-1-1 Core Services to PSAPs and other NG9-1-1 providers, replacing existing 9-1-1 network services for location and routing functions. i3-Route™ can terminate calls into any PSAP, including ones that are still using legacy equipment.
- i3-Call™ includes a hosted PBX phone system tied to a fully compliant i3 call taking application for complete presentation of caller information including location, additional data and multimedia content. This is ideal for PSAPs looking to upgrade to NG9-1-1 quickly and economically.⁴⁵

What is not apparent in this description is that the “connections” – *i.e.*, the trunk or transport lines – are not provided by Synergem itself, even though they are listed in Synergem's tariffs. Like two of the other network service providers, Atos and NGA 911, Synergem has no trunks or transport facilities of its own, a

⁴⁵ Found at <https://synergemtech.com/synergemnet>.

fact noted by the CPUC in granting these entities CPCN operating authority.⁴⁶ Thus, Synergem's NG 911 service **requires** the use of the existing physical network to transport calls, once the Synergem software processes and routes the call. The existing physical network of trunks, switches and other equipment over which the NG 911 calls travel is owned by various licensed carriers like AT&T California, AT&T Corporation, Frontier, and Level 3. Without that physical network, the NG 911 system could not exist.

The Commission has long required any licensed carrier offering network transport services to tariff its service offerings. Nothing in the new system does away with that requirement.⁴⁷ The requirement to tariff network transport

⁴⁶ See D.18-03-005 (Synergem):

Synergem intends to use its own switching facilities and to obtain transport from other carriers...Synergem will not construct any facilities other than equipment to be installed in existing buildings or structures." (Slip Op at 2, FoF 2).

And D.18-07-032 (NGA 911):

"NGA proposes to provide emergency call routing, transport and related functionalities to state and municipal governmental agencies to support public service answering point (PSAP) operations. NGA will rely primarily on existing facilities obtained from other carriers and utilities but may consider constructing its own facilities as necessary. NGA expects that any outside plant construction would be small in scale, consisting of construction of relatively short conduit stubs or other below or above-ground facilities, where existing facilities are inadequate."

And D.18-07-031 (Atos):

"All services will be routed over facilities owned by other certified carriers. Atos proposes to provide services throughout California and does not contemplate any construction or extension of facilities in connection with the instant application, other than equipment to be installed within existing building or data centers." (Slip Op at 3)

⁴⁷ We note that the Federal Communications Commission has urged the States to "retain their primary responsibility for the deployment and configuration of 911 and NG 911 services." See FCC's Report to Congress re Legal and Regulatory Framework for NG 911 Services (2014),

services is inextricably linked to the requirement to provide the 911 component of Basic Service. "Access to 911" and "911 transport" are both essential, integral elements of a 911 system. What was once a unified system in which a single carrier like AT&T was responsible for getting the 911 call from the consumer to the PSAP will, once NG 911 is fully implemented, be distributed among multiple providers, including but not limited to AT&T. Commission rules, however, will continue to require, at a minimum, that 911 transport to be tariffed.

4.1 The Legal Requirement to Tariff NG 911 Services

AT&T's Appeal argues that the only duty it has is to provide "access to" 911, and even there it has no duty to separately *tariff* such access. "Applicable law requires the tariff of Basic Service only – which already inherently includes access to 911."⁴⁸ Respondents contend there is no separate "requirement to tariff 'access to' 911," which it claims is "distinct from actual '911 Service' sold to PSAPs."⁴⁹ For good measure, AT&T adds that "Cal OES's planned implementation of an NG 911 system does not create any tariffing requirement."⁵⁰ These statements are all contrary to law and fact.

available at <https://www.fcc.gov/document/legal-and-regulatory-framework-ng911-services-report-congress>, at Summary of Recommendations, *passim*.

⁴⁸ Appeal at 1.

⁴⁹ *Id.*

⁵⁰ *Id.*

4.1.1. AT&T Has a Duty to Tariff All Elements of its 911 Services

AT&T's repeated references to "access to" 911 as the only duty at issue⁵¹ are, in fact and in law, red herrings. They are an attempt to distract from what the law requires and what Director Walker and other Commission staff repeatedly requested: the tariffing of NG 911 transport.

The 911 system only works if the emergency call moves as rapidly as possible from the threatened or injured party to the emergency service provider (police, fire, EMT etc.). If any link of the intervening chain is missing, the 911 system fails. That is why the Commission has clearly and on multiple occasions indicated that the 911 tariffing requirement relates to the 911 *system*, and to the *services* that comprise that system. And that is why AT&T itself has tariffed multiple components of 911 service in the legacy system, as shown below.

In Decision (D.) 07-09-018, we addressed the question of whether services other than Basic Service should be tariffed, and concluded that neither "a tariff for basic service" nor a "tariff for *911 or other emergency services*" qualified for de-tariffing, and so ordered.⁵² We found that "[t]he 911 **system** provides the public an important public service that must be available to all phone customers and **must not be de-tariffed.**"⁵³

⁵¹ *Id.* at 1, 2, 7, 8 *passim*.

⁵² D.07-09-018, Conclusion of Law 3 (emphasis added). We reached such findings and conclusions, even when AT&T, Verizon, Frontier and were found to lack "significant market power" in the voice telephone market. *Id.* at 4.

⁵³ *Id.*, Finding of Fact (FOF) 34 (emphasis added).

In D. 13-07-019, the Commission reiterated the importance and necessity of 911 emergency services “for all telecommunications consumers and the public,” as well as its order that 911 and other emergency services not be de-tariffed:

[W]ith some of the recent Commission decisions deregulating certain telecommunications services in California,⁵⁴ the Commission has never deregulated 911 and other emergency services nor explicitly equated 911 and other emergency services with other deregulated telecommunication services. In fact, in D.07-09-018, we found that ... “[**de-tariffing of 911 services is not in the public interest.**”⁵⁵

Even in the face of “ever-changing technological advances,” the Commission has reiterated the necessity of 911 emergency services “for all telecommunications consumers and the public”:

The Commission has long been a steadfast supporter of California’s 911 system and been committed to promotion of that 911 system in the sea of ever-changing technological advances to provide critical public safety protection to California’s telecommunications consumers. This unwavering commitment has its foundation in Public Utilities Code §451 which provides:

... Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary

⁵⁴ See *e.g.*, D.06-08-030; D.07-09-018; and D.07-09-019.

⁵⁵ D.13-07-019. Slip Op. at 8, quoting D.07-09-018, Conclusion of Law (COL) 22 (emphasis added).

to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.⁵⁶

True to Public Utilities Code § 451, in decision after decision, the Commission has promoted the “safety, health, comfort, and convenience of its patrons, employees, and the public” while carefully balancing the need for regulation to protect consumers with the need for businesses to earn a satisfactory return on their investments.⁵⁷

All 911 services are in a protected category both as to tariffing and pricing:

This unequivocal decision directing that 911 and other emergency services not be de-tariffed, coupled with an absence of language addressing the pricing of 911 in any of our other decisions, further confirms our continued conviction that 911 and other emergency services warrant different treatment and heightened protection as compared to other telecommunication services, both in terms of tariffing and pricing.

Thus, we confirm that 911 and other emergency services remain under the same protective treatment as they had been under the Commission’s 1990 Resolution requiring that the rates for 911 and other emergency services be “as close to cost as possible.”⁵⁸

⁵⁶ *Id.*, Slip Op. at 6, quoting Pub.Utills. Code § 451.

⁵⁷ *Id.*

⁵⁸ *Id.* at 8 (footnote omitted); *see also id.* at CoL 10:

It continues to be the Commission’s policy that Enhanced 9-1-1 service rates and charges, including services such as “Inform 911”, should be fair and reasonable and based on a cost showing to the Commission, and the utilities’ rates

The Commission has uniformly reaffirmed the importance and need for 911 coverage for all telecommunications consumers and the public, even as it liberalized the rules applicable to the larger marketplace. In D.06-03-013 (Decision Issuing Revised General Order 168, Market Rules to Empower Consumers and to Prevent Fraud), the Commission announced its continuing commitment to public safety, recognized the importance of supporting the 911 system consistent with the commitment to public safety and extended the 911 requirements to wireless carriers, stating:

[T]he role of government at issue here -- the promotion of public safety -- is independent of the marketplace. Significant public safety considerations justify the extension of 911 requirements to wireless carriers. For some time, state and local governments have relied 911 as the critical communications element in providing police, fire protection and emergency health service. Although the marketplace will likely drive most providers to offer 911 services, we believe that it is better to adopt these 911 requirements, rather than create a situation in which the unavailability of 911 service becomes known only in an emergency.⁵⁹

4.1.2. The Duty to Tariff 911 Service Elements Applies to NG 911 Service

AT&T claims that any NG 911 tariffing requirement for the years prior to 2020 is barred by Section 710's prohibition on Commission regulation of

associated with Enhanced 9-1-1 service to MLTS customers must be cost-based and generally subject to Resolution T-14043.

⁵⁹ D.06-03-013, Slip Op. at 61.

IP-enabled service. Thus, it argues, it could have no liability for failure to tariff NG 911 services that it did offer and provide during that time.⁶⁰ The

Commission rejected this argument in D.19-08-025:

Section 710 expressly states that its prohibition of VoIP [“and Internet Protocol enabled services”] regulation does not apply to 9-1-1 emergency services. Section 710 (c)(8) states:

This section does not affect or supersede the “Warren-9-1-1-Emergency Assistance Act,” (Gov. Code § 53100 et seq.). The Warren-9-1-1-Emergency Assistance Act established “9-1-1” as the primary emergency telephone number for use in California.⁶¹ This Act addresses the roles of local public agencies, the Public Safety Communication Division, within the Office of Emergency Services (Cal OES), and the Attorney General. While the Commission recognizes the primary role of the Office of Emergency Services (Cal OES) to implement the 9-1-1 system; as the agency with primary jurisdiction over telephone corporations, the Commission, would have the authority to enforce/implement requirements that support 9-1-1 service.⁶²

⁶⁰ Appeal at 19-21 (“Section 710 Precludes Any Fine During 2019”). AT&T’s violation of GO 96-B reaches back before 2019, to the beginning of NG 911 service in Pasadena, which was late 2017 based on the contract (see below) or early 2018 at the latest.

Although Public Utils. Code § 710 sunset on January 1, 2020, and the Legislature did not enact a successor statute, AT&T’s witnesses suggested that there could be no tariffing requirement going forward because NG 911 was based on a “virtual network ... so there’s no hard connection ever.” Transcript at 55:11-56:8. As made clear below, AT&T is still offering NG 911 transport service over physical connections, even if the protocol is different.

⁶¹ Gov. Code, §§ 53100, 53111.

⁶² Slip Op. at 14.

AT&T argues that the (c)(8) exception does not apply to CPUC regulation because the Emergency Assistance Act “does not even mention the Commission.”⁶³ That argument distorts the actual text and structure of Section 710, which states (in 710(a)) that “[t]he commission shall not exercise regulatory jurisdiction” over IP-enabled services, and then adds in 710(c) that this prohibition “does not affect or supersede any of the following,” including the Warren-911-Emergency Assistance Act. The fact that the CPUC is not specifically mentioned in that Act is immaterial. At the time Section 710 was passed into law, the CPUC had other obligations, anchored in the Public Utilities Code, regarding 911 service.⁶⁴

Additionally, we note that “any obligations to offer basic service” are also excepted from 710(a)’s prohibition.⁶⁵

4.1.3. AT&T itself has Recognized a Duty to Tariff 911 Services, and all Parts of Them.

AT&T’s Appeal rests in part on an alleged distinction between “access to 911” services and “911 services” proper. AT&T itself, however, has recognized a duty to tariff all parts of its legacy 911 service, not just from the customer premises to some 911 gateway, but also from there to a central aggregation or processing point, and from that point to the PSAP.

⁶³ Appeal, at 20.

⁶⁴ See, e.g., Pub. Utils. Code §§ 319 (as described above), 2883, and 2896 (referencing Emergency Assistance Act).

⁶⁵ See 710(e). AT&T argues that Basic Service only includes “access to” 911, not 911 transport (Appeal at 19).

Thus, while AT&T California briefly references 911 in its Basic Service tariff,⁶⁶ AT&T California has submitted a separate Network & Exchange Services tariff (A9)⁶⁷ which covers in detail the 911 and E 911 service “furnished to political subdivisions and municipal corporations of the State of California” (including Cal OES which purchases the service for use by the PSAPs).⁶⁸ AT&T California’s A9 tariff includes the types of trunks and network elements that Commission staff directed AT&T to tariff for NG 911 networks.⁶⁹ AT&T California’s existing A9 “9-1-1 Emergency Service” tariff includes multiple entries for “E 9-1-1 End Office Trunk[s],” with nonrecurring and monthly charges.⁷⁰ Director Walker also requested that AT&T update the tariff for NG 911 “PSAP trunk”; AT&T California’s *existing* A9 tariff includes entries for “exchange lines” and “trunk” lines “terminating at the ... terminal equipment at the PSAP.”⁷¹

⁶⁶ AT&T California Schedule Cal PUC No A5, at section 5.2.2.A.8, 4th Revised Sheet 212.1, available at <http://cpr.att.com/pdf/ca/a005.pdf>.

⁶⁷ AT&T mentions the A9 tariff only once in its Appeal, in footnote 5, quoting the A9 language that 911/E911 service components are offered only to “political subdivisions and municipal corporations of the State of California.” The A9 tariff is found at <http://cpr.att.com/pdf/ca/a009.pdf>. As AT&T chose not to put the A9 tariff into evidence, as well as other relevant tariffs and service guides discussed below, the Commission will take Official Notice of those public documents, as set forth in Conclusion of Law [9] and Attachment A of this decision.

⁶⁸ See, e.g., A9 tariff 9.2.1.A.1, 3d revised sheet 224.

⁶⁹ Compare, for example, OSC Exhibit 5 (directing AT&T to update its “tariffs to include Nonrecurring and Monthly recurring charges” for NG 911 “End Office Trunk[s]”).

⁷⁰ *Id.* at tariff 9.2.3C, 5th Revised Sheet 243.9

⁷¹ *Id.* at tariff 9.2.1.C, 4th Revised Sheet 231.

AT&T California's A9 tariff encompasses both "Wireless 911"⁷² ("a service offering which routes wireless calls to specific [PSAPs]") and "VoIP 911 Service."⁷³ The A9 tariff describes other elements of 911 and E911 service, including Call Path Associated Signaling,⁷⁴ Pseudo-Automatic Number Identification (pANI) (for VoIP calls),⁷⁵ and various forms of customer premises equipment at the PSAP.⁷⁶

We note that affiliate AT&T Corp. also has a tariff that provides for 911 and E 911 "Emergency Number Service":

This tariff provides for Emergency Number Service (911 Service) which is an arrangement of Company Central Office *and trunking* facilities whereby a user who dials the telephone number "911" will reach the emergency

⁷² See, e.g., tariff 9.1.11.A.1., 3d Revised Sheet 219.

⁷³ See, e.g., tariff 9.1.11.A.2, 4th revised sheet 221; see also 9.1.11.C.2, 1st Revised Sheet 223.2 ("VoIP calls utilizing Wireless switch features").

⁷⁴ *Id.* tariff 9.1.11.A.1, *supra*.

⁷⁵ *Id.* tariff 9.1.11.A.2, *supra*.

⁷⁶ AT&T California's A9 tariff also demonstrate the ubiquity and utility of standard coding to identify service elements in a way that can be understood across the network, and which – had AT&T fully complied with Director Walker's direction – could have eliminated much of the confusion described herein.

These standard codes are called Uniform Service Order Codes (USOCs), and provide an industry-wide *lingua franca*. According to *Newton's Telecom Dictionary*, 24th Ed., these codes provide a "structured language" used to order, provision, bill, and maintain services and equipment.

The Bell operating companies in the United States and many independent telephone companies use USOCs to communicate both within their company and between companies. Many new companies in the industry are using the USOC information to interpret incumbent telephone company records when they are supplying service to a new customer. The different companies may have

report center or PSAP for the telephone from which the number is dialed. The telephone user who dials the 911 number will not be charged for the call.⁷⁷

Finally, the point-to-point transport services described in these 911-specific tariffs (as well as those described in the Service Guides discussed below), appear similar and may in some cases be identical to the trunk services offered in AT&T California's special access tariffs, including virtual private network and fiber optic transport services.⁷⁸

These tariffs and service guides collectively demonstrate that, contrary to AT&T's assertions, services similar to the AT&T Virtual Private Network (AVPN) trunk lines (see below) and other next generation point-to-point transport used in NG 911 networks, can be and have been tarified.

different names for the same service, but the USOC name is generic and therefore becomes a common naming device between companies.

Id at 973. Thus, 911 access lines have a USOC of 91M and 911 trunks have a USOC of TGZ (if flat rate service), 92K and T99 respectively if measured rate service.

⁷⁷ AT&T Corp. Schedule Cal P.U.C. No F-T, Tariff Schedule Applicable to Competitive Local Carrier Within the State of California, at Rule No. 26, 2.26.1 *et seq.*, 1st Revised Sheet 71, Original Sheets 72 and 73 (2012-13) (emphasis added), available at https://serviceguide.att.com/tariff/consumer/manage/secure/files/CALCBTCM_j001.pdf.

⁷⁸ AT&T California Special Access Service, tariff Schedule Cal P.U.C. No 175-T, available at <http://cpr.att.com/pdf/ca/t007.pdf>; *see e.g.*, at 16th Revised Sheet 249 ("Service Descriptions" of "Private Virtual Network Access Line," as well as "Optical Network Point to Point Service" and other optical services usually associated with high-speed fiber transmission); 5th Revised Sheet 278D (virtual private networks); 5th Revised Sheet 251 (Optical Carrier Network services).

4.1.4. AT&T's Service Guides Show that AT&T Corp. Is Currently Offering NG 911 Service in California

The record does not reflect any instance before, at, or after the OSC hearing – or at any time in its protracted negotiations with the CPUC⁷⁹ -- in which AT&T mentioned that it has terms and conditions on its website for a service explicitly labelled “NG 9-1-1 System Provider Services.”⁸⁰ The Terms & Conditions for this NG 911 system, offered by AT&T Corp., define the service as an

Internet Protocol (IP) based system comprised of managed Emergency Services IP networks (ESInets), functional elements (applications), and databases that replicate traditional Enhanced 9-1-1 Service features and functions and provides additional capabilities. NG 9-1-1 is designed to provide access to emergency services from all connected communications sources and provides multimedia data capabilities for Public Safety Answering Points (PSAPs) and other emergency service organizations. AT&T ESInetTM is a NG 9-1-1 Service.⁸¹

AT&T's ESInet includes transport:

AT&T will route the OSP's 9-1-1 traffic from the AT&T

⁷⁹ See, e.g., OSC Exhibits 3 and 4 (August 2018 correspondence), 8 (including September 27, 2019 AT&T email), 14 (October 4, 2019 Advice Letter), 15 (October 24, 2019 rejection), and 9 (AT&T's November 5, 2019 letter).

⁸⁰ The AT&T “Service Guide” containing these “terms and conditions” is found at https://serviceguide.att.com/servicelibrary/ext/buss_tariffs.cfm?state=CA&stype_id=548&category=1 (checked July 12, 2020) . The Service Guide specifically applies to AT&T Corp., as it “is certified to do intrastate business” in California. *Id.*

⁸¹ *Id.* at Section 2, First Revised Sheet 2.

ESInet™ POI to the primary PSAP or to the alternate locations designated by the NG 9-1-1 Customer, according to routing criteria specified by the NG 9-1-1 Customer.⁸²

AT&T advertised its NG 911 service with a 2016 press release, touting its “Next Generation IP Network Service for 911.”⁸³ Yet in response to the OSC before this Commission, AT&T denied that it had such a product: “AT&T California ... does not provide, has no plans to provide, and was not selected by Cal OES to provide NG 911 service.”⁸⁴ And what about AT&T Corp., also named as a Respondent in the OSC? At page 26 of its Response, AT&T admits that AT&T Corp. has a “customized, customer-specific offering called the ‘Pasadena RING solution,’ under which it provides an NG 911 Emergency Services IP network,” but states that “AT&T Corp does not offer NG 911 on a generic basis in California.”⁸⁵ Yet AT&T Corp.’s NG 911 Service Guide states that it applies to

⁸² This language is in a different part of AT&T’s NG 911 Service Guide, relating to “Service Description” for NG 911, available at https://serviceguide.att.com/servicelibrary/ext/buss_tariffs.cfm?state=CA&stype_id=548&category=2 (checked July 12, 2020) (at Section 6.2.1 “Call Routing,” Original Page 1.1, effective February 2018).

⁸³ https://about.att.com/story/next_generation_ip_network_service_for_911.html. AT&T does not distinguish in this marketing material between its affiliates.

⁸⁴ AT&T California’s (U 1001 C) and AT&T Corp.’s (U 5002 C) Verified Response to Administrative Law Judge’s Ruling Regarding Order to Show Cause, filed January 6, 2020, at p. 1. This document was accepted for filing although it is not searchable as required by Rule 1.13 of the CPUC’s Rules of Practice and Procedure.

⁸⁵ *Id.* at 26.

AT&T Corp. as it “is certified to do intrastate business” in a list of States, including California.⁸⁶

In addition to the ESInet “solution,” AT&T Corp.’s “California Service Guide” for “Private Line Services – Interoffice Channel” also reflects AT&T’s offering of a localized intra-LATA point-to-point transport which it refers to as a virtual private network, echoing AT&T’s description of AVPN:

When an ACCUNET T1.5 Service channel is offered for intraLATA service, it will only be used for the dedicated connection of two end user premises within a LATA for the purpose of providing intraLATA high speed digital non-switched service. See AT&T Private Line Services- Local Channel Service Guide .⁸⁷

We understand that the telecommunications network technology is constantly evolving. What does not change, however, is the need for physical transport, *i.e.*, trunk lines and other facilities to carry the traffic. These are elements that AT&T California provided in the legacy 911 system, and that

⁸⁶ NG 911 Service Guide, Terms and Conditions, *supra* fn. [81].

⁸⁷ AT&T Corp.’s California Service Guide for Private Line Services – Interoffice Channel, at Section 5, 1st Revised page 1, found at at https://serviceguide.att.com/tariff/business/manage/secure/files/CAP9SSDM_h502.pdf#page=1 With descriptions and rates for this and other dedicated high speed digital channels. Section 6 of the Service Guide for Private Line Services offers fiber transport AT&T calls its Accunet T45 Interoffice Channel, which it defines as

[A] channel between two AT&T central offices, points of connection, or a combination thereof, on AT&T’s digital fiber optic network.

Descriptions and price lists for these and other high-speed point-to-point services are included in this Service Guide. *Compare* Transcript at 52:27-28 (“AVPN is AT&T’s Virtual Private Network, and it is a transport service”).

AT&T will likely continue to provide in the NG 911 system. Without access to these elements, the NG 911 system cannot function. These elements have been tariffed in the past; they are being tariffed now (and/or included in “Service Guides”); and they must be tariffed in the future.

To the extent that AT&T (or any of its affiliates) is offering, or will be offering, new or changed 911 services, those services must be tariffed per GO 96-B Tariff Rules 8.3 and 8.4. These are not new rules.

4.1.5. AT&T’s Evasive and Contradictory Response to the Order to Show Cause

AT&T’s testimony and briefing float between the existing legacy network and its view of a future NG 911 network, while hardly mentioning the NG 911 network that AT&T was actually operating from 2017-2020 in Pasadena, California. In so doing, AT&T defines for itself what is included in NG 911 service and what is excluded (its “generic” AVPN trunk lines, for example). These strategies are described below.

4.1.5.1 Rather than Respond to the Order to Show Cause, AT&T Attempted to Change the Subject

The Order to Show Cause describes (at pp. 4-5) the three letters written to AT&T by the Director of the CPUC’s Communications Division, directing AT&T to submit updated tariffs for the new NG 911 services it was offering. Director Walker’s letters were very specific: AT&T was instructed to tariff all 911 “service elements,” including “Next Generation (NG) Trunks and bandwidth for transport of 9-1-1 traffic from the Central Office to the point of ingress (POIs) of

the Emergency Service IP network (ESInet), from POI to Regional NG Core and Regional Core to PSAP, and IP trunks from the Selective Router to the PSAP.”⁸⁸

Rather than respond to these questions about trunks and transport, AT&T argued about “access to” 911 services. AT&T seized on the fact that staff had initially grounded its direction to AT&T to tariff NG 911 service elements on AT&T’s status as a Basic Service Provider and COLR, *inter alia*. AT&T then reached back to language from a 1996 CPUC Decision defining Basic Service to include “access to” 911 service. Both its briefing and testimony refer repeatedly to “access to” 911 [and distinguish it from 911 service proper] and say little if anything about trunk lines and other transport, the subjects of Director Walker’s three notices to correct.⁸⁹

At no point did Director Walker ask AT&T to tariff “access to” 911 services – her letters were directed to wires (NG 911 trunks), facilities, and other network parts that actually deliver NG 911 service.⁹⁰ We can only infer that the request for information on facilities-based services was the question AT&T did not want to answer.

⁸⁸ OSC Exhibit 5, April 15/26 2019 letter from Director Walker to AT&T Regulatory’s Mark Berry.

⁸⁹ AT&T references “access to” nine times in the first two pages of its Appeal and repeats it throughout. AT&T cites (at page 12) the *one instance* in the POD where “access to” is used, and ignores the multiple references in the POD to “AVPN” and other NG 911 transit” (*e.g.*, POD at 12), to Director Walker’s letters requiring AT&T to tariff its trunk lines (POD at 3-4) and the importance of tariffs “to ensuring a sound 911 system” (POD at 4, *emphasis added*). *See also*, *e.g.*, Transcript at 9:14, 18:9-18, 40:20, 41:7, 71:16-17, 72:7, 82:26.

⁹⁰ OSC Exhibits 5-7.

**4.1.5.2. Misleading Statements and Testimony
Related to AT&T Services in Future NG
911 Networks.**

The Commission decisions and other law cited above, establishing the duty to tariff 911 services of course are well known to AT&T. Nevertheless, before and during the OSC hearing, and in its Appeal, AT&T has taken the position that ongoing changes in telecommunications technology relieve AT&T of the duty to provide a tariff for NG 911 services, notwithstanding multiple admonitions from the Commission that the duty to tariff remains unchanged. In support of this untenable position, AT&T's description of past, current and future 911 network configurations have been rife with inaccuracy, evasion, omission, and contradiction.

For example, AT&T wrote in its Appeal:

The implementation of an NG 911 system is not a mere update to the legacy system. Rather, it is a wholesale replacement that will radically change some carriers' roles and responsibilities. In particular, when Cal OES's NG 911 system is fully implemented, *AT&T California will no longer be a 911 System Service Provider*. Rather, Cal OES has chosen four NG 911 Service Providers, which do not include any ILECs, to serve as the exclusive "NG 911 Service Providers" statewide. *See Ex. 21*. When they become fully operational in 2021, those NG 911 Service Providers will provide all NG 911 Service and be "responsible for the aggregation, routing and delivery of 911 calls" in California.⁹¹

⁹¹ Appeal, at 7-8 (emphasis added)

This description of the NG 911 network -- particularly the assertion that “AT&T California will no longer be a 911 System Service Provider” -- is at best misleading. AT&T continues to provide, and almost certainly will continue to provide, essential 911 service components needed to “stitch together” the NG 911 network, the connections between the originating network, the core network intelligence, and the PSAPs, all provided by its AT&T’s AVPN trunk lines or equivalent transport services discussed herein.⁹² We know this because 3 of the 4 NG 911 “network service providers,” as Cal OES calls them,⁹³ have no transport facilities of their own (*see above*).

Exhibit 19, which illustrated much of AT&T’s testimony, and to which AT&T refers in its Appeal Brief, is a diagram (reproduced below) prepared by Cal OES to illustrate the structure of the future NG 911 system. AT&T’s name is on the diagram, at the lower left as one of the State’s largest Originating Service Providers or “OSPs.” And AT&T’s wires are also represented on the diagram, as the “OSP connection” from AT&T’s last-mile network to the Points of Interface (POIs), which connection is denoted by red arrows. Finally, the evidence

⁹² Although the use of AVPN lines was addressed in the Order to Show Cause (at footnote 15), and was a recurring theme of the OSC Hearing, AVPN transport appears only once in AT&T’s Appeal, at footnote 19, where AT&T claims that AVPNs are “generic service” and therefore not part of NG 911 service. Footnote 19 refers to AT&T’s Post-Hearing Brief at pp. 16-21, which makes the same point at greater length (“not sold as a 911 service). The Post-Hearing Brief adds the misleading suggestion that because some APVNs are “located on the PSAP’s side” of the demarcation between NG 911 Service Provider and PSAP, all AVPN lines are located there, and therefore not part of the NG 911 network. We reject both conclusions.

⁹² *See, e.g.*, A9 tariff 9.2.1.A.1, 3d revised sheet 224

⁹³ *See, e.g.*, OSC Exhibit 1, RFP at sub-Exhibits 21 and 23.

strongly suggests that AT&T's wires are also on the diagram as the "NG trunk service" denoted by the blue arrows that connect the NG 911 service providers and the PSAPs. This is an inference we draw from these facts:

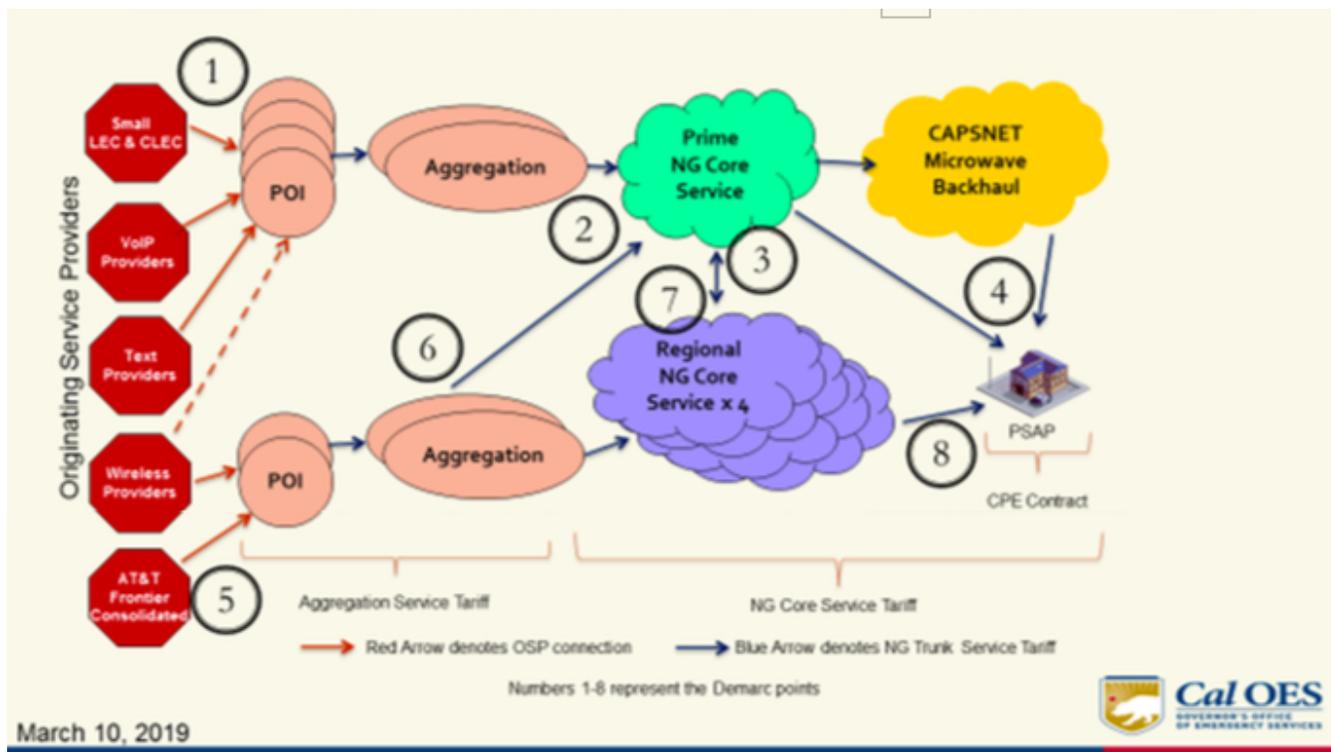
1. The Core Network Service Provider and two of the three Regional Network Service Providers shown on the diagram have no facilities of their own;⁹⁴
2. AT&T *has* supplied these lines in the Pasadena Regional Integrated Next Generation 911 network;⁹⁵
3. Only AT&T, Frontier, Comcast and a few other competitive carriers are in position to provide these facilities at the scale needed;⁹⁶ and
4. AT&T's Service Guides, described above, indicate that AT&T is currently offering NG 911 services, including the related connectivity.

Here is the future NG 911 network, as envisioned in Cal OES' RFP (OSC Exhibit 19):

⁹⁴ See discussion above. There are three RNSPs covering four districts. The CNSP (Atos) overlays all the districts.

⁹⁵ See the discussion below.

⁹⁶ Transcript at 66:24-27. ("There's several entities that also provide a similar service, Comcast or Level 3. They can use coax cable or fiber optics cable or several other sources^[REDACTED]").



While there is substantial evidence in the record suggesting that AT&T will provide AVPN or similar transport services in this future NG 911 network, we have no evidence suggesting the contrary. Thus, while AT&T’s witnesses repeatedly asserted that new NG 911 service providers had been selected to take over the NG 911 service operations,⁹⁷ they omitted two critical pieces of information: 1) the new system will not be up and running until 2021 or later, and even then 2) AT&T will be best positioned to transport 911 traffic for the NG Core and Regional Network Service Providers that have no facilities of their own. In the unlikely event that AT&T does not continue to transport 911 traffic,

⁹⁷ See, e.g., Transcript at 24:19-21, 28:27-28, 30:25-31:11, 37:21-22, 38:24-26 (“the only carriers that provide an NG 911 trunk are the NG 911 providers that Cal OES selected”), 44:7-9 (“NG 911 trunk that only that NG 911 provider selected by the state can provide”), 52:4-6, 79:24-28.

AT&T can so attest and submit an Advice Letter withdrawing all its existing 911 trunk service tariffs.

Despite evidence that AT&T is providing this service in an existing NG 911 network in Pasadena (see below), and perhaps elsewhere in the State, AT&T's witness Neinast began with the misleading assertion that "The only provider that can provide an NG 911 trunk is a NG 911 provider."⁹⁸ This tracks the misleading assertions in its Appeal that "AT&T California will no longer be a 911 System Service Provider" and "AT&T California's and AT&T Corp's only role in Cal OES's NG 911 system will be as Originating Service Providers."⁹⁹

This is a redefinition of terms – in the future NG 911 network, AT&T may not be a NG 911 *system* service provider, but it likely will continue to provide service to the NG 911 *network* service providers.¹⁰⁰ After denying that companies other than the new NG 911 operators would be able to offer NG 911 service to PSAPs,¹⁰¹ AT&T's witness Neinast admitted that AT&T is in fact able to offer transport services to the future NG 911 provider:

[ALJ] Q. And who is providing that transit to the

⁹⁸ Transcript at 38:10-11.

⁹⁹ Appeal at 7-8.

¹⁰⁰ The term "system service provider" appears to be AT&T's own coinage, as the RFP speaks of "network service providers." AT&T does not provide a glossary or definitions that might have clarified its usage.

¹⁰¹ Transcript at 30:25-28:

Q. Will companies other than the entities listed on [Exhibit 21] be able to offer NG 911 service to PSAPs?

A. No.

PSAP?^[REDACTED]

A Either they are or they're getting it from a third party.^[REDACTED] . . .

Q And the third party could be ^[REDACTED] . . .

A Could be anybody. Could be Comcast, it could be AT&T, it could be ^[REDACTED] Level 3 . . . There's a number of, you know, competitive access providers they could get that service from.^[REDACTED] . . .

Q Could it be AT&T California or AT&T Corporation?^[REDACTED] . . .

A It depends on what they are. AT&T California has TDM equipment, like T1s and they can do that.¹⁰²

In later questioning, Neinast admitted that AT&T in fact did offer and provide NG 911 service, at least in Pasadena if not elsewhere in California, as described below.

After questioning AT&T's witness about the Pasadena RING contract, the ALJ then asked whether, in addition to the Pasadena RING network, AT&T provided AVPN service to PSAPs elsewhere in the State, and the witness responded evasively. AT&T's Neinast first asserted that the connection to the PSAP was the "911 service provider's responsibility," despite the fact that AT&T was and possibly still is the 911 service provider in Pasadena, that new NG 911 providers do not come online until 2021, and that Mr. Neinast knew or reasonably should have known that AT&T had fulfilled both NG "911 service

¹⁰² *Id.* at 26:28- 27:16.

provider” and underlying transport functions in Pasadena. He then shifted the discussion to the question of what “customer side” service entails, without addressing the ALJ’s question, neither admitting nor denying that AT&T offers AVPN service to PSAPs elsewhere in California.¹⁰³ He gave a similarly evasive answer to a question about AVPN transport:

Q: Is that [AVPN] transport a 911 service?

A: No, it’s just a vehicle to get the 911 service to the PSAP.¹⁰⁴

One page earlier in the transcript, however, the witness had described an AVPN circuit in the NG 911 future as “a transport medium that kind of stitches those two intelligent devices [in the NG 911 network core] together.”¹⁰⁵ And a couple of pages earlier in the transcript he testified about the AT&T AVPN circuits used in the existing Pasadena ESInet, as discussed below.

In other contexts, this sort of point-to-point service is called “special access,” a service that AT&T California offers and tariffs.¹⁰⁶

¹⁰³ *Id.* at 57:4-18.

¹⁰⁴ Transcript, at 60-61. AT&T now claims that the AVPN service did not need to be tariffed as a NG 911 service because it is available to all customers, not just PSAPs. Appeal at fn. 19 (the only time AVPN lines are mentioned in the Appeal). This is again disingenuous. AVPN is not listed in AT&T’s A9 tariff, despite AT&T’s claims that it is generally available service, or other tariffs and Service Guides staff has reviewed. Even if it were listed, AT&T could have drawn that fact to Director Walker’s attention and explained that the service was used to transport 911 calls to the PSAPs.

¹⁰⁵ *Id.* at 59:14-24.

¹⁰⁶ See discussion of AT&T California Special Access Service in section 4.1.3, *supra*, fn. [79] and accompanying text. .

**4.1.5.3. Misleading Testimony and Conduct
Related to Its Provision of Untariffed NG
911 Services in the Pasadena RING 911
Network, 2017 to Date.**

In the Pasadena RING 911 program AT&T provided its ESInet, a complete NG 911 solution that includes routing intelligence as well as transport service, doing so in the end-to-end fashion of incumbent carriers in the legacy system,¹⁰⁷ as elicited in this testimony:

(ALJ) Q. So I'm going to ask you about another [acronym]. Can you explain to me in engineering terms what you understand by "AVPN." [REDACTED] . . .

A. AVPN is AT&T's Virtual Private Network, and it is a transport service. It's kind of like these blue lines if you will [referring to Exhibit [19], Cal OES' diagram of a NG 911 system]...¹⁰⁸

Q. Does either AT&T California or AT&T Corporation to your knowledge offer AVPN service to any PSAPs? [REDACTED] . . .

A. They offer it -- AVPN is the vehicle for the transmission from the ESInet that is our NG 911 to the PSAP. **So it's part of a packaged service. That's one of the things that is included as the service. Our Pasadena RING pad, part of that whole contract is**

¹⁰⁷ "End-to-end," in this context, connotes a network that delivers the 911 call from the end-user to the PSAP. See, e.g., Transcript at 13:12-13:

[ALJ] Q. Who supplies the transit between the LSR [Selective Router] and the PSAP?

A. The 911 System Service Provider provides that. And in today's world, since they are all ILECs, they have their own cables, their infrastructure, and they use that infrastructure to get the calls to that PSAP.

¹⁰⁸ *Id.* at 52-53.

the connectivity.

Q. To your knowledge, does the PSAP receive any call other than a 911 call?^[L] . . .

A. Not to my knowledge.^[L] . . .

Q. So your testimony, if I understand it, is that either AT&T California or AT&T Corporation or both of them are offering Internet Protocol enabled calls to PSAPs currently. Is that not your testimony?^[L] . . .

A. For the Pasadena RING, that's true.¹⁰⁹

AT&T attempted to obfuscate its provision of NG 911 service in the Pasadena RING network by suggesting first that AT&T's role had been supplanted by Cal OES' selection of four NG 911 network service providers (an absurd claim because these service providers will not fully assume their roles until 2021), and then by suggesting that the Pasadena project had been terminated:

Q. Now, focusing on AT&T Corp, does AT&T Corp provide NG 911 service to PSAPs?

A Yes, it does.

Q In California

A In California, no, it does not any longer. . . . **They had a service in Pasadena, but it's been displaced.**¹¹⁰

¹⁰⁹ *Id.* at 56-57 (emphasis added).

¹¹⁰ *Id.* at 36:25-37:5.

The claim here is that the Pasadena RING contract had ended three days before the OSC hearing, as AT&T's Neinast implied in his testimony while leaving open the contrary possibility.¹¹¹

If AT&T can deliver NG 911 calls to PSAPs, it can also submit tariffs describing that service, including prices, terms and other conditions, as it does for legacy 911 trunk lines in its A9 tariff (described above). Determining what NG 911 services AT&T was offering and the prices that AT&T was charging for them was precisely the object of Director Walker's multiple letters. In her April 15, 2019 letter, she directed AT&T to tariff the network or service elements to be included in the NG 911 network, going so far as to give specific examples of the elements she had in mind, including trunk lines from the central office to the core network, and from there to the PSAPs.¹¹² AT&T provided no substantive response. In her September 18, 2019 letter, Director Walker again attempted to

¹¹¹ Transcript at 36:25-37:5 (emphasis added)

· · · Q · Now, focusing on AT&T Corp, does · AT&T Corp provide NG 911 service to PSAPs... [i]n California[?]

· · · A · In California, no, it does not any · longer. · They were displaced. · They had a · service in Pasadena, RING, but it's been · displaced. · The contract is null and void, and **its being transitioned off.**

At 51:24-28 (emphasis added):

Q · Does the Pasadena RING service · still exist? · · · ·

A · No. · It's been decommissioned. · Its · contract expired January 20th, which is · recently, but Cal OES is already **working the transition off the network.**

¹¹² OSC Exhibit 5.

extract this information, particularly regarding the existing Pasadena RING 911 project:

In the State of California, all services within your network that carry 911 traffic, regardless of transport, must be tarified. The services deployed by AT&T in the Pasadena RING project include the connections from the Selective Router to the Hosted-Remote Call Processing Equipment (CPE) and from the CPE to the remote Public Safety Answering Points (PSAPs). Regardless of transport, the CPUC requires that *any connections used to carry 911 traffic* need to be tarified.¹¹³

After further delay, AT&T made a purported tariff submission with Advice Letter 4336, served on the advice letter service list on October 4, 2019. Staff rejected AL 4336 on October 24, 2019 because it failed to provide a clear statement of NG 911 services, prices, terms and conditions.¹¹⁴ Rather than identify the trunk line service (AVPN or otherwise) and other facilities being used to carry the NG 911 traffic, as required, the proposed “Tariff Schedule Applicable to Customer Specific Contracts” attached to Advice Letter 4336 contained several pages of boilerplate, ending with a page labelled “Customer Specific Contracts.” This page listed one contract, what purported to be

¹¹³ OSC Exhibit 7 (emphasis added).

¹¹⁴ This and other staff objections are found in OSC Exhibit 10 (October 24, 2019 email from CPUC’s Louise Fischer to AT&T’s Mark Berry), discussed above.

“Pasadena RING (Regional Integrated Next Generation) Project, Agreement Number 17-4003.”¹¹⁵

That was all staff and service list received in the initial October 4, 2019 electronic submission. AL 4336 and the proposed tariff stood alone; there was no indication that Agreement 17-4003 was “an integral part of the tariff,” as AT&T’s witness Mark Berry later testified.¹¹⁶ When AT&T’s counsel introduced AL 4336 and the proposed tariff as OSC Exhibit 14 at the OSC hearing, he omitted the contract, and did not notify the ALJ that an “integral part of the tariff” was missing.¹¹⁷

After the electronic service, staff received a compact disk (CD) which contained, among other documents, an electronic file labelled simply “contract.”¹¹⁸ There was no indication that the proposed tariff was meant to

¹¹⁵ OSC Exhibit 14.

¹¹⁶ Transcript at 80:4.

¹¹⁷ *Id.* at 6:5-17.

¹¹⁸ The table of contents of the CD read in its entirety:

<u>contents.txt</u>	<u>List of files on this CD</u>
4336.pdf	Summary Sheet, Advice Letter and proposed tariff changes
Contract.pdf	Contract

There was no explanatory note on the CD drawing attention to the “contract,” indicating it was intended to be part of AL 4336, or otherwise explaining its significance.

Even the contract, by its own terms, was not complete. Agreement 17-4003 lists, on its face, six incorporated documents. Items four, five, and six were not included on the CD: IFB [Invitation for Bid] 2015-01911 Next Generation 911 Systems and Services; AT&T Corp.’s Best & Final Offer; and AT&T Corp.’s Final Bid Response. An iteration of the IFB dated August 6, 2016, labelled Addendum 6 but apparently containing all or most of the IFB, is on Cal OES’ website, at <https://caloes.ca.gov/PublicSafetyCommunicationsSite/Documents/IFB2015-01911.pdf>.

explicitly incorporate the “contract” by reference. The proposed tariff did not “have prices,” as AT&T’s Berry testified.¹¹⁹ The proposed tariff did not “describe the services offered,” as the witness further testified.¹²⁰ It did not indicate in any way that AT&T was seeking approval of a proposed contract as required by Tariff Rule 4.7(5) and Industry Rule 4 (*see below*).

Finally, the “contract” sent to the CPUC on the compact disk was not the Pasadena RING contract as AT&T’s witnesses claimed,¹²¹ but – if anything – a predecessor contract (and only part of it).¹²² The actual Pasadena RING contract is different. It is online, in its public, abbreviated form, with a different Agreement number, and a specified contract price.¹²³ From this, one sees that

¹¹⁹ *Id.* at 80:1-3:

Q. Did the tariff that AT&T filed have prices?

A. Yes.

At the end of the alleged “contract,” there is a “cost workbook,” but there’s no reference there to Pasadena that staff can detect, or the specific requirements of the Pasadena RING contract. It is not in any recognizable tariff form as required by Tariff Rules 4.5-4.7 and Industry Rules 8.3 and 8.4.

¹²⁰ *Id.* at 80:6-8:

Q. Did the tariff AT&T Corp filed describe the services offered?

A. Yes.

¹²¹ *See, e.g.*, Transcript at 77:21-22.

¹²² On October 4, 2019 transmission to the CPUC included a document identified only as “contract.” It is Cal OES Agreement # 17-4003, executed on January 26, 2016 [2017?] and February 2, 2017 respectively. It has no final contract price.

¹²³ Cal OES Agreement # 4165-6, executed on June 22 and 29, 2017 respectively, clearly concerns the Pasadena RING project and is available at <https://www.caloes.ca.gov/PublicSafetyCommunicationsSite/Documents/OESAgreement4165-6ATTCorp.pdf>. It shows a final contract price of \$3.531 million. Agreement 17-4003, the

even the repeated claim that AT&T Corp. provided the Pasadena RING service turns out to be questionable. While the Pasadena RING contract is signed by a representative of AT&T Corp., the AT&T contact person for contract performance is a representative of AT&T California.¹²⁴

As noted above, it is not clear that AT&T's provision of untariffed NG 911 AVPN transport services to the Pasadena RING project has ended. AT&T's Peter Hayes' letter to the Commission suggests the possibility that AT&T's engagement with the Pasadena RING contract might be "extended" past the January 20, 2020 end-date.¹²⁵ AT&T's Berry implied the same.¹²⁶

4.1.6. AT&T Is Required to Submit a Tariff for NG 911 Services, even if it Provides those Services Pursuant to Contract

AT&T's November 5, 2019 letter went on to claim that service to the Pasadena RING did not need to be tariffed because it was a "custom...and negotiated" arrangement "not suitable for placement in a tariff."¹²⁷ AT&T here appears to be invoking General Order 96-B, [Telecommunications] Industry Rule 4. Contracts and Other Deviations

The Commission may authorize a Utility, on a case-by case basis, to provide service under a contract or other

"contract" on the CD AT&T delivered to staff, had no contract price. *Compare* Transcript at 48:25-26, volunteering the wrong date for the RING contract (i.e., the Agreement 17-4003 date).

¹²⁴ *Id.* (showing Henry Wang, an Application Sales Executive from AT&T California, as the "Contract Contact").

¹²⁵ OSC Exhibit 9.

¹²⁶ Transcript at 79:21-28.

¹²⁷ OSC Exhibit 9.

deviation that departs from rates, charges, terms, or conditions offered in the Utility's tariffs. A Utility that does not use tariffs to provide service other than Basic Service may provide such de-tariffed or non-tariffed service under a contract, without any additional authorization from the Commission.

While AT&T and its affiliates have regularly tariffed 911 service elements, AT&T has never sought, nor has the Commission granted, authority to substitute privately negotiated contracts for tariffed 911 service elements.

The record establishes that AT&T could have tariffed the services it provided to Cal OES for the Pasadena RING project; it did not because it did not want to do so. A disinclination to submit a tariff is not a justification for failing to do so. AT&T simply ignored the Commission's repeated directives to tariff their 911 service offerings.

4.1.7. AT&T May Not Evade Its Tariffing Obligation by Renaming Services or Transferring them from One Affiliate to Another.

Nor can AT&T evade its duty to tariff 911 service elements by claiming that an affiliate provides such services, whether that affiliate is regulated or not. AT&T's Appeal and its entire OSC testimony and presentation is replete with instances where AT&T California claims that it does not offer NG 911, only its affiliate AT&T Corp. does.¹²⁸

As an initial matter, AT&T California offered and still offers E 911 transport in its tariffs. AT&T now says that NG 911 services are only offered

¹²⁸ See, e.g., Transcript at 31:12-15, 36:6-27, 37:9-12, 48:12-15, 58:6-9, 79:18-23, and Post Hearing Brief at footnote 10 and accompanying text.

through AT&T Corp. Whether or not AT&T California's E 911 trunk is now AT&T Corp's AVPN trunk is of little moment. The technology may be different, but the function is the same. Further, AT&T California and AT&T Corp. often conduct their business as though they are one and the same corporation: Mark Berry is the government relations contact for both entities, neither witness specified the affiliate for which he was testifying, and AT&T's counsel explicitly stated that Mr. Neinast was appearing on behalf of both entities.¹²⁹ As noted above, both AT&T California and AT&T Corp. appear involved in the Pasadena RING service. The Commission, when sound regulatory practice requires, will not let the separate corporate existence of an affiliate defeat the Commission's oversight responsibilities.¹³⁰

In any event, neither Respondent submitted a tariff adequate to the NG 911 services it is offering. The witnesses' hairsplitting distinctions between affiliates are distinctions without a difference, interposed to obscure the underlying issues.

¹²⁹ *Id.* at 7:26. *Cf.* D.14-08-033, in which the Commission relied on *Associated Vendors v. Oakland Meat Co.*, 210 Cal App 2d 825, 836-842 (1962), which sets out a long list of possible factors for consideration when a tribunal is presented with a request to disregard the corporate entity in finding liability in the sole owner of a utility and related corporations, among them factors such as common ownership, common employees, common witnesses.

¹³⁰ *See, e.g.*, Pub. Utils. Code §§ 314(b), 587, 798, and 856, and 2113

4.1.8. The Cal OES RFP and Contract Do Require that NG 911 Services be Tariffed.

AT&T's statement in its Appeal that "Cal OES's planned implementation of an NG 911 system does not create any tariffing requirement" is also false.¹³¹ Cal OES' RFP, which is the basis for the contracts that implement the state-wide NG 911 system, contains an explicit requirement that all of the contract services be tariffed, and that all of the contractors as well as the large subcontractors, be certificated by this Commission.¹³²

¹³¹ Appeal at 2. If AT&T believed that Cal OES' NG 911 implementation created no tariffing requirement, one wonders why AT&T went to Court to stop it. Indeed, AT&T's Verified Petition and Complaint filed in Sacramento Superior Court states that Cal OES's "RFP requires each bidder to file a tariff with the California Public Utilities Commission." *AT&T Corp v California Governor's Office of Emergency Services*, Verified Petition and Complaint filed May 16, 2019, at ¶2.

¹³² OSC Exhibit 1, RFP, [sub] Exhibits 21 and 23, at requirements 21.3.1 and 23.3.1 ("The Prime [and Region] Network Service Provider and any subcontractor providing aggregation services must have a CPCN and tariff filing"); *see also* RFP at Part II, Statement of Work, Section 8, Requirements 13 and 14 ("The Contractor shall maintain a Certificate of Public Convenience and Necessity (CPCN) through CPUC throughout the term of the contract" and "The Contractor shall have CPUC approved tariffs that match the contract terms, conditions, and pricing, throughout the term of the contract"). A separate section of the RFP requires any subcontractor with more than 20% of total volume (presumably including AT&T) to maintain a CPCN and tariff. *Id* at Part 1, Section 3.3:

It is the Bidder's responsibility to ensure any subcontractor that the Bidder chooses to use in fulfilling the requirements of this solicitation, and which is expected to receive more than twenty percent (20%) of the value of the Contract, also meets all administrative and proposal requirements of the solicitation, **which includes meeting CPCN and tariff requirements.**

Emphasis in original.

4.1.9. AT&T Violated the Standard Set Forth in D.19-08-025.

Conclusion of Law 25 of D.19-08-025 states that “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.” AT&T claims now that it could not have violated this standard because the “only relevant 911-related obligation of Basic Service providers is to provide their end users with ‘free and unlimited **access to**’ 911 Service, by delivering their calls the actual 911 System Provider as a Component of Basic Service.”¹³³

AT&T’s argument distorts the history of the 911 service requirement in Basic Service. AT&T has always provided end-to-end 911 service, with the “access to” component necessarily ancillary to AT&T’s transport of the call from the end user to the PSAP, as described in AT&T’s A9 tariff and section 4.1.3 above. That is the network status today. It has been the network status at all times during the Pasadena RING project. It will remain the network status until NG 911 is implemented in 2021 or later.

Once NG 911 is complete, AT&T will no longer offer end-to-end 911 service (from customer to PSAP). Therefore, AT&T argues, there is no need to submit an NG 911 tariff because there will be nothing to tariff beyond access to the 911 network. This is inaccurate and misleading. As noted in the preceding discussion, it appears inescapable that, in addition to the “access to” NG 911 service, AT&T will be providing inputs to the NG 911 system that are essential to

¹³³ Appeal at 11, emphasis in original.

its functioning. These inputs could include equipment and services that facilitate the handoff from the local exchange carrier to the RNSP, transport of the call by the RNSP, handoff from the RNSP to the PSAP or communication among the PSAPs and the NG 911 data centers. Whatever inputs AT&T provides and wherever it provides them, they are essential elements of the 911 system and as such they must be tariffed under existing CPUC rules.

4.2 The Truthfulness of AT&T's Witnesses (and Filings)

The pattern of AT&T's misdirection and misleading statements is described in section 4.1.4 above. Their witness Neinast continued this pattern of incorrect, partially incorrect, incomplete, and misleading statements, particularly on questions related to IP-enabled communication. For example, he was asked a simple question on direct examination: "Does AT&T California offer *any kind* of NG 911 service to PSAPs?"; he responded "No."¹³⁴ In response to cross-examination by the ALJ, however, Neinast admitted that AT&T does in fact "transport" the NG 911 traffic to the PSAP (*see* Section 4.1.5.2 above).

On re-direct, AT&T's counsel attempted to rehabilitate his witness.

Q. You were talking about the Pasadena RING and its use of AVPN and that contract is – let me ask it this way: AVPN [is] an offering from AT&T Corp. Is that a 911 service?

A. No. It's just a vehicle to get the 911 service to

¹³⁴ Transcript, at 36:6-8 (emphasis added); *see also id.* at 33:23-27 ("AT&T California, Corp., Mobility, Verizon, whoever. They're not 911 providers and they're not authorized to do that service").

the PSAP.¹³⁵

AT&T and its witness are here engaged in a semantic shell-game. That AT&T defines for itself what constitutes a 911 service as it goes along is made clear by this further exchange from the January 2020 OSC hearing:

Q. Is every piece of the network that could carry a 911 call a 911 service?

A. No.¹³⁶

It is this Commission's responsibility to determine what services need to be tariffed and AT&T is bound by our determination. AT&T's AVNP lines provide essential NG 911 transport service and therefore must be considered "911 services." The Cal OES diagram introduced into evidence as Exhibit 19 shows these NG 911 trunks as integral to the system. In its legacy A9 Network Exchange Services tariff, AT&T lists 911 trunk lines as part of its "911 Emergency Reporting Services."¹³⁷ It is unclear why exchange lines, access lines, and trunk lines carrying NG 911 traffic should be treated any differently. And even AT&T's witness seemed confused, at one point calling AVPN "part of a packaged [ESInet] service," the NG 911 product AT&T sold to Pasadena.¹³⁸

AT&T's witness acknowledged that once California's NG 911 system is operational, the RNSPs will be using trunks and other services provided by third

¹³⁵ *Id.* at 60-61.

¹³⁶ *Id.* at 61:25-28.

¹³⁷ A9, at tariff rule 9.2.3C, 5th Revised Sheet 243.9

¹³⁸ Transcript at 56:18-19. ESInet is AT&T's NG 911 product. *See* <https://www.business.att.com/content/dam/attbusiness/briefs/att-esinet-service-next-generation-911-public-safety-solutions-brief.pdf>.

parties **including AT&T**.¹³⁹ AT&T will be paid for making elements of its network available to the RSNPs for transmission of 911 traffic. And as a provider of essential components of the NG 911 system, AT&T is required to submit tariffs describing those components and its fees for providing them.

AT&T's Appeal claims that AVPN "is a generic service offered to all customers (banks, multi- location corporations, etc.) and which, unlike 911 Service, is not provided only to PSAPs or emergency responders and is not limited only to 911 traffic."¹⁴⁰ This argument confuses the fact that an AVPN trunk may deliver traffic to multiple destinations with the fact that the only destination for a 911 call is a PSAP. AT&T admits (as set forth above) that AVPN lines are in fact integral in the delivery of NG 911 traffic from the network core intelligence to the PSAPs in the Pasadena RING 911 network (and quite possibly elsewhere in the state, although AT&T's witnesses avoided answering that question directly).¹⁴¹

4.3 Delay in Responding, and Failure to Respond, to Director Walker's Notice of Deficiency

AT&T's Appeal claims that no CPUC rule determines the amount of time to respond to letters from the Director of the Communications Division. This is incorrect. Director Walker's letters repeatedly gave AT&T notice of deficiencies in its existing tariffs and requested the tariffs be updated and corrected. GO 96-B

¹³⁹ Transcript at 27:5-7 ("Could be anybody. Could be Comcast, it could be AT&T, it could be Level 3 -").

¹⁴⁰ AT&T Appeal, at fn. 19.

¹⁴¹ Transcript at 57:4-19; *see also* discussion in section 4.1.5.2, *supra*.

General Tariff Rule 9.3 gives the utility ten business days to either “submit” a corrected tariff or “an answer explaining why the utility believes the tariffs in question comply with the specified statute or Commission order.” AT&T did neither. The tariff AT&T submitted almost six months after the initial notice was non-responsive and was rejected.

On November 5, 2019, almost seven months after Director Walker’s initial April 15, 2019 letter, AT&T sent a letter which again was not responsive, stating that “AT&T California does not offer a NG 911 Trunk Service in California,” while at the same time noting that its affiliate AT&T Corp. did in fact offer such services on the Pasadena RING network.¹⁴² Thus, after seven months, AT&T still failed to provide the Commission with a complete and accurate description of its NG 911 services in California. Instead, it has obfuscated, misled the Commission, and avoided the matter at issue. This pattern of delay and artifice is addressed in the Rule 1.1 discussion below.

4.4 The Penalties Assessed Against AT&T Are Just and Reasonable

AT&T’s Appeal challenges the penalties imposed by the POD on several grounds: that they are premature; that they are assessed for too long; that Section 710 precludes any fine during 2019; that the POD did not consider the factors required for imposition of such penalties, such as mitigation efforts and harm to the regulatory process; and that AT&T’s delay in responding to Director

¹⁴² OSC Hearing Exhibit 9.

Walker's notice of deficiency did not contravene any Commission rule or legal requirement.¹⁴³

To review: the POD assesses two types of penalty against the AT&T Respondents: (i) a penalty of \$1.25 million for "misrepresentations regarding the handling of 911 traffic and their deliberate disregard of D.19-08-025"¹⁴⁴ in violation of the Commission's Rule 1.1; and (ii) a penalty of \$2.5 million for their "repeated refusal to respond to the letters from Director Walker," *i.e.*, their failure to submit tariffs covering its NG 911 services, despite being repeatedly directed to do so by the Director of the Commission's Communications Division, in violation of GO 96-B. Public Utilities Code Sections 2107 and 2108, as set forth above, authorize monetary penalties for these violations

4.4.1 AT&T's False and/or Misleading Statements, Justify Rule 1.1 Sanctions Pattern of Artifice,

Rule 1.1 states that any person who transacts business with the Commission agrees to "maintain the respect due to the Commission, members of the Commission, and its ALJs; and never to mislead the Commission or its staff by an artifice or false statement of fact or law."

AT&T's Appeal makes several arguments against Rule 1.1 sanctions. First, AT&T argues it is a violation of due process for the Commission to fine AT&T for conduct not spelled out in the OSC.¹⁴⁵ When the OSC issued, many of AT&T's false or misleading statements and omissions had not yet been made, or were not

¹⁴³ Appeal at 18-37. The delay issue is discussed in section 4.3 above, *inter alia*.

¹⁴⁴ POD at 14.

¹⁴⁵ Appeal at 27.

fully evident. The Commission could not have completely described them in the OSC because their extent and gravity only emerged fully in and after the OSC hearing.

The witnesses at the hearing were under oath and subject to Rule 1.1; their misstatements justify Rule 1.1 sanctions. AT&T's pattern of obfuscation, delay, and deception, which did not begin or end at the OSC hearing, is a Rule 1.1 violation, and may also be taken into consideration in assessing the *amount* of statutory penalties, as discussed below.

AT&T's second argument is that the witness did not really contradict himself, first saying that AT&T no longer provided NG 911 service in California,¹⁴⁶ and then admitting that AT&T is able to do exactly that.¹⁴⁷ AT&T's Appeal claims that in the later pages the witness "was talking about a different service."¹⁴⁸ The Appeal uses the phrase "different service" several times, but only identifies it in a footnote at the end of its discussion.¹⁴⁹ This is emblematic of AT&T's approach in this case, its use of multiple terms, never specifically defined so as to allow their meaning to fluctuate according to AT&T's purposes. This is one reason the Commission is insisting on clearly defined tariffs.

On multiple occasions, AT&T's witnesses said or implied that AT&T does not offer NG 911 services, and then reversed themselves and said that AT&T did

¹⁴⁶ POD at 12, citing Transcript at 36-37.

¹⁴⁷ *Id.*, Transcript at 56-60

¹⁴⁸ Appeal at 17.

¹⁴⁹ *Id.* at fn. 19 ("the different service is AVPN, which is a generic service offered to all customers"). This is the only reference to AVPN in the Appeal.

offer such services. The evidence establishes, at least, that AT&T provided a turnkey Regional Integrated Next Generation 911 network to Pasadena, which it also called an ESInet, and which necessarily included transport lines. Those transport lines are the mystery “different service” that AT&T’s Appeal is loath to identify, but which are referenced over 25 times in the OSC hearing transcript – the so-called “AVPN” or AT&T Virtual Private Network” lines. The notion that these lines are not part of the NG 911 network is a fiction, an AT&T unilateral reinterpretation of NG 911 service as only the routing intelligence and not the underlying connectivity.¹⁵⁰

The statement in AT&T’s Appeal that such transport lines or AVPNs were used “on the PSAP’s side of the network” is likewise deceptive inasmuch it suggests (in the absence of information to the contrary) that AVPNs were used *only* on the PSAP side of the NG 911 network, and therefore not part of the network in AT&T’s view.¹⁵¹ Mr. Neinast’s testimony about APVN lines (discussed above) proves that suggestion false as well. The POD correctly sees Rule 1.1 violations in AT&T’s “misrepresentations regarding the handling of 911 traffic,” which misrepresentations began in its initial responses to Director Walker and have continued through this Appeal.

Finally, AT&T argues that the penalties may not be multiplied on a *per diem* basis as the alleged misrepresentations occurred only on one day, at the

¹⁵⁰ See Neinast testimony, Transcript, at 56:13-22

¹⁵¹ Appeal at 19. The statement is deceptive in suggesting that connectivity “on the PSAP side,” *i.e.*, among PSAPs, and between PSAPs and the various data centers involved in an NG 911 network, is somehow no longer part of the NG 911 network.

OSC hearing. As noted above, however, we are confronted with a continuing pattern of “misrepresentations,” misdirection, artifice, and omission, which reached its apex (but did not end) at the OSC hearing, and left the Commission with an incomplete understanding of AT&T’s NG 911 network services.

In the final analysis, Rule 1.1 is about candor.

A Rule 1.1 violation occurs when there has been a lack of candor, withholding of information, or failure to correct misinformation or respond fully to data requests by the Commission; non-disclosure does not have to be intentional, and it may occur due to carelessness, ignorance or mistake.¹⁵²

A Rule 1 violation may also be found where the utility fails to correctly inform or correct mistaken information.¹⁵³ Without utility candor, the Commission cannot do its job.

[S]harp dealing has no place in Commission practice and will not be countenanced. Rule 1 of this Commission's Rules of Practice and Procedure speaks to ethics, and provides in relevant part that by transacting business with the Commission, a party agrees "never to mislead the Commission or its staff by an artifice or false statement of fact or law."¹⁵⁴

¹⁵² D.19-12-041, Slip Op at 9-10, *citing* See D.92-07-078, D.92-07-084, D.93-05-020, D.01-08-019, and D.13-12-053.

¹⁵³ D.16-03-032 (*SFMTA*, on rehearing), Slip Op at 9, *citing* D.94-11-018, 57 Cal.P.U.C.2d at 204; *see also* D.04-04-065, *Order Instituting Investigation into Southern California Edison Company’s Electric Line Construction, Operation, and Maintenance Practices*, Slip Op at 35-36.

¹⁵⁴ D.90-12-038, 1990 Cal PUC LEXIS at *34.

The impression created by AT&T that it had submitted a tariff with a contract, listing of prices and descriptions of service, when in fact what AT&T served, and what it produced in evidence here, had no contract attached, nor prices or description of services, smacks of the sort of “artifice” found when PG&E attempted to slip materially significant information into a minor errata filing:

Because the document presented by PG&E for filing with the Commission on July 3, 2013, did not clearly convey the nature or significance of the facts set forth within, we find that it was an artifice, as that term is used in Rule 1.1, and misled the Commission. The misleading nature was exacerbated by the submission date of July 3, before a holiday weekend.¹⁵⁵

The Commission PG&E fined \$14.35 mm for its artifice in that case.¹⁵⁶

Self-serving delay also can constitute a Rule 1.1 violation, when “[t]he timing or manner in which information is disclosed would have a material effect on the outcome desired by the disclosing party.”¹⁵⁷

The Commission seeks to protect Californians who need safe energy delivery and reliable communications through the natural and man-made disasters to which California is increasingly prone. The Commission’s need

¹⁵⁵ D.13-12-053, Slip Op. at 15-16.

¹⁵⁶ *Id.* at Ordering Paragraph 1.

¹⁵⁷ D.15-04-008 (*Cal-Am Water*), Slip Op. at 8; *see also* D.13-12-053 at 13 (“This unreasonable delay misled the Commission by allowing a key “false statement of fact” to persist uncorrected and was a violation of Rule 1.1”); D.90-12-038, 1990 Cal PUC LEXIS at CoL 6 (delay as artifice).

for “accurate information from the utility in order to, among other things, ensure that it is providing just, reasonable and safe service”¹⁵⁸ is acute, given the inherent information asymmetry between regulator and regulated entity.¹⁵⁹ AT&T has not provided accurate information pertaining to the issues before us.

4.4.2 AT&T’s Failure to Respond to Director Walker’s Letter, and its Ongoing Failure to Comply with the Commission’s Tariff Rules, Violated Multiple Provisions of GO 96-B.

The Presiding Officer imposed penalties on AT&T for its disregard of the obligation to respond to Commission inquiries and its refusal to submit tariffs as directed by Director Walker. AT&T’s failure to submit tariffs for its NG 911 service violated multiple provisions of GO 96-B, including but not limited to the requirement that it respond to a notice of deficiency in 10 days:

- GO 96-B’s core principle of transparency – “The Commission intends that all interested persons have the opportunity, through timely and efficient means, (1) to inspect a utility’s tariffs ... (3) to have access to public records regarding such documents, and (4) to find information on the status of particular advice letters.”¹⁶⁰

¹⁵⁸ D.15-04-021 (*In re PG&E Facilities Records*), Slip Op at 268-269.

¹⁵⁹ See, e.g., D.16-12-025 (“Competition Decision”), Slip Op. at 111-12 (“There is, however, a fundamental asymmetry at work here, as carriers possess detailed information about the operations of the network and market, while regulators try to piece together a picture of the network and market from incomplete information”).

¹⁶⁰ GO 96-B, Rule 4.1

- The requirement that the utility “promptly submit such revisions as are necessary to conform the utility’s tariffs to statute or Commission order.”¹⁶¹
- The requirement that the utility, upon receiving a “notice directing the utility to correct tariffs that the Industry Division believes may violate a statute or Commission order,” the utility should “[w]thin 10 business days of the issuance of the notice to correct ... submit to the Industry Division either (1) an advice letter or substitute sheet letter, if appropriate, proposing corrective action, or (2) an answer explaining why the utility believes the tariffs in question comply with the specified statute or Commission order.”¹⁶²
- The requirement that the utility “separately state those rules regarding its rates charges and services ... in a clear and readily understandable English.”¹⁶³
- [When a utility claims it is providing service pursuant to a contract] the requirement that the “utility shall compile and publish in its tariffs a list of all contracts and other deviations [from stated tariffs] ... [with] the name and location of the customer; the type or class of service; dates of execution and expiration; ... and number of the Commission order authorizing the contract or other deviation”,¹⁶⁴ and

¹⁶¹ *Id.* at General Rule 9.1

¹⁶² *Id.* at General Rule 9.3.

¹⁶³ *Id.* at General Rule 9.5.7

¹⁶⁴ *Id.* at General Rule 9.5.6 and Telecommunications Industry Rule 4. *See also* Rule 8.2 (“Contracts for tariffed services must be submitted to the Commission...”). Publication of such contracts might also be required if they are considered interconnection contracts under 47 USC § 251.

- The requirement that AT&T provide notice of a change of its services, of “any new contract for a tariffed service”;¹⁶⁵ but also any new service offered, any de-tariffing of existing service, or entry into any “negotiated interconnection agreement pursuant to Section 252 of the Telecommunications Act of 1996” (to the extent that it has interconnected with other NG 911 carriers).¹⁶⁶

AT&T has no recognizable tariff for the AVPN or NG 911 trunks that it offers as transport specifically for NG 911 traffic, nor did it at any time respond in a meaningful or timely way to Director Walker’s notices of such deficiency.¹⁶⁷

4.4.3 The Penalties Assessed are Not “Premature”

AT&T argues that any penalties are “premature,” as the NG 911 system has not yet been fully instituted.¹⁶⁸ This argument fails for several reasons. First, AT&T offered end-to-end NG 911 service during the entire period of the Pasadena RING contract,¹⁶⁹ even though the state-wide NG 911 system was not yet in place. Second, General Order 96-B, Rule 8.3, requires that an advice letter requesting approval of a New Service must attest *prospectively* that the proposed service would “comply with all applicable provisions of the Public Utilities Code.” New service tariffs are not something to be submitted after the fact. These violations had occurred and were continuing when the OSC issued.

¹⁶⁵ *Id.* at Industry Rule 7.1

¹⁶⁶ *Id.* at Rules 7.2 and 7.3.

¹⁶⁷ Had AT&T identified, in response to Director Walker’s notice of deficiency, specific tariffed services that it was using to fulfill the Pasadena RING contract, our analysis might be different.

¹⁶⁸ Appeal at 18.

¹⁶⁹ Transcript, at 56:13-22.

4.4.4 The Penalties Assessed Are Not Barred by Section 710

As demonstrated in section 4.1.2 above, the penalties assessed are not barred by Section 710, as it had an exception for 911 services. We note also that AT&T's failure to follow the tariff rules have extended into 2020, i.e., past the sunset date for Section 710, and may be continuing to this date in that AT&T's AVPN lines may still be in service in Pasadena and elsewhere.

4.4.5 The Amount of the Penalties Is Justified.

After establishing that there was a (continuing) violation, the Commission must consider how to deter such conduct in the future: "The purpose of a fine is to ... effectively deter further violations by this perpetrator or others."¹⁷⁰ . Under that Decision, the factors to be considered in determining whether to impose a fine and, if so, at what level, include the severity of the offense, the utility's conduct, the financial resources of the utility, the totality of circumstances in furtherance of the public interest, and the role of precedent.

4.5.5.1 The Severity of the Offense

In a matter of public safety, AT&T has refused to cooperate with the Commission. AT&T's lack of any meaningful response to Director Walker's notices of deficiencies in AT&T's emergency service tariffs, as well as its lack of candor throughout, are entirely incommensurate with the public trust that

¹⁷⁰ D.98-12-075, *Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates*, Final Opinion Adopting Enforcement Rules (1998) 84 Cal.P.U.C.2d 155, 188; App. A, at Section D(2)(b) (LEXIS *79).

naturally resides in AT&T's communication network and its role as the largest utility communications provider in the State.

Although no persons died or were injured as an immediate result of AT&T's refusal to accurately report and tariff its operations, the integrity of the Commission's processes was impugned, and California's citizens were left with a less accountable, less known, emergency communications system. As the California Court of Appeal stated, quoting from Commission Decision 98-12-075:

“Many potential penalty cases before the Commission do not involve any harm to consumers but are instead violations of reporting or compliance requirements. In these cases, the harm may not be to consumers but rather to the integrity of the regulatory processes. ... Such compliance is absolutely necessary to the proper functioning of the regulatory process.”¹⁷¹

The Commission has found harm to the regulatory process when a party submits false or misleading testimony or otherwise attempts to impede a Commission investigation. In *San Gabriel Valley Water Co.*, the Commission explained that the utility's failure to disclose material facts related to a land transfer from an affiliate violated Rule 1.1 because it misled the Commission.¹⁷² In *San Francisco Municipal Transp. Agency*, the Commission found that the City of San Francisco, by failing to provide unredacted copies of accident records which

¹⁷¹ *PG&E v. CPUC*, (2015) 237 CA4th 812, 845, upholding \$13.45 million in Rule 1.1 sanctions against PG&E as ordered in D.13-12-053, and quoting from Commission's rules on penalties as found in D.98-12-075.

¹⁷² D.07-04-046 at 107 (“The submittal of misleading information causes substantial harm to the regulatory process, which cannot function effectively unless participants act with integrity at all times”).

were subpoenaed, a Rule 1.1 violation, had impeded the Commission's accident investigation, which in turn harmed the regulatory process:

The SFMTA's violation of Rule 1 harmed the regulatory process by failing to produce the unredacted copies of the transit driver's training and accident records. This failure impeded the Commission staff's ability to carry out its statutory duties to investigate transportation accidents and to make recommendations for the improvement of conditions to prevent similar accidents in the future. This is one of the paramount safety features that the Commission is tasked with and any action by a regulated entity that interferes with that duty harms the regulatory process.¹⁷³

And "tariff rule violations" are accorded a "high level of severity" in Commission penalty analysis, almost by definition, because they go to the heart of regulatory process integrity.¹⁷⁴

In the earliest contact with the Commission on this issue, in August 2018, AT&T was informed that NG 911 emergency communication services were vital, and must be tariffed:

We are aware that 911 service is offered using a variety of technology platforms and network designs, but in the end what customers use is 911 service and that is what we are concerned about here. In light of the current wildfires burning across the state, as well as the

¹⁷³ D.15-08-032 at 41 (emphasis added).

¹⁷⁴ D.19-04-041, Slip Op. at 40, citing D.17-03-017, Slip Op at 8 ("Harm to the regulatory process occurs when there is a violation of a statutory directive or a violation of reporting or compliance requirements"); D.15-04-008 ("high level of severity to any violation that harms or undermines the regulatory process").

inevitability of future disasters, it is imperative that Californians have reliable access to 911 service. That is the underpinning of the CPUC's determination not to de-tariff the service¹⁷⁵

Emergency service tariff violations are not garden-variety regulatory misfeasance. The transport of emergency communications is a life and death matter. The difference between transport that guarantees 98%, 99.9% or 99.999% availability for a given trunk line¹⁷⁶ can well mean the difference of an ambulance or fire truck that arrives on time and one that does not.

Although we are cognizant of the fact that the telecommunications network is evolving, the following facts remain true: (i) emergency communications – from the customer/user to the PSAP, and beyond that to the first responders and other public safety officials – remains among the most essential and basic services offered on the network; and (ii) the wires, radio interfaces, and other facilities over which California emergency communications travel today continue to be owned and operated in large part by AT&T.¹⁷⁷

The requirement to tariff is an exercise of the State's police power authority, particularly when it comes to matters implicating public safety and

¹⁷⁵ OSC Exhibit 4, August 2018 email correspondence between AT&T Assoc. General Counsel and CPUC General Counsel.

¹⁷⁶ Compare, e.g. CenturyLink NG 911 tariff, at Section 4, 1st Revised Page 6, available at https://www.centurylink.com/tariffs/ca_clc_loc_t_no_11.pdf.

¹⁷⁷ See D.16-12-025, Slip Op. at 70 (“the largest ILEC (AT&T) is a corporate affiliate of one of the largest wireless carriers (AT&T Wireless”), 95 (“last mile facilities still appear to be concentrated in the legacy phone companies and in the cable companies”), 97 (“legacy carriers still exercise considerable market power in the special access market,” including wireless backhaul, citing FCC Report on Broadband Data Services”), *passim*.

welfare.¹⁷⁸ That authority amounts to “comprehensive jurisdiction over questions of public health and safety arising from utility operations,” and “includes not only administrative but also legislative and judicial powers.”¹⁷⁹

Rules applying police power to specific situations carry strict liability for their violation.¹⁸⁰ It does not matter what “understanding” or explanation AT&T now proffers. It had a duty to provide a timely response to Director Walker’s notice of deficiency; it failed to do so; and that failure triggers sanctions.

¹⁷⁸ In enforcing its tariff rules, particularly when they affect public safety, the Commission exercises state police power, as expressed in the California Constitution and state statute:

“Pursuant to this grant of power the Legislature enacted Public Utilities Code section 701, conferring on the commission expansive authority to ‘do all things, whether specifically designated in [the Public Utilities Act] or addition thereto, which are necessary and convenient’ in the supervision and regulation of every public utility in California. (Italics added.) The commission’s authority has been liberally construed.”

PG&E v CPUC, supra, 237 CA4th at 820, quoting from *Consumers Lobby Against Monopolies v. PUC* (1979) 25 C.3d 891, 905.

¹⁷⁹ *San Diego Gas & Electric Co., v Sup. Ct.* (1996) 13 C4th 893, 924.

¹⁸⁰ Both GO 96-B and Rule 1.1 are *strict liability* rules. Such laws are sometimes referred to as public welfare or police power laws, as they involve protection of the public at large. Cf. *Investigation on the Commission’s own motion into ... Communication Telesystems [CTS]*, D.97-10-063 (1997) 1997 Cal. PUC LEXIS 912 at *10-11, *16, and Conclusion of Law 6 (slamming of long distance customers); see also D.97-05-089, 1997 Cal. PUC LEXIS 447 at *39-40; see also *Donald v. Cafe Royale, Inc.* (1990) 218 CA3d 168, 180 (failure to provide wheelchair access in restaurant); *Drewry v. Welch* (1965) 236 CA2d 159, 175-76 (trespass in removing timber), discussed in D.97-10-063, 1997 LEXIS 912 at *11. As the Court said in *PG&E v. CPUC* (2015) 237 Cal. App. 4th 812, 845, quoting in part from *Kizer v. County of San Mateo* (1991) 53 C.3d 139, 147:

“Civil penalties under [section 2107] ... require no showing of actual harm ... , are imposed ... irrespective of actual damage suffered,” “without regard to motive,” and “require no showing of malfeasance or intent to injure.”

See also D.19-12-041, Slip Op at 9-10, citing *See* D.92-07-078, D.92-07-084, D.93-05-020, D.01-08-019, and D.13-12-053

Given the public safety ramifications of the tariff requirement, AT&T's refusal to cooperate with the Commission takes on systemic importance and adds to the severity of its offense.

4.5.5.2 The Utility's Conduct

AT&T's Appeal argues that it "attempted to prevent any alleged violation" by offering to meet with the Commission's General Counsel and with the Director of the Communications Division. The record, however, shows that the General Counsel and other Commission staff communicated repeatedly with AT&T. Given the incomplete and misleading character of AT&T's representations, as illustrated herein, staff was correct in concluding that there was nothing further to be gained from such meetings.

The notion that the utility "timely filed a tariff for the service it actually offered when asked to do so"¹⁸¹ is only true if AT&T considers delay of not quite six months from notice of deficiency to its inadequate tariff submission,¹⁸² and of seven months before providing the Commission with any semblance of a written reply, to be timely.

Looking at the facts established in this proceeding and in the public record, as discussed above – that AT&T had offered an "NG 911" service (sometimes called ESInet) perhaps as early as 2016 or earlier, that the terms and conditions of that offering were posted in an online "Service Guide" but which the utility

¹⁸¹ Appeal at 23.

¹⁸² As noted, the tariff submitted six months after a notice to correct, with no explanation as required by the Rule (GO 96-B, Tariff General Rule 9.3) was non-compliant.

refused to tariff, that the utility did not disclose the Service Guide to the Communications Division despite direct requests to tariff those same services, and that pattern of misdirection and misleading statements described herein – the Commission can reasonably draw the inference that AT&T wanted to avoid any clear resolution of the legal status of its NG 911 services in order to delay or avoid entirely the day when such services would be subject to regulatory scrutiny.¹⁸³

Such an abdication from its position of public trust is particularly egregious when Californians have come to rely on the emergency communications network more than at any time in the past, due to climate change and related emergency conditions.

4.5.5.3 The Financial Resources of the Utility

AT&T's parent corporation earned more than \$4 billion net profit in the first *quarter* of this year.¹⁸⁴ As discussed above, AT&T is the biggest communications provider in California. The California Secretary of State lists

¹⁸³ D.13-07-019, Slip Op. at 50-57, documented previous AT&T resistance to 911 tariffing requirements, although it did not find bad faith. After describing the "inadvertent" de-tariffing of AT&T's "Inform 911" product in Res. T-17203, based on an AT&T Advice Letter submission attesting that none of a long list of services it sought to de-tariff fell "within the categories of services excluded from de-tariffing under Telecommunications Industry Rule 5," without noting that one of those services, a "PRI ISDN trunk," was necessary component of "Inform 911." The Decision further noted AT&T's resistance to its re-tariffing.

¹⁸⁴ AT&T Inc's 10Q for the quarter ending March 31, 2020, Part 1, Item 1, available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/732717/000156276220000171/t-20200331.htm>

approximately forty separate entities operating in the state that are identifiably AT&T affiliates.¹⁸⁵

When taking AT&T's net profits into consideration, the fines assessed here may even be too modest, both in terms of AT&T's financial resources and Commission precedent (discussed below).

4.5.5.4 The Totality of the Circumstances, Including AT&T's Pattern of Delay and Obfuscation

Rather than attempt to mitigate its violations of Commission's GO 96B and Commission decisions and orders, AT&T dug in and used every artifice at its command, including delay and the false and/or misleading statements set forth above to prevent oversight of its NG 911 services.

4.5.5.5 The Amount of the Fine Is Consistent with Precedent

In Decision 13-12-053, the Commission fined PG&E \$50,000/day for PG&E's failure to correct, and *delay* in correcting, data given to Commission staff re maximum allowable operating pressure of its gas lines. Although no one died as a direct consequence of the delay in reporting, the Commission found the matter serious enough to assess a daily fine far greater the fine imposed herein.

Indeed, the \$3.75 million fine assessed here is modest in comparison with other fines assessed by this Commission. *See, e.g., In re Qwest Communications*, D.02-10-059 (fine of \$20.34 million for slamming and cramming offenses), *In re*

¹⁸⁵ Secretary of State website, at <https://businesssearch.sos.ca.gov/CBS/SearchResults?filing=&SearchType=CORP&SearchCriteria=AT%26T&SearchSubType=Keyword>. Some of the AT&T entities are shown as inactive, surrendered, or merged out.

Pacific Bell, D.02-10-073 (fine of \$27 million for DSL billing and reporting errors), *UCAN v. Pacific Bell*, D.01-09-058, limited rehearing D.02-02-027 (fine of \$15.225 million for misleading marketing tactics calculated twenty years ago at \$17,500 per day for each offense); *In re TracFone*, D.15-12-031 (\$10 million penalty for failure to report intrastate revenue and pay surcharges on same, in addition to over \$24 million in back surcharges assessed and paid); *In re Cingular/Pacific Bell Wireless*, D.04-09-062 (\$12.1 million penalty for misleading marketing and unfair practices, calculated at \$10,000/day, concurrently for two violations); *In re Telseven*, D.14-08-033 (\$19.76 million fine for unauthorized charges, calculated at \$10,000/day).

The \$3.75 million in total penalties assessed in the POD (at \$5-10,000/day) are, if anything, on the low end of the spectrum, given AT&T conduct is entirely incommensurate with the public trust attendant on the utility services it provides. The penalties do not account for conduct after the OSC issued in December 2019.

4.6 Compliance Going Forward

AT&T must submit a tariff compliant with General Order 96-B:

“Tariffs” refer collectively to the sheets that a utility must file, maintain, and publish as directed by the Commission, and that set forth the terms and conditions of the utility’s services to its customers; “tariffs” may also refer to the individual rates, tolls, rentals, charges, classifications, special conditions, and rules of a utility.¹⁸⁶

We expect AT&T to submit tariffs identifying the services that it provides to participants in the NG 911 system, both as it exists today and as it will exist when NG 911 is fully operational. To be as clear as possible given the welter of conflicting and changing definitions AT&T has deployed in this matter, we expect AT&T to provide a “NG 911 Emergency Services” tariff, similar to its A9 tariff but updated to include NG 911 transport services, or services that are used to transport NG 911 traffic.

The tariff should list, at a minimum, product names, prices, terms and conditions for any transport service offered anywhere in the State to any NG 911 system operator, as well as to any PSAP, OES, or other public entity. It should include those AT&T trunk or transport services that carry traffic from AT&T’s originating or last-mile network to the ingress point (or other gateway) maintained by the NG 911 network service provider, those that carry traffic *for* the NG 911 network service providers (subcontracted or otherwise), and those that carry traffic to and among and for the PSAPs (on the “customer side” of the

¹⁸⁶ G.O. 96-B, Rule 3.15.

network as AT&T's witness described it).¹⁸⁷ The tariffs should fully disclose all price terms, and accurately describe the service offered as well as its guaranteed availability, speed, and any other characteristics deemed material. We expect such tariffs to be clear and straightforward, and AT&T to supply all definitions and directions necessary to make the tariff understandable.¹⁸⁸

It does not matter that AT&T may offer these or similar services to other customers, or that such services are provided to other non-911 customers by contract. What is material here is that these services are used in a 911 system, whether existing or future NG 911 systems.

Upon reflection we believe a continuing daily fine is a more appropriate way to ensure compliance than the doubling remedy originally set out in the POD. If AT&T fails to submit the tariffs required herein within the 30 day time period specified in Ordering Paragraph 2, we will fine AT&T an additional \$15,000 for each day from the effective date of this decision until such time as the required tariffs are filed. This proceeding shall remain open.

4.7 Conclusion

None of the errors alleged by AT&T in its Appeal is meritorious and no material change in the Presiding Officer's decision is warranted in response to

¹⁸⁷ Compare Transcript at 57:12-18

¹⁸⁸ The Commission will construe tariff ambiguities against the drafter, i.e., against the utility. GO 96-B, Rule 9.1 ("Any ambiguity in a tariff provision shall be construed in the way most favorable to the customer"); D.01-07-026 Slip Op at 4 ("As the drafter of the tariff and the party with the most complete knowledge of situations the tariff is intended to cover, the utility must properly bear the responsibility for the clarity of its own tariffs and any liability arising from its failure to do so").

them. Changes have been made to the text of the decision for the sake of clarity, to correct obvious typographical errors, and to respond to the arguments made in AT&T's Appeal.

Findings of Fact

1. 911 service is a tariffed element of Basic Service.
2. AT&T Corporation and AT&T California both offer Basic Service; AT&T California does so pursuant to its obligations as a COLR, while AT&T Corporation does so pursuant to its obligations under its CPCN.
3. The 911 system consists of all the hardware and software necessary to deliver an emergency communication from an originating customer to an emergency responder. Virtual Private Network lines and other trunk, transit, and access lines between NG 911 system nodes are an integral part of the Next Generation (NG) 911 system.
4. AT&T's A9 Network and Exchange Services Tariff tariffs elements across the legacy 911 system, from AT&T's local networks through the central routers to the PSAPs.
5. On three separate occasions in 2019 former Communications Division Director Cynthia Walker wrote letters notifying AT&T that its 911 tariffs needed to be updated to include NG 911 trunks and the ESInet "solution" deployed in the Los Angeles Area" within a specific time frame.
6. Neither AT&T California nor AT&T Corporation replied to former Director Walker's letters within the requested timeframe.

7. During the years 2018-2020, AT&T provided a NG 911 network in Cal OES' pilot program, known as the Pasadena Regional Interagency Next Generation (RING) 911 project.

8. AT&T's AVPN lines provided essential 911 transport service in Pasadena, and therefore must be considered "911 services."

9. On April 1, 2019, Cal OES issued an RFP to construct a State-wide NG 911 emergency services system, which required companies submitting proposals to have a certificate of public convenience and necessity (CPCN) and appropriate tariff on file with the CPUC.

10. Cal OES selected four companies, referred to as NG 911 service providers (Core or Regional Network Service Providers) to develop and operate the proposed NG 911 system.

11. Neither AT&T California nor AT&T Corp. was among the companies selected by Cal OES to develop and operate the proposed NG 911 system.

12. As three of the four NG 911 service providers have no transport facilities of their own, the proposed NG 911 system will require the use of AT&T's existing network of access lines, trunks and other equipment to transport emergency calls.

13. On May 16, 2019, AT&T Corporation filed a lawsuit against Cal OES claiming that the tariffing requirement in the RFP was illegal.

14. On June 3, 2019 the Court denied AT&T's Petition for a Temporary Restraining Order against Cal OES. AT&T subsequently dismissed the lawsuit.

15. On October 4, 2019, AT&T Corporation submitted a non-compliant tariff regarding its provision of 911 service. Staff rejected the non-compliant filing.

16. AT&T California and AT&T Corporation have not submitted compliant NG 911 tariffs as required.

17. The obligation of originating carriers to offer access to 911 service, and of all carriers providing services to the 911 system to tariff those services, is independent of the technology used to deliver that service.

18. Respondents falsely claimed that they did not deliver 911 calls to Public Service Access Points over IP-enabled circuits, and made other incorrect, incomplete, and/or misleading statements during this proceeding.

19. The documents listed in Attachment A provide a fuller picture of AT&T's NG 911 and related point-to-point transport services; they were not submitted to the record by AT&T in its "show cause" presentation.

Conclusions of Law

1. 911 service must be tarified and may not be de-tarified.

2. All transport services supplied to the 911 system by licensed telephone corporations must be tarified.

3. The obligation of last-mile providers to offer access to 911 service, and of licensed telephone corporations providing services to the 911 system to tariff those services, is independent of the technology used to deliver those services.

4. Public Utilities Code Section 710 contained an exception for 911 services.

5. Public Utilities Code Section 710 was deleted from the Public Utilities Code in January 2020 pursuant to a sunset provision in the original legislation.

6. Respondents' pattern of incorrect, incomplete, and misleading statements violated Commission Rule 1.1.

7. Respondents' failure to update their tariffs violated and continues to violate General Order 96-B, Decision D.19-08-025, and applicable law.

8. Respondents should be fined for their violations of Commission Rule 1.1, General Order 96-B, Decision D.19-08-025, and applicable law.

9. The Commission may take official notice of the documents listed in Attachment A as "not reasonably subject to dispute and ... capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy," as permitted by California Evidence Code 452 and CPUC Rule of Practice & Procedure 13.9. Some of the documents may also be public records reflecting official acts of the California executive departments.

O R D E R

1. Respondents AT&T California and AT&T Corporation shall pay a fine of \$3,750,000 by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102, within twenty (20) days of the effective date of this order. Write on the face of the check or money order "For deposit to the General Fund per Decision 20-08-037."

2. Within thirty (30) days of the effective date of this order, AT&T California and AT&T Corporation shall each serve and submit a NG 911 tariff, as more particularly set out above.

3. If either AT&T California or AT&T Corporation fails to serve and submit NG 911 tariffs as directed herein within the thirty-day period specified in Ordering Paragraph 2, an additional \$15,000 daily fine shall accrue from the effective date of this order until such time as the required tariffs are submitted.

4. The Commission takes official notice of the documents listed in Attachment A.

5. This proceeding remains open.

This order is effective today.

Dated August 27, 2020, at San Francisco, California.

MARYBEL BATJER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners

ATTACHMENT A

ATTACHMENT A
OFFICIAL NOTICE OF DOCUMENTS

1. A 66-page document submitted by AT&T to CPUC Communications Division staff on or about October 4, 2019 on a compact disk and labelled “contract” on the disk, appearing to be parts of Agreement 17-4003 entered into between Cal OES and AT&T Corp on or around February 2017.

2. A 5-page document, the signature page and summary of Agreement 4165-6 entered into between Cal OES and AT&T Corp. in June 2017, related to the Pasadena Regional Integrated Next Generation 911 network, and found at <https://www.caloes.ca.gov/PublicSafetyCommunicationsSite/Documents/OESAgreement4165-6ATTCorp.pdf>.

3. AT&T California’s A5 Basic Services tariff, found at <http://cpr.att.com/pdf/ca/a005.pdf>.

4. AT&T California’s A9_Network & Exchange Services tariff, found at <http://cpr.att.com/pdf/ca/a009.pdf>

5. AT&T California’s special access tariff, found at <http://cpr.att.com/pdf/ca/t007.pdf>

6. AT&T Corp.’s FT tariff, found at https://serviceguide.att.com/tariff/consumer/manage/secure/files/CALCBTCM_j001.pdf

7. AT&T Corp.’s “Service Guide” containing the “terms and conditions” for its NG 911 services, found at

https://serviceguide.att.com/servicelibrary/ext/buss_tariffs.cfm?state=CA&stype_id=548&category=1

8. AT&T Corp.'s "Service Guide" containing the service description for its NG 911 services, found at

https://serviceguide.att.com/servicelibrary/ext/buss_tariffs.cfm?state=CA&stype_id=548&category=2

9. *AT&T Corp. v. California Governor's Office of Emergency Services*, Verified Petition and Complaint for Writ of Mandate and for Injunctive and Declaratory Relief, filed by AT&T Corp. on or about May 16, 2019 in Sacramento Superior Court, No. 34-2019-80003146.

(END OF ATTACHMENT A)