Date of Issuance: October 16, 2009

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**Communications Division** **RESOLUTION T-17190**
**Carrier Oversight and Programs Branch** **October 15, 2009**

**R E S O L U T I O N**

**Resolution T-17190 Supporting the Communications Division Rejection of AT&T California's Advice Letter No. 32304.**

---

## Summary

This resolution supports and memorializes the rejection by the Communications Division (CD) of Advice Letter (AL) 32304, which AT&T California[1] (AT&T) filed March 28, 2008. AL 32304 requested authority to increase measured rate usage rates for local Zone Usage Measurement (ZUM)[2] Zones 1 and 2 and ZUM Zone 3 calls. As explained below, CD rejected AL 32304. After much discussion with AT&T over both the legitimacy of the staff rejection, and AT&T's response to the rejection, AT&T ultimately reversed rate increases it had imposed on customers concurrent with the filing of AL 32304. AT&T provided CD with the customer refunds status report, however, AT&T indicated it has not completed the steps it committed to take to remedy its actions. Here, we further direct AT&T to complete the required customer refunds within 30 days of adoption of this resolution.

## Background

Price Control Rules

On August 24, 2006, the Commission approved Decision (D).06-08-030 which instituted price controls on basic residential service. Ordering Paragraph (OP) 2 specifically states that, "[b]asic residential services receiving a CHCF-B subsidy shall be frozen at a level equal to the current rate…" OP 3 further states that, "[p]rice caps on basic residential services that are not subsidized by CHCF-B shall be automatically lifted on January 1, 2009." And finally OP 6 of D.06-08-030, states that, "[m]easured residential basic service, flat-rate residential service…shall remain subject to the pricing controls discussed herein…"

On December 14, 2006, the Commission modified OP 2 of D.06-08-030 through D.06-12-044 to clarify the Commission's intent. That paragraph was changed to read as follows:

> With respect to the regulation of prices for any of the services "associated" with basic residential service, we find it is consistent with current ULTS program parameters to extend the rate cap to those "associated" services which are included in the subsidized basic residential service package. These include: flat

---

[1] Registered with the Commission as Pacific Bell Telephone (U-1001-C)

[2] Calls within ZUM Zones 1 and 2 or up to about 12 miles, are local calls. In metropolitan areas, calls between 13 and 16 miles are ZUM Zone 3 calls. All other calls within each Service Area are referred to as Local Toll calls. In non-ZUM areas Local Toll calls start at 13 miles.

> and measured local usage; Zum Zone 1 & 2 local calls; EAS; non-recurring installation; toll blocking; and conversion. However, our discussion of the statutes and market conditions makes it clear that it is not necessary to continue price regulation for "associated" services if they are not included in a subsidized basic residential service package. The rate cap will thus not apply to non-subsidized: local usage; ZUM; EAS; recurring and non-recurring charges; Caller ID; call trace; 976 service; 900/976 call blocking; non-published and unlisted telephone numbers; white pages listings; busy line verification and interrupt services; and inside wire maintenance plans.

The California legislature adopted price controls on basic residential service by law in the Digital Infrastructure and Video Competition Act of 2006 (DIVCA). Section 5950 states, "The commission shall not permit a telephone corporation that is providing video service directly or through its affiliates pursuant to a state-issued franchise as an incumbent local exchange carrier to increase rates for residential, primary line, basic telephone service above the rate as of July 1, 2006, until January 1, 2009…"

AT&T Advice Letter

On March 28, 2008, AT&T filed AL 32304 as a Tier 1[3] filing to increase the rates for local (ZUM zones 1 and 2) and ZUM zone 3 calls. On April 1, 2008, AT&T began charging the new measured rates proposed in the AL.

In accordance with Rule 7.4, adopted in (D.) 07-09-019[4] TURN filed a protest to AL 32304 on April 18, 2008. TURN's protest was directed at the rate increases for calls made in ZUM Zones 1 and 2. TURN asserted that the relief requested ". . . would violate…or is not authorized by statute or Commission order" and "is unjust, unreasonable, or discriminatory".

On April 21, 2008 CD contacted AT&T by telephone to inform the carrier that CD could not approve the AL as filed because AT&T's request to increase ZUM 1-3 rates was prohibited by Commission decision and furthermore, the AL was not filed in the proper tier as it made a request not available via a Tier 1 filing.[5] CD further instructed AT&T that it could either withdraw the AL or CD would be required to reject AL 32304. AT&T informed CD that it would not withdraw the AL and that CD did not have authority to reject the AL under the new rules governing advice letters set forth in G.O. 96-B. CD completed its telephone call with AT&T by stating that if AT&T would not withdraw AL 32304, CD would have no option but to reject it.

---

[3] A Tier 1 advice letter filing is immediately effective pending staff disposition, and is appropriate for a change by an URF carrier to a rate, charge, term, or condition of a regulated service, except for changes to basic service.
[4] Rule 7.4.1 provides that, "any person may protest or respond to an advice letter.
[5] Tier 1 is appropriate for a change by an URF carrier to a rate , charge, term, or condition of a regulated service (except for ILEC basic service rates) changes to terms and conditions for basic service that are not more restrictive and that do not conflict with law or the Commission's decisions or orders are permitted.

AT&T submitted a response to the TURN protest on April 25, 2008 in which it continued to contend that, "ZUM usage is separate from the basic residential access line" and that, "the reasons advanced by TURN for rejecting the ZUM rates...are without merit."

On April 25, 2008, CD sent AT&T a letter rejecting AL 32304 without prejudice, pursuant to its authority granted under Commission rules. CD cited D.05-01-032 Rule 3.3[6] as providing authority to the reviewing Industry Division, in this case, CD, to reject without prejudice an advice letter that has been filed improperly. The CD letter further notified AT&T that in accordance with D.06-08-030 Ordering Paragraph 2[7] and 3[8] and DIVCA, Section 5950[9], the requested rate increases to basic service were prohibited by Commission decision and state legislation respectively.

On May 9, 2008, CD met with AT&T to discuss its noncompliance with staff's rejection of AL 32304. In this meeting, CD informed AT&T that because of the carrier's failure to comply with the staff rejection, AT&T was charging rates the Commission had not authorized. During the May 9th meeting, AT&T maintained its position and responded that it would not reverse the rate increase because it did not agree with CD's determination. May 9, 2008 was also the last day for AT&T to file an appeal with the Commission in response to staff's rejection. According to Rule 7.7.1 adopted in D.07-01-024,[10] the utility may request Commission review of an industry division disposition within 10 days of issuance of the disposition. AT&T did not file an appeal.

Following CD's rejection of the AL, AT&T met with Commissioners' offices between the months of May and June of 2008,[11] to discuss staff's rejection of the advice letter filing. According to some Commissioners' advisors, AT&T stated in these meetings that staff acted

---

[6] Rule 3.3 set forth in D.05-01-032 and later adopted as Rule 7.1 in D.07-01-024 provides that, "the reviewing Industry Division may reject without prejudice an advice letter due to defective service or omitted contents. Notwithstanding the Industry Division's acceptance of an advice letter for filing, a defect or omission that becomes apparent during review of the advice letter may require rejection of the advice letter without prejudice if the utility fails, upon request, to promptly cure the defect or omission."

[7] Basic residential services receiving a CHCF-B subsidy shall be frozen at a level equal to the current rate, which shall be reevaluated in the upcoming CHCF-B review in R.06-06-028.

[8] Price caps on basic residential services that are not subsidized by CHCF-B shall be automatically lifted on January 1, 2009.

[9] The commission shall not permit a telephone corporation that is providing video service directly or through its affiliates pursuant to a state-issued franchise as an incumbent local exchange carrier to increase rates for residential, primary line, basic telephone service above the rate as of July 1, 2006, until January 1, 2009

[10] Rule 7.7.1 reads as follows:

> The utility or a person filing a protest, or any third party whose name and interest in the relief sought appear on the face of the advice letter, may request Commission review of an Industry Division disposition. …The request for Commission review shall be filed with the reviewing Industry Division within 10 days after the issuance of the disposition….

[11] Recorded meetings with AT&T and Commissioner Offices include:

Lindsay Brown, advisor to Commissioner Bohn on May 23, 2008.
Jane Whang, advisor to Commissioner Chong in May/June, 2008
Lester Wong, advisor to Commissioner Peevey on May 12, 2008.
Kelly Hymes, advisor to Commissioner Grueneich on May 30, 2008.
Phyllis White, advisor to Commissioner Simon on May 12, 2008.

inappropriately, that staff did not have authority to reject its AL filing and that therefore, the Commission should require staff to rescind its determination or overturn the rejection.

Commencing on June 9th, 2008,[12] CD met with the various Commissioners' offices to explain the substance of AT&T's proposed AL, the reasons for CD's rejection and to answer any questions about the applicable AL processes. During these meetings, CD explained why staff rejected the advice letter, and pointed to the appropriate Commission decisions and rules that provided the guidance for CD's actions. CD cited, for example, D.07-01-024 Rule 7.1 which provides authority to the reviewing Industry Division to reject without prejudice an advice letter filing.

On June 4, 2008, in response to AT&T's noncompliance with staff's rejection of its AL, TURN sent a letter to Commission President Michael Peevey requesting that the Commission take action to enforce the rejection of AL 32304. TURN asserted that, "AT&T has simply refused to comply…and has thumbed its nose at the process."[13]

On June 5, 2008, AT&T submitted to Commission President Michael Peevey a written response to the TURN letter, in which AT&T again asserted that, "CD staff erred in its hasty rejection…the rejection was erroneous…rule [Rule 3.3] cited by Staff does not exist…and [the rejection] exceeded the authority delegated to staff."

On August 13, 2008 after numerous meetings with staff[14] and Commissioners' advisors, AT&T ultimately complied with staff's April 25, 2008 rejection of AL 32304, and restored measured rates to their authorized levels.

In a compliance letter dated August 15, 2008, AT&T provided staff with written notice of its intention to comply with staff's rejection of AL 32304. In the August 15th letter, AT&T stated that its purpose was, "to comply with and resolve the rejection." In the letter, AT&T also informed CD that it will credit customers for overcharges during this period and that it, "will provide a report…upon completion of the customer credits."

---

[12] Recorded CD staff meetings with Commissioner offices:
6/09/08 Kelly Hymes advisor to Commissioner Grueneich
6/09/08 Lester Wong advisor to Commissioner Peevey
6/11/08 Lindsay Brown advisor to Commissioner Bohn
6/11/08 Commissioner Chong and Jane Whang advisor to Commissioner Chong
6/16/08 Phyllis White advisor to Commissioner Simon
6/23/08 Lindsay Brown advisor to Commissioner Bohn
7/14/08 All Commissioner telecommunications advisors
7/17/08 Commissioner Bohn and Lindsay Brown advisor to Commissioner Bohn
8/04/08 All Commissioner telecommunications advisors

[13] *See* TURN's June 4, 2008 letter, p. 2.

[14] Recorded CD staff meetings with AT&T:
06/18/08, 06/25/08, 07/02/08, 07/11/08, 08/11/08, 08/13/08.

On August 25, 2009, fourteen days after the Commission mailed a draft of this resolution our for comment, CD received a report from AT&T indicating that it has completed the majority of customer credits.

**Discussion**

General Order (GO) 96-B[15] contains general rules as well as telecommunication industry rules that govern all informal matters such as advice letter filings submitted to the Commission by carriers. The tiered[16] advice letter process set forth in GO 96-B provides a quick and simplified procedure for requests by carriers that the Commission expects to be non-controversial. The fundamental objective of the tiered advice letter review process is to distinguish between those filings that an industry division may approve and those that may require a Commission resolution.[17]

Under the Commission's rules, a utility has no discretion to decide whether it must or shall comply with a staff rejection of an advice letter. If a utility does not agree with a staff determination, pursuant to D.07-01-024, Rule 7.7.1, the utility's sole remedy is to file a request for Commission review within ten days of the rejection. Otherwise, the utility must comply with the staff determination. Rather than complying with the staff determination or pursuing the available administrative remedy to file a request for Commission review, AT&T simply chose to ignore the staff directive for nearly four months. During that period, from April 1, 2008 through August 13, 2008, AT&T charged unauthorized measured service rates. Also during that period, in lieu of compliance or submission of an appeal, AT&T repeatedly lobbied Commissioners' offices, seeking its desired outcome.

Because of AT&T's refusal to comply with CD's rejection of its AL, customers were harmed during the period AT&T charged unauthorized measured rates. In addition, many staff hours and Commission resources have been dedicated to resolving this otherwise ministerial matter, not just during the period unauthorized rates were charged, but up to this point, and beyond, as staff has a continuing duty to ensure that customers are made whole and this matter is resolved. AT&T has now largely complied with staff's rejection of AL 32304. Nonetheless, a resolution memorializing these events and acknowledging the egregious nature of AT&T's conduct in refusing to comply with a staff directive for more than four months is warranted. After carefully reviewing this matter, we conclude that staff acted appropriately in rejecting AL 32304. CD's actions are supported by language in GO 96-B, as well as in a number of our subsequent clarifying and supporting decisions.

[15] This General Order contains general rules that govern all informal matters including advice letter and information-only filings submitted to the Commission by utilities.
[16] A "tier" refers to the type of advice letter and the subject matter allowed to be addressed in the respective tier.
[17] In general, the reviewing industry division approves or rejects an advice letter submitted in Tier 1 or 2 and it falls to the Commission to approve or reject by resolution advice letters submitted in Tier 3.

According to Rule 5.4.3[18] of D.07-01-024, if staff rejects a Tier 1 AL for being improperly designated, the AL will cease to be in effect and the Commission will further direct the utility regarding any other remedial actions necessary to undo the advice letter. Rule 7.5.3, set forth in D.07-01-024,[19] further explains that when an AL has been rejected, the utility shall immediately stop implementation of its terms and shall undertake any necessary remedial actions. Finally, according to Rule 5.3, adopted in D.07-01-024,[20] if staff rejects an AL that raises issues requiring review in a formal proceeding, the utility may re-submit the request as an application. AT&T chose none of these available remedies to comply with staffs' rejection of its AL for roughly four months, and instead, steadfastly ignored CD's determination and flouted the Commission's rules.

In its June 5, 2008 letter to the Commission, AT&T asserted that CD rejected AL 32304 pursuant to a rule that "does not exist." However, Appendix to D.05-01-032 does include Rule 3.3, which was later adopted with minor modifications for electronic filing in D.07-01-024 as Rule 7.1. Both Rule 7.1 and its predecessor, Rule 3.3 *expressly provide* that, "[t]he reviewing Industry Division may reject without prejudice an advice letter due to defective service or omitted content" as the CD rejection letter of April 25, 2008, specifically stated.[21]

Further, the discussion of Industry Rule 7.4 of D.07-09-019 provides, in relevant part:

> [S]taff will reject without prejudice an advice letter that "requests relief or raises issues requiring an evidentiary hearing or otherwise requiring review" in a formal proceeding. The rule gives examples of matters requiring review in a formal proceeding. AT&T argues that Industry Rule 7.4 is an unlawful delegation of Commission authority to staff to reject a Tier 1 advice letter without due process. In support of this argument, AT&T asserts, first, that staff's rejection without prejudice is essentially a final decision (by compelling the utility to halt the effectiveness of its Tier 1 advice letter) and is inconsistent with the Commission's

[18] Rule 5.4.3 of D.07-01-024 states, "if staff determines that the Tier 1 designation was improper, staff will reject the advice letter without prejudice."

[19] Rule 7.5.3 of D.07-01-024 states that "[a] utility that has implemented the actions or tariff changes set forth in an advice letter effective pending disposition shall immediately stop such implementation, and shall commence such remedial action as may be appropriate (including but not limited to the submission of an advice letter setting forth a remedial plan), if the advice letter is rejected pursuant to General Rule 5.4, 7.6.1, or 7.6.2."

[20] Rule 5.3 of D.07-01-024 provides, "Whenever the reviewing Industry Division determines that the relief requested or the issues raised by an advice letter require an evidentiary hearing, or otherwise require review in a formal proceeding, the Industry Division will reject the advice letter without prejudice. The utility may resubmit, as an application or other appropriate formal request for relief, the request contained in an advice letter that it has withdrawn, pursuant to this General Rule, or that is rejected without prejudice on the grounds that the advice letter must be heard or reviewed in a formal proceeding. When an advice letter has been withdrawn voluntarily by the utility, the utility may resubmit the matter as an advice letter so long as the relief requested or issues raised are appropriate to an advice letter."

[21] *See* CD's April 25, 2008 rejection letter, which states, "[t]his letter is to inform you that the Communications Division (CD) is rejecting AT&T CA's Advice Letter (AL) No. 32304 without prejudice, pursuant to CPUC Decision 05-01-032, Appendix A, "Advice Letter Filing, Service, Suspension, and Disposition", Rule 3.3."

> determination that an already effective advice letter may not be suspended. Second, AT&T asserts that the rejection without prejudice in these circumstances is inherently an exercise of discretion that only the Commission itself can perform. We disagree. We believe AT&T misunderstands both Tier 1 and Industry Rule 7.4.

The discussion of Rule 7.4 in D.07-09-019 also provides an example of a circumstance in which the rejection of Tier 1 filing would be appropriate. The example set forth in D.07-09-019 offers facts very similar to those at issue in the rejection of AL 32304:

> For example, suppose one of the four large incumbent local exchange companies submits a Tier 1 advice letter, prior to January 1, 2009, raising Basic Service rates. These rates are currently frozen pursuant to D.06-08-030, Ordering Paragraph 2, and may not be increased by Tier 1 advice letter. *See* Industry Rule 7.1(5). The advice letter is clearly erroneous, and rejecting it does not exceed staff's ministerial function. Staff would reject the advice letter without prejudice under Industry Rule 7.1, which states in relevant part, 'By submitting an advice letter in Tier 1, a Utility represents that the advice letter is properly filed in Tier 1.' As the example illustrates, Industry Rule 7.4 does not enter staff's analysis at all: If an advice letter's subject matter is proper to Tier 1, it necessarily is a proper advice letter, and if its subject matter is not proper to Tier 1, staff has authority to reject it under Industry Rule 7.1.

AT&T's actions in response to CD's rejection of AL 32304 is all the more troubling in light of its comments concerning the Commission's advice letter process as cited in D.07-09-019. AT&T advanced the same arguments in its comments on the proposed Rule 7.4,[22] thus providing insight into its perspective here, and undercutting its claim that the staff rejection of AL 32304 was an unlawful delegation of authority. Citing to AT&T's comments on proposed Rule 7.4, D.07-09-019 contains the following passages: "AT&T argues that industry Rule 7.4 is an unlawful delegation of authority to staff to reject a Tier 1 advice letter" and, "the rejection without prejudice in these circumstances is inherently an exercise of discretion that only the Commission can perform." The Commission rejected AT&T's interpretation in D.07-09-019, finding that Tier 1 advice letters will typically involve ministerial authority which under settled law the Commission can delegate to staff.[23] Thus, when AT&T repeatedly argued that staff lacked authority to reject AL 32304, AT&T *knew* the Commission had considered that argument and explicitly rejected it in the process of adopting the Industry Rules in D.07-09-019. This knowledge compounds the egregious nature of AT&T's behavior, underscoring the need for this Resolution.

Further, we are mindful of concerns that in its meetings with Commissioners' advisors, AT&T intentionally misled and withheld facts from advisors in an effort to sway Commissioners'

---

[22] This decision accompanies and reflects the changes made to rules governing telecommunications carriers in the URF rulemaking.

[23] D. 07-09-019, Section 4. Comments On Proposed Decision, Industry Rule 7.4 Matters Requiring Review in Formal Proceedings.

offices to overrule the staff decision. Specifically, advisors assert that they were informed by AT&T that CD did not provide proper notice that AL 32304 was rejected, that the industry division does not have delegated authority to reject an improperly-filed AL, that rules cited in the rejection did not exist, and finally, that the Commission was required by its own prior decision(s) to overturn the rejection. We take this opportunity to remind AT&T of its obligation to adhere to Rule 1.1[24] of the Commission's Rules of Practice & Procedure in all its communications with staff as well as with Commissioners' advisors.

We recognize that AT&T ultimately complied with the staff's rejection of AL 32304. At the same time, we note that AT&T did so after charging an unauthorized rate to its ZUM Zone 1, 2, and 3 customers for nearly four months, and only when it recognized that its efforts to garner Commission support to overturn the staff rejection had failed. We find that AT&T should be admonished for its refusal to comply with staff's rejection.

In summary, the Commission upholds staff's rejection of AT&T's AL 32304. The Commission wishes to emphasize that under current practice and procedure for addressing advice letter filings, a resolution is not required. Here, however, because AT&T responded improperly and defiantly to the staff rejection of AL 32304, we deem it necessary to issue a resolution. We caution AT&T that the Commission has the authority to sanction a utility for refusing to comply with staff's rejection of an advice letter and the Commission's rules and regulations.

We direct AT&T to complete the remaining customer refunds for the ZUM Zone 1, 2, and 3 overcharges, and to provide a status report to CD within 30 days of adoption of this resolution. To the extent the remaining customer refunds are not completed within the 30 day requirement the Commission shall consider penalties, including sanctions, for AT&T's failure to complete customer refunds in a timely manner.

---

[24] Rule 1.1 reads as follows:

> Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

**Notice/Comments**
In accordance with PU Code Section 311(g)(1) a notice letter was e-mailed on August 11, 2009, to interested parties informing these parties that the Communications Division's draft resolution on this matter is available at the Commission's website at http://www.cpuc.ca.gov and is available for public comment.

On August 26, 2009 AT&T filed comments in response to the draft resolution.[25] AT&T asserted that modifications to the draft resolution were necessary for the following reasons:

- Characterizations of conversations in the draft resolution lack any evidentiary basis and thus constitute legal error.

- The draft resolution errs in its discussion of the rejection of AL32304 and the rules applicable to AL 32304.

- ATT has reported on the refunds.

On August 31, 2009 DRA filed comments in support of the draft resolution[26]. DRA however, contends the severity of AT&T's actions justify further Commission action as evidenced by its recommendations below.

- DRA finds AT&T's refusal to comply with CD's rejection of AL 32304, "to be extreme enough to warrant a significant penalty"[?]

- AT&T harmed customers by illegally increasing ZUM Zone rates.

- AT&T's misleading behavior violates Rule 1.1 of the Commission's Rules of Practice and Procedure.

- DRA recommends fining AT&T up to $3.2 million.

On August 31, 2009, TURN filed reply comments in support of the draft resolution.[27]

- The Resolution properly characterizes the background of this advice letter process.

- It "is clear that Commission decision must be supported by the record, "However, the nature of "the record" is dependent on the nature of the proceeding….the advice letter process is inherently less formal than rulemaking.

- Staff's use of an incorrect citation is not relevant to the recommendation for admonishment.

[25] Comments of AT&T California (U 1001 C) on draft resolution T-17190 filed August, 26, 2009.
[26] Comments of the Division of Ratepayer Advocates on draft resolution T-17190 files August 31, 2009.
[27] Reply comments of the Utility Reform Network on draft resolution T17190 filed August 31,2009.

- AT&T's ultimate compliance with staff's requests were too little too late.
- AT&T's proposed changes should be rejected.
- Staff could have recommended a harsher penalty, including possible fines.

In response to the above comments and reply comments we see it necessary to undertake a discussion of the following issues.

AT&T argues that, because there is no evidentiary basis for this recounting (discussions between staff and AT&T), the language in the resolution referring to the discussion must be removed. TURN however asserts in its reply comments that it disagrees with AT&T and contends that, it "is clear that Commission decision must be supported by the record". "[h]owever, the nature of "the record" is dependent on the nature of the proceeding….the advice letter process is inherently less formal than rulemaking". The Commission agrees that the decision process must be based on the record, but agrees with TURN that the nature of the record necessarily linked to the nature of the process employed to create the "record". Here, AT&T sought approval for the change in ZUM rates via the AL process, which is inherently an "informal" process, to which the Commission's Rules of Practice and Procedure do not apply. The AL process results in not in a formal Commission decision, but a resolution. Because they are not formal decisions of the Commission, resolutions are not published, though they are subject to appeal. Having practiced before this agency for decades, AT&T is acutely aware of the difference between a formal record and the informal record created through the processing of an advice letter. Accordingly, we reject AT&T's reasoning, and decline to modify the language in question.

AT&T argues that, "staff did have authority…under General Order 96-B, pursuant to D.07-01-024 and D.07-09-019, but…not Rule 3.3 of D.05-01-032. TURN asserts in response, that the, "mistake is inconsequential". Although, the citation errors are insignificant, and AT&T is not questioning staff's authority to reject a Tier 1 advice letter in its comments, the citations in the Draft Resolution have been corrected to ensure accuracy.

AT&T asserts in its comments that, "the overall summary report was provided on August 25, 2009. Although, the summary report was provided as indicated, AT&T itself acknowledges that it has yet to complete all of the required refunds. Therefore, we require AT&T to complete all refunds within 30 days and to provide an additional status report once the refunds have been completed. Moreover, we note that AT&T only provided the summary report *after* the Commission mailed a draft of this resolution out for comment.

The Commission does not see a need for any further modifications to the Draft Resolution in response to party's comments beyond those discussed here.

**Findings**

1. AT&T California (AT&T) filed Advice Letter (AL) 32304 as a Tier 1 filing to increase measured rates for local (ZUM Zones 1 and 2) and ZUM Zone 3 calls on March 28, 2008.

2. On April 1, 2009, AT&T began charging the measured rates proposed in AL 32304.

3. AT&T charged customers the unauthorized rates from April 1, 2008 through August 13, 2008.

4. TURN submitted a protest to AL 32304 on April 18, 2008.

5. On April 21, 2008, Communications Division (CD) notified AT&T in a telephone call that the industry division could not approve AL 32304 as filed.

6. AT&T submitted a response to the TURN protest on April 25, 2008.

7. On April 25, 2008, CD sent a letter to AT&T rejecting AL 32304 without prejudice.

8. On June 4, 2008, TURN submitted a letter requesting the Commission enforce staffs rejection of AL 32304.

9. On June 5, 2008, AT&T provided a written response to the TURN letter challenging staffs rejection of AL 32304.

10. On August 13, 2008, AT&T restored measured rates to authorized levels.

11. On August 15, 2008, AT&T sent a compliance letter to staff providing notice of its intention to comply with staff's rejection of its AL.

12. On August 25, 2009, AT&T provided CD with a report indicating it has completed the majority of customer refunds.

13. We find that staff acted appropriately in rejecting AT&T's AL 32304.

14. We find that CD's actions are supported by language in General Order 96-B and subsequent clarifying and supporting decisions.

15. The Commission upholds staff's rejection of AT&T's AL 32304.

16. AT&T did not undertake any available formal remedies to comply with staffs' rejection of its AL for roughly four months.

17. We find that AT&T should be admonished for its failure to comply with staff's rejection.

18. The Commission has the authority to sanction a utility for refusing to comply with staff's rejection of an advice letter and the Commission's rules and regulations.

**THEREFORE, IT IS ORDERED that:**

1. AT&T California shall complete the remaining customer refunds and provide a report of their completion to the Communications Division within 30 days of adoption of this resolution.

2. To the extent the remaining customer refunds are not completed within the 30 day requirement the Commission shall consider penalties, including sanctions, for AT&T's failure to complete customer refunds in a timely manner.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on October 15, 2009. The following Commissioners approved it:

/s/ Paul Clanon

PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH

JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners