

**OFFICE OF THE COUNTY COUNSEL  
COUNTY OF SANTA CLARA**

County Government Center  
70 West Hedding Street  
East Wing, 9<sup>th</sup> Floor  
San José, California 95110-1770



**Tony LoPresti  
COUNTY COUNSEL**

**Kavita Narayan  
CHIEF ASSISTANT COUNTY COUNSEL**

**Robert M. Coelho  
Michaela L. Lewis  
Steve Mitra  
Elizabeth G. Pianca  
Douglas M. Press  
Gita C. Suraj  
ASSISTANT COUNTY COUNSEL**

(408) 299-5900  
(408) 292-7240 (FAX)

**Kim Forrester  
LEGAL AND COMPLIANCE OFFICER**

December 14, 2023

**ELECTRONICALLY SUBMITTED (<https://www.fcc.gov/ecfs>)**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: Safeguarding and Securing the Open Internet, WC Docket No. 23-320

Dear Ms. Dortch:

We write on behalf of the County of Santa Clara (the “County”) and the Santa Clara County Central Fire Protection District (“County Fire,” and together with the County, “Santa Clara”) to encourage the Federal Communications Commission (the “Commission” or FCC) to adopt the rules described in the notice of proposed rulemaking *Safeguarding and Securing the Open Internet*, WC Docket No. 23-320 (the “2023 Open Internet Proposed Rules”).<sup>1</sup>

The *2023 Open Internet Proposed Rules* propose to take three steps that together are critical for enabling local governments like Santa Clara to fulfill their primary responsibilities to protect public safety and enhance their residents’ health and wellbeing. First, the *2023 Open Internet Proposed Rules* would impose specific conduct rules that prohibit Internet service providers (ISPs) that provide broadband Internet access service (BIAS) from blocking, throttling, or engaging in paid or affiliated prioritization of Internet traffic. Second, the *2023 Open Internet Proposed Rules* would adopt a general conduct standard. The general conduct standard supplements and augments the conduct rules by prohibiting ISPs from engaging in “practices

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<sup>1</sup> *Safeguarding and Securing the Open Internet*, FCC 23-83, WC Docket No. 23-320 (rel. Oct. 20, 2023) (the “2023 Open Internet Proposed Rules”), subsequently published in summary form as FCC, *Safeguarding and Securing the Open Internet*, 88 Fed. Reg. 76048 (Nov. 3, 2023).

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that unreasonably interfere with or unreasonably disadvantage the ability of consumers to reach the Internet content, services, and applications of their choosing or of edge providers to access consumers using the Internet.” The Commission will then refine and tailor the standard’s application on a fact-specific, case-by-case basis. And third, the classification at the heart of the *2023 Open Internet Proposed Rules*—i.e., that BIAS is a telecommunications service under Title II of the Communications Act of 1934, as amended—enables the Commission to “use all of its capabilities to address threats to national security and public safety,” including by responding with enforcement and regulation if and to the extent they are required to respond to technological developments or private-sector market behavior.<sup>2</sup>

These three steps are consistent with the Commission’s fundamental responsibility to “promot[e] safety of life and property through the use of wire and radio communications.”<sup>3</sup> In fact, the *2023 Open Internet Proposed Rules* expressly recognize that this is “an important statutory mandate.”<sup>4</sup> Since 2017, Santa Clara has consistently explained that this statutory mandate compels the FCC to understand that “lives are at stake” when BIAS is hampered and, therefore, that its regulations must account for the central role that mass-market BIAS plays in local governments’ ability to respond to emergencies and protect public safety. Indeed, when Santa Clara challenged the FCC’s rescission<sup>5</sup> of the prior *2015 Open Internet Order*<sup>6</sup> in court, the D.C. Circuit agreed with Santa Clara not only that this is a statutory requirement, but also that the 2018 rescission was arbitrary and capricious because it failed to consider and account for the rescission’s impacts on public safety.<sup>7</sup> Because Santa Clara—and local governments around the country—continue to rely on the very same modes of communication described in Santa Clara’s prior submissions to the FCC, those prior submissions are just as valid today as when they were filed in 2017, 2020, and 2021. Accordingly, they are attached to this letter as Exhibits 1 through 4 and incorporated by reference in order to ensure they are considered as part of this proceeding.<sup>8</sup>

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<sup>2</sup> *Id.* at ¶¶ 148-163 (rules prohibiting blocking, throttling, and paid or affiliated prioritization arrangements); *id.* at ¶¶ 164-167 (general conduct rule); *id.* at ¶ 25 (reclassification would permit the Commission to use all of its capabilities).

<sup>3</sup> 47 U.S.C. § 151.

<sup>4</sup> *2023 Open Internet Proposed Rules* at ¶ 16.

<sup>5</sup> FCC, *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311 (2017) (“*RIF Order*”).

<sup>6</sup> FCC, *In re Protecting and Promoting the Open Internet*, GN No. 14-28, DA FCC-15-24 (rel. Mar. 12, 2015) (“*2015 Open Internet Order*”), republished in summary form at 80 Fed. Reg. 19738 (Apr. 13, 2015).

<sup>7</sup> *See generally Mozilla Corp. v. FCC*, 940 F.3d 1, 62-64 (D.C. Cir. 2019).

<sup>8</sup> County & County Fire’s December 6, 2017 ex parte submission, WC Docket No. 17-108 (the “Santa Clara December 6, 2017 Comment”), at 2 (emphasis added), incorporated herein by reference, available at <https://www.fcc.gov/ecfs/filing/1207942320842> and <https://perma.cc/7MMJ-7CWX>, and attached hereto as Exhibit 1; Initial Comments of the County of Santa Clara, Santa Clara County Central Fire Protection District, and the City of Los Angeles in Response to the Commission’s February 19, 2020 Public Notice, Restoring Internet Freedom, WC Docket Nos. 17-108, 17-287, 11-42 (April 20, 2020) (“Santa Clara & Los Angeles April 20, 2020 Comment”),

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Developments in the years since the FCC rescinded the *2015 Open Internet Order* have only increased the extent to which public safety depends on community members' reliable, unfettered access to the open Internet through the mass-market retail BIAS that is the subject of the *2023 Open Internet Proposed Rules*. Individuals' access to the open Internet has become, and will continue to become, ever more central to everyday economic, social, civic, and professional life. The COVID-19 pandemic did not start widespread social trends toward Internet-based commerce, communications, community-building, campaigning, working, and organizing, but it did accelerate them.<sup>9</sup>

#### A. Public Health and Safety Systems Depend on a Neutral Internet

Governments must be able to reach their residents to serve them. In the 21st Century, just as in prior centuries, local governments like Santa Clara must meet residents where they are<sup>10</sup> in order to effectively address the "matters of local concern" for which they have always been responsible, paramount among them "the protection of the lives, limbs, health, comfort, and quiet of all persons."<sup>11</sup> Governments' Internet-based services and activities are only as effective as community members' access to them over broadband Internet provided on nondiscriminatory terms.

Santa Clara fully embodies these truths. The County serves the geographic region of Santa Clara County, California, generally known as Silicon Valley. This region embraces fifteen

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incorporated herein by reference, available at <https://www.fcc.gov/ecfs/filing/10421077992221> and <https://perma.cc/SH6S-3UKB>, and attached hereto as Exhibit 2; County of Santa Clara and Santa Clara County Central Fire Protection District, Petition for Reconsideration, Restoring Internet Freedom, WC Docket Nos. 17-108, 17-287, 11-42 (Feb. 8, 2021), incorporated herein by reference, available at <https://www.fcc.gov/ecfs/filing/10209224471190> and <https://perma.cc/5JV9-79DK>, and attached hereto as Exhibit 3; *see also* Declaration of Fire Chief Anthony Bowden, *Mozilla Corp. v. FCC*, No. 18-1051 (D.C. Cir. filed Aug. 20, 2018), incorporated herein by reference, available at <https://counsel.sccgov.org/sites/g/files/exjcpb426/files/Bowden%20Decl%20and%20Ex%20A.pdf>, archived at <https://perma.cc/DB8H-9GZM>, and attached hereto as Exhibit 4.

<sup>9</sup> *2023 Open Internet Proposed Rules* at ¶ 2 ("The COVID-19 pandemic showed how essential BIAS connections are for consumers' participation in today's society and economy, for work, health, education, community, and everyday life."); *see also 2015 Open Internet Order* at ¶ 1 ("The open Internet drives the American economy and serves, every day, as a critical tool for America's citizens to conduct commerce, communicate, educate, entertain, and engage in the world around them."); FCC, *Preserving the Open Internet*, GN Docket No. 09-191 (rel. Dec. 23, 2010), at ¶¶ 15-17 (cataloging ways the public was by 2010 increasingly relying on the Internet for critical daily activities, and that "local, state, and federal government agencies are increasingly using the Internet to communicate with the public, including to provide information about and deliver essential services").

<sup>10</sup> *See* Federal Emergency Management Agency, *2022-2026 FEMA Strategic Plan* (Dec. 9, 2021), at 3, 24 (FEMA Director and Director for Center for Homeland Defense and Security at the Naval Postgraduate School emphasizing that emergency personnel must meet the needs of people where they are or will be, not where they have been), available at [https://www.fema.gov/sites/default/files/documents/fema\\_2022-2026-strategic-plan.pdf](https://www.fema.gov/sites/default/files/documents/fema_2022-2026-strategic-plan.pdf), archived at <https://perma.cc/BML5-HJBB>.

<sup>11</sup> *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996) (quoting *Hillsborough Cnty. v. Automated Med. Lab 'ys, Inc.*, 471 U.S. 707, 719 (1985), and *Metro. Life Ins. Co. v. Mass.*, 471 U.S. 724, 756 (1985)).

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cities, from Palo Alto in the north to Gilroy in the south, including San José, and is a major employment center for the region, providing more than a quarter of all jobs in the Bay Area.<sup>12</sup> The County provides essential services and governance to 1.9 million residents. To perform the wide variety of public safety services and responses for which it is responsible, the County has long invested in and relied on systems that depend on both officials and residents' access to the open Internet.

Established in 1947, County Fire provides fire and emergency medical services for Santa Clara County and the communities of Campbell, Cupertino, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Redwood Estates, and Saratoga, as well as the unincorporated areas adjacent to those communities. It is responsible for the safety of more than 225,000 people spread across a geographic area that covers 132 square miles over an approximately 20-mile arc around the southern end of Silicon Valley, including the portion of the San Andreas Fault that runs through the Santa Cruz Mountains. County Fire includes 15 fire stations, an administrative headquarters, a maintenance facility, and five other support facilities. It employs more than three hundred fire prevention, suppression, investigation, administration, and maintenance personnel; daily emergency response consists of more than sixty employees. It is an integral part of the County's emergency response system, and in all of its roles it relies on, and continues to invest in, Internet-based communication and collaboration systems.<sup>13</sup>

Like other governments across the country, Santa Clara has only added in recent years to the many services, edge providers, and systems it relies upon to perform critical governmental functions, as described in its prior submissions regarding open Internet principles. Thus, Santa Clara's experience confirms the Commission's expectation that "broadband services play an important role in how public safety officials communicate with each other and how they deliver and receive information from the public," in part because "they often rely on commercial broadband services to communicate during emergency situations," to access databases and operate "911 and emergency operations centers," and to deploy "social media[] to communicate important and timely information to the public and to gain valuable information from the public

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<sup>12</sup> Office of the County Counsel analysis of publicly available data, on file with the Office of the County Counsel. Data on file with the Office of the County Counsel and available at Cal. Employment Development Dep't, *Labor Force and Unemployment Rate for Cities and Census Designated Places* (Oct. 2023), available at <https://labormarketinfo.edd.ca.gov/data/labor-force-and-unemployment-for-cities-and-census-areas.html>, archived at <https://perma.cc/8PT6-H92L>.

<sup>13</sup> County Fire, *2022 Annual Report* (2023), at 5-7, available at [https://www.sccfd.org/wp-content/uploads/2023/04/2023.4.26\\_SCCFD\\_Annual-Report\\_WEB.pdf](https://www.sccfd.org/wp-content/uploads/2023/04/2023.4.26_SCCFD_Annual-Report_WEB.pdf), archived at <https://perma.cc/9F2T-2DNC>; County Fire, *Community Risk Assessment Standards of Cover 2020* (Jan. 2021), at 40, 41, 79, 274 (noting continued use of the OES 5262 mobile command vehicle), available at <http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=211051&inline=true>, available through [https://sccgov.iqm2.com/Citizens/Detail\\_LegiFile.aspx?ID=104856](https://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?ID=104856), archived at <https://perma.cc/ZM4F-UBTA>; see also County Fire, *2023-2027 Strategic Plan* (Apr. 26, 2023), available at <http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=239336&inline=true>, available through [https://sccgov.iqm2.com/Citizens/Detail\\_LegiFile.aspx?ID=116633](https://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?ID=116633), archived at <https://perma.cc/Y8ZF-YDQL>.

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and build on-the-ground situational awareness.”<sup>14</sup> This is true not only for Santa Clara’s response to large-scale emergencies, but also its daily law enforcement activities and performance of individualized nonemergency public-safety services.

## 1. Preparedness for and Response to Large-Scale Emergencies

Across the country, emergency management is organized into federal, state, regional, and local operational areas. The County is the lead emergency management agency for the Santa Clara County Operational Area (“SCC OpArea”), which encompasses all 15 incorporated cities and all special districts within Santa Clara County.<sup>15</sup> The central nervous system for large-scale emergency response within the SCC OpArea is the emergency operations center (EOC), which the County runs with the support of County Fire’s executive management. Today, just as in 2017, Internet-based situational awareness tools such as the platform called WebEOC and an implementation in California called CalEOC are foundational to the EOC’s emergency communications, coordination, and management efforts, including making and receiving emergency management mutual aid requests from other jurisdictions.<sup>16</sup> Through its web-based interface, WebEOC enables aggregation and dissemination of data to and from Internet-connected endpoints regardless of the ISP, Internet connection, or data system those endpoints operate. Because critical personnel may be at home or in the field, and must be able to connect to the platform from a variety of Internet access services, the system cannot function effectively if ISPs block or hinder traffic traveling to or from WebEOC. And even when the emergency operations center has not been activated, the County’s Office of Emergency Management (OEM) must be prepared to receive and respond to requests for emergency aid from Operational Area partners at any time of day or night. It assigns this responsibility to the Duty Officer position.<sup>17</sup>

A key aspect of Santa Clara’s emergency-response system is to build in redundancies for communications systems. This approach aligns with federal guidance and best practices.<sup>18</sup>

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<sup>14</sup> 2023 Open Internet Proposed Rules at ¶ 34.

<sup>15</sup> OEM, *County of Santa Clara Emergency Operations Plan* (Jan. 2022), at 58-61, available at [https://emergencymanagement.sccgov.org/sites/g/files/exjcpb261/files/document/2022%20EOP\\_County%20of%20Santa%20Clara\\_01.20.2022%20Accessibility%20Check.pdf](https://emergencymanagement.sccgov.org/sites/g/files/exjcpb261/files/document/2022%20EOP_County%20of%20Santa%20Clara_01.20.2022%20Accessibility%20Check.pdf), archived at <https://perma.cc/C5B4-JZEH>.

<sup>16</sup> *Id.* at 79; see also County Fire, *2022 Annual Report*, *supra* note 13, at 12; Bay Area Joint Information System, *A Toolkit to support the Coordination of Public Information and Warning throughout the San Francisco Bay Area* (Feb. 2018), at 29-30, available at [https://emergencymanagement.sccgov.org/sites/g/files/exjcpb261/files/For%20Partners/2018\\_02\\_27%20JIS%20Toolkit\\_FINAL.pdf](https://emergencymanagement.sccgov.org/sites/g/files/exjcpb261/files/For%20Partners/2018_02_27%20JIS%20Toolkit_FINAL.pdf), archived at <https://perma.cc/6XLV-LN9J>.

<sup>17</sup> See OEM, *Strategic Visioning Plan* (May 6, 2022), at 13, available at [https://emergencymanagement.sccgov.org/sites/g/files/exjcpb261/files/document/SIGNED%20SVP%202022\\_FINAL.pdf](https://emergencymanagement.sccgov.org/sites/g/files/exjcpb261/files/document/SIGNED%20SVP%202022_FINAL.pdf), archived at <https://perma.cc/VB4X-N82B>.

<sup>18</sup> Cybersecurity & Infrastructure Security Agency (CISA), *Improving Emergency Communications Resiliency through Redundancies* (Jul. 21, 2021), available at <https://www.cisa.gov/sites/default/files/publications/NECP%2520Spotlight%2520-%2520Improving%2520Emergency%2520Communications%2520Resiliency%2520through%2520Redundancies%2520-%2520508%2520final.pdf>, archived at <https://perma.cc/GSQ3-XH8S>; see also

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These redundancies greatly increase Santa Clara’s ability to continue to lead and coordinate emergency response even if one form of communication is forced offline.<sup>19</sup> To this end, Santa Clara relies on Internet-driven communications systems even though it also uses conventional telephone systems. Specifically, both the EOC and the Duty Officer must be prepared to exchange information through IP-enabled edge providers like Apple iMessage, Slack, Google services (including Gmail, Google Drive, and Google Calendar), and Microsoft Teams as well as email, phone calls, text, WebEOC, and 2-way radios and satellite phones. Because the Duty Officer is a 24/7/365 position, the Duty Officer is frequently at home during off hours. In those situations, the Duty Officer’s availability to receive and disseminate emergency information depends on the mass-market BIAS that provides Internet service to their home. Likewise, Santa Clara is a member of the California Common Operating Picture for Threat Awareness (Cal COP), which “is a cloud-based information-sharing environment available to all public safety agencies” within California. Using a platform called Haystax, Cal COP layers local and regional risk management and infrastructure assessments with real-time data on threats and hazards “to create a common threat awareness picture” for all sorts of incidents, including disasters and special events. Cal COP enables public-safety officials to maintain situational awareness on a local, regional, and statewide basis. Officials across the State access Cal COP through their Internet-enabled devices on mobile apps and web browsers from their homes, command centers, offices, and the field.<sup>20</sup> Effective emergency preparation and response requires governmental personnel and facilities to connect with the public at large—not only with one another.<sup>21</sup> For a region and

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Federal Emergency Management Agency, *2018-2022 Strategic Plan* (March 15, 2018), at 26-27, available at [https://www.fema.gov/sites/default/files/2020-07/strat\\_plan\\_2018-2022.pdf](https://www.fema.gov/sites/default/files/2020-07/strat_plan_2018-2022.pdf), archived at <https://perma.cc/2EYZ-KLLA>.

<sup>19</sup> For instance, in response to interrupted communications during deployments, County Fire purchased two Mobile Operations Satellite Emergency Systems, which “are designed to quickly restore and protect critical communications when infrastructures are compromised.” County Fire, *Community Risk Assessment Standards of Cover 2020*, *supra* note 13, at 38.

<sup>20</sup> See generally California Common Operating Picture for Threat Awareness, *About* (last accessed Dec. 14, 2023), <https://calcop.org/about>, archived at <https://perma.cc/VF79-ZBQU>.

<sup>21</sup> To be sure, like their counterparts across the country, Santa Clara’s emergency-response officials also rely upon and take advantage of the Wireless Emergency Alert system (WEA), Wireless Priority Service (WPS), and the First Responder Network Authority, or FirstNet, about which the Commission asked. *2023 Open Internet Proposed Rules* at ¶ 35. But by their very nature, these systems do not meet members of the public where they are, nor do they enable, protect, or prioritize access *by members of the public* to the often life-saving information that Santa Clara and other local government public-safety officials are trying to convey. Accordingly, the County treats WEA, WPS, and FirstNet as critically important, *but secondary*, to the Internet-enabled systems—like social media platforms, WebEOC, Slack, and Microsoft Teams—discussed in text.

While these systems are critical, especially because of the need for redundancy and resiliency in communication infrastructure, they are limited. WEA, for instance, provides specific pathways for officials to communicate with the public about emergencies through the Integrated Public Alert and Warning System (IPAWS) operated by the Federal Emergency Management Agency. See generally FCC, *Wireless Emergency Alerts (WEA)* (Sept. 25, 2023), <https://www.fcc.gov/consumers/guides/wireless-emergency-alerts-wea>, archived at <https://perma.cc/FJM9-EXT3>. WEA only enables the transmission of limited data, and in any case it is effective only insofar as members of the public receive, review, and act on the alerts. WPS permits—but *does not require*—wireless service providers to receive and act upon requests from public safety officials to prioritize those officials’ voice, data, and video services

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its residents to become “disaster resilient,” government must “empower[] the whole community with emergency preparedness tools and resources before, during, and after a disaster to promote an ongoing supportive emergency communications network.”<sup>22</sup> Thus, Santa Clara must continually “inform, prepare, alert and warn community members of all hazards and threats that could occur or are occurring in the County.” It operates the SCC OpArea Joint Information System (JIS) and the Joint Information Center (JIC) that executes emergency communications strategy; participates in the broader Bay Area JIS; and promotes adoption of AlertSCC, the County’s alert and warning system.<sup>23</sup> Each of these systems much reach officials and individual residents regardless of their location, their ISPs, and the smartphones, tablets, and other Internet-connected devices they may be using. Similarly, County Fire and the Santa Clara County Fire Chiefs’ Association recently coordinated the countywide implementation of new evacuation planning, mapping, and notification platforms—Genasys EVAC and Genasys Protect (formerly Zonehaven). Genasys EVAC is a first-responder interface and provides field-level public safety leaders the tools they need to make critical decisions and to communicate to the public about protective actions during wildfire, flood, tsunami, and all-hazard threats. Within this interface, community leaders—including law enforcement, fire safety agencies, and OEM—can pre-identify evacuation centers and routes, temporary refuge areas, and traffic control points to assist in decision making. Genasys Protect is a community-facing application with internet-based interfaces that allow residents served by County Fire and other local agencies to review and understand evacuation plans and obtain real-time evacuation data during emergencies.<sup>24</sup> Each of these operations is deeply reliant on the mass-market BIAS plans covered by the *2023 Open Internet Proposed Rules*.

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over the providers’ networks. *See generally* FCC, Report and Order, *Review of Rules and Requirements for Priority Services*, FCC 22-36, PS Docket No. 20-187 (rel. May 20, 2022), published in summary form as FCC, *Review of Rules and Requirements for Priority Services*, 87 Fed. Reg. 39770 (Jul. 5, 2022). And FirstNet is a dedicated public safety broadband network dedicated to use by public-safety officials, but it does not facilitate effective communication with individuals who cannot access that network, such as members of the public. *See generally* FCC, Order, *First Responder Network Authority*, ULS File No. 0010176495, FCC DA 23-452 (rel. May 26, 2023).

<sup>22</sup> OEM, *Strategic Visioning Plan*, *supra* note 17, at 31.

<sup>23</sup> *Id.*; *see generally* Bay Area Urban Areas Security Initiative, *Bay Area Joint Information System (JIS)* (last accessed Dec. 14, 2023), <http://bayareauasi.org/jis>, archived at <https://perma.cc/G92K-VBPR>.

<sup>24</sup> Agreement between South Santa Clara County Fire District and Santa Clara County Central Fire Protection District for Zonehaven Evacuation Management Platform Implementation, Subscription, and Maintenance (Sep. 12, 2023), <https://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=240785&inline=true>, available through [https://sccgov.iqm2.com/Citizens/Detail\\_LegiFile.aspx?ID=117287](https://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?ID=117287), archived at <https://perma.cc/4DP9-VPYP>; *see also* Santa Clara County Fire Department (@sccfiredept), YOUTUBE, *Zonehaven Announcement - Santa Clara County Fire Department* (Sep. 15, 2021), <https://www.youtube.com/watch?v=Qi8swHnDvwQ>, archived at <https://perma.cc/D9PB-M6AY>; Santa Clara County Fire Department (@sccfiredept), YOUTUBE, *How to use Zonehaven* (Sep. 23, 2021), [https://www.youtube.com/watch?v=TBuG\\_BGgxE](https://www.youtube.com/watch?v=TBuG_BGgxE), archived at <https://perma.cc/VEF7-FXTK>; *see generally* Genasys, *Genasys Protect EVAC*, <https://genasys.com/genasys-protect-evac>, archived at <https://perma.cc/27L4-4XH2> (last accessed Dec. 14, 2023); County Fire, *Be Evacuation Ready*, <https://www.sccfd.org/education-and-preparedness-overview/be-evacuation-ready>, archived at <https://perma.cc/9BXQ-3QH6> (last accessed Dec. 14, 2023).

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Federal public-safety agencies have long and universally acknowledged the centrality of social media and Internet-connected communication systems to effective public safety management.<sup>25</sup> Other federal regulators have recognized the same truth that social media is critical to providing life and safety information.<sup>26</sup> Consistent with these recommendations and practices, Santa Clara routinely uses multiple social media platforms to communicate with residents in multiple languages ahead of and during major events that pose public-safety risks. The SCC OpArea JIS explicitly singles out social media for purposes such as maintaining situational awareness and disseminating accurate facts:

Monitoring social media ([X, formerly known as] Twitter, Facebook, Instagram, Nextdoor) in the JIC helps the communications team to maintain situational awareness and dispel misinformation and potentially harmful rumors. Keeping a regular posting schedule on social media provides a constant flow of useful information and reassurance to the community. Social media management tools such as Hootsuite helps manage social media by providing visibility to multiple social media handles, reporting, and

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<sup>25</sup> See, e.g., CISA, *Essentials of Alerts, Warnings, & Notifications* (Apr. 2020), at 7, [https://www.cisa.gov/sites/default/files/publications/CISA%20Essentials%20of%20AWNs\\_4.27.20%20-%20FINAL%20%28508c%29.pdf](https://www.cisa.gov/sites/default/files/publications/CISA%20Essentials%20of%20AWNs_4.27.20%20-%20FINAL%20%28508c%29.pdf), archived at <https://perma.cc/NU8R-UT32> (“Crowdsourcing on social media facilitates dynamic exchanges between the public and emergency officials in real time.”); *id.* at A-1 (noting plans to deploy Integrated Public Alert and Warning Systems (IPAWS) messages through social media); *id.* at C-1 (“social media platforms and different types of sensor systems are becoming increasingly integrated into the overall public safety ecosystem,” and use of social media platforms can both “boost the possibility of reaching a wider audience” and “increase their outreach towards diverse populations, especially those with language barriers and disabilities”); *id.* at C-2, C-3 (noting commercial public-safety enterprise systems that are designed, in part, to communicate with the public through social media); CISA, *Public Safety Communications: Ten Keys to Improving Emergency Alerts, Warnings & Notifications* (Apr. 2019), at 4 & n.21, [https://www.cisa.gov/sites/default/files/publications/safecom-ncswic\\_ten\\_keys\\_to\\_improving\\_awns\\_4.26.19\\_-\\_final\\_section\\_508\\_compliant.pdf](https://www.cisa.gov/sites/default/files/publications/safecom-ncswic_ten_keys_to_improving_awns_4.26.19_-_final_section_508_compliant.pdf), archived at <https://perma.cc/LX66-LAUS>; U.S. Dep’t of Homeland Security, *Innovative Uses of Social Media in Emergency Management* (Sept. 2013), [https://www.dhs.gov/sites/default/files/publications/Social-Media-EM\\_0913-508\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/Social-Media-EM_0913-508_0.pdf), archived at <https://perma.cc/WL3B-4JCP>; R. Merchant et al., *Integrating Social Media into Emergency-Preparedness Efforts*, *New England J. Med.* 2011; 365:289-291 (Jul. 28, 2011), <https://www.nejm.org/doi/full/10.1056/nejmp1103591>, archived at <https://perma.cc/QQX6-JMF8>; see also H. Kozłowska, *Facebook’s algorithm change could affect how cops speak to citizens*, *Quartz* (Feb. 1, 2018), <https://qz.com/1191037/facebooks-news-feed-change-could-affect-how-police-and-local-governments-speak-to-citizens>, archived at <https://perma.cc/3LHG-HNVQ> (“Facebook has become a critical communications tool for police and fire departments as well as local governments across the United States. The social media platform is used to distribute and gather information about public safety and form a productive relationship with the public.”).

<sup>26</sup> See, e.g., 23 C.F.R. § 1300.27(b), (e)(2) (permitting states to use federal highway grant funding for public information campaigns, including advertising on social media); 28 C.F.R. § 90.17(b)(2)(vii) (permitting Violence Against Women Act subgrantees to use grant funding for “electronic communications systems and platforms,” including “Web pages and social media”); 40 C.F.R. § 122.38(a)(3)(i) (requiring a person permitted to discharge combined sewer overflow to the Great Lakes Basin to provide public notification of such discharges, including “electronically, such as by text, email, social media alerts to subscribers or by posting a notice on its public access website”); 40 C.F.R. § 141.85(a)(1)(vi), (b)(2)(iii), (b)(2)(iv) (requiring, in various circumstances, that water systems that may use lead-based infrastructure to inform the public through their websites and through public notification plans that can include “social media campaigns”).



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streamlines the process of scheduling and posting to multiple accounts. When appropriate, the JIC will utilize the lead agency and other relevant County's social media handles to coordinate messaging.<sup>27</sup>

Pursuant to this emergency operations plan, Santa Clara relies on social media to connect with residents, visitors, traditional media, and others in a variety of contexts. Indeed, there are too many instances to cite, even from the last year. In addition to the COVID-19 pandemic,<sup>28</sup> some recent examples include inclement weather events, including high winds and fire risk,<sup>29</sup> rain and floods,<sup>30</sup> temperatures so cold that residents may need access to warming centers,<sup>31</sup> and

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<sup>27</sup> OEM, *Emergency Communications Annex: Function-Specific Annex to the County of Santa Clara Emergency Operations Plan* (Mar. 2022), at 45, [https://emergencymanagement.sccgov.org/sites/g/files/exjcpb261/files/annex/EMERGENCY%20COMMUNICATIONS%20ANNEX\\_FINAL.pdf](https://emergencymanagement.sccgov.org/sites/g/files/exjcpb261/files/annex/EMERGENCY%20COMMUNICATIONS%20ANNEX_FINAL.pdf), archived at <https://perma.cc/Z4E3-246S>; see also *id.* at 38-39, 43; OEM, *County of Santa Clara Emergency Operations Plan*, *supra* note 15, at 84-85 (emphasizing importance of posting on and monitoring social media to JIS, effective operation of the joint information center, maintenance of situational awareness, and awareness of spread of misinformation).

<sup>28</sup> Like other governments across the country, the County posted thousands of messages on social media platforms during the pandemic to update residents on the course of the pandemic, local public health conditions, and the rules in place to manage them. These are much too numerous to cite. As examples, however, we point to three posts that provided information about the shelter-in-place to individuals who read or speak Chinese and who speak using American Sign Language (ASL), and to all individuals about a briefing that would take place on Facebook Live. See County of Santa Clara (@SCCgov), TWITTER (Apr. 1, 2020, 5:14 PM), <https://twitter.com/SCCgov/status/1245504850248384512>, archived at <https://perma.cc/8S9F-NDF3> (alerting residents in Chinese to shelter in place orders); County of Santa Clara (@SCCgov), TWITTER (Apr. 20, 2020, 5:46 PM), <https://twitter.com/SCCgov/status/1256022021055512577>, archived at <https://perma.cc/DG5R-73FP> (noting in ASL that shelter in place orders had been extended); County of Santa Clara (@SCCgov), TWITTER (May 1, 2020, 9:01 AM), <https://twitter.com/SCCgov/status/1256252468327047170>, archived at <https://perma.cc/DZ9R-JKM6>.

<sup>29</sup> County of Santa Clara (@SCCgov), TWITTER (Mar. 9, 2023, 3:18 PM), <https://twitter.com/SCCgov/status/1633970591421313024>, archived at <https://perma.cc/MBS2-9AV8> (also retweeting National Weather Service tweet in English and Spanish about high wind safety); Santa Clara County Fire Department (@SCCFireDept), FACEBOOK (Oct. 27, 2023, 10:45 AM), <https://www.facebook.com/sccfiredept/posts/pfbid0GxAMNvR6kQNTdd2akUmTrf68De6s4EEuN2BeEAXxe6tmjGGSmtuWCYNGveVm2S8yl>, archived at <https://perma.cc/K48J-SZAU>.

<sup>30</sup> County of Santa Clara, California (@county.of.santa.clara), FACEBOOK (Nov. 22, 2023, 7:31 PM), <https://www.facebook.com/county.of.santa.clara/posts/pfbid028SrhUYTeMTqRVzWE7nWeuL11FRkes4xBUMRH5moFnjKnWMpmrDoN8z1UGAQZZooql>, archived at <https://perma.cc/EC2J-EXB2> (notifying residents of flood alert system); Santa Clara County Fire Department (@SCCFireDept), FACEBOOK (Nov. 16, 2023, 3:57 PM), <https://www.facebook.com/sccfiredept/videos/safe-driving-in-the-rain/211516361897956>, archived at <https://perma.cc/46LS-F786>.

<sup>31</sup> Santa Clara County Office of Emergency Management (@SCCOEM), TWITTER (Jan. 10, 2023, 4:37 PM), <https://twitter.com/SCCOEM/status/1612971840900677632>, archived at <https://perma.cc/3D4K-TH7K> (posting information about operating shelters in English); Santa Clara County Office of Emergency Management (@SCCOEM), TWITTER (Jan. 10, 2023, 5:44 PM), <https://twitter.com/SCCOEM/status/1612988824539516928>, archived at <https://perma.cc/8A3R-23QL> (posting same information in Spanish); Santa Clara County Office of Emergency Management (@SCCOEM), TWITTER (Jan. 10, 2023, 5:45 PM), <https://twitter.com/SCCOEM/status/1612988966650925057>, archived at <https://perma.cc/RMF5-UYS7> (posting same information in Vietnamese); County of Santa Clara (@SCCgov), TWITTER (Jan. 10, 2023, 4:50 PM), <https://twitter.com/SCCgov/status/1612975235506274311>, archived at <https://perma.cc/AGQ5-PTMG> (also retweeting OEM tweet about shelters); see also County of Santa Clara (@SCCgov), TWITTER (Dec. 29, 2021, 8:30 AM), <https://twitter.com/SCCgov/status/>

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temperatures so hot that they may need to get to cooling centers;<sup>32</sup> invasive insects detection and response, including instances of an oriental fruit fly<sup>33</sup> and mosquitoes carrying the West Nile virus;<sup>34</sup> preparation and common hazards associated with specific holidays;<sup>35</sup> response to fires;<sup>36</sup>

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[1476229118324731906](https://perma.cc/HEQ3-BVRJ), archived at <https://perma.cc/HEQ3-BVRJ>; County of Santa Clara (@SCCGov), TWITTER (Nov. 9, 2022, 2:43 PM), <https://twitter.com/SCCGov/status/1590475135089541122>, archived at <https://perma.cc/3Q6X-Z8W3> (also retweeting National Weather Service tweet about forecasted low temperatures); County of Santa Clara (@SCCGov), TWITTER (Jan. 2, 2022, 5:30 PM), <https://twitter.com/SCCGov/status/1477814614817652739>, archived at <https://perma.cc/2SLK-MFHB>; County of Santa Clara (@SCCGov), TWITTER (Mar. 17, 2021, 7:01 PM), <https://twitter.com/SCCGov/status/1372367526286352387>, archived at <https://perma.cc/D7FD-5AP5>.

<sup>32</sup> County of Santa Clara, California (@county.of.santa.clara), FACEBOOK (Sept. 5, 2022, 2:32 PM), <https://www.facebook.com/county.of.santa.clara/posts/pfbid0i6svtYaBweEB1iAyJaH6BFUe6pVpRSY5GPb8sDd8jAK2XX58mdeJ8EADsUgXcXjl>, archived at <https://perma.cc/WGY4-S6EG> (informing residents of how to identify and respond to signs of heat stroke); Santa Clara County Fire Department (@SCCFireDept), FACEBOOK (Oct. 19, 2023, 10:16 AM), <https://www.facebook.com/sccfiredept/posts/pfbid0SD9XCCoqhdRtYHezkXU5DQuRzrx23APkmjdUGpqsXtGcDXjVVes4Yw7YASXEYAwul>, archived at <https://perma.cc/EY3F-K5KN> (alerting public to high temperatures, cooling centers, and Spare the Air day); Santa Clara County Fire Department (@SCCFireDept), FACEBOOK (Oct. 5, 2023, 10:41 AM), <https://www.facebook.com/sccfiredept/posts/pfbid0hdoB8TbauZAbzrM2P2uDhMzZnkmQx5iLJN8TqNMYtsgV949qMhCm5RgJY46FYil>, archived at <https://perma.cc/L95L-SW2X> (heat advisory).

<sup>33</sup> County of Santa Clara, California (@county.of.santa.clara), FACEBOOK (Sept. 6, 2023, 8:56 AM), <https://www.facebook.com/county.of.santa.clara/posts/pfbid02m4zYij8qd7TYhL9btYcthBfVdpQX6Xr1vRRrzab4A8x8gNQwMRGxbQB1RGscqG8Cl>, archived at <https://perma.cc/CLY3-X34J> (notifying residents of state-imposed quarantine following detection of oriental fruit flies).

<sup>34</sup> County of Santa Clara, California (@county.of.santa.clara), FACEBOOK (Jul. 24, 2023, 2:23 PM), <https://www.facebook.com/county.of.santa.clara/posts/pfbid02BGnEm3Q4KGkrwiPtf8ESzmVLt9hDvk6xoQHQECv6tsS1YCYfYjUCxidMTmk7UxcNI>, archived at <https://perma.cc/5JX5-77AB> (alerting residents in English, Spanish, and Vietnamese of West Nile virus mosquitoes and planned treatment three days later).

<sup>35</sup> County of Santa Clara, California (@county.of.santa.clara), FACEBOOK (Nov. 22, 2023, 8:34 AM), <https://www.facebook.com/county.of.santa.clara/posts/pfbid0XdfyftSmObetotQePSuHAoXs3U2a1W9MDewz8eVnENCCXdJ2vUKsSALULWbGiz2Ml>, archived at <https://perma.cc/DN75-M44U> (food poisoning associated with food handling during Thanksgiving cooking); County of Santa Clara, California (@county.of.santa.clara), FACEBOOK (Jun. 28, 2023, 7:48 PM), <https://www.facebook.com/county.of.santa.clara/posts/pfbid02bD4QyMb7kYDMnKKPjHMRaRT6SZfvTH92Ae1qooszgc2gvHubWoR4MeFi941BkGt4l>, archived at <https://perma.cc/98LE-DEQ8> (alerting residents to safe and sanctioned fireworks displays).

<sup>36</sup> Santa Clara County Fire Department (@SCCFireDept), FACEBOOK (Aug. 29, 2023, 1:02 PM), <https://www.facebook.com/sccfiredept/posts/pfbid0cwD55qRDY6nmBmXQNoYRu8HuB1dLqznsi7kCVh4kR6MzaDEFQDBG7TjEJCqckLI>, archived at <https://perma.cc/X5UZ-6EM7>; Santa Clara County Fire Department (@SCCFireDept), FACEBOOK (Aug. 25, 2023, 4:30 PM), <https://www.facebook.com/sccfiredept/posts/pfbid0229SZUtPwi31PYzcfWBfRUz66qEcn5m4pnkCiZsefVa585ZHu2MReaNiu4g2nEXAHL>, archived at <https://perma.cc/BGT9-PVC7>; Santa Clara County Fire Department (@SCCFireDept), FACEBOOK (Aug. 24, 2023, 3:42 PM), <https://www.facebook.com/sccfiredept/posts/pfbid039S5Dj4S6xacLTCJcLRTNAqxmUsMK6atYUBrjJEkoPtQzEM9Fgg8MNvE4zEnZjBQl>, archived at <https://perma.cc/P66L-KJGT>; Santa Clara County Fire Department (@SCCFireDept), FACEBOOK (Aug. 4, 2023, 9:30 AM), <https://www.facebook.com/sccfiredept/posts/pfbid0YbUmigkheNuJ1MPaDnag1VyPeYQaXXyuV8yCEYockHJYhM8nrcUHnrqR2kH9Sj3ml>, archived at <https://perma.cc/JBY9-PRHC>; Santa Clara County Fire Department (@SCCFireDept), FACEBOOK (Jul. 13, 2023,

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and traffic alerts associated with preparation of evacuation routes.<sup>37</sup> Santa Clara also uses social media to convey public safety information to residents, visitors, and others during large mass gatherings like the Super Bowl, which was held in Santa Clara County in 2016 and will be held here again in 2026.<sup>38</sup> With some frequency, these social media platforms generate discussion with or questions from community members that enable governmental officials to share additional information that further enhances public safety.<sup>39</sup> And public safety officials are constantly examining and working with new third-party edge providers. Just this year, for instance, Santa Clara began using another tool called Brand 24, which, like Hootsuite, helps to

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8:22 AM), <https://www.facebook.com/sccfiredept/posts/pfbid0x7x6UpQthEMt7FJ1VTps3vzMt1QaPjTmE9Xac58bN4aj3HFjs6KsNLF2ieKcLkTI>, archived at <https://perma.cc/29JB-QSST>.

<sup>37</sup> Santa Clara County Fire Department (@SCCFireDept), FACEBOOK (Oct. 20, 2023, 4:21 PM), <https://www.facebook.com/sccfiredept/posts/pfbid0LAUT1SMWhyutLyGtGAffw8yiMgsnwjBfpc9qnvEYA89yhQimkhf5ngDJjwW5Zcgl>, archived at <https://perma.cc/8HHQ-TPVA>; Santa Clara County Fire Department (@SCCFireDept), FACEBOOK (Sept. 13, 2023, 7:45 AM), <https://www.facebook.com/sccfiredept/posts/pfbid02dJpPShJENNCpxhsXsfzzqJaqupXRnzSwHjgaAr6LXS29jKuJXXjZYDELK3n9YgWfl>, archived at <https://perma.cc/VJC3-PSBM>; Santa Clara County Fire Department (@SCCFireDept), FACEBOOK (Aug. 14, 2023, 4:16 PM), <https://www.facebook.com/sccfiredept/posts/pfbid02q3KUEL52kZ777ou8a7X9AGddgTtXmqBd5aWd1g3Q3KvZyewb6tsVkMt3sNn7zwDel>, archived at <https://perma.cc/3375-46W8>; Santa Clara County Fire Department (@SCCFireDept), FACEBOOK (Aug. 9, 2023, 7:45 AM), <https://www.facebook.com/sccfiredept/posts/pfbid02easkx9fdMcRQMBWUPvY6z6KM8yxbSwzHZs8pcZWwKpWqj3n7p57qstjVV9Y9YCNTl>, archived at <https://perma.cc/TWJ8-DBKL>.

<sup>38</sup> Santa Clara agencies posted messages on social media platforms to keep the public informed and safe during Super Bowl 50, which took place at Levi's Stadium in Santa Clara County on February 7, 2016. For instance, County Fire and the County's Office of Communications and Public Affairs posted messages urging residents and visitors to drive safely in the rain and be alert to road closures, clean their hands during mass gatherings, avoid drunk driving, sign up for emergency alerts, and be attentive to signs of human and labor trafficking, which is common during large events. Santa Clara CA Fire (@SantaClaraFD), TWITTER (Feb. 2, 2016, 6:04 AM), <https://twitter.com/SantaClaraFD/status/694521870775767041>, archived at <https://perma.cc/4JJU-F72Z>; County of Santa Clara (@SCCgov), TWITTER (Dec. 23, 2015, 3:31 PM), <https://twitter.com/SCCgov/status/679806497568587776>, archived at <https://perma.cc/3TP6-8KVH>; County of Santa Clara (@SCCgov), TWITTER (Feb. 5, 2016, 3:47 PM), <https://twitter.com/SCCgov/status/695755618792001536>, archived at <https://perma.cc/X6BL-GR8Y>; County of Santa Clara (@SCCgov), TWITTER (Feb. 6, 2016, 11:17 AM), <https://twitter.com/SCCgov/status/696050170736328705>, archived at <https://perma.cc/J635-XLAP>; County of Santa Clara (@SCCgov), TWITTER (Feb. 7, 2016, 3:42 PM), <https://twitter.com/SCCgov/status/696479146768265217>, archived at <https://perma.cc/5YNU-H5FS>.

<sup>39</sup> For instance, the County has engaged in dialogue with residents over social media regarding cooling centers that accept pets, County of Santa Clara, California (@county.of.santa.clara), FACEBOOK (Sept. 5, 2022, 2:32 PM), *supra* note 32; quarantines associated with oriental fruit flies, County of Santa Clara, California (@county.of.santa.clara), FACEBOOK (Sept. 6, 2023, 8:56 AM), *supra* note 34; how to address problem trees that may pose safety risks during storms, @votedarnyou, TWITTER (Jan. 11, 2023, 8:47 AM), <https://twitter.com/votedarnyou/status/1613215983166185473>, archived at <https://perma.cc/JY6G-S4QW>; County of Santa Clara (@SCCgov), TWITTER (Jan. 11, 2023, 10:03 AM), <https://twitter.com/SCCgov/status/1613235139827601409>, archived at <https://perma.cc/3ASC-T87M>; and safety during inclement weather, County of Santa Clara (@SCCgov), TWITTER (Feb. 25, 2023, 10:48 AM), <https://twitter.com/SCCgov/status/1629553885693235200>, archived at <https://perma.cc/MEY7-N8VZ> (also showing tweet in response by resident that included video from the location in question).

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monitor and analyze social media posts to receive community input, understand community knowledge, and develop situational awareness.<sup>40</sup>

Local governments' own social media accounts are not the only way—or, for some communities, even a *primary* way—that critical public safety information is communicated to and among individual residents and accessible to them through mass-market BIAS plans. This is borne out by the myriad networks of Volunteer Organizations Active in Disaster (VOADs) throughout the United States, including in California.<sup>41</sup> In the SCC OpArea, the VOAD is organized as Collaborating Agencies' Disaster Relief Effort (CADRE), which comprises more than 50 local community-based and faith-based organizations that partner with Santa Clara to “facilitat[e] cooperation, communication, coordination, and collaboration” before, during, and after emergencies.<sup>42</sup> And beyond its 50 formal members, CADRE “serves as a central coordination and information point for hundreds of non-profit organizations that can provide services during and after disaster operations. For example, CADRE can disseminate information such as shelter locations, warming/cooling centers locations to their extensive network; could provide support resources for shelter and care during earthquake, flooding, and wildfire events, and assist in recovery efforts.” OEM recognizes other ways that CADRE can help, too. CADRE operates an access and functional needs (AFN) sub-working group, through which it “may identify resources through their network to support AFN needs during a disaster and disseminate information to the population(s) they serve.”<sup>43</sup> OEM has a VOAD liaison position that is the conduit between CADRE and Santa Clara; this position is especially critical during disasters and emergencies because its responsibility is to support the community where gaps exist.

CADRE's member organizations and the broader network of organizations with which they communicate often have deep, strong, and reliable ties to particular communities within Santa Clara County that give CADRE and its organizations particular credibility when sharing information with the public. Across virtually all communities, some individuals are not inclined to trust or comply with news, guidance, or orders coming directly from governmental officials. Accordingly, CADRE and the hundreds of organizations with which it communicates are critical

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<sup>40</sup> See Brand 24, <https://brand24.com> (last accessed Dec. 14, 2023); Hootsuite, <https://www.hootsuite.com> (last accessed Dec. 14, 2023).

<sup>41</sup> See generally National VOAD, *About Us*, <https://www.nvoad.org/about-us>, archived at <https://perma.cc/9FZ6-UPOS>; California VOAD, <https://voadcalifornia.wpengine.com>, archived at <https://perma.cc/2SR7-QLRY>; see also Cal. Gov't Code § 8589.65(a) (requiring California of Office Emergency Services to coordinate with VOADs to plan for responding to or recovering from disasters).

<sup>42</sup> Cnty. of Santa Clara Bd. of Supervisors, Resolution No. BOS-2019-155, *Resolution of the Board of Supervisors of the County of Santa Clara Declaring Collaborating Agencies' Disaster Relief Effort as the Santa Clara County Operational Area's Volunteer Organizations Active in Disaster* (Dec. 10, 2019), available at <http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=194265&inline=true>, and available through [http://sccgov.iqm2.com/Citizens/Detail\\_LegiFile.aspx?ID=99362](http://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?ID=99362), archived at <https://perma.cc/34F5-4H68>.

<sup>43</sup> OEM, *Access and Functional Needs Annex: Functional Annex to the County of Santa Clara Emergency Operations Plan* (May 2022), at 20 [https://emergencymanagement.sccgov.org/sites/g/files/exjcpb261/files/document/2022%20Access\\_and\\_Functional\\_Needs.pdf](https://emergencymanagement.sccgov.org/sites/g/files/exjcpb261/files/document/2022%20Access_and_Functional_Needs.pdf), archived at <https://perma.cc/RTL9-D9AL>.

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to County emergency preparedness and response efforts. As the SCC OpArea VOAD, CADRE is integrated into the SCC OpArea's joint information system and OEM's AFN & Cultural Competency workgroup.

Because CADRE plays these roles, Santa Clara can—and does—rely on CADRE to collaborate with it on messaging and then share information with communities that governmental officials may not be able to reach. A critical part of this strategy calls for both OEM's VOAD liaison and CADRE's own liaison to participate in coordination calls for the JIS and then to communicate out with CADRE's members and partner organizations. This communication itself relies on mass-market BIAS. Indeed, CADRE recognized that, over the course of 2020, Zoom “became the preferred method of communicating with a broad cross-section of key stakeholders across the county” and around the state, especially in light of the “new Work from Home modalities,” and because it enabled more people to participate in the coordination calls.<sup>44</sup> CADRE realized other benefits to relying on IP-enabled, data-driven communication systems like Zoom rather than conventional, copper-line telephony. Because the calls were based on data rather than solely voice exchange, they could be augmented by transcription and artificial intelligence systems to facilitate access for the hearing impaired.<sup>45</sup>

Once the JIC has developed and approved a message, both OEM's VOAD liaison and CADRE's liaison help to spread that message. One critical mechanism is CADRE's echoing and reposting of information from Santa Clara and other governmental sources about emergencies and emergency preparedness. Recent examples include flooding<sup>46</sup> and extreme temperatures.<sup>47</sup>

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<sup>44</sup> CADRE, *After Action Report of Response Operations for 2020 COVID-19 Pandemic, SCU/CZU Wildfires* (Aug. 2021), at 10, [https://cadresv.wpengine.com/wp-content/uploads/CADRE-MOA\\_AAR-2020-v090121.pdf](https://cadresv.wpengine.com/wp-content/uploads/CADRE-MOA_AAR-2020-v090121.pdf), archived at <https://perma.cc/Z8D7-5ADU>.

<sup>45</sup> *Id.*

<sup>46</sup> For instance, during winter storms in January 2023, CADRE posted to its Facebook page both its own alerts about rain and flooding, and also time-sensitive links alerting followers to news about evacuation orders issued by the County. See CADRE Network (@CADRESCCO), FACEBOOK (Jan. 4, 2023, 5:20 PM), <https://www.facebook.com/cadresco/posts/pfbid02buFX27Xgb3RHoz87hDNWZQB9u1PKs6YnfUPxQKjwS2aCXfcFhMCV23XKFGSiVrwyI>, archived at <https://perma.cc/Z8RQ-Y55K> (posting information and link to news reports about heavy rain); CADRE Network (@CADRESCCO), FACEBOOK (Jan. 8, 2023, 5:41 PM), <https://www.facebook.com/cadresco/posts/pfbid0wHMMhPv5jLd6MBudJ2GBnFWmi5k3ZD37C7zRv2VuNPZP8YjukyCPM8F96QtSgkaI>, archived at <https://perma.cc/V2FC-XMBK> (linking to County press release about evacuation order); Cnty. of Santa Clara, *Santa Clara County Issues Evacuation Warning to Watershed Areas of the Uvas Reservoir and Pacheco Pass River Basin* [Press Release] (Jan. 8, 2023), <https://news.santaclaracounty.gov/news-release/evacuation-warning-watershed-areas-uvas-reservoir-and-pacheco-pass>, archived at <https://perma.cc/3SSM-YPTC>.

<sup>47</sup> To take just two examples, this past summer, CADRE echoed posts from the County's Public Health Department about the link between mental health medications and heat sensitivity and about workers' rights during extreme heat. See CADRE Network (@CADRESCCO), FACEBOOK (Aug. 1, 2023, 6:53 PM), <https://www.facebook.com/cadresco/posts/pfbid0XMH0P1xNUTK5fqfCMt2hkb19BkEwTQbn4HpsgZjViEVHS3h4sEQsR4HH9RogpCPI>, archived at <https://perma.cc/SS7F-PUBU> (including graphics with English, Spanish, and Vietnamese messages about mental health medications and heat sensitivity); County of Santa Clara Public Health Department (@SCCPublicHealth), FACEBOOK (Aug. 1, 2023, 10:01 AM), <https://www.facebook.com/sccpublichealth/posts/pfbid0qgfpc67gpimq83rp7hBfSK8ziAYVYfDQAgZ6tzasL86VNKKNkmxkdKqZQNEabpAI>, archived at <https://>

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As importantly, CADRE also uses the Internet—including social media, websites, and email lists—to distribute to the community an extensive library of public-safety information.<sup>48</sup> CADRE’s work in this regard is reliant on mass-market BIAS for the same reasons as government officials’ work: not only could CADRE members themselves be working from home or from locations or on devices served by mass-market BIAS, but their intended audience of community members relies almost exclusively on mass-market BIAS to connect from their homes and smartphones. This is even more true coming out of the pandemic because a far greater proportion of the public now spends their working hours connected to the Internet from their homes rather than their employers’ facilities.<sup>49</sup>

## 2. 9-1-1 Response, Law Enforcement Activities, and Non-Emergency Public Safety Operations

Santa Clara’s reliance on mass-market BIAS extends well beyond the large-scale, socially dislocating emergencies that call for long-term coordinated multiagency response and activation of the emergency operations center.

For instance, through Santa Clara County 9-1-1 Communications (“County Communications”), Santa Clara operates one of only two of the SCC OpArea’s 15 public safety answering points (PSAPs) that are both primary and secondary. This means that County Communications can receive, process, and route to dispatch calls that require response from either law enforcement or fire or medical services—and, therefore, that County Communications must be able to communicate effectively with a range of first-responder agencies. To aid in this

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[perma.cc/GD2Q-G3QB](https://perma.cc/GD2Q-G3QB); CADRE Network (@CADRESCCO), FACEBOOK (Jul. 27, 2023, 8:20 AM), <https://www.facebook.com/cadresco/posts/pfbid02iHUQjA5fm6uDvQLCfV6fUdjtASgpLGSC9D4Y03Aza2mcLay9rTzNSJX4ftYLYXUSI>, archived at <https://perma.cc/4VLL-4MAH> (including graphics with English, Spanish, and Vietnamese messages about workers’ rights in extreme heat); County of Santa Clara Public Health Department (@SCCPublicHealth), FACEBOOK (Jul. 26, 2023, 9:04 AM), <https://www.facebook.com/sccpublichealth/posts/pfbid02FoYSQ58R1kyNxyRhHCTNZeovVNaxTn6xPjfpCb19p6wPrgGtPvPesFUfSM26PoUkl>, archived at <https://perma.cc/3YPX-R5ML>.

<sup>48</sup> CADRE, <https://cadresv.org>; see also *CADRE Connection Newsletter* (Nov. 2023), [https://app.getresponse.com/view.html?x=a62b&m=BXj9o7&u=YTA&z=Et0ehsS&o=pp\\_1](https://app.getresponse.com/view.html?x=a62b&m=BXj9o7&u=YTA&z=Et0ehsS&o=pp_1), archived at <https://perma.cc/NDD7-YT5L>; CADRE Network (@CADRESCCO), FACEBOOK (Nov. 17, 2023, 9:07 AM), <https://www.facebook.com/cadresco/posts/pfbid02qqjXMhUM9fG7mpdZ5eG7mamRX3g2vN39RWgzHgLAAtMGCBfqQdzLQuWHZzXsQL9dTI>, archived at <https://perma.cc/7CRD-G8S5> (linking to November 2023 *CADRE Connection* newsletter); see generally CADRE, *After Action Report*, *supra* note 44, at 12-13 (listing CADRE’s communication modalities).

<sup>49</sup> E.g., K. Parker, *About a third of U.S. workers who can work from home now do so all the time*, Pew Research Center (Mar. 30, 2023), <https://www.pewresearch.org/short-reads/2023/03/30/about-a-third-of-us-workers-who-can-work-from-home-do-so-all-the-time>, archived at <https://perma.cc/F6WW-QJEL>; C. Dougherty & E. Goldberg, *What Comes Next for the Most Empty Downtown in America*, N.Y. TIMES (updated Feb. 9, 2023), <https://www.nytimes.com/2022/12/17/business/economy/california-san-francisco-empty-downtown.html>, archived at <https://perma.cc/S6Y9-S5S8>.

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work, Santa Clara has implemented a modern computer-aided dispatch (CAD) system.<sup>50</sup> Because CAD is web-based, first responders and other public-safety officials can access CAD to post, review, and analyze data about calls and responses even when they are not physically in the County Communications office.

At the same time, like other local governments across California and around the country, Santa Clara has been overhauling and upgrading its infrastructure in preparation to adopt the Next Generation 9-1-1 (NG911) system.<sup>51</sup> As the Commission has explained, “[w]ith the transition to NG911, 911 authorities will replace the circuit-switched architecture of legacy 911 networks with IP-based technologies and applications, which provide new capabilities and improved interoperability and system resilience.”<sup>52</sup> The CAD will offer even greater functionality once Santa Clara integrates it with NG911.

NG911 is driven in part by the reality that members of the public are increasingly using IP-enabled systems, rather than conventional telephony, to reach out during emergencies. Many people no longer use copper-line telephone systems, and the percentage of people who use Voice over IP (VoIP) systems to contact PSAPs grows every year. And sometimes residents’ IP-enabled devices, rather than people themselves, initiate contact. For years now, technology companies have built systems into their devices that permit the transmission of a wide range of data beyond just voice and approximate location information. There has, at the same time, been a proliferation of handheld and mobile IP-enabled devices—including smartphones, wearables, and cars equipped with wireless connectivity—that can identify potential emergencies and initiate contact with 911 operators. Technology to detect emergencies and initiate calls to call centers and from there to PSAPs was once limited to vehicles equipped with the OnStar system and homes equipped with hardwired security systems connected to corporate call centers. But in the intervening decades, those capacities and more are now deployed directly in smartphones and wearable devices by Apple, Samsung, and other manufacturers and app developers as well as by IP-enabled do-it-yourself home security systems like Ring, Vivint, and SimpliSafe. These devices, apps, and systems analyze data recorded by the devices’ sensors to assess the likelihood

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<sup>50</sup> See generally County Communications, Report No. 117581 (Sept. 21, 2023), [https://sccgov.iqm2.com/Citizens/Detail\\_LegiFile.aspx?ID=117581](https://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?ID=117581), archived at <https://perma.cc/F9K7-3UFU>.

<sup>51</sup> See generally Cal. Office of Emergency Services, *CA 911 Technology* (last accessed Dec. 14, 2023), <https://www.caloes.ca.gov/office-of-the-director/operations/logistics-management/public-safety-communications/ca-9-1-1-emergency-communications-branch/ca-911-technology>, archived at <https://perma.cc/M9CN-PKB3>; CISA, *The California Statewide Next Generation 911 Geographic Information System* (Aug. 2020), [https://www.cisa.gov/sites/default/files/publications/21\\_0707\\_cisa\\_california\\_statewide\\_ng911\\_gis\\_usecase\\_508.pdf](https://www.cisa.gov/sites/default/files/publications/21_0707_cisa_california_statewide_ng911_gis_usecase_508.pdf), archived at <https://perma.cc/2GDH-D2CW>; see also D. Jackson, *California aims to complete NG911 migration statewide by December 2024*, IWCE’s Urgent Communications (Nov. 21, 2023), <https://urgentcomm.com/2023/11/21/california-aims-to-complete-ng911-migration-statewide-by-december-2024>, archived at <https://perma.cc/45KU-LG3P>.

<sup>52</sup> *Facilitating Implementation of Next Generation 911 Services (NG911)*, FCC 23-47, PS Docket No. 21-479 (rel. Jun. 9, 2023), at ¶ 1, subsequently published in summary form as FCC, *Facilitating Implementation of Next Generation 911 Services (NG911)*, 88 Fed. Reg. 43514 (Jul. 10, 2023) (notice of proposed rulemaking).

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that a severe emergency has occurred, and, if necessary, to contact a PSAP directly and alert the user's emergency contacts.

NG911 will give PSAPs the technological capacity to receive the full range of information these devices have and share—but only if those users have access to the open Internet, because the devices and apps transmit that information to PSAPs over the very same mass-market BIAS that users use to access the Internet and IP-enabled services when they are not in crisis.<sup>53</sup> For instance, Apple iPhones and Apple Watches monitor GPS, Wi-Fi, gyroscope, accelerometer, microphones, air pressure, heartrate, and other data to assess when—and precisely where—a user has experienced a severe crash, a fall, or other emergency. At the same time, many users store a wealth of other health-related information in their phones that can be critical for first responders attempting to save lives—including name, age, height, weight, blood type, primary languages, medications, allergies, existing health conditions, medical notes, heartrate, exercise history, and emergency contacts. When an iPhone or Apple Watch detects a crash, fall, or other emergency event, and a user does not then respond to prompts, the device can initiate contact with a PSAP by calling 911, and at the same time it can gather these data and the user's location—what Apple calls Enhanced Emergency Data, or EDD—and transmit it to the PSAP using a “modern, IP-based path.” The device can then also alert the user's emergency contacts to the incident and the user's location.<sup>54</sup> Google Pixel smartphones have somewhat similar features,<sup>55</sup> as do many newer vehicles<sup>56</sup> and IP-enabled home security system devices.<sup>57</sup> All of

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<sup>53</sup> In the absence of IP-based pathways to share this information, Apple devices can share a subset of the data over legacy Text-to-911 systems. But as the *2023 Open Internet Proposed Rules* suggest, legacy 911 systems are simply not capable of supporting the full range of IP-enabled 911 communications contemplated by NG911. *2023 Open Internet Proposed Rules* at ¶ 36. Accordingly, while Santa Clara appreciates and has benefited from the Commission's efforts to expand legacy systems' capacities, including through text-to-911 and E911, technological development around IP-enabled communications has outstripped the legacy systems' capacities and ultimately demand transition to NG911—thus highlighting the importance to emergency communications of ensuring residents have access to open Internet through their mass-market BIAS plans.

<sup>54</sup> Apple, *Enhanced Emergency Data: Location and Medical ID Data for PSAPs* (Oct. 2020), [https://f.hubspotusercontent00.net/hubfs/549701/Documents/Apple%20Enhanced%20Emergency%20Data%20\(Oct%202020\).pdf](https://f.hubspotusercontent00.net/hubfs/549701/Documents/Apple%20Enhanced%20Emergency%20Data%20(Oct%202020).pdf), archived at <https://perma.cc/2BCD-2L2L>; Apple, *Enhanced Emergency Data: Fast, secure location for emergency calls* (Aug. 2018), [https://cdn.ymaws.com/www.nena.org/resource/resmgr/docs/Apple\\_Enhanced\\_Emergency\\_Data.pdf](https://cdn.ymaws.com/www.nena.org/resource/resmgr/docs/Apple_Enhanced_Emergency_Data.pdf), archived at <https://perma.cc/3JBA-P9YH>; Apple, *Use Crash Detection on iPhone or Apple Watch to call for help in an accident* (Oct. 4, 2023), <https://support.apple.com/en-bn/HT213225>, archived at <https://perma.cc/T24M-PW6C>; Apple, *Use Fall Detection with Apple Watch* (Oct. 4, 2023), <https://support.apple.com/en-us/HT208944>, archived at <https://perma.cc/Z6XG-ZM5B>.

<sup>55</sup> See Google, *Get help in an emergency using your Pixel phone* (last accessed Dec. 14, 2023), <https://support.google.com/pixelphone/answer/7055029>, archived at <https://perma.cc/X76C-6B9T>.

<sup>56</sup> K. Barry, *Some Automakers Charge Extra for Automatic Crash Notification. These Don't Make You Pay More for This Lifesaving Feature*, *Consumer Reports* (Apr. 20, 2023), <https://www.consumerreports.org/cars/car-safety/automakers-charging-extra-for-automatic-crash-notification-a6462204495>, archived at <https://perma.cc/E7XE-X5AQ>.

<sup>57</sup> See, e.g., Ring, *Ring Protect Plans* (last accessed Dec. 14, 2023), <https://ring.com/protect-plans>, archived at <https://perma.cc/CBT9-HTMK>.



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them rely on reliable access to the Internet free from unreasonable interference and discrimination by ISPs.<sup>58</sup>

Law enforcement agencies themselves also rely on community members' access to the open Internet through mass-market BIAS to distribute and receive information about incidents in progress. As Santa Clara noted in its prior submissions, police departments and other law enforcement agencies rely on community members' access to social media for help to solve crimes, identify victims, apprehend suspects, and find missing persons.<sup>59</sup> This reliance has continued unabated in the years since. It continues to include social media,<sup>60</sup> and now also includes many of the cameras, microphones, and other Internet-enabled security devices and systems that have proliferated in the last few years.<sup>61</sup> Law enforcement agencies including the

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<sup>58</sup> See *2023 Open Internet Proposed Rules* at ¶ 36.

<sup>59</sup> Santa Clara December 6, 2017 Comment, *supra* note 8, at 11-12; Santa Clara & Los Angeles April 20, 2020 Comment, *supra* note 8, at 5 & n.6.

<sup>60</sup> To take three recent examples, the Santa Clara County Sheriff's Office used Facebook, along with other modes of communication, for help to find a missing person, to seek information about a crime, and to alert residents to phone scams. Santa Clara County Sheriff's Office (@santaclarasheriff), FACEBOOK (Aug. 3, 2023, 7:17 AM), <https://www.facebook.com/santaclarasheriff/posts/672921028195685>, archived at <https://perma.cc/K9N8-M4DT> (asking for help to find a missing person; showing extensive responsive comments from community members); Santa Clara County Sheriff's Office (@santaclarasheriff), FACEBOOK (Oct. 18, 2023, 4:15 PM), <https://www.facebook.com/santaclarasheriff/posts/pfbid0qQPyiCMVgKuLBxr91SZayJbhNU1v9qCciUGWjWXPrvE9okYjWFE7LsZutEOTLkiVI>, archived at <https://perma.cc/8VSL-5K2Y> (seeking information about crime); Santa Clara County Sheriff's Office (@santaclarasheriff), FACEBOOK (Nov. 22, 2023, 11:30 AM), <https://www.facebook.com/reel/1045987489858185>, archived at <https://perma.cc/T7UX-PBYK> (phone scam alert). Other Bay Area law enforcement agencies continue to use social media in similar ways. See, e.g., Berkeley Police Department, NEXTDOOR (Oct. 24, 2023), <https://nextdoor.com/p/MF7FXJcW5tDZ?view=detail>, archived at <https://perma.cc/3L39-4EBC>. Residents likewise use social media to contact law enforcement and to crowdsourcing responses to their public-safety needs. E.g., Signe Nielsen, NEXTDOOR (Nov. 23, 2023), <https://nextdoor.com/p/-Xr8pJLRDZ9H?view=detail>, archived at <https://perma.cc/YTR8-SE96> (posting to Nextdoor for help to find missing person, providing URL for Berkeley Police Department alert on Nixle, and then updating post to state that person had been found and to thank Berkeley Police Department).

<sup>61</sup> For example, in late 2021, the Santa Clara County Sheriff's Office was able to identify and apprehend a suspect accused of sexually assaulting a blind woman in a parking lot after posting security camera footage to YouTube and screen captures on its website, which were then reposted and shared on Twitter that same day. Within four weeks, members of the public helped identify the suspect using little more than the color and make of his car and an image of the suspect's small but unique dashboard decoration. This followed after the Sheriff's Office spent six months trying to identify the suspect using conventional investigatory techniques. Santa Clara County Sheriff's Office, Press Release re: Case No. 21-125-0237C (Dec. 2, 2021; originally posted Nov. 8, 2021), <https://countysheriff.sccgov.org/sites/g/files/exjcpb406/files/news-releases/Sexual%20Assault%20Suspect%20Identification%20Update%2011.08.2021.pdf>, archived at <https://perma.cc/NT6F-U9PB>; Santa Clara County Sheriff's Office (@SantaClaraCoSheriff), YOUTUBE, *Can you identify this person? 21-125-0237C* (Nov. 8, 2021), [https://www.youtube.com/watch?v=HX8V\\_6rSSoM](https://www.youtube.com/watch?v=HX8V_6rSSoM), archived at <https://perma.cc/PBK2-EN8F>; Santa Clara County Sheriff's Office (@SantaClaraCoSheriff), YOUTUBE, *Can you identify this person? (Part2) 21-125-0237C* (Nov. 8, 2021), <https://www.youtube.com/watch?v=Lz2D84qOo4c>, archived at <https://perma.cc/QW3D-JPEM>; Henry K. Lee (@henrykleeKTVU), Twitter (Nov. 8, 2021, 9:47 AM), <https://twitter.com/henrykleeKTVU/status/1457766860770852868>, archived at <https://perma.cc/UTQ4-D4T4>; Henry K. Lee (@henrykleeKTVU), Twitter (Nov. 8, 2021, 9:50 AM), <https://twitter.com/henrykleeKTVU/status/1457767465279115267>, archived at <https://perma.cc/UTQ4-D4T4>.

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Santa Clara County Sheriff's Office routinely use video and data that residential security systems like Ring doorbells can record, monitor, save, and share using the Internet.<sup>62</sup> Social media also enhances officer safety and situational awareness in other ways. For example, the Sheriff's Office monitors and analyzes community members' social media posts to help it understand, for example, what community members in a particular area are seeing, whether they are following incidents in real-time, where suspects or victims may be located, and what risks, if any, deputies will face when they are dispatched to the location. This sort of social media open-source intelligence is an increasingly important part of emergency response nationwide.<sup>63</sup>

In nonemergency contexts, too, local governments depend on residents' access to the open Internet for a variety of programs that enhance civic engagement and protect communities. Governments across the country, from New York and Chicago to San José and San Francisco, operate "311" services to receive and process information requests, complaints, and alerts from community members. In large part these systems began with telephony, but they have since expanded to include Internet-enabled intake systems. When these systems can accept inquiries from Internet-based devices, they dramatically expand the extent to which they hear from and can respond to nonemergency requests for help or information.

San Francisco's 311 service is a case in point. Since 2008, the service has consistently received between 11,000 and 15,000 telephone calls each month. But the total number of

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[perma.cc/NC5V-VRBW](https://perma.cc/NC5V-VRBW); Henry K. Lee (@henrykleeKTVU), Twitter (Nov. 8, 2021, 9:53 AM), <https://twitter.com/henrykleeKTVU/status/1457768234422190081>, archived at <https://perma.cc/U874-5QFZ>; Henry K. Lee (@henrykleeKTVU), Twitter (Nov. 8, 2021, 9:58 AM), <https://twitter.com/henrykleeKTVU/status/1457769487894138887>, archived at <https://perma.cc/XA59-D3LY>; see also Henry K. Lee (@henrykleeKTVU), Twitter (Dec. 2, 2021, 3:23 PM), <https://twitter.com/henrykleeKTVU/status/1466548523059478533>, archived at <https://perma.cc/MZ94-7S93>; Santa Clara County Sheriff's Office (@SCCoSheriff), TWITTER (Dec. 2, 2021, 3:54 PM), <https://twitter.com/SCCoSheriff/status/1466556424377409542>, archived at <https://perma.cc/4LZU-FXMA>; *Investigators Search for Suspect in Sexual Assault of Blind Woman in Cupertino*, NBC Bay City News (Nov. 9, 2021), <https://www.nbcbayarea.com/news/local/investigators-search-for-suspect-in-sexual-assault-of-blind-woman-in-cupertino/2723955/?amp=1>, archived at <https://perma.cc/UT67-XKJM>.

<sup>62</sup> D. Wroclawski, *What to Do If the Police Ask for Your Security Camera or Video Doorbell Recordings*, Consumer Reports (May 2, 2023), <https://www.consumerreports.org/legal-rights/police-ask-for-video-doorbell-recordings-what-to-do-faq-a8950763605>, archived at <https://perma.cc/4KTK-QFDT>; J. Sallee, *Ring Doorbell cameras help law enforcement solve investigations*, KBZK Bozeman (Jan. 11, 2023), <https://www.kbzk.com/news/local-news/ring-doorbell-cameras-help-law-enforcement-solve-investigations>, archived at <https://perma.cc/Z37H-XYFW> ("More than 2,000 police and fire departments across the U.S. have cooperative agreements with the Ring Doorbell system. This allows them to ask all camera owners within half a square mile of a crime scene to share videos that could help with a case. This is active in every state, except Montana and Wyoming.").

<sup>63</sup> For example, the National Initiative for Cybersecurity Careers and Studies (NICCS) now offers training on social media open-source intelligence methods that aims to teach attendees, among other things, "to build a real-time threat-detection system on their own laptop." NICCS, *Social Media (Open Source Intelligence) Training Using Social Media for Research, Investigations and Analysis* (Aug. 16, 2022), <https://niccs.cisa.gov/education-training/catalog/center-threat-intelligence/social-media-open-source-intelligence>, archived at <https://perma.cc/3DLA-K3KX>. Third-party edge providers offer these services, too. See, e.g., FirstTwo, <https://www.firsttwo.com>, archived at <https://perma.cc/6GRZ-7397> (last accessed Dec. 14, 2023).

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*requests* has increased more than five-fold, to an average of almost 70,000 per month in 2023. The increase is due entirely to the Internet: virtually all of the increase over that 15-year span is based on requests submitted through the 311 website and the mobile phone app. The results for engagement and resident communication with the City and County of San Francisco are astounding. In 2008, 99 percent of San Francisco’s monthly average of 11,164 requests came by phone call. By 2015, the figures had risen to 28,615 requests per month—43 percent by phone call, 36 percent from the mobile app, and 14 percent from the website. This trend continued throughout the COVID-19 pandemic, and it has only intensified since the end of the federal declaration of emergency in May 2023. This year, through October, the figures stand at 68,073 requests per month, 69 percent of them by mobile app, 12 percent from the website, and just 17 percent by telephone call.<sup>64</sup> In short, San Francisco’s 311 system hears from and can respond to five times as many residents today as it did 15 years ago, and almost the entirety of that increase is due to residents submitting requests over the Internet. Data from the City of San José paint a similar picture. There, residents used the Internet, including a mobile app, to submit well over half of the 256,000 requests that San José’s 311 service received between January and October of this year.<sup>65</sup> These data reflect the very same widespread social trends acknowledged elsewhere: that as residents live more of their lives on the Internet, they increasingly turn first—and sometimes only—to the Internet to send and receive communications with the local governments charged with protecting them.<sup>66</sup>

When residents’ mass-market BIAS plans provide open and nondiscriminatory Internet access, they also enable a range of other public safety-related operations. These include telemedicine, which is important not just during pandemics like COVID-19,<sup>67</sup> but also in other contexts like patients located in rural areas who cannot attend in-person appointments,<sup>68</sup> or when

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<sup>64</sup> Office of the County Counsel analysis of publicly available data. Data and analysis on file with the Office of the County Counsel; data available at DataSF, *311 Cases*, <https://data.sfgov.org/City-Infrastructure/311-Cases/vw6y-z8j6> (last accessed Dec. 14, 2023), and SF.Gov, *311 service requests by intake channel*, <https://sf.gov/data/311-service-requests-intake-channel> (last accessed Dec. 14, 2023).

<sup>65</sup> Office of the County Counsel analysis of publicly available data. Data and analysis on file with the Office of the County Counsel; data available at City of San José, *311 Service Request Data, 2023 Service Requests*, <https://data.sanjoseca.gov/dataset/311-service-request-data/resource/00b1c1ba-b83e-40a0-8260-e634c57e4fcc> (last accessed Dec. 14, 2023).

<sup>66</sup> Another example is the County’s effort to enforce public health rules during the COVID-19 pandemic. In that case, the County instituted a web-based platform for residents to submit and track alerts and complaints about institutions whose practices violated public health rules in ways that risked the health or lives of the complainants or other residents. That very same system also permitted the County itself to manage and respond to the complaints more effectively, because County officials, like residents, were accessing the system and collaborating with one another from their homes. Thus, both members of the public and County officials themselves relied extensively on mass-market BIAS plans to connect with one another and protect the public health.

<sup>67</sup> Santa Clara & Los Angeles April 20, 2020 Comment, *supra* note 8, at 8-9.

<sup>68</sup> *See, e.g.*, 38 C.F.R. §§ 17.1205, 17.1215 (permitting Veterans Affairs clinicians to use telehealth to provide free outpatient medical care to eligible individuals in acute suicidal crisis); 38 C.F.R. § 71.60 (permitting Veterans Affairs clinicians to use “telehealth modalities” to provide mental health and related services).

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effective behavioral health care is available from providers far from patients.<sup>69</sup> Similarly, many alternatives to incarceration, including programs available in Santa Clara County, require individuals to check in with supervising officers remotely, wear GPS monitors, or use continuous alcohol monitoring devices, all of which require the individual or device to have Internet connectivity and all of which the officers can monitor or participate in over the Internet while teleworking.

**B. The 2023 Open Internet Proposed Rules Facilitate and Enhance Local Governments' Ability to Protect Residents' Health and Safety**

As Santa Clara has consistently emphasized, Internet-based public safety systems rely on *community members* having robust, unfettered, and open access to the Internet, free from discrimination and unreasonable interference by their ISPs. The *2023 Open Internet Proposed Rules* prohibit ISPs from engaging in just this sort of interference, and, as a result, the proposed rules advance public safety efforts and are consistent with the Commission's mandate to "promot[e] safety of life and property through the use of wire and radio communications."<sup>70</sup>

An essential aspect of the *2023 Open Internet Proposed Rules* is that they impose requirements on ISPs *ex ante*, that is, *before* their blocking, throttling, or unreasonable interference can hinder or prevent time-sensitive, life-saving public safety communications from reaching their destinations. As we have consistently said, *ex post* remedies cannot adequately protect against or compensate for the harms that ISP interference can cause to public safety. And the D.C. Circuit acknowledged that "whenever public safety is involved, lives are at stake."<sup>71</sup> This is because, "unlike most harms to edge providers incurred because of discriminatory practices by broadband providers, the harms from blocking and throttling during a public safety emergency are irreparable. People could be injured or die."<sup>72</sup> For example, such practices could interfere with the communications about the existence of a fire line or evacuation zone, the location of flooding, or the location of criminal suspects or missing individuals, among many other critical and time-sensitive communications. The harm caused by blocking and throttling these types of communications simply cannot be remedied after the fact.<sup>73</sup> For these reasons, the

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<sup>69</sup> Cal. Bus. & Prof. Code § 2290.5 (permitting mental health providers to use telehealth in specified circumstances); accord 16 Cal. Code Regs. §§ 1396.8, 1815.5 (permitting most clinicians to provide psychological and psychotherapy services by telehealth).

<sup>70</sup> 47 U.S.C. § 151.

<sup>71</sup> *Mozilla*, 940 F.3d at 62.

<sup>72</sup> *Id.*

<sup>73</sup> Although well outside the FCC's jurisdiction, recent world events offer stark reminders of the irreparable harm to life and limb that can result when Internet access is blocked during an emergency. See, e.g., A. Satariano, *Twitter Was Blocked in Turkey, Internet-Monitoring Group Says*, N.Y. TIMES (Feb. 8, 2023), <https://www.nytimes.com/2023/02/08/world/europe/turkey-earthquake-twitter-blocked.html>, archived at <https://perma.cc/2G6K-U497> (blockage of Twitter "[took] out a key communication channel for coordinating relief efforts after Monday's devastating earthquake").

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Commission was correct to conclude in the *2023 Open Internet Proposed Rules* that blocking, throttling, and paid prioritization “are the types of conduct that require *ex ante* intervention to ensure they do not happen in the first instance,” and the Commission was likewise correct to posit that “*ex ante* regulations would provide better public safety protections than” exclusive reliance on “an *ex post* enforcement framework.”<sup>74</sup>

The *2023 Open Internet Proposed Rule*’s reclassification of BIAS as a telecommunications service, together with its *ex ante* conduct rules and general conduct standard, aid public safety in less direct but no less important ways, too. There is an entire ecosystem of ISPs and edge providers that can continue to grow in the fertile soil of a reliably open Internet but may be stymied if incumbent ISPs can engage in discrimination, paid prioritization, and other unreasonable interference with Internet traffic. The *2015 Open Internet Order* laid the groundwork for a healthy market of ISPs to emerge. By classifying BIAS as a telecommunications service, the *2015 Open Internet Order* enabled BIAS-only providers to gain access on nondiscriminatory terms to infrastructure like utility poles that incumbent ISPs and other utilities have otherwise jealously guarded.<sup>75</sup> At the same time, that classification expanded the universe of ISPs eligible to offer subsidized Internet through the Lifeline program and thus expand the number of residents who can afford BIAS.<sup>76</sup> Consumers and other Internet users also benefited because the open Internet principles facilitated expansion in the number, type, and offerings of edge providers. These principles balanced ISPs and edge content providers, allowing both to innovate, invest, and expand while preventing ISPs from erecting unaffordable or unscalable barriers to entry in the form of discrimination, paid prioritization, or other unreasonable interference.

The *2023 Open Internet Proposed Rules* would return to these same open Internet principles and the strong legal foundation that supports them. As a result, the proposed rules can reinvigorate the development of healthy, multidimensional, and competitive markets among edge providers and ISPs. Beyond facilitating technological development *generally*, these markets advance the core public safety principle of redundancy and resiliency: the chance of effective information exchange increases dramatically when governments and residents can connect with one another through multiple websites, applications, platforms, and networks.<sup>77</sup>

This is not a theoretical or purely academic exercise. There is every reason to conclude that if federal regulation does not constrain them in ways that protect public safety, private-sector ISPs will behave in ways that follow the whims of individual owners, maximize profit, extract

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<sup>74</sup> *2023 Open Internet Proposed Rules* at ¶¶ 33, 137.

<sup>75</sup> *Mozilla*, 940 F.3d at 65-67 (if BIAS is classified as an information system, “the statute textually forecloses any pole-attachment protection for standalone broadband providers,” which is a “lapse in legal safeguards” because it prevents BIAS-only providers from leveraging existing infrastructure and thus erects an insurmountable barrier to entry).

<sup>76</sup> *See id.* at 69 (explaining that “broadband’s eligibility for Lifeline subsidies turns on its common-carrier status”).

<sup>77</sup> *Supra* notes 18-23 and accompanying text.

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rents, and reduce competition.<sup>78</sup> This is true for all ISPs. After the FCC rescinded the *2015 Open Internet Order*, a small ISP that provides BIAS in northern Idaho and parts of Washington State, responding to Twitter’s and Facebook’s bans of former President Trump after January 6, 2021, announced that it would begin blocking all of its customers from Twitter, Facebook, “and any other website that may also be [c]ensuring whether it be through their algorithm they use for their site or any other means.” This ISP said it decided to block Facebook and Twitter based on its “belie[f] [that] a website or Social Networking site [does not have] the Authority to Censor what you see and post” and said its decision was an expression of its “moral high ground of fair and decent communication.” The ISP offered individual customers the option to opt out of the companywide block; then, when faced with potential liability under Washington State’s open Internet law, “the company backtracked” and converted to an opt-in approach.<sup>79</sup> Examples from elsewhere around the globe reflect the reality of modern capitalism that the preferences, politics, and whims of individual Americans who own ISPs can have profound and deleterious effects on the availability of broadband Internet for millions of people, even in the most urgent, life-and-death situations.<sup>80</sup> Likewise, economic analysis<sup>81</sup> underscores the common-sense point that

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<sup>78</sup> For all of the reasons set forth in text, Santa Clara has long supported the California Legislature’s work to adopt rules to protect an open Internet within California. In adopting the California Internet Consumer Protection and Net Neutrality Act of 2018, Cal. Civ. Code §§ 3100-3104, the Legislature found that “[a]lmost every sector of California’s economy, democracy, and society is dependent on the open and neutral Internet,” including “[p]olice and emergency services,” “[h]ealth and safety services and infrastructure,” and “[g]overnment services, voting, and democratic decisionmaking processes.” S.B. 822, 2017-2018 Reg. Sess. (Cal. 2018), § 1. Santa Clara supported the state’s successful defense of this law against ISPs’ challenge that it is preempted by the Telecommunications Act and FCC regulations. *ACA Connects v. Bonta*, 24 F.4th 1233 (9th Cir. 2022) (affirming district court determination that the California law is not preempted); Br. Of Amici Curiae County of Santa Clara, California and Six Additional Local Governments in Support of Defendant-Appellee, *ACA Connects v. Bonta*, No. 21-15430 (9th Cir. May 11, 2021) (arguing that local governments rely on an open Internet to protect the health and wellbeing of their residents).

Nonetheless, as the example described in text illustrates, there is a limit to what any one state can do—even the state that is the home of Silicon Valley and has long fostered and facilitated its growth. The economics and scale of edge provider development and ISP investment and infrastructure rollout are often national in scope. As a result, state-based regimes can augment, but cannot fully replace, effective federal protection of the open Internet.

<sup>79</sup> Citing ‘censorship’ concerns, *Idaho internet provider blocks Facebook, Twitter*, WKRC Local 12 (Jan. 13, 2021), <https://local12.com/news/nation-world/citing-censorship-concerns-idaho-internet-provider-blocks-facebook-twitter>, archived at <https://perma.cc/658W-TM7H>; E. Czachor, *Internet Provider to Restrict Access to Facebook, Twitter to Customers Who Request It*, Newsweek (Jan. 11, 2021), <https://www.newsweek.com/internet-provider-restrict-access-facebook-twitter-customers-who-request-it-1560656>, archived at <https://perma.cc/PC3D-Q8DV>.

<sup>80</sup> A. Satariano et al., *Elon Musk’s Unmatched Power in the Stars*, N.Y. TIMES (Jul. 28, 2023), <https://www.nytimes.com/interactive/2023/07/28/business/starlink.html>, archived at <https://perma.cc/KAU4-PT3Z> (“Mr. Musk, who leads SpaceX, Tesla and Twitter, has become the most dominant player in space as he has steadily amassed power over the strategically significant field of satellite internet. Yet faced with little regulation and oversight, his erratic and personality-driven style has increasingly worried militaries and political leaders around the world, with the tech billionaire sometimes wielding his authority in unpredictable ways”).

<sup>81</sup> E. Lorenzon, *Zero-rating, content quality, and network capacity*, Information Economics and Policy (Vol. 58, March 2022), <https://www.sciencedirect.com/science/article/abs/pii/S0167624522000026>, archived at <https://perma.cc/6V54-9ZSC> (concluding, from economic modeling, that “[z]ero-rating makes content more expensive for consumers to use and imply a downward distortion of content quality,” is based on rent extraction, and is “welfare

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corporate ISPs have incentives to engage in profit-seeking behavior—including the sort of discrimination and interference that the *2023 Open Internet Proposed Rules* render unlawful<sup>82</sup>—even when they *know* it undermines public safety.

This point—that BIAS providers have a demonstrated practice of prioritizing their economic interests, even to the detriment of public safety, and the FCC must fill the gap—is the fundamental relevance of the 2018 episode in which Verizon Wireless severely throttled County Fire’s access to mobile broadband Internet while County Fire’s mobile command and control resource—OES 5262, assigned to County Fire by the California Office of Emergency Services—was using it to coordinate emergency response among several firefighting agencies combatting the Mendocino Complex Fire, then the largest wildfire in California history.<sup>83</sup> County Fire’s mobile unit relied on mobile broadband Internet to receive and distribute near-real-time information that informed urgent, life-or-death decisions about what resources to deploy where. Yet Verizon refused to stop throttling until County Fire upgraded to a more expensive plan with a higher data cap—even after County Fire told Verizon that its unit had been deployed to the Mendocino Complex Fire, that County Fire needed “a rapid solution” because Verizon’s throttling left the mobile unit with “no meaningful functionality” in the midst of fighting a fire.<sup>84</sup> In response to these pleas, Verizon instead suggested that County Fire switch to a new data plan

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reducing and detrimental to consumers”); see also A. Gautier & R. Somogyi, *Prioritization vs zero-rating: Discrimination on the internet*, *International Journal of Industrial Organization* (Vol. 73, Dec. 2020), <https://www.sciencedirect.com/science/article/pii/S0167718720300850>, archived at <https://perma.cc/NY4H-RJEK> (offering economic model that predicts ISP incentives to engage in zero-rating and paid prioritization activities);

<sup>82</sup> Large incumbent ISPs have made various forays into zero-rating services that did not count their own or their affiliates’ content against BIAS plans’ data caps. See, e.g., N. Statt, *Verizon Wireless wades right back into the net neutrality debate with Fios deal*, *The Verge* (Mar. 9, 2017), <https://www.theverge.com/2017/3/9/14876692/verizon-fios-zero-rating-mobile-streaming-net-neutrality>, archived at <https://perma.cc/3MNT-SGXW>; Zacks Equity Research, *Is Verizon (VZ) Zero-Rating its Data on FiOS Mobile App?*, *Yahoo! Finance* (Mar. 13, 2017), <https://finance.yahoo.com/news/verizon-vz-zero-rating-data-140302345.html>, archived at <https://perma.cc/7XJE-E2N8>.

In addition, a 2018 study concluded that Sprint throttled traffic associated with Microsoft Skype, which, as an IP-based communications system, competes with Sprint’s own telephony services. Bloomberg, *Sprint is throttling Microsoft’s Skype service, study says*, *L.A. TIMES* (Nov. 8, 2018) <https://www.latimes.com/business/technology/la-fi-tn-sprint-skype-20181108-story.html>, archived at <https://perma.cc/S6BX-ZD3E>; see also A. Bracci, *New research shows that, post net neutrality, internet providers are slowing down your streaming*, *Northeastern Global News* (Sept. 10, 2018), <https://news.northeastern.edu/2018/09/10/new-research-shows-your-internet-provider-is-in-control>, archived at <https://perma.cc/L3FP-HQ8N>.

<sup>83</sup> Bowden Decl., *supra* note 8, at ¶¶ 5-12 & Ex. A; see also M. Stevens, *Verizon Throttled California Firefighters’ Internet Speeds Amid Blaze (They Were Out of Data)*, *N.Y. TIMES* (Aug. 22, 2018), <https://www.nytimes.com/2018/08/22/us/verizon-throttling-california-fire-net-neutrality.html>, archived at <https://perma.cc/5XW7-57TJ>; J. Brodtkin, *Verizon throttled fire department’s “unlimited” data during Calif. Wildfire*, *Ars Technica* (Aug. 21, 2018), <https://arstechnica.com/tech-policy/2018/08/verizon-throttled-fire-departments-unlimited-data-during-calif-wildfire>, archived at <https://perma.cc/CMN9-CPHM>; J. Brodtkin, *Fire dept. rejects Verizon’s “customer support mistake” excuse for throttling*, *Ars Technica* (Aug. 22, 2018), <https://arstechnica.com/tech-policy/2018/08/fire-dept-rejects-verizons-customer-support-mistake-excuse-for-throttling>, archived at <https://perma.cc/59HV-3CX4>.

<sup>84</sup> Bowden Decl., *supra* note 8, at ¶¶ 5-12 & Ex. A.

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at more than twice the cost before Verizon would remove the throttle. “In the interim, County Fire personnel . . . were forced to use other agencies’ [ISPs] and their own personal devices to provide the necessary connectivity and data transfer capability” that the unit needed.<sup>85</sup>

Verizon contends that its actions would not have violated the general conduct standard.<sup>86</sup> But that is beside the point for two independent reasons. First, as the *2023 Open Internet Proposed Rules* point out, compliance with the general conduct standard—including its prohibition on ISP practices that “unreasonably interfere with or unreasonably disadvantage” end-users’ access to the Internet—must be assessed on a fact-specific, totality-of-the-circumstances, case-by-case basis.<sup>87</sup> Inasmuch as the Commission never assessed the question, the question is unresolved whether and in what circumstances an ISP’s refusal to remove throttling during an emergency could constitute unreasonably interfering with or disadvantaging a user’s access to the Internet. Second, regardless of general conduct standard’s contours, Verizon’s actions underscore the importance of having Internet access protected by a regulator mandated by statute to consider and protect public safety. An unregulated or underregulated free market cannot be expected to protect the public. By design, private-sector ISPs are built and incentivized to maximize profit and market share, not to protect common goods like public safety. Accordingly, a system that assigns private-sector ISPs the responsibility to prioritize public safety is a system designed to fail. Instead, the Commission itself must bear responsibility to protect the public. The *2023 Open Internet Proposed Rules* carry that responsibility in several ways, including by reclassifying BIAS as a telecommunication service and thereby opening to the Commission a range of authorities that it can exercise if and when necessary to protect public safety.<sup>88</sup>

Indeed, it is critical that the *2023 Open Internet Proposed Rules* give the Commission the discretion, flexibility, and regulatory authority to take further actions if they become necessary to protect public safety. At this juncture, the conduct rules and general conduct standard suffice, without need for public safety-specific exceptions. To take one example, some advocates contend that regulators should affirmatively require ISPs to prioritize or zero-rate<sup>89</sup> Internet traffic from governmental sources, either as a general matter or at least during public safety

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<sup>85</sup> *Id.* at ¶¶ 9-10.

<sup>86</sup> J. Brodtkin, *Fire dept. rejects Verizon’s “customer support mistake” excuse for throttling*, *supra* note 83.

<sup>87</sup> *2023 Open Internet Proposed Rules* at ¶ 165; *see generally id.* at ¶¶ 164-168.

<sup>88</sup> *See id.* at 136 (“With Title II classification, the FCC would have the authority to intervene when firefighters in Santa Clara, California had the wireless connectivity on one of their command vehicles throttled when responding to wildfires.”) (separate statement of Commission Chairwoman Rosenworcel).

<sup>89</sup> Zero-rating refers to an ISP’s practice of providing Internet access to particular content without charge to the end user, including, most prominently, without charging the associated data against the data cap set by a user’s Internet access plan or by setting at zero the price per unit of data charged to the user for the associated data.



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emergencies.<sup>90</sup> Likewise, the Commission asks whether it should affirmatively require ISPs “to offer prioritized routing for all IP-based services and prioritized restoration for all network infrastructure” within the scope of the *2023 Open Internet Proposed Rules*.<sup>91</sup>

Santa Clara disagrees with suggestions to permit ISPs to prioritize or zero-rate public-safety related governmental communications because doing so would introduce risks to public safety with no offsetting protections. First, as a technological matter, governmental traffic is likely impossible to identify, isolate, and treat differently, especially because public safety officials often themselves use third-party edge providers to transmit governmental communications, even during emergencies.<sup>92</sup> And even if it were technologically possible, prioritizing or zero-rating Internet traffic specifically from governmental sources misunderstands and too narrowly defines public safety communications in the first place and would exclude many of the most important communications. As the Commission itself acknowledges,<sup>93</sup> and as we make clear above, many of the most critical communications between governments and residents take place *not* on governmentally owned sites or platforms, but instead on over-the-top (OTT) third-party edge provider platforms like social media that would not be captured by any policy applicable to governmental communications. There is, moreover, no need to take these steps now. In the event that future circumstances require and technologically enable this sort of zero-rating or prioritization in order to protect public safety, the *2023 Open Internet Proposed Rules*’s reclassification of BIAS as a telecommunications service empowers the Commission to address those circumstances if and when they arise through future rulemakings—including, if circumstances call for urgency, through an interim final rule.<sup>94</sup> Such steps would also be consistent with the Commission’s proposed statement that nothing in the *2023 Open Internet Proposed Rules* “supersedes any obligation or authorization a provider of broadband Internet access service may have to address the needs of emergency communications or law enforcement,

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<sup>90</sup> Nicol Turner Lee, *California’s net neutrality law and the case for zero-rating government services*, Brookings Institution TechTank (Apr. 19, 2021), <https://www.brookings.edu/articles/californias-net-neutrality-law-and-the-case-for-zero-rating-government-services>, archived at <https://perma.cc/KQ3H-ZL9N>.

<sup>91</sup> *2023 Open Internet Proposed Rules* at ¶ 35.

<sup>92</sup> As Santa Clara pointed out in 2017: “Because third-party providers often host and distribute County data and services, the County does not believe that it would be possible to isolate and preferentially prioritize its data—even data that is important to public health and safety. The examples of services provided over the internet in this communication are only examples; there are many others.” Santa Clara December 6, 2017 Comment, *supra* note 8, at 3-4 & n.4

<sup>93</sup> *2023 Open Internet Proposed Rules* at ¶ 34.

<sup>94</sup> *Id.* at ¶ 163 (prohibiting paid or affiliated prioritization, and proposing to allow waivers from the prohibition where there is a significant public interest and the waiver would not harm the open Internet); *id.* at ¶ 166 (describing the list of factors relevant to assessments under the general conduct standard as “non-exhaustive,” thus reserving to the Commission the authority to determine that zero-rating or prioritizing governmental public-safety communications satisfies the general conduct standard).

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public safety, or national security authorities, consistent with or as permitted by applicable law, or limits the provider's ability to do so."<sup>95</sup>

### C. Conclusion

To enable local governments to protect the safety, health, and wellbeing of the residents they serve, and for the reasons set forth above, the County of Santa Clara and the Santa Clara County Central Fire Protection District urge the Commission to adopt the *2023 Open Internet Proposed Rules*.

Very truly yours,

TONY LOPRESTI  
County Counsel



Raphael N. Rajendra  
Deputy County Counsel

Phillip R. Malone  
Juelsgaard IP and Innovation Clinic  
Mills Legal Clinic at Stanford Law School

Jef Pearlman  
Intellectual Property &  
Technology Law Clinic  
USC Gould School of Law

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<sup>95</sup> *Id.* at ¶ 209.