BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Emergency Disaster Relief Program	R.18-03-011 (filed March 22, 2018)

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

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Pursuant to Rule 14.4(a), Pacific Bell Telephone Co. d/b/a AT&T California and AT&T Corp. (collectively, "AT&T") respectfully appeal the Presiding Officer's Decision ("POD").

I. EXECUTIVE SUMMARY

The POD rests on four fundamental, reversible errors:

First, the POD (at 7-8) would fine AT&T for failing to comply with a law that does not exist: a requirement to tariff "access to" 911. Applicable law requires the tariffing of Basic Service only – which already inherently includes access to 911. AT&T questioned tariffing "access to" 911 as a separate component and sought to explain that (i) it is not an independent "service" and is distinct from actual "911 Service" sold to PSAPs, and (ii) Cal OES's planned implementation of an NG911 system does not create any tariffing requirement.

Second, the POD (at 12) would fine AT&T because its 911 network engineering expert allegedly contradicted himself, which the POD incorrectly treats as a false statement. The witness's allegedly inconsistent statements addressed completely different services in a set of highly technical services and relationships. While this underscores the complexity in 911 that AT&T has repeatedly sought the opportunity to explain, there was no misrepresentation.

Third, the POD (at 13-14) would fine AT&T for not adequately responding to Director Walker's letters. That fine is unlawful: the Order to Show Cause never mentioned this possible violation and the POD identifies no law AT&T could have violated. The POD faults AT&T for responding by a "junior staff member," but he is an AT&T executive and the person to whom Ms. Walker's letter was addressed. Staff never suggested AT&T's responses were inadequate and refused to meet with AT&T to clarify any alleged tariffing duties. We respectfully emphasize that, had Staff agreed to meet, this issue could have been resolved long ago.

Fourth, of critical import, the fines are unlawful because the POD fails to address the factors it legally must consider and dramatically overstates the duration of the alleged violations.

II. INTRODUCTION

AT&T Has Satisfied All Applicable Tariffing Requirements. The POD asserts AT&T violated D.19-08-025 by not tariffing the "access to" 911 Service component of basic local exchange service ("Basic Service"). That finding rests on a misunderstanding of 911 calling and tariffing obligations. As illustrated in Figures 1 and 2 below[1] there are two segments of a 911 call: (a) "access to" 911 Service, and (ii) the 911 Service itself. An Originating Service Provider ("OSP") provides its end users with "access to" 911 Service by carrying their 911 calls to a handoff point to the 911 System Service Provider, and (ii) the 911 System Service Provider then provides actual 911 Service to its customer, the Public Safety Answering Point ("PSAP"), by delivering the 911 call from that handoff point to the PSAP.

"Access to" 911 Service is an inherent "element" of Basic Service. D.12-12-038, Appendix A at 2. Basic Service is required to be tariffed, and AT&T California and AT&T Corp. have tariffs on file for that service. The POD, however, erroneously assumes that because Basic Service must be tariffed, the "access to" 911 Service component must **also** be tariffed, as if it were itself an independent "service." That is not the law. The sources the POD relies on (D.19-08-025, D.12-12-038, and Pub. Utils. Code § 495.7(b)) say that Basic Service must be tariffed but say nothing about tariffing the "access to" 911 element of Basic Service. Nor does anything about Cal OES's planned implementation of an NG911 system create any tariffing requirement for "access to" 911 Service. Thus, the POD would severely penalize AT&T for violating a tariffing requirement that does not exist. Section 2107 does not allow that.

AT&T's Witness Testified Truthfully and Accurately at The Hearing. Although the distinction between providing "access to" 911 as part of Basic Service and providing actual 911

[1] *See* pp. 7-8.

Service to PSAPs is clear, the specific network details can be very complex, which is one reason AT&T asked multiple times to meet with the Communications Division to discuss the transition to NG911. Yet, as an additional basis for the $1.25 million fine, the POD asserts that AT&T's witness contradicted himself in describing services, and thereby made a misrepresentation in violation of Rule 1. The full record, however, shows that the purportedly conflicting testimony concerned two discrete services, and that the witness spoke accurately about each. He therefore neither contradicted himself nor misstated the facts.

The Alleged Inadequate Responses to Correspondence Are Not Sanctionable.

The POD's entirely separate, $2.5 million fine for an alleged failure to adequately respond to the Communications Division's letters is unlawful for two reasons. To begin, the fine violates due process and the Commission's own rules because the response to the letters was not an alleged violation in the Order to Show Cause, and therefore is beyond the scope of the proceeding. In addition, sanctions can be imposed only for violating a legal requirement imposed by the state Constitution, a state statute, or "the commission" (Pub. Utils. Code § 2107), and the POD does not identify any legal requirement governing responses to letters from the Communications Division that AT&T could have violated. Accordingly, there is no lawful basis for the fine.

The Law and Record Do Not Support Either Fine. Even if AT&T's conduct could justify a fine of any sort (though as it cannot), the proposed fines are unsupported and excessive. Regarding the alleged failure to tariff, any fine is premature because Cal OES's NG911 Providers will not be receiving live 911 traffic until 2021, meaning there was no NG911 Service AT&T could have provided "access to," much less done so without a tariff. The fine also is unlawful because Section 710 of the Public Utilities Code precluded any penalty during 2019. And with regard to both fines, the POD fails to consider the factors that Decision 98-12-075

requires be assessed before imposing a fine under Section 2107. As a result, the POD gives no weight to important mitigating factors, such as the lack of any harm to any person or entity from AT&T's conduct and the fact that in analogous circumstances the Commission typically imposes fines of $1,000 a month. Nor did the POD consider that Frontier received the same April 15, 2019 letter from Director Walker, yet its tariff filing, which the POD cites as compliant, occurred on December 11, 2019, just 9 days before Order to Show Cause.

Moreover, regarding the fine for AT&T's response to Director Walker's letters, the POD has the facts wrong. The POD focuses on the April 2019 letter, where it faults AT&T California for allegedly having a "junior staff member" respond to a "junior staff member" at the Commission. But the "junior" person at AT&T California is both a Director (*i.e.*, an executive) and the person to whom Director Walker addressed her letter. He cannot possibly be too "junior" to respond to a letter sent directly to him. And the Staff member at issue, a Senior Engineer, was the Communications Division's own chosen point of contact for that letter. Thus, she too cannot possibly have been too "junior." In short, the POD's analysis is erroneous.

III. BACKGROUND

A. 911 Overview

In informal usage, "911 service" is sometimes used to refer to the entirety of an emergency call, *i.e.*, from an end user dialing 911 all the way through to the PSAP. But that is inaccurate, and such informal, inaccurate usage can lead to erroneous conclusions. There are two distinct segments in a 911 call, and the difference is important here.

1. "Access to" 911 Service

As described above, the first segment of a 911 call is the connection between the end user dialing 911 and the 911 System Service Provider. Tr. 8:19-9:17 (Neinast/AT&T). This segment provides the end user with "**access to**" the 911 Service of the SSP so its 911 calls can be

completed. "Access to" 911 Service is supplied by the end user's local service provider, *i.e.*, the Originating Service Provider. Exs. 17, 19; Tr. 8:13 to 10:13 (Neinast/AT&T). In California, such "access to" 911 Service is an included element of Basic Service. D.12-12-038, Appendix A at 2.[2] Although Basic Service is required to be tariffed (and AT&T California and AT&T Corp. have done so[3]), "access to" 911 Service is not separately tariffed, priced, or sold. Rather, it is just an inherent attribute of Basic Service. In this way, the role of Basic Service providers supplying end users with "access to" 911 Service is analogous to that of originating local carriers with respect to toll-free ("1-800") calls, *i.e.*, such carriers originate and deliver the call from the end user to the 1-800 service provider, which then delivers the call to its 1-800 service customer. It is also similar to how Basic Service providers supply end users with access to the interexchange carrier ("IXC") of their choice, *i.e.*, by delivering the end users' long distance calls to that IXC as a built-in part of local service, not as a separate service. To use a non-telecom analogy, when you order a pizza, sauce is an inherent element, not a separate product.

2. 911 Service

The second segment of a 911 call – the actual 911 Service – is where the 911 System Service Provider receives a 911 call from an Originating Service Provider and delivers the call to a PSAP.[4] Tr. 9:18 to 10:23 (Neinast/AT&T). Among other distinctions from mere "access to" 911 Service, actual 911 Service (i) is provided by the few 911 System Service Providers, not by all Basic Service providers; (ii) is sold to PSAPs for a fee, whereas "access to" 911 is provided to

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[2] *Decision Adopting Basic Telephone Service Revisions*, Decision (D.) 12-12-038, Appendix A at 2 (CPUC, 2012) (defining duties of Basic Service providers); Tr. 10:14-17 (Neinast/AT&T).

[3] AT&T California SCHEDULE CAL. P.U.C. NO. A5, § 5.2.2; AT&T Corp. SCHEDULE CAL. P.U.C. NO. F-T, § 5.

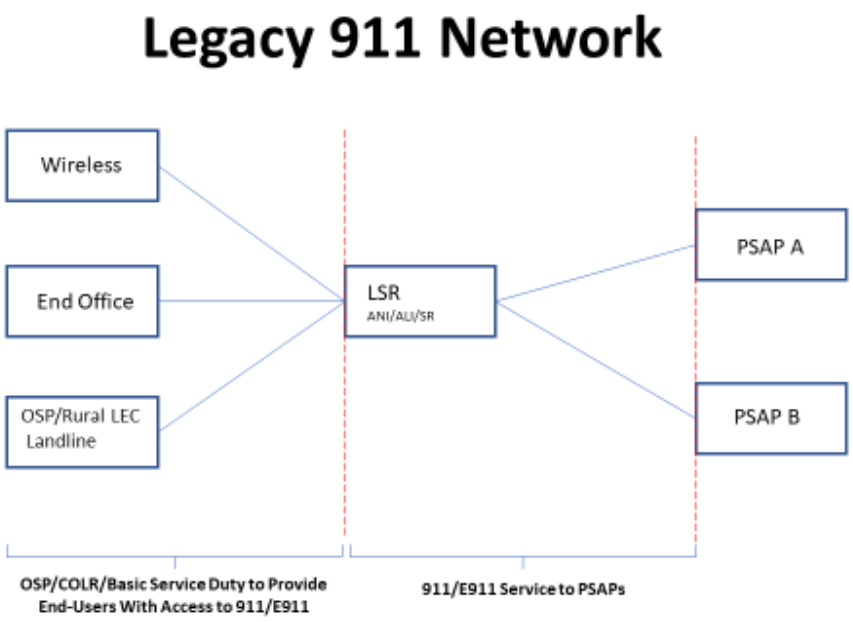
[4] *In the Matters of IP-Enabled Services*, 20 FCC Rcd. 10245, ¶¶ 11-15 & n.35 (2005) (describing provision of 911 Service today, in which the 911 Service provider, typically an ILEC, forwards 911 calls from its Selective Router to a PSAP); Tr. 9:15 to 10:23 (Neinast/AT&T).

end users as a free element of Basic Service; and (iii) is not part of Basic Service.[5] Also, while a carrier can voluntarily choose to provide 911 Service to PSAPs, no carrier – including providers of Basic Service, whether as holders of Certificates of Public Convenience and Necessity ("CPCNs") or carriers of last resort ("COLRs") – is legally required to do so. *See infra* n.9, 14. This makes sense because, as AT&T explained, there is a "huge distinction" between Originating Service Providers and 911 System Service Providers, in that there are "literally thousands" of Originating Service Providers in the United States, but "only a handful" of 911 System Service Providers. Tr. 8:19-21, 9:21-24 (Neinast/AT&T).

The following diagram (which uses the term "Legacy Selective Router" ("LSR") to describe the key facilities of the 911 System Service Provider) illustrates the division of responsibility between Originating Service Providers and the 911 System Service Providers today:

[5] AT&T California SCHEDULE CAL. P.U.C. No. A9, § 9.2.1.A.1 ("9-1-1 emergency service is furnished to political subdivisions and municipal corporations of the State of California."); FRONTIER CALIFORNIA INC. SCHEDULE Cal. P.U.C. No. A-5 ("9-1-1 Emergency Telephone Service") at Section I and Section III ("The 9-1-1 Service offering is available to governmental agencies that are responsible for the provision of emergency services within the state.").

DIAGRAM 1



Historically, ILECs like AT&T California and Frontier have served as the 911 System Service Providers and provided 911 Service to PSAPs. Tr. 9:21-10:2 (Neinast/AT&T).[6] But their role will change with Cal OES's implementation of NG911.

3. Cal OES's Plan for an NG911 System

Pursuant to Government Code § 53121(a), under the direction of the Cal OES, the dedicated architecture of legacy 911 Service will be replaced with a new NG911 architecture, that uses an internet protocol-based ("IP-based") emergency call routing system. The implementation of an NG911 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.

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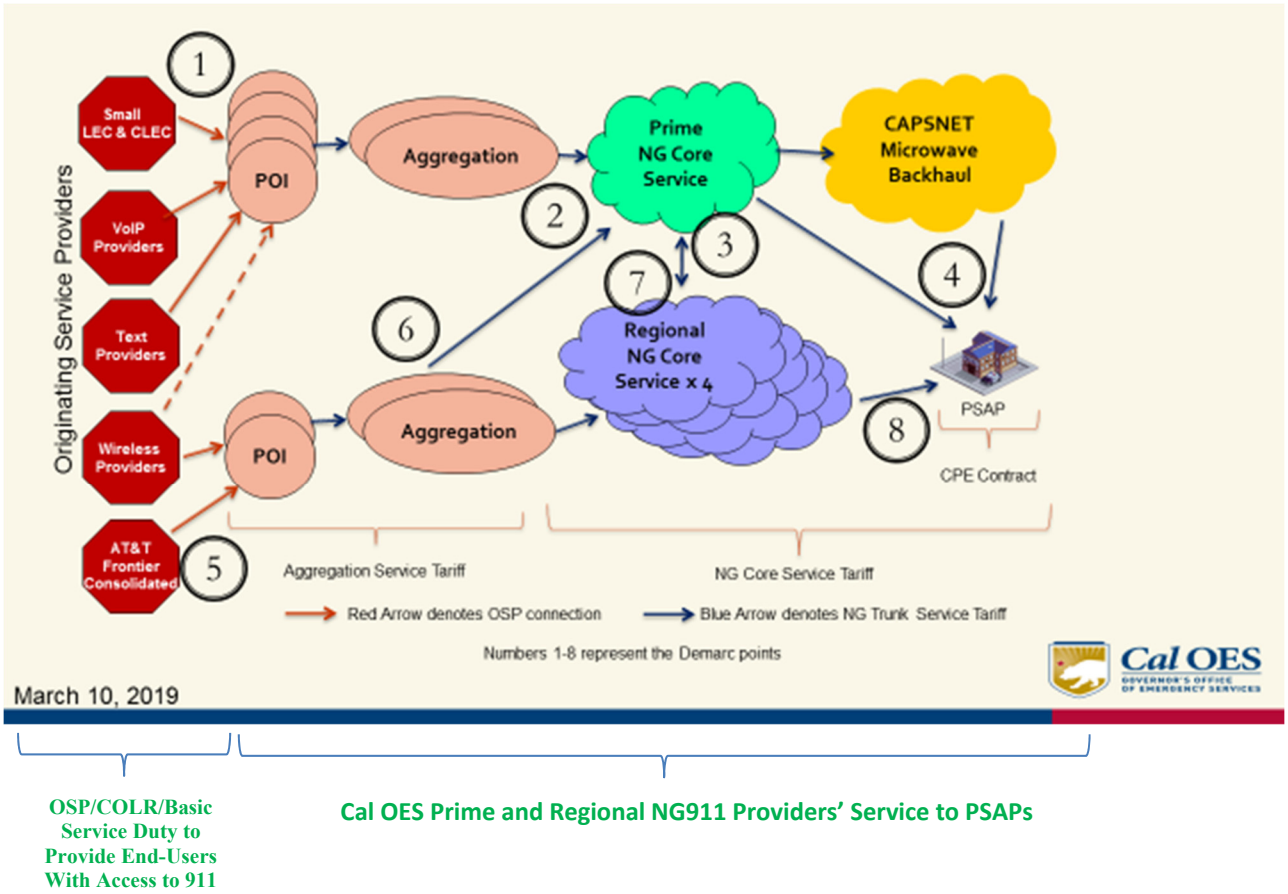
[6] Tr. 9:21-10:2 (Neinast/AT&T); *see also In the Matters of IP-Enabled Services* , 20 FCC Rcd. 10245, ¶¶ 14-15 & n.35 ("The service between the incumbent LEC and PSAP is contractual in nature and paid for by the PSAP typically through a special tariff filed with the public utilities commission."); Ex. 1, Cal OES RFP, § 1.4.1 ("The 9-1-1 services [in the current environment] are provided via tariff through 45 Selective Routers that are maintained by two telecommunications service providers (AT&T [California] and Frontier Communications).").

In particular, when Cal OES's NG911 system is fully implemented, AT&T California will no longer be a 911 System Service Provider. Rather, Cal OES has chosen four NG911 Service Providers, which do not include any ILECs, to serve as the exclusive "NG911 Service Providers" statewide. *See* Ex. 21. When they become fully operational in 2021, those NG911 Service Providers will provide all NG911 Service and be "responsible for the aggregation, routing and delivery of 9-1-1 calls" in California. Ex. 1, Cal OES RFP, § 1.4.2. The following diagram by Cal OES (except for the brackets and green text at the bottom, which AT&T has added for clarity), illustrates what the division of responsibility will be under Cal OES's NG911 system:

DIAGRAM 2



As Cal OES's diagram shows, AT&T California's and AT&T Corp.'s only role in Cal OES's NG911 system will be as Originating Service Providers. As such, they will be

responsible only for carrying 911 calls from their end-users to their handoff point, called a point of interface ("POI"), with the NG911 Service Provider's network (red arrows in Diagram 2). (In other words, they will provide "access to" NG911 Service.) Past that handoff point, the NG911 Service Providers will be responsible for providing NG911 Service to deliver the 911 call to the PSAP in IP format (blue arrows in Diagram 2).[7] Cal OES will be the sole purchaser of NG911 Service on behalf of PSAPs, and it will buy only from its chosen providers. Tr. 31:19 to 32:6 (Neinast/AT&T). No changes will be needed to the networks or technology Originating Service Providers currently use to provide "access to" NG911 service, so no "updates" will be necessary. Tr. 72:18-21 (Berry/AT&T).

B. Letters From the Communications Division and AT&T's Requests for Clarification

AT&T California proactively raised the issue of tariffing in relation to NG911 Services in August of 2018, writing a letter to engage General Counsel Ms. Aguilar in a dialogue in connection with AT&T's consideration of whether to participate in Cal OES's NG911 RFP process. Exs. 3, 4. After an exchange of emails detailing its views, AT&T California requested a meeting to address the issue further, emphasizing that "it is essential that all parties concerned receive clarity and feedback from the Commission." Exs. 3, 4.[8] Yet Ms. Aguilar declined to

[7] Cal OES's chosen NG911 Service Providers have already filed tariffs for their NG911 Service. The tariffs state that the NG911 Service Providers will be responsible for all 911 calls in their region "from ingress to egress" (that is, from the POI to the PSAP). *E.g.*, NGA 911, LLC Schedule Cal. P.U.C. 1-T, Sheets 60 and 74; CenturyLink Communications, LLC Cal. P.U.C. Schedule No. 11-T, § 6.2.1.M.

[8] As AT&T's August 24, 2018 email to Ms. Aguilar explained (Ex. 4) (emphasis added):

> **[I]t occurs to me that we may have a disconnect, and I am hoping that it might be easily resolved. … We would be happy to arrange a more detailed technical discussion** regarding the NG911 suite of services and to explain the IP platform on which they operate in contrast to the TDM-based 911 services. **A meeting could be arranged over the telephone or perhaps even in person with one of our experts and your staff next week.**

meet, noting that AT&T had clearly stated its position – but she thereby denied AT&T any clarification of the Communications Division's view. *Id*.

Months later, on April 15, June 17, and September 18, 2019, Director Walker of the Communications Division sent letters saying AT&T California needed to "update" its tariffs in light of Cal OES's plan to implement an NG911 system.[9] Exs. 5-7. AT&T California disagreed that tariff updates were necessary, for reasons it fully explained to the Communications Division several times – in the correspondence months before with Ms. Aguilar, during a telephone conversation regarding the first letter, and in a combined response to all three letters. Exs. 2-4, 9; OSC at 4. AT&T California also again asked to meet with the Communications Division to discuss implementation of NG911 and resolve any misunderstandings (Exs. 4, 9), but the Communications Division refused – again stating that AT&T had made its position clear, but refusing to clarify its own views or address AT&T's position. Ex. 10.

C. The Order to Show Cause and the Presiding Officer's Decision

On December 20, 2019, an Order to Show Cause ("OSC") was issued directing AT&T California and AT&T Corp. to show cause why they should not be sanctioned for not "updating" their tariffs in light of Cal OES's NG911 plans. OSC at 14. AT&T filed a response, and after a hearing and a further brief, the POD was issued on April 2, 2020. The POD directs AT&T California and AT&T Corp. to file "a[n] NG911 tariff" and imposes a $1.25 million fine for an

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See also Ex. 3 (Aug. 21, 2018 letter to Ms. Aguilar) ("**[I]t is essential that all parties concerned receive clarity and feedback from the Commission. I am happy to discuss this further at your earliest convenience** ….") (emphasis added).

[9] The September 2019 letter also directed AT&T California to file a tariff for the service of AT&T Corp. (a separate entity) under a contract with Cal OES known as the Pasadena RING contract. AT&T Corp. filed that tariff on October 4, 2019, but it was rejected on erroneous grounds, as discussed *infra*, n.39. The Communications Division refused AT&T Corp.'s request to meet to discuss the rejection. Ex. 10.

alleged violation of Decision 19-08-025 and misstatements, as well as a separate $2.5 million fine for alleged failure to adequately respond to the Director Walker's letters. POD at 14, 16.

IV. ARGUMENT

A. AT&T California and AT&T Corp. Have Not Violated Any Tariffing Requirement

1. AT&T Has Met Any Tariffing Duty Under D.19-08-025

The POD reasons as follows:

1. "911 service is a tariffed element of basic service." POD at 14 (FOF 1);
2. "911 services or other emergency services may not be detariffed." *Id*. (FOF 2); and
3. Therefore, because AT&T California and AT&T Corp., as a COLR and CLEC, provide Basic Service, they must "provide tariffed 911 service" and therefore have violated D.19-08-025 by not filing such a tariff. *Id.* at 15 (FOF 13-14).

That analysis falls apart because the POD uses the same term – "911 service" – to refer to two very different things, provided by two different types of providers with different obligations. 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 911 calls to the actual 911 System Service Provider as a component of Basic Service. D.12-12-038, Appendix A at 2 (emphasis added). In other words, Basic Service providers (and COLRs and CLECs) have the same obligation as Originating Service Providers, described and illustrated above. It is only the 911 System Service Providers that – entirely separate from Basic Service – provide actual 911 Service, for a fee, to PSAPs. That actual 911 Service to PSAPs traditionally has been tariffed. By contrast, end user "access to" 911 Service is a mere "component" of Basic Service and has not been required to be tariffed.

The POD identifies no statute, rule, decision, or order that specifically requires tariffing of the "access to" 911 component of Basic Service. Instead, it relies on language in D.19-08-025

stating that "9-1-1 service is a component of basic service … and as such, providers are required to maintain 9-1-1 tariffs on file with the CPUC per Decision 12-12-038." POD at 8, quoting D.19-08-025 at 14. The POD interprets this as requiring Basic Service providers[10] to also tariff the "access to" 911 Service component of Basic Service.[11] POD at 7-8. But D.19-08-025 imposes no such requirement. Specifically, although D.19-08-025 imprecisely uses the term "9-1-1 service," the context and the sources it relies on show that it was simply reasserting the requirement to provide "**access to**" 911 as a "**component** of" tariffed Basic Service – **not** creating a new duty to tariff "access to" 911 as if it were an independent "service." D.19-08-025 at 14 (emphasis added).

First, D.19-08-025 (at 14) expressly says it is discussing a "component" of Basic Service. The **only** 911-related "component" of Basic Service is the "access to" 911 component described above. D.12-12-038, Appendix A at 2.

[10] The POD's Finding of Fact 13 (POD at 14) also refers to AT&T California's obligations as a COLR. A COLR is a carrier that must stand ready to provide Basic Service to any customer requesting such service within a specified area. D.12-12-038, Appendix C. Thus, the only relevant duty of a COLR with regard to 911 is to provide Basic Service end-users with "access to" 911 Service as an "element" of that service. *Id*., Appendix A at 2. Similarly, the POD (at 7) states that AT&T Corp., as a CLEC, has the same obligation to provide its local service end-users with "access to" 911 Service. (Emphasis added); *In re Cox California Telecom, LLC*, Resolution T-17526 at 3-4 (CPUC, 2016) (as a CLEC providing Basic Service, Cox Telecom was obligated to provide "reliable **access to** emergency 911 services" as part of Basic Service) (emphasis added).

[11] The POD's linkage of the duty to tariff Basic Service to an alleged brand-new duty to tariff the "access to" 911 "component" of Basic Service is evident throughout its discussion. POD at 7 ("[T]he CPUC is statutorily prohibited from detariffing anything it defines as 'basic service' **and thus** AT&T California is required to maintain and update 911 tariffs on file with the Commission.") (emphasis added); *id*. at 8 ("'911 service is a **component** of basic service … **and as such**, providers are required to maintain 911 tariffs …'") (emphasis added), quoting D.19-08-025 at 14; *id*. at 9 (asserting that the requirements for Basic Service include "the obligation to offer 911 service"); *id*. at 10 ("**so long as they were providing basic service,** they remained obligated to provide 911 service") (emphasis added); *id.*at 14-15 (Findings of Fact 1-3) (asserting that "911 service is a tariffed **element** of basic service," that such "911 services … may not be detariffed[.]") (emphasis added).

Second, D.19-08-025 (at 14) relies explicitly and exclusively on D.12-12-038 and Pub. Utils. Code 495.7(b). Both of those deal **only** with Basic Service. Pub. Utils. Code 495.7(b) requires Basic Service to be tariffed, but says nothing about 911 or tariffing "access to" 911 Service. And D.12-12-038 merely discusses the duty to include "access to" 911 Service as an "element" of Basic Service. D.12-12-038 at 22-23 (describing "the basic service requirements for 911/E911 access"). It says nothing about tariffing "access to" 911 Service. This is fatal to the POD. As the Court of Appeals held in *AT&T California v. Pub. Utils. Comm'n*, 2010 WL 2031268, at *7 (Cal. App., May 24, 2010) (unpublished), the Commission cannot use a general obligation, like the duty to tariff Basic Service, to impose fines on a utility for allegedly violating a much more specific obligation that is not itself reflected in any statute, rule, order or decision. 2010 WL 2031268, at *7 (reversing fine where authority the CPUC relied on did not actually impose the specific duty at issue).

Accordingly, when read in context and in light of the sources it relies on, D.19-08-025 merely recognizes the longstanding facts that **Basic Service** must be tariffed and that Basic Service providers must supply "access to" 911 Service as an inherent component of Basic Service. AT&T California and AT&T Corp. fully comply with those duties, for it is undisputed that they have tariffs on file for their Basic Service and provide end users with "access to" 911 Service as part of that service.[12] By contrast, D.19-08-025 does **not** stand for the proposition that such "access to" 911 Service must be tariffed. AT&T therefore cannot have violated any duty.[13]

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[12] AT&T California SCHEDULE CAL. P.U.C. NO. A5, § 5.2.2; AT&T Corp. SCHEDULE CAL. P.U.C. NO. F-T, § 5.

[13] The POD elsewhere cites D.07-09-018 as declining to detariff "911 service" (POD at 7 n.8), but that Decision concerned actual 911 Service, *i.e.*, the service that 911 System Service Providers sell to PSAPs to carry 911 calls between an Originating Service Provider and a PSAP. AT&T Post-Hearing Br. at 17 n.24. The POD (at 3) also refers to General Order 96-B, Telecommunications Industry Rule 8.3 and 8.4, but never explains how or why AT&T California or AT&T Corp. could be deemed to have violated those rules, which merely apply to how tariffs are filed, not what service must be tariffed. AT&T California

2. Cal OES's Plan to Implement an NG911 System Does Not Require Basic Service Providers to "Update" Any Tariffs

The POD also claims that AT&T California and AT&T Corp. are required to "update" their tariffs because of Cal OES's plan for implementing an NG911 system. POD at 3, 7-9. In doing so, the POD again relies on faulty reasoning, contending that:

1. Cal OES is implementing an NG911 system for California to replace the current 911 system. POD at 3.

2. Therefore, AT&T California and AT&T Corp. "are required to update their tariffs." *Id* at 3, 9 (FOF 9).

This reasoning is a *non sequitur* because the POD misunderstands the nature – and timing – of Cal OES's implementation of an NG911 system, as well as AT&T California's and AT&T Corp.'s role in that system.

First, nothing in D.19-08-025, or anything else the POD cites, requires carriers to "update" their tariffs simply because **other** entities (Cal OES's NG911 Service Providers) will be using new technology for the service **those** carriers will eventually provide (NG911 Service). To the contrary, when those NG911 Service Providers become fully operational, AT&T California's and AT&T Corp.'s only role will be as Originating Service Providers. *See supra*, Figure 2 (Cal OES diagram). That means their **only** duty will be to connect their end-users to the NG911 System Service Provider, *i.e.*, to provide "access to" the NG911 Service provided by those other carriers. *See id*. And they can do that in exactly the same manner they provide their end users with "access to" 911 Service today.[14] Basic Service providers therefore do not have to

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and AT&T Corp. therefore cannot be deemed to have violated General Order 96-B. *E.g.*, *Encino Motorcars LCC v. Navarro*, 136 S. Ct. 2117, 2125 (2016) ("One of the basic procedural requirements of administrative rulemaking is that an agency must give adequate reasons for its decisions."); *Greyhound Lines, Inc. v. Pub. Utils. Comm'n*, 65 Cal.2d 811, 813 (1967); Pub. Utils. Code § 1757(a)(3)-(4).

[14] The POD asserts that AT&T's 911 routing obligations, under the Cal OES regime, will end at the handoff to the NG911 Service Provider on only "some" 911 calls. POD at 11. That is incorrect. Under Cal OES's planned NG911 system, AT&T's 911 routing obligations will end at the handoff to the NG911

"update" any tariffs, or the technology they use, in order to deliver their end users' 911 calls to Cal OES's chosen NG911 Service Providers. Indeed, the Commission has held that "**[w]e do not dictate the use of any particular technology or network design for the purpose of satisfying the basic service requirement for 911/E911 access** …." D.12-12-038 at 23 (emphasis added). Thus, contrary to the POD's assumption, Cal OES's implementation of NG911 does not create any new tariffing obligations.[15]

Second, the error in the POD's legal approach is underscored when one considers its practical effect. If the POD's reasoning were correct, then D.19-08-025 would require **every** Basic Service provider to "update" its tariffs to describe how they will provide "access to" Cal OES's chosen NG911 Service Providers – even though there is no requirement to change anything about how they provide "access to" 911 Service. Moreover, there are many Basic Service providers in California, yet there is no evidence the Communications Division asked any carriers other than AT&T, Frontier, and Consolidated to "update" their tariffs. This indicates

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Service Provider on **all** 911 calls. *See supra*, Figure 2 (Cal OES diagram, in record as Ex. 19); Tr. 20:3-11 and 24:3-5 (Neinast/AT&T).

[15] There also can be no claim that the POD's analysis applies to anything other than "access to" 911 Service as part of Basic Service. To begin, the POD is based entirely on alleged duties of COLRs, CLECS, and Basic Service providers, and nothing about being a COLR, CLEC, or Basic Service provider requires any carrier to provide actual 911 Service (or NG911 Service) to PSAPs. In addition, AT&T California does not have any NG911 Service to offer to PSAPs, and could not offer such service on its existing network. Tr. 74:10-12 (Berry/AT&T). AT&T California therefore has nothing with which it could "update" any tariff, and there is no legal duty for a carrier to create new services it does not choose to offer. Tr. 36:6-24 (Neinast/AT&T). Further, penalizing AT&T California or AT&T Corp. for not creating and tariffing an NG911 Service as part of Cal OES' new NG911 system would not only be unlawful, it would be pointless. Under Cal OES's framework to implement NG911 in California, Cal OES has picked the four entities that will act as the exclusive NG911 Service Providers statewide, with Cal OES as the exclusive purchaser. Tr. 30:25 to 31:6 (Neinast/AT&T); Ex. 21. AT&T California and AT&T Corp. are not among the chosen NG911 Service Providers. Tr. 30:25 to 31:6 (Neinast/AT&T). Thus, Cal OES's architecture ensures that, even if AT&T California had an NG911 Service to offer, there would be no customers for it. Tr. 37:21-25 (Neinast/AT&T). Requiring AT&T California or AT&T Corp. to create and tariff a service for which there would be no customers would be arbitrary and capricious and thus unlawful. *E.g.*, *Ponderosa Tel. Co.*, 36 Cal.App.5th at 1019; Cal. Pub. Utils. Code § 1757.

that even the Communications Division does not really believe such "updates" are necessary. Thus, fining AT&T for not "updating" its tariffs would be transparently discriminatory, and therefore arbitrary and capricious.[16] *Cf. AT&T California*, 2010 WL 2031268, **6-7 (CPUC finding that AT&T violated a disclosure obligation that CPUC had not in fact required was "not supported by substantial evidence" and thus invalid under Section 1757).

3. AT&T's Witness Did Not Misrepresent the Facts

As part of the justification for the $1.25 million fine, the POD contends that AT&T's witness first said that AT&T Corp. no longer provides NG911 Service to PSAPs in California, but later said it is "able to" deliver IP-enabled traffic to a PSAP, and that this testimony was contradictory and revealed a misrepresentation, in violation of Rule 1. POD at 12, citing Tr. 36-37 and 56-60; POD at 15 (Finding of Fact 11). The POD further states that AT&T's witness said AT&T Corp. "suppl[ies] trunks to [Cal OES's NG911] 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." *Id*. Those characterizations are inaccurate and belied by the actual content and context of the testimony.

While the POD contends that AT&T's witness first said AT&T Corp. no longer offers NG911 Service in California but then said it does, the witness actually was talking about two different services. As AT&T's witness and briefs explained, AT&T Corp. has provided a service under the Pasadena RING contract that has been characterized as an NG911 Service to deliver calls between Originating Service Providers' networks and PSAPs, but that contract expired on

[16] All of the above being said, AT&T has stated throughout this proceeding that although it is not required to specifically or separately tariff "access to" 911 Service as part of Basic Service, it is willing to voluntarily do so, because it must provide that access anyway under existing state and federal law. Tr. 82:19-28 (Berry/AT&T). What AT&T objects to most is being fined for violating an alleged duty with no basis in existing law.

January 20, 2020. Tr. 74:10-12 (Berry/AT&T); Tr. 36:6 to 37:3 (Neinast/AT&T); AT&T Post-Hearing Br. at 8. That is the only point AT&T's witness was making, accurately, on pages 36-37 of the transcript, where he discussed only that Pasadena RING service.[17] He did not contradict that point on pages 56-60 of the transcript, as the POD claims (with no quote or specific citation). To the contrary, at pages 56-60 he was talking about a different service, which he did not say was an NG911 Service. Specifically, while the POD asserts (at 12 n.20) the witness said AT&T Corp. was using that different service to deliver IP-enabled calls "to PSAPs," what he actually said was that the different service is used on the PSAP's side of the network,[18] not the end user and 911 System Service Provider's side, and therefore is **not** part of delivering a 911 call from an Originating Service Provider to a PSAP.[19] Tr. 57:12-18, 60:27-28, 62:20-23 (Neinast/AT&T; AT&T Post-Hearing Br. at 19-20 (including diagrams)). This subject is technical and complex, to be sure, but that is no basis for accusing AT&T of a misrepresentation when the witness was discussing two different services that do different things on different sides of the network, and accurately discussed each of them. *See Ponderosa Tel. Co.* v. *Pub. Utils. Comm'n*, 36 Cal.App.5th 999, 1019 (2019) (finding that "lack[s] substantial evidence" is "arbitrary" and grounds for reversal under Section 1757).

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[17] Tr. 36:25-37:5 (Neinast/AT&T):

> Q: Now, focusing on AT&T Corp., does AT&T Corp. provide NG 911 service to PSAPs?
>
> 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 it's being transitioned off.

[18] Referring to Figure 2 above, the PSAP's side of the network is to the right of the PSAP. That is distinct from 911 Service (traditional or NG911), which connects the Originating Service Provider's network to a PSAP. Tr. 66:8-10 (Neinast/AT&T).

[19] The service referred to is AVPN, which 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. AT&T Post-Hearing Br. at 16-21; Tr. 58:8-12, 59:3-24 (Neinast/AT&T).

Similarly, the POD's separate claim that AT&T's witness said AT&T "suppl[ies] trunks to the core service providers" ignores that the discussion on pages 26-27 of the transcript was about what AT&T theoretically could do **in the future, not** what it is doing **today**. Specifically, the discussion there was about the network diagram in Cal OES's RFP (Ex. 19) and how Cal OES's architecture for NG911 will work in the future once Cal OES's chosen NG911 Service Providers become fully operational – which will not happen until 2021. *See* Tr. 19:19-20 and 22:14-15 (introducing discussion of Ex. 19 that continues on Tr. 26-27); Ex. 20 at 5, 13 (timeline showing NG911 Core and Regional Service Providers expect to begin receiving live traffic in 2021). AT&T's witness therefore was discussing the diagram of Cal OES's **plan**, not what is actually being done today. There is a vast difference between the two. It would be arbitrary and capricious for the Commission to penalize AT&T for truthfully discussing hypothetical future possibilities. *Ponderosa Tel.*, 36 Cal.App.5th at 1019 (2019).

B. The Proposed Fine for the Alleged Tariffing Violation and Alleged Misrepresentations Is Unlawful, Unsupported, and Excessive

The discussion above demonstrates that AT&T's challenged conduct cannot lawfully be punished under Section 2107 or Rule 1. But even if such conduct could support a fine, the fine proposed in the POD is unlawful, unsupported, and excessive.

1. Imposing Any Penalty is Premature

Imposing a penalty for the period from June 15, 2019 to December 20, 2019 would be improper because it is premature. The POD contends that AT&T must "update" its tariffs "[b]ecause CalOES is updating existing 911 services to NG 911 services[]." POD at 3, 8. There is no such duty for the reasons stated above, but even if there were such a duty, it cannot have been "violated" **yet**, because none of Cal OES's chosen NG911 Service Providers is actually operational and providing NG911 Service, and will not be until some time in 2021. Ex.

20 at 5, 13. It would be patently unreasonable to fine AT&T California and AT&T Corp. for not "updating" their tariffs **in 2019** to deal with a state of affairs (*i.e.*, when they will actually deliver 911 calls to the NG911 Service Providers) that will not exist until **2021**. The POD points to no law saying that carriers must "update" tariffs approximately two years early. *See AT&T California*, 2010 WL 2031268, at *6 (reversing CPUC fine against AT&T California as premature because AT&T California could not have violated duty to provide a certain service until it "received a request from" a customer for that service and failed to provide it). To use an analogy, the IRS can't fine you for failing to file your 2022 tax return in 2020.

2. Section 710 Precludes Any Fine During 2019

The POD's proposed fine covers the period from April 15, 2019 (Director Walker's first letter) to December 20, 2019 (issuance of the Order to Show Cause). POD at 14. During that period, however, Section 710 of the Public Utilities Code prohibited the Commission from regulating any "IP-enabled" service, with some exceptions. NG911 is an IP-enabled service. 47 U.S.C. § 942(e)(5). Thus, even if "access to" NG911 were an NG911 Service (which it is not), Section 710 would have forbidden the Commission from requiring a tariff for it in 2019. The POD nevertheless contends that two exceptions allowed the Commission to force AT&T to "update" tariffs to NG911; namely, Sections 710(e) and 710(c)(8). POD at 9-11. That is incorrect.

Section 710(e) contained an exception for regulations governing Basic Service.[20] As explained above, the only relevant requirement for Basic Service is to provide "access to" 911 calling as a component of Basic Service. AT&T California and AT&T Corp. already have

[20] Pub. Utils. Code § 710(e) (expired) ("This section does not affect any existing … regulations governing … the offering of basic service … and obligations to offer basic service.")

tariffs on file for their Basic Service and provide "access to" 911 calling as part of it. Section 710(e) is therefore irrelevant.

The other exception the POD cites, Section 710(c)(8), pertains to the Warren-911 Emergency Assistance Act ("Warren Act"),[21] which does not even mention the Commission. Further, while other exceptions in Section 710 expressly preserved "the commission's authority" under certain sections of the Public Utilities Code (Section 710(c)(1)-(2) and (4)-(7)), Section 710(c)(8) conspicuously did not address any Commission authority over 911. That exclusion is presumed intentional. *See Citizens for a Responsible Caltrans Decision v. Dept. of Transp.*, 2020 WL 1429231, *7 (Cal. App., Mar. 24, 2020) (unpublished) (discussing doctrine of expressio unius est exclusio alterius). Indeed, the state's Legislative Counsel's Office concluded that Section 710(c)(8) "does not provide any authority for the PUC to regulate IP-based 911 services," and that "it would be unlawful for the PUC to impose tariffing requirements on next generation 911 services" while Section 710 was in effect. Ex. 25 at 7-8. That analysis confirms Section 710 precluded any penalty for an alleged failure to tariff NG911 services in 2019.[22]

[21] Pub. Util. Code § 710(c)(8) (expired) ("This section does not affect or supersede … 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.")).

[22] It is important to recognize that the POD misstates AT&T's position. The POD contends that AT&T's – and the Legislative Counsel's Office – reading of Section 710 would mean that, while Section 710 was in effect, carriers who upgraded their network would be "excuse[d] … from providing 911 service at all." POD at 10. AT&T has never argued any such thing. To the contrary, AT&T California and AT&T Corp. have made explicit throughout this proceeding, and the fact is undisputed, that they provide their Basic Service end-users with "access to" 911 Service, and will continue to do so when Cal OES's chosen NG911 Service Providers eventually become operational. Tr. 72:18-21 (Berry/AT&T); AT&T Response to OSC at 10. As noted above, there is no legal duty to provide actual NG911 Service to PSAPs, and, in any event, Cal OES already picked the only four providers that will be able to do so.

3. The POD Fails to Consider the Factors the Commission Must Consider Before Imposing Penalties

The POD fails to consider the factors the Commission must consider before imposing a fine or penalty, as set forth in Decision 98-12-075.[23] This error warrants rejecting the fine altogether. Moreover, the factors show that any fine would have to be much smaller.

a. The Alleged Violation Did Not Harm Any Person, Carrier, or Property

When assessing potential fines or penalties, the most severe violations are those that cause physical harm to people or property, followed by those that threaten such harm. D.98-12-075, Section D.2.b.i. There is no evidence or claim that AT&T California's or AT&T Corp.'s conduct here caused or threatened any physical harm to anyone. There also is no evidence that AT&T California's or AT&T Corp.'s failure to "update" their tariffs prevented any end-user from being able to make and complete any 911 call. Nor could they have caused any harm, since Cal OES's NG911 Service providers will not be fully operational to receive 911 traffic from AT&T until some time in 2021. *See* Ex. 20 at 5, 13. The lack of any harm to end-users "most strongly dictates in favor of a more modest penalty."[24] Yet the POD fails to consider it.

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[23] *Re Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates*, Decision (D.) 98-12-075, 84 CPUC 2d 155 (CPUC, 1998). The Commission has recognized that these factors must be addressed before imposing a fine under Section 2107, and has even granted rehearing to ensure that they are. *See Order Modifying Decision 14-01-037*, Decision (D.) D.15-05-032, at 8 (CPUC, 2015) (granting rehearing to "to issue a final decision that comports with our process for assessing penalties, including our established process under D.98-12-075"); *Application of California-American Water Co.*, Decision (D.) 15-04-008, at 12-13 and n.26 (CPUC, 2015) ("D.98-12-075 indicates that the principles therein distill the essence of numerous Commission decisions concerning penalties in a wide range of cases, and the Commission expects to look to these principles as precedent in determining the level of penalty in a full range of Commission enforcement proceedings.").

[24] *Application of Southern California Gas Company for Authority Pursuant to Public Utilities Code Section 851 to Sell Certain Intellectual Property Known as Energy Marketplace*, Decision (D.) 01-06-080, at 20 (CPUC, 2001).

Likewise, there is no evidence or claim that AT&T California's or AT&T Corp.'s actions caused or threatened any economic harm to anyone, or have resulted in unlawful gains to AT&T. There is no evidence that any entity paid more for 911 Service than it otherwise would have if AT&T California or AT&T Corp. had "updated" their tariffs as the POD requires. Nor is there any evidence of harm to competition, given that Cal OES chose the sole authorized providers of NG911 Service pursuant to a competitive bidding process that it controlled, and through which it rejected AT&T Corp.'s bid in favor of the bids of other entities. *See* Ex. 1 (Cal OES RFP). This too is a mitigating factor. Yet the POD fails to consider it.

b. AT&T Did Not Harm the Regulatory Process

Another factor under D.98-12-075 is harm to the regulatory process. D.98-12-075, Section D.2.b.i. There has been no such harm here. That is because "access to" 911 calling as part of Basic Service has at all times been required by D.12-12-038 (and D.96-10-066 before that). The Commission has authority to enforce that Decision. Pub. Utils. Code § 2107. And that means the Commission at all times had full authority to penalize or require action by AT&T if AT&T were not meeting the requirements of that Decision. The existence or non-existence of tariff provisions on "access to" 911 has no effect whatsoever on that authority or ability to enforce. Because nothing AT&T did affected the Commission's ability to enforce the "access to" 911 requirement, nothing AT&T did had any adverse effect on the regulatory process.

Indeed, the lack of harm to the regulatory process is especially clear here, because the POD's entire focus is on an alleged duty to "update" tariffs in light of Cal OES's implementation of an NG911 system. POD at 3, 9-10, 15 (Finding of Fact 9). Cal OES's chosen NG911 Service Providers will not be fully operational and accepting traffic from originating carriers like AT&T until some time in 2021. Ex. 20 at 5, 13. It cannot possibly have harmed the regulatory process

for AT&T not to have had tariffs on file for providing "access to" those carriers' NG911 Service in 2019, when AT&T will not send 911 traffic to them until 2021.

c. AT&T Attempted to Prevent Any Alleged Violation

Another factor under D.98-12-075 is the utility's effort to prevent an alleged violation. D.98-12-075, Section D.2.b.ii. As explained below, AT&T California (i) proactively sought to address the issue with the Commission's General Counsel well before Director Walker's first letter, (ii) timely filed a tariff for the service it actually offered when asked to do so, and (iii) repeatedly sought meetings to discuss or clarify the issue, recognizing the parties may be talking past each other, but was denied. Coordinating with Staff is a mitigating factor in any penalty analysis.[25] AT&T was denied that opportunity here, despite its multiple requests. Nevertheless, the fact that AT&T sought to work with Staff is a mitigating factor. Yet the POD fails to consider it.[26]

d. The Proposed Fine is Materially Inconsistent With Fines Imposed in Analogous Situations

Another factor the Commission must consider under D.98-12-075 is what the Commission has done in analogous situations. As D.98-12-075 stated, "the Commission will be expected to explicitly address those previously issued decisions which involve the most reasonably comparable factual circumstances and explain any substantial differences in outcome." D.98-12-075, Section

[25] *See Order Instituting Investigation*, Decision (D.) 14-01-037 (CPUC, 2014) (treating TracFone's coordination with Staff as a mitigating factor); *Application of Southern California Gas Company for Authority Pursuant to Public Utilities Code Section 851 to Sell Certain Intellectual Property Known as Energy Marketplace*, Decision (D.) 01-06-080, at 20 (CPUC, 2001) ("SoCalGas did attempt to seek clarification from the Energy Division" which is "indicative of an attempt to comply with the law.").

[26] The POD also alleges that AT&T California and AT&T Corp. made "efforts to obstruct and delay the NG 911 RFP." POD at 10-11. That claim is patently incorrect. AT&T California did not even bid on the RFP, nor was it required to bid. Tr. 31:12-13 (Berry/AT&T). AT&T Corp. did bid on the RFP but was not chosen (Tr. 31:14-15 (Berry/AT&T)), and there is no evidence that anything AT&T did had any affect on the RFP process. Commission decisions must rest on record evidence (Pub. Utils. Code § 1701.2(e); Pub. Utils. Code § 1757(a)(4)), yet the POD's obstruction claim is without support.

D.2.b.v; *Application of California-American Water Co.*, Decision (D.) 15-04-008, at 20 (CPUC, 2015). Yet the POD does not attempt to identify or discuss any analogous situations, much less justify any differences in outcome. That is reversible error.

Moreover, AT&T identified several relevant rulings in its post-hearing brief (at 29-30). The most analogous situation would be cases where public utilities were fined for having operated without the required authority, such as a certificate of public convenience and necessity. That situation is akin to providing a service with no tariff where one was required, although providing service without a CPCN is worse because the Commission has exercised no oversight whatsoever regarding the utility. In cases where a public utility operated without the required authority, the Commission typically imposes fines of $1000 per month.[27] Given the similarities between the two situations, $1000 per month would be the most relevant benchmark if any fines were to be imposed here. Yet the POD, without explaining this departure or why those certificate cases would not be analogous, would impose a fine of $5,000 a day – **150 times** the normal amount.

Another arguably analogous situation would be a failure to file a required Advice Letter. In the two instances addressing that situation the Commission assessed a penalty "in the minimum range for large utility," and the fines have been significantly smaller for worse offenses – $300,000 for failure to file an Advice Letter specifically required by a Commission

[27] Resolution T-17577 (CPUC, 2017) ($1,000 per month penalty for operating without authority for 4 years); Resolution T-17571 (CPUC, 2017) ($1,000 per month penalty for operating without authority for 10 months); Resolution T-17570 (CPUC, 2017) ($1,000 per month penalty for operating without authority for 10 months); *Application of Vodaphone U.S. Operations Inc.*, Decision (D.) 16-05-001 (CPUC, 2016) ($500 per month penalty for company that operated without authority for 32 months but had since stopped operating in California).

order for 16 months in circumstances giving economic gain to the utility,[28] and $20,000 for a failure to file an Advice Letter that affected the rates of all bundled service customers for many months.[29] Yet the POD fails to consider these or identify any other analogous cases.

e. The POD Fails to Consider the Totality of the Circumstances

Lastly, Decision 98-12-075 requires consideration of the totality of the circumstances. D.98-12-075, Section D.2.b.iv. Examined in full context here, the circumstances do not warrant a fine, for all the reasons discussed above. It also is significant that even though Consolidated and Frontier filed tariffs in response to the April 2019 letter from the Communications Division, they did not do so until August 2019 and December 2019, respectively. Exs. 11-12. Thus, they too filed tariffs several months after the date Staff requested, but they were not subjected to an Order to Show Cause, much less fined. The POD cannot justify this disparity in treatment. Similarly, under the POD's logic, **every** Basic Service provider should have been instructed to "update" its tariffs in light of Cal OES's implementation of NG911, yet there is no evidence they were. This differential enforcement cuts strongly against imposing a special fine on AT&T.

4. The POD Overstates the Duration of the Alleged Violation

Even if it were lawful and were not premature, the $1.25 million fine is excessive because, on its own terms, the POD materially overstates the duration of the alleged misconduct. Section 2108 permits the Commission to impose a separate penalty for each violation, and for "a continuing violation, each day's continuance thereof shall be a separate and distinct offense." Pub. Utils. Code § 2108. The POD would impose a fine of $5,000 per day for purported

[28] *Application of Southern California Gas Company for Authority Pursuant to Public Utilities Code Section 851 to Sell Certain Intellectual Property Known as Energy Marketplace*, Decision (D.) 01-06-080, at 20 (CPUC, 2001).

[29] *Expedited Application of Southern California Edison Co. Regarding Energy Resources Recovery Account Trigger Mechanism*, Decision (D.) 19-12-001 at 25-26, 28 (CPUC, 2019).

"misrepresentations regarding the handling of 911 traffic and [] deliberate disregard of D.19-08-025." POD at 14. The POD applies a period of 250 days, which represents the time "between the date of Director Walker's first letter [April 15, 2019] and the filing of the Order to Show Cause [December 20, 2019]." *Id*. The 250-day period is unsupportable.

As for the "disregard" of D.19-08-025, the Commission did not issue that Decision until August 25, 2019. AT&T cannot have "disregarded" that Decision before it was even issued. Moreover, if D.19-08-025 imposed an obligation to tariff "access to" NG911 Service providers (and it did not), such obligation logically could not have begun any time in 2019, as none of the NG911 Service providers were operational then (and will not be until 2021). In all events, no violation could have begun until August 25, 2019, when D.19-08-025 was issued, at the earliest.

As for the purported "misrepresentations," the violations were not "continuing" at all. The only alleged misrepresentations identified in the POD occurred exclusively within the context of the January 23, 2020 hearing. POD at 12. Any violation occasioned by misrepresentations made at an evidentiary hearing is inherently a one-time event, not "continuing." And in no event can misrepresentations made at a January 23, 2020 hearing support a "continuing violation" from April 15, 2019 and December 20, 2019.

In sum, the alleged "misrepresentations" were not continuing in nature, and the period for a "continuing" violation concerning D.19-08-025 either never began, or at most extended from August 25, 2019 through December 20, 2019. This, at a minimum, shrinks the penalty period from 250 days to 117 days.[30]

[30] As above, if the penalty at remains at $5,000 per day, this would reduce the resulting fine from $1,250,000 to $585,000. But the $5,000 per day amount is excessive and should be reduced as explained above.

C. The $2.5 Million Fine For AT&T's Manner of Responding to Director Walker's Letters Is Unlawful and Unsupported

Entirely apart from the $1.25 fine regarding tariffing and alleged misrepresentations, the POD would impose a separate $2.5 million fine on AT&T for allegedly not "respond[ing] adequately" to Director Walker's letters in 2019. POD at 14. That fine should be reversed.

1. AT&T's Manner of Responding to the Communications Division's Letters Is Beyond the Scope of the Order to Show Cause

The fine is unlawful because it is beyond the scope of the Order to Show Cause and therefore violates due process and the Commission's own Rules. The **only** alleged legal violation in the OSC was the "failure to file updated 911 tariffs." OSC at 14. There was no allegation that AT&T's manner of responding to the letters violated any legal requirement. *See id.* Nor do any of the decisions, statutes, or orders cited in the OSC have anything to do with how utilities must respond to such letters.

It is a fundamental aspect of due process that before fines or penalties can be imposed on an entity it must have prior "notice and an opportunity to be heard." *Garamendi* v. *Golden Eagle Ins. Co.*, 116 Cal. App.4th 694, 706 (2004) (citing cases). Similarly, Pub. Utils. Code § 1701.1(b) requires that where a hearing is to be held (as there was here), there must be a Scoping Memo "that describes the issues to be considered." *See also* Commission Rule of Practice and Procedure 7.3(a) (Scoping Memo "shall determine the ... issues to be addressed").

The Order to Show Cause was the *de facto* Scoping Memo here, yet the OSC did not put AT&T on notice that it might be penalized for allegedly "inadequately responding" to the letters or that it needed to respond to such a claim. By addressing, for the first time, alleged legal obligations that were not identified as alleged violations in the OSC and that AT&T did not have notice to address in briefs or at the hearing, the POD deprives AT&T of due process and fails to

follow the Public Utilities Code and Commission's own rules.[31] *See Garamendi*, 116 Cal. App.4th at 706 (vacating awards for personal injury and attorney fees because they were not described in the operative complaint, which deprived defendants of due process because they "had no reason to anticipate liability for such" damages, and thus did not seek the relevant discovery or prepare a defense); *Southern California Edison Co. v. Pub. Utils. Comm'n*, 140 Cal.App.4th 1085, 1106 (2006) (reversing Commission decision for deciding issues "beyond the scope of issues identified in the scoping memo"); *Util. Reform Network v. Pub. Utils. Comm'n*, 2012 WL 1059368 (Cal. App., Mar. 16, 2012) (unpublished) (CPUC decision annulled for "decid[ing] issues outside the scope of [the Application]"); *AT&T California*, 2010 WL 2031268, at *7 (declining to address whether AT&T California had violated a statute where no issue regarding that statute was raised in the Scoping Memo). The $2.5 million penalty is therefore unlawful.

2. AT&T's Manner of Responding to the Communications Division's Letters Did Not Violate Any Legal Requirement

The POD contends that AT&T's response to Director Walker's letters was "inadequate" or "inappropriate" because it allegedly "ignored" them and refused "without explanation" to "update" its tariffs. POD at 13. In particular, the POD faults AT&T for having an alleged "junior staff member" reply to the initial letter by talking with a "junior" Staff member "down in

[31] AT&T was prejudiced by this lack of notice, as it was unaware of any need to present evidence or legal argument on the normal, established method of responding to such letters, which routinely includes responses by telephone, or on whom it usually deals with to respond to such letters. In this case, for example, AT&T could have presented evidence that it was actually Ms. Fischer that e-mailed Director Walker's April 2019 letter to Mr. Berry and told him to respond **to her** (Ms. Fischer) with any questions, and that Ms. Fischer told Mr. Berry on the June 12, 2019 phone call that she would relay his response to the April 2019 letter to Director Walker. Had it been given proper notice, AT&T also would have been able to brief the alleged legal basis for attempting to fine it for its manner of responding to the letters (a legal basis that is not even identified in the POD).

the bowels of the Commission" and by not responding by the dates requested in the letters. *Id*. at 13 and 16 (Finding of Fact 7).

The POD is wrong on the facts, as discussed below, but there is no need to get that far. As a threshold and dispositive legal matter, AT&T's manner of responding to the letters cannot be the basis for any fine because it did not violate any legal requirement.

Section 2107 authorizes the Commission to impose a penalty **only** when a public utility "violates or fails to comply with any provision of the Constitution of this state or of this part" or "fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission." Pub. Utils. Code § 2107. Thus, absent violation of a specific, identified requirement "of the commission," there can be no penalties under Section 2107. *See* Pub. Utils. Code § 1757(a)(1)-(2). The POD, however, does not identify any constitutional provision, statute, order, decision, decree, rule, direction, demand, or requirement "of the commission" that AT&T violated by its manner of responding to Director Walker's letters. Instead, the POD conjures from whole cloth an entirely new rule, not based on any existing legal source, that a utility can be fined millions of dollars based solely on a later, subjective opinion that its manner of responding to a letter was not "appropriate."

Section 2107 does not permit that. It is well-settled that the Commission acts by formal decision or order only.[32] Accordingly, statements or requests by the Communications Division, even its Director, do "not … set or change the law." D.15-05-032, at 22. This is a basic

[32] *Order Modifying Decision 14-01-037*, Decision (D.) 15-05-032, at 22-23 (CPUC, 2015) ("More importantly, staff advice is not binding on the Commission. … The Commission acts by formal decision or order only."), citing *Holder v. Key Sys.*, 88 Cal.App.2d 925, 933 (1948); Decision (D.) 10-12-016 at 82 and 96-97, as modified by D.11-04-035 at 6 n.13 (affirming finding that Commission acts by formal order or decision only); and *Greyhound Lines Inc. v. Pub. Utils. Comm'n* 68 Cal.2d 406, 412 (1968) (same).

principle of administrative law.[33] And because the Communications Division does "not have authority to set or change the law," deadlines in letters from the Communications Division, or requests to take action, do not constitute a legal requirement "of the commission" that can be "violated." *Id*.; *see AT&T California*, 2010 WL 2031268, at *7 (reversing fine against AT&T California because the cited legal authority did not address the specific alleged violation). Furthermore, and perhaps most importantly, it is critical to remember that the $2.5 million fine is solely for AT&T's manner of responding to the letters, an area in which the POD identifies no law. Because there is no cognizable legal violation under Section 2107, there is no lawful basis for penalties.[34]

3. The POD's Criticism of AT&T's Response to the Communications Division's Letter Directly Conflicts With the Record

Even if a failure to adequately respond to the Communications Division's letters violated some existing legal requirement (though it does not), the $2.5 million fine should be reversed because the POD fails to consider the factors it is required to consider under D.98-12-075 and because the POD's reasoning cannot be squared with the undisputed facts. The POD ignores that AT&T's manner of responding to the letters did not harm or threaten to harm anyone, physically or economically. It also fails to identify any analogous cases as precedent for such an extreme

[33] *E.g.*, *California Communities Against Toxins v. EPA*, 934 F.3d 627 (D.C. Cir. 2019) (memo from high-ranking staff official "has no independent legal authority"); *Soundboard Ass'n v. FTC*, 888 F.3d 1261 (D.C. Cir. 2018) (opinion letter from a "subordinate official," as opposed to a commissioner or the full commission, had no legal effect); *cert. denied*, 139 S. Ct. 1544 (2016).

[34] It is important to recognize and enforce this distinction between a requirement "of the commission" and a request by the Communications Division. For example, under the POD's view, a single Staff member could send a letter telling AT&T to drop its Basic Service rate to $0, a request with no legal basis, yet AT&T could still be fined millions of dollars if it did not meet Staff's requested response date, or responded by phone instead of letter, or responded through someone that is arbitrarily deemed to be too "junior." If that were the law, utilities would be at the mercy of each ALJ's individual, subjective, post hoc view of the "appropriate" way to respond to a Staff letter. Such a system would defeat the rule of law.

fine. And while the POD purports to consider the "severity" of the alleged violation (POD at 14), it materially misunderstands the facts. In particular, the POD's entire justification of the $2.5 million fine rests on its claims that California[35] "ignored" and "refuse[ed] to respond appropriately" to the April 2019 letter, and did so "without explanation."[36] POD at 13. Those claims are demonstrably incorrect.

Director Walker sent her first letter to AT&T California on April 15, 2019. Ex. 5. The letter did not make sense, as it appeared to misunderstand the distinction between COLRs and Cal OES's chosen NG911 Service Providers. In particular, the letter said that Cal OES's implementation of NG911 would require AT&T California to "update" its tariffs **because it is a COLR**. Ex. 5. But a COLR's only relevant duty is to provide end users with Basic Service, including "access to" 911. D.12-12-038, Appendix A at 2, Appendix C. That duty, and how AT&T California fulfills it, will not change as a result of what Cal OES is doing with its chosen NG911 Service Providers.

Contrary to the POD's claim, however, AT&T did respond to the letter. On June 12, 2019 (just three business days after Staff's requested response date), AT&T's Mark Berry, a Director in the Regulatory department, spoke with Louise Fischer, a Senior Telecommunications Engineer in the Communications Division, about the letter. During this call, Mr. Berry explained that AT&T California has no NG911 Service to offer and that AT&T's position was that Section 710 of the Public Utilities Code precluded a tariffing requirement even if AT&T California had

[35] All three letters were addressed only to AT&T California. Exs. 5-7.

[36] The POD also appears to assert that AT&T did not respond appropriately the Communications Division's other two letters, but provides no discussion, analysis, or rationale for any such conclusion, which means that no part of the fine can be justified based on allegedly failing to "adequately" respond to those letters. *See E.g.*, *Encino Motorcars*, 136 S. Ct. at 2125; *Greyhound Lines*, 65 Cal.2d at 813; Pub. Utils. Code § 1757(a)(3).

such a service. Tr. 72:10-14, 74:10-13 (Berry/AT&T). Senior Engineer Fischer said she understood and that this was similar to the position of other providers. *Id*. That presumably meant Frontier and Consolidated, who had received the same letter as AT&T on April 15 and, like AT&T, had not filed any tariff in response to the letter at that time.[37]

The POD nevertheless claims AT&T California "ignored" the April letter and "refus[ed] to respond appropriately" because "a phone call from a junior staff member at AT&T California to a junior staff member at the Commission [did not] constitute[] an adequate response to Director Walker's multiple written directives to senior officers at AT&T California[.]" POD at 13. The record refutes those claims.

First, there is absolutely no evidence that a phone call is an "inappropriate" way to respond to a Communications Division letter. There is no law dictating the manner of such responses, and no reason to think that phone calls, emails, or written letters are not all equally viable ways of responding to such letters.

Second, there is absolutely no evidence that Mr. Berry – a Director at AT&T – is a mere "junior staff member." To the contrary, the Order to Show Cause directed AT&T to bring a "senior executive" to testify (OSC at 16), and Mr. Berry was that executive. The ALJ never questioned Mr. Berry's credentials to fill that role or questioned his authority, responsibilities, or level at AT&T. Even more to the point, while the POD dismisses Mr. Berry as being too "junior" to respond to Director Walker's letter, Mr. Berry is the person **to whom Ms. Walker addressed her April (and September) letters**! Ex. 5. He cannot possibly be too "junior" to be qualified to respond to a letter **that was addressed to him.**

[37] Consolidated did not file any tariff until August 2019, 4 months after the April letter, and Frontier did not file until December 11, 2019, 8 months after the letter and just 9 days before the Order to Show Cause here. Exs. 11-12.

Third, the POD criticizes AT&T's Mr. Berry for providing his response to a "junior staff member," namely Senior Engineer Fischer, as if he were trying to sidestep Director Walker. POD at 13. This too has no support. To begin with, the POD has the facts wrong, as it was Senior Engineer Fischer who called Mr. Berry to discuss the April 15 letter (OSC at 4 n.9), which she necessarily did as the delegate of Director Walker. Senior Engineer Fischer cannot possibly be too "junior" to count when she was the person **Staff itself chose** to contact Mr. Berry. Indeed, she said AT&T's position was the same as other utilities that received Director Walker's letter (Consolidated and Frontier), which indicates she was Staff's chosen point of contact for **all** utilities on this issue. Tr. 74:10-13 (Berry/AT&T).[38]

Director Walker's final letter came on September 18, 2019. Ex. 7; Tr. 31:16-18 (Neinast/AT&T) and 70:13-15 (Berry/AT&T). This letter – **again addressed to Mr. Berry** – repeated the prior letters and again failed to acknowledge AT&T's prior correspondence with Ms. Aguilar (Ex. 3-4) or prior response to Ms. Fischer. Instead, it asserted for the first time that AT&T Corp.'s service under its Pasadena RING contract with Cal OES needed to be tariffed. The POD claims (at 13) AT&T "ignore[d]" that letter, but provides no facts to support that claim. Nor could it, as AT&T directly responded in two ways.

First, AT&T Corp. timely filed a tariff by Staff's deadline. Ex. 8 (allowing tariff filing by Oct. 4, 2019); Ex. 14 (filing tariff on Oct. 4, 2019); Tr. 80:1-278 (Berry/AT&T). Staff, however, then took the extraordinarily rare step of summarily rejecting that tariff. Ex. 15. It thus inexplicably departed from the normal course – the one it follows for more than 99.98%

[38] Director Walker sent a second letter just a few days after Mr. Berry responded to the first letter. Ex. 6. AT&T California did not separately respond to this June 17, 2019 letter because it simply repeated the statements in Director Walker's April 2019 letter, to which AT&T California had just orally responded to Senior Engineer Fischer. Tr. 74:26-75:1 (Berry/AT&T). While AT&T could have responded again, it would not have conveyed anything different than what it just told the Communications Division a few days before, because the June 17 letter did not address or reply to the substance of AT&T's position.

of all Advice Letters – of either accepting the tariff or suspending it and engaging in further communications with the utility.[39] That highly unusual tactic prevented AT&T Corp. from explaining to Staff that, contrary to its rejection email (Ex. 15), the tariff **did** include a description of the service and all rates, terms, and conditions for the Pasadena RING offering.[40]

Second, AT&T provided a written response on November 5, 2019 from Peter Hayes, Assistant Vice President-Regulatory (another executive, and senior to Mr. Berry). Mr. Hayes addressed all three of Ms. Walker's letters and explained AT&T's position yet again. He also requested a meeting with Staff and Cal OES to discuss the issues. Ex. 9. That was essential. Director Walker's prior letters had asserted that Cal OES's implementation of NG911 was the reason that AT&T California (allegedly) had to "update" its tariff (Exs. 5, 6), so it was important to AT&T to have both Staff and Cal OES involved to ensure that everyone shared the same understanding of AT&T's role in the transition to NG911. But Director Walker refused to meet. Ex. 10. By refusing to meet, Staff never provided the clarity AT&T sought.

Third, there is no evidence Staff ever claimed at the time that AT&T's responses were "inadequate." To the contrary, when Director Walker refused to meet with AT&T, she said AT&T had fully explained its position in its written response (Ex. 10) (though she ignored that AT&T was seeking a meeting because the parties seemed to be talking past each other).

[39] See the discussion on of Advice Letter data in AT&T Post-Hearing Br. at 15. Outright rejection of an Advice Letter is extremely unusual. By contrast, AT&T Corp.'s conduct in filing a tariff, then seeking consultation when the Communications Division rejected it, sought to follow the well-established, usual course outlined in GO 96-B. *Id*.

[40] Ex. 14 (Advice Letter; the Pasadena RING contract was filed with the Advice Letter, and Ex. 16 to that contract contains the full pricing schedule). All the other reasons for rejecting the tariff related to AT&T California, which was not party to the Pasadena RING contract, and therefore were irrelevant. Staff never explained how the "failure" of AT&T California to file a tariff for a service it does not offer could have any bearing on the validity of a tariff filed by AT&T Corp.

Simply put, the POD's analysis lacks any legal or factual foundation. It creates from thin air a subjective standard for what constitutes an "adequate" response to a Communications Division letter, assumes without citation that "inadequate" responses are unlawful, and then illogically finds that responses between the people the Communications Division chose (the person it sent the letter to and the person it designated to follow up with him) equals no response at all. Given the severe defects and lack of record support for the POD's analysis, it would be an abuse of discretion to fine AT&T in these circumstances. *See Ponderosa Tel.*, 36 Cal.App.5th at 1019; Pub. Utils. Code § 1757(a)(5).

Moreover, had the Communications Division agreed to meet and told AT&T that something like the tariff Consolidated filed in August was acceptable, AT&T could have filed such a tariff and this entire Order to Show Cause proceeding would have been obviated. By refusing to meet, the Communications Division prevented that from happening. In these circumstances, no fine is appropriate. *See* Pub. Utils. Code § 1757(a)(3)-(5).

4. Even If a Fine Could Lawfully Be Imposed, the 250-day Period is Inaccurate

The POD would impose a fine for of $10,000 per day for the alleged refusal to respond to the letters and apply that fine for 250 days "between the date of Director Walker's first letter [April 15, 2019] and the filing of the Order to Show Cause [December 20, 2019]." *Id*. That 250-day period improperly assumes there was a "continuing" violation. And even if there were, that period starts too soon, ignores events in the middle, and ends too late.

The alleged failure to adequately respond to the Communications Division's letters is not a "continuing" violation. As discussed above, the requested response dates in the letters are not binding law, so there can be no claim that every day of alleged "inadequate" responses is a separate violation. Rather, if there had been violation at all, it could occur just once for each

letter, meaning a maximum of three violations. For example, when California-American Water Company failed to disclose 58 projects as part of a submission in a rate case, the Commission treated that as 58 one-time violations, not as "continuing" violations for the life of the rate case.[41] Similarly, when Sprint failed to provide accurate responses to Staff, the Commission treated each data element that Sprint failed to disclose as a separate offense, but did not find any "continuing" offense for each day Sprint failed supply accurate data.[42] The POD thus errs in computing a fine based on an alleged 250 violations rather than three.

Further, even if the alleged violations could be viewed as continuing (though they cannot), the 250-day period is too long even under the POD's own logic. The 250-day period begins on the date of Ms. Walker's April 15, 2019 letter to Mr. Berry. But that letter asked AT&T California to respond by June 7, 2019. Ex. 5. It cannot reasonably be said AT&T California "failed to respond to" or "ignored" the April 15 letter before the date the letter itself set for a response, *i.e.*, June 7, 2019.[43] Otherwise AT&T would irrationally be fined $10,000 a day for April 16, April 17, April 18, etc., through June 7 – resulting in a fine of $530,000 for a period before any response was "due." That would be an abuse of discretion.

Although AT&T California did not respond by June 7, it did respond on June 12, when Mr. Berry (the addressee of the letter) spoke with the Communications Division's Senior Telecommunications Engineer and explained AT&T's position. Tr. 74:18-22 (Berry/AT&T). That undeniably qualifies as a response. At most, then, the POD's own logic would justify only a 5-day fine to cover the period from June 7 to June 12. Moreover, no new fine period could

[41] *Application of California-American Water Co.*, Decision (D.) 15-04-008, at 14 (CPUC, 2015).

[42] *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service*, Decision (D.) 01-08-019, at 12 (CPUC, 2001).

[43] Nor could AT&T have "ignored" or "failed to respond" to the other two letters, dated June 17, 2019 and September 18, 2019, before AT&T even received them.

begin after that until AT&T was deemed not to have responded to Ms. Walker's next letter, which could not be any date before June 23, the day after Ms. Walker asked for a response to her June 17, 2019 letter. Ex. 6.

The 250-day period ends too late because AT&T formally responded to all three letters more than a month before the Order to Show Cause issued on December 20, 2019. On November 5, 2019, Peter Hayes wrote Ms. Walker regarding "your letters of April, June and September of 2019." Ex. 9. Mr. Hayes explained AT&T's position on the tariffing issues raised by the letters and offered to meet with Ms. Walker and Cal OES to address any continued misunderstandings. *Id.* In reply, Ms. Walker told Mr. Hayes she was satisfied that his letter "explains AT&T's position." Ex. 10. Accordingly, as of November 5, 2019, AT&T could no longer be said to have "ignored" Ms. Walker's letters.

In sum, the record demonstrates AT&T could not possibly have "ignored" Ms. Walker's letters before June 7, 2019, between June 12 and June 22, or after November 5, 2019. That reduces the period of AT&T's alleged "continuing violation" from 250 days to 135 days.[44]

D. The POD's Potential Doubling of the Fines Is Unlawful and Unjustified

The POD "direct[s] Respondents to file NG911 tariffs within 20 days of the effective date of this decision," and "[i]f they fail to do so, the [$3.75 million] fine imposed herein will be doubled to $7.5 million." POD at 14. This potential doubling of the fine is unlawful and improper for several reasons and should be reversed.

First, the POD tellingly cites no authority for such a draconian decree. And, indeed, it is facially invalid under Section 2107. Section 2107 subjects utilities to fines of "not less than

[44] If the penalty remains at $10,000 per day, this would reduce the resulting fine from $2.5 million to $1.35 million. But as explained above, the $10,000 per day amount is excessive and, at a minimum, should be reduced.

[$500], nor more than [$100,000]" if they "fail or neglect to comply with … any order, decision, decree … of the commission." Pub. Utils. Code § 2107. Accordingly, if AT&T were not to file the requested tariff within 20 days of the POD's effective date, the additional $3.75 million fine imposed for that violation of a Commission Order would grossly exceed the maximum penalty of $100,000 allowed under Section 2107. The POD's potential "doubling" of the $3.75 million fine thus cannot be squared with the plain text of Section 2017, and accordingly is unlawful.[45]

Second, the POD's above-described due process violations and failure to consider the factors for imposing fines required by D.98-12-075 apply fully to its doubling of the fine. Indeed, they are magnified. For instance, by its terms, the POD would impose a $3.75 million fine on the 21st day after its effective date if the NG911 tariffing requirement is not met, with no consideration of the reasons leading to such a circumstance. That would subject AT&T to a substantial fine with no opportunity to be heard, in derogation of fundamental due process protections. Enhancing that concern is the vagueness of the POD. For example, it is not clear whether the mere fact of filing a tariff would avoid the doubling of the fine, or if that tariff must satisfy certain criteria. Other than concluding the Frontier tariff adequately responds to Staff's letters, the POD nowhere specifies what the tariff must contain in order to satisfy the requirement and avoid the double fine.[46] POD at 11. Doubling AT&T's fine if the Commission decides, after the fact, that AT&T guessed wrong on the requirements of the tariff is fundamentally unfair.

[45] The POD's error cannot be undone by characterizing the doubling of the fine as a "continuing violation." The POD states that, if doubled, the "$7,500,000 [fine] will continue to accumulate interest and late penalties until paid in full." POD at 1. The POD thus expressly contemplates that the full $3.75 million in additional fines will be imposed on the first day of the violation, with interest and late payment penalties – not accumulating per-day fines – incentivizing compliance thereafter.

[46] Nor is it clear whether a tariff that did not satisfy the Commission's expectations when filed, but was revised into compliance during the ordinary tariff review process, would avoid application of the fine.

Regarding the D.98-12-075 factors, three errors are particularly glaring. One, as with the underlying failure to file tariffs, the POD does not, and cannot, identify any harm to persons, carriers or property that would occur if AT&T did not file the requested tariff within the 20-day period. And because the NG911 system will not be receiving live 911 traffic until at least 2021, the absence of such harm is guaranteed, rendering any penalty premature. Two, because the full penalty would apply on the first day after the 20-day period, AT&T would have no ability to rectify the violation. Three, the fine is wildly disproportionate compared to analogous fines. And here, there is a directly analogous fine – the $5,000 per day fine the POD imposed for AT&T's "failure" to file a tariff during 2019. The POD offers no justification for why AT&T should pay $3,750,000 for being a single day late with the tariff under the POD's 20-day deadline, when failure to file that exact same tariff merited an (already excessive) fine of $5,000 for each day in 2019, and no such justification is conceivable.[47]

Third, doubling the full $3.75 million fine is nonsensical. $2.5 million of that fine relates to AT&T's purported failure to respond appropriately to Director Walker's letters, which is wholly untethered to the POD's separate demand that AT&T fifle an "NG911 tariff."[48] Confirming this point, the POD says the doubling of the fine would be "in addition to imposing [the $3.75 million] fine for **past misconduct**." POD at 14 (emphasis added). Thus, the additional, doubled fine concerns only AT&T's tariff-related actions after the POD takes effect.

[47] At $5,000 per day, it would take 750 days – over two years – to accumulate $3,750,000 in fines. Thus, under the POD, being one day late on its 20-day deadline for the tariff is 750 times worse than the failure to file such tariff in 2019. That is wholly unreasonable.

[48] Stated differently, whether or not AT&T files the requested tariff within the specified 20-day period in no way alters AT&T's prior actions with respect to Director Walker's letters, which are "completed offenses."

Since those actions cannot possibly concern Director Walker's 2019 letters, doubling the fine associated with those letters is improper.

IV. CONCLUSION

For the reasons stated, the POD should be reversed.

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Respectfully submitted,

By: /s/

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