



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**FILED**

11-18-10  
04:59 PM

Santa Clara Valley Water District,

Complainant,

v.

Pacific Bell Telephone Company, dba AT&T  
California (U 1001 C)

Defendant.

Case No. C. 10-10-003  
(Filed October 6, 2010)

**ANSWER OF PACIFIC BELL TELEPHONE COMPANY (U 1001 C)**  
**d/b/a AT&T CALIFORNIA TO THE COMPLAINT**

Pacific Bell Telephone Company, doing business as AT&T California (“AT&T”), respectfully submits this Answer to the complaint of Santa Clara Valley Water District (“Complainant” or “District”).

**I. INTRODUCTION**

Complainant, the Santa Clara Water District, is engaged in a water project (the “Calabazas Creek Project”) that it contends necessitates the relocation of certain AT&T facilities. The District seeks to have AT&T bear the cost of relocating the facilities at issue under the common law principle that a utility accepts franchise rights in public streets subject to an implied obligation to relocate its facilities at its own expense when necessary to make way for a proper governmental use of the streets. However, the courts have held that this common law principle does not apply where the governmental entity is acting in a proprietary, rather than a governmental, capacity. Additionally, the courts have consistently found that, where a city or municipality assumes the duty of operating a water system, it is acting in a propriety capacity.

That is exactly the case here.

In its Complaint, the District admits that it “provides wholesale water supply, flood protection, groundwater management, and watershed and environmental stewardship services to Santa Clara County” and “serves approximately two million people in the 15 cities of Santa Clara County” by acting in this capacity.<sup>1</sup> Its Calabazas Creek Project is a water project which allegedly requires the relocation of existing AT&T facilities. Under case precedent holding that a governmental agency acts in a proprietary, not governmental, capacity when it administers a public water system, the common law principle requiring a utility to relocate its facilities to make way for a proper governmental use of the streets does not apply here; the District is not acting in a governmental capacity in administering its Calabazas Creek water project. Consequently, the District cannot require AT&T to bear the cost of relocating the facilities at issue. AT&T is entitled to be compensated for this relocation work, and the complaint should be denied in its entirety.

## **II. COMPLAINANT’S FACTUAL ALLEGATIONS (COMPLAINT, SECTION (F))**

Answering the allegations set forth in Attachment 1 to the Complaint, which Section F of the Complaint incorporates by reference, AT&T admits, denies, and avers as follows:

1. AT&T lacks information sufficient to form a belief as to the truth of the allegations asserted in this paragraph and, on that basis, denies those allegations.
2. AT&T admits it has offices as set forth in this paragraph and that it is authorized to do business in the State of California. AT&T avers that all pleadings, correspondence, notices and other communications concerning this complaint should be sent to AT&T at the following mailing addresses:

STEPHANIE HOLLAND  
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Except as expressly admitted, AT&T denies all remaining allegations in this paragraph.

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<sup>1</sup> See Attachment 1 to Complaint, paragraph 1.

3. Admitted. AT&T avers that it is a public utility authorized to operate in California as a local exchange carrier that is subject to the jurisdiction of the Commission.

4. AT&T California admits that the Santa Clara Valley Water District sent AT&T a letter dated June 22, 2010, states that the letter speaks for itself, refers to the letter for the contents thereof, and denies any allegations inconsistent therewith. AT&T lacks information sufficient to form a belief as to the truth of the remaining allegations asserted in this paragraph and, on that basis, denies those allegations.

5. AT&T admits that it sent the Santa Clara Water District a letter agreement dated April 27, 2010, states that the letter speaks for itself, refers to the letter for the contents thereof, and denies any allegations inconsistent therewith. AT&T lacks information sufficient to form a belief as to the truth of the remaining allegations asserted in this paragraph and, on that basis, denies those allegations.

6. AT&T California admits that the Santa Clara Valley Water District sent AT&T a letter dated July 2, 2010, states that the letter speaks for itself, refers to the letter for the contents thereof, and denies any allegations inconsistent therewith.

7. AT&T admits that, under the common law, a utility accepts franchise rights in public streets subject to an implied obligation to relocate its facilities at its own expense when necessary to make way for a proper governmental use of the streets but denies that this common law rule is applicable to the case at hand. AT&T avers that this common law principle is inapplicable when a governmental agency, such as the Complainant, is acting in a proprietary, rather than a governmental, capacity. To the extent this paragraph purports to describe AT&T's position set forth in its letter to the Santa Clara Water District dated July 15, 2010, AT&T states that the letter speaks for itself, refers to the letter for the terms thereof and denies any allegations inconsistent therewith. AT&T denies all remaining allegations in this paragraph.

8. AT&T California admits that the Santa Clara Valley Water District sent AT&T a letter dated July 2, 2010, states that the letter speaks for itself, refers to the letter for the contents thereof, and denies any allegations inconsistent therewith. AT&T admits it has billed

Complainant for the relocation work and avers it is not legally obligated to bear the cost of relocating the facilities at issue.

9. Admitted.

### **III. SCOPING INFORMATION (COMPLAINT, SECTION (G))**

AT&T agrees that this proceeding should be designated as an adjudicatory proceeding and should be handled under the Commission's regular complaint procedure. AT&T believes there may exist disputed issues of material fact requiring evidentiary hearings and reserves the right to address this issue at the prehearing conference. AT&T denies that the issue identified by Complainant is a proper, neutral statement of the issue requiring resolution in this proceeding. AT&T believes the issue to be resolved simply is whether the Santa Clara Water District is acting in a proprietary, rather than a governmental, capacity in seeking the relocation of AT&T's facilities for the Calabazas Creek Project at issue. AT&T requests that the parties be given the opportunity to discuss scheduling matters for this proceeding at a prehearing conference, including the need for discovery and the need for evidentiary hearings.

### **IV. REQUESTED RELIEF (COMPLAINT, SECTION (H))**

AT&T denies that the Complainant is entitled to the relief requested or any relief.

### **V. AFFIRMATIVE DEFENSES**

#### First Affirmative Defense

The complaint does not state facts sufficient to constitute a cause of action.

#### Second Affirmative Defense

The activities of AT&T California are and continue to be consistent with the law and the parties' contract.

#### Third Affirmative Defense

The complaint and each cause of action in it are barred in whole or in part by waiver, estoppel fraud, and/or deceit.

Fourth Affirmative Defense

The complaint does not adequately advise AT&T California or the Commission of the grounds of the complaint as required by Rule 4.2 of the Commission's Rules of Practice and Procedure.

Fifth Affirmative Defense

AT&T California cannot fully anticipate at this time all defenses that may be applicable. Accordingly, AT&T California reserves the right to assert additional affirmative defenses if and to the extent such affirmative defenses are later discovered and found to be applicable.

Dated at San Francisco, California, this 18<sup>th</sup> day of November 2010.

Respectfully submitted,



STEPHANIE HOLLAND

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Attorney for AT&T California

**VERIFICATION**

I, Stephanie Holland, under penalty of perjury, certifies as follows:

I am a General Attorney employed by AT&T Services, Inc. and am legal counsel for Pacific Bell Telephone Company, doing business as AT&T California, a corporation. I make this verification for and on behalf of said company because there is at present no company officer available to make this verification. I have read the foregoing **ANSWER OF PACIFIC BELL TELEPHONE COMPANY (U 1001 C) d/b/a AT&T CALIFORNIA TO THE COMPLAINT** in C.10-10-003. I declare under penalty of perjury that the contents thereof, and the facts therein stated, are true to the best of my knowledge, information and belief.

Dated at San Francisco, California this 18<sup>th</sup> day of November 2010.

/s/

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STEPHANIE HOLLAND

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the **ANSWER OF PACIFIC BELL TELEPHONE COMPANY (U 1001 C) d/b/a AT&T CALIFORNIA TO THE COMPLAINT** on all known parties to **C.10-10-003**, by hand-delivery or by mailing a properly addressed copy by first-class mail with postage prepaid to each party named in the official Service List, by electronic mail, and/or via messenger.

Executed this 18<sup>th</sup> day of November 2010 at San Francisco, California.

**AT&T CALIFORNIA**  
525 Market Street  
San Francisco, CA 94105

\_\_\_\_\_  
/s/

Thomas J. Selhorst

# CALIFORNIA PUBLIC UTILITIES COMMISSION

## Service Lists

**Proceeding: C1010003 - SANTA CLARA VALLEY W**

**Filer: Santa Clara Valley Water District**

**List Name: LIST**

**Last changed: October 19, 2010**

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## Parties

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AT&T CALIFORNIA

## State Service

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