



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED

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California Building Industry Association,

Complainant,

vs.

Pacific Bell Telephone Company d/b/a AT&T
California (U 1001 C)

Defendant.

Case No. 09-09-016

**OPENING BRIEF OF PACIFIC BELL TELEPHONE COMPANY (U 1001 C)
d/b/a AT&T CALIFORNIA**

I. INTRODUCTION.

Complainant California Building Industry Association (“CBIA”) attempts to convince the Commission that AT&T California (“AT&T”) has acted improperly by charging the actual cost of construction when an entity requests the replacement of aerial facilities with underground facilities under Rule 32 of AT&T’s A2 tariff. Notably, CBIA does not allege that AT&T has inflated its costs, has performed or billed for unnecessary work, or that AT&T otherwise has attempted to recoup anything more than the costs it has actually incurred in fulfilling requests for aerial to underground facility conversions. Rather, it asserts simply that AT&T is prohibited from charging anything more than the estimated cost of construction that an applicant pays in advance of construction. As discussed below, there is no merit to CBIA’s claims and its complaint should be dismissed in its entirety.

II. BURDEN OF PROOF.

In adjudicatory proceedings before the Commission, it is well established that the burden is on the complainant to prove, by a preponderance of the evidence, there has been a

violation of law, Commission rule or order.¹ The defendant must prevail if the complainant's evidence is insufficient to establish a violation by a preponderance of the evidence or if defendant produces evidence that casts doubt on complainant's evidence.² CBIA has not satisfied its burden.

III. THE FACTUAL RECORD.

The relevant tariff governing the replacement of aerial facilities with underground facilities is AT&T's Tariff Rule 32.³ Tariff Rule 32⁴ has several subparts but contains no rates or charges. When an applicant submits a Rule 32 request for AT&T to convert aerial to underground facilities, AT&T estimates how much the undergrounding project will cost to complete.⁵ Before AT&T will begin work on the project, AT&T requires the applicant to make an upfront payment equal to the estimated cost of the job.⁶

There is no dispute that AT&T bills Rule 32 projects in one of two ways – on a fixed cost basis (“FCB”) or an actual cost basis (“ACB”). For FCB jobs, the upfront payment the applicant makes before construction begins is the total amount AT&T charges for the job.⁷ For ACB jobs, AT&T renders a reconciliation statement at the conclusion of the job for the difference between the upfront payment made by the applicant and the actual cost incurred by AT&T.⁸ If the actual cost exceeds the upfront estimated cost payment, AT&T will bill the

¹ *Office of Ratepayer Advocates v. Pacific Bell Telephone Company*, Decision No. 01-08-067, *mimeo*, p. 6 (Aug. 23, 2001) (“Under [Cal.] Pub. Util. Code § 1702, a complainant must prove an alleged violation of a specific standard contained in a statute, rule or order of the Commission, or a tariff which has been approved by the Commission. The standard of proof is by a preponderance of the evidence.”).

² *Arco Products Company, et al. v. SFPP, L.P.*, Decision No. 98-08-033, 81 Cal. P.U.C.2d 573, 584 (Aug. 6, 1998) (“If complainants’ evidence is sufficient to outweigh the evidence against it that defendant has presented, complainants will prevail; otherwise, defendant will prevail. Defendant did not need to present its own cost of service study to carry its burden of production. It was sufficient for defendant to produce evidence that cast doubt upon complainants’ evidence.”). *See also Order Granting Rehearing of Decision 98-08-033*, Decision No. 99-06-093, 1999 WL 699485 (Cal. P.U.C.), at *7 (June 24, 1999).

³ Amended Complaint, ¶ 9.

⁴ AT&T California Tariff Schedule Cal. P.U.C. No. A2, Section 2.1.32 (“Tariff Rule 32”). Although AT&T’s tariffs are a matter of public record, set forth hereto as Attachment 1 is a copy of Tariff Rule 32 for the Commission’s convenience.

⁵ Exh 4, Testimony of Michael Shortle on behalf of Pacific Bell Telephone Company d/b/a AT&T California (hereinafter “Shortle Testimony”), Q&A 6.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

applicant for the difference.⁹ Conversely, if the estimated cost exceeded the actual costs incurred, AT&T will refund the difference to the applicant.¹⁰

The parties agree that, beginning in or about April 2006 timeframe, AT&T began using a \$10,000 threshold to determine whether to bill individual Rule 32 projects using FCB or ACB pricing.¹¹ Using this threshold, projects estimated to cost more than \$10,000 to complete would be billed on an ACB and those estimated to cost less than \$10,000 would be billed on a FCB.¹²

There is a question of fact as to how AT&T billed Rule 32 projects prior to April 2006. CBIA contends that AT&T's practice was to bill *all* Rule 32 projects using FCB prior to April 2006, charging applicants nothing more than the upfront estimated cost payment.¹³ However, the record does not support CBIA's allegation. The only evidence CBIA offered to corroborate this assertion is the second-hand testimony of its witness, Carl Lower, who claims he believes this to be the case based on "CBIA members' experiences in conducting business with AT&T for many years."¹⁴ By contrast, AT&T produced three pieces of evidence to the contrary: (1) An internal AT&T document establishing that AT&T's use of ACB for jobs estimated to exceed \$25,000 dates back to at least 1998;¹⁵ (2) testimony of AT&T's construction and engineering manager that, in his more than 20 years in the engineering group, "it was always AT&T's policy to bill undergrounding jobs on an ACB if they were estimated to exceed \$25,000 and on a FCB if they were estimated to cost less than \$25,000;"¹⁶ and (3) examples of two

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at Q&A 12. See also, Exh 1, Prepared Testimony of Carl C. Lower on behalf of CBIA (hereinafter "Lower Testimony"), Q&As 4, 5.

¹² *Id.*

¹³ Exh 1, Lower Testimony, Q&As 4, 6.

¹⁴ *Id.* at Q&A 7.

¹⁵ See, Exh 3, "Billing Methods" dated 01/01/98, stating that book cost or actual cost billing is used under several circumstances, including when "the amount [of the job] is estimated to be over \$25,000."

¹⁶ Exh 4, Shortle Testimony, Q&A 7. Further, Mr. Shortle testified that he had no information about the policy employed prior to his joining the engineering department. See, July 27, 2010 Hearing Transcript (hereinafter "Tr."), page 11, lines 12-22; page 42, lines 8-23. Therefore, there exists no evidence upon which to conclude that any other policy or practice had ever been employed.

Rule 32 jobs predating 2006 that were billed on an actual cost basis, directly refuting CBIA's claim that all jobs prior to 2006 were billed on a FCB.¹⁷

IV. ARGUMENT.

A. **CBIA Fails To Carry Its Burden To Support Its Allegation That A Change In Practice Occurred Prior To 2006. Consequently, The Commission Cannot Find Any Violation Premised On This Allegation.**

CBIA asserts that, “[a]ssuming Defendant’s claim is true that it instituted a \$25,000 threshold for actual cost billing at some undefined point in the past, Defendant’s employment of a \$25,000 threshold for actual cost billing represents a change in practice with regard to tariff Rule 32.”¹⁸ According to CBIA, this undefined change constituted a violation of Section 454 of the California Public Utilities Code, General Order 96-B, and Tariff Rule 32.¹⁹

The Commission has held that, where a defendant produces evidence that casts doubt upon the complainant’s evidence, the defendant will prevail.²⁰ As discussed above, CBIA’s only evidence that any such change in practice occurred is the second-hand testimony of its witness, who testified that he believed this to be the case based on “CBIA members’ experiences in conducting business with AT&T for many years.”²¹ AT&T produced ample evidence – an internal company document, expert testimony, and documentation on two sample jobs – to call this assertion into question. As such, CBIA has failed to carry its burden of proving, by a preponderance of the evidence, that any change in practice occurred prior to 2006. As such, the Commission may not find any violation premised upon this allegation.²²

¹⁷ Exh 4, Shortle Testimony, Attachment 2 (Project No. 5457194); Exh. 5, Project No. 5287964.

¹⁸ Amended Complaint, ¶ 12.

¹⁹ *Id.* at ¶¶ 18, 19, 23.

²⁰ *Arco Products Company, et al. v. SFPP, L.P.*, D.98-08-033, *mimeo*, p. 18 (“If complainants’ evidence is sufficient to outweigh the evidence against it that defendant has presented, complainants will prevail; otherwise, defendant will prevail. Defendant did not need to present its own cost of service study to carry its burden of production. It was sufficient for defendant to produce evidence that cast doubt upon complainants’ evidence”).

²¹ *Id.* at Q&A 7.

²² Even if CBIA had met its burden of proving that a change in practice occurred at some point in time prior to 2006, its causes of action relating to events prior to 2006 are barred by the applicable statutes of limitations. *See*, Cal. Pub. Util. Code §§ 343, 735.

B. AT&T's Adoption of a \$10,000 Billing Threshold In 2006 Did Not Violate Any Law, Rule or Tariff.

1. Section 454 Does Not Apply To Tariff Rule 32 Conversions And, Even If It Did, Section 454 Is Preempted By Cal. Gov. Code Section 66437.6.

Section 454 of the California Public Utilities Code provides, in relevant part, as

follows:

[N]o public utility shall change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the commission and a finding by the commission that the new rate is justified.²³

CBIA contends that AT&T violated Section 454 when it altered its practice in 2006 to charge actual costs for jobs estimated to exceed \$10,000 without a showing before and a finding by the Commission that the resulting increase was justified.²⁴ CBIA's claim is without merit.

First, by its plain language, Section 454 does not apply to Tariff Rule 32 conversions. Section 454 prohibits a *rate* change or a change in practice that results in a new *rate*. Significantly, CBIA never identifies what rate allegedly changed after 2006. The reason, of course, is that Tariff Rule 32 contains no rates. Instead, aerial to underground conversions are billed on an individual case based on the unique costs attributable to each job.

In an effort to circumvent the problem of being unable to identify any rate that allegedly changed, CBIA plays fast and loose with the language of Section 454. CBIA replaces the word "rate" with the word "charge" and argues that AT&T violated Section 454 when it began charging actual costs for undergrounding jobs estimated to exceed \$10,000 because this practice resulted in "increased *charges* for applicants for aerial conversions."²⁵ The word charge, however, does not appear in Section 454 and CBIA offers no evidence that the word charge is synonymous with the word rate. If the legislature intended Section 454 to prohibit increased *charges*, presumably it would have said so. It did not. Moreover, even if it were reasonable to interpret the word "rate" in Section 454 to mean "charge," Section 454 still would

²³ Cal. Pub. Util. Code § 454.

²⁴ Amended Complaint, ¶¶ 17-18.

²⁵ *Id.* at ¶ 17.

not apply because Tariff Rule 32 contains neither rates nor charges. As such, CBIA fails to carry its burden of proving, by a preponderance of the evidence, that Section 454's prohibition against rate changes apply to tariffed services – such as Rule 32 conversions – that have no rates.

Second, even if Section 454 did somehow apply (which it does not), it is preempted by Section 66473.6 of the California Government Code, which requires AT&T to impose the charges about which CBIA complains. Section 66473.6 provides, in relevant part:

Whenever a city or county imposes as a condition to its approval of a tentative map or a parcel map a requirement that necessitates replacing, undergrounding, or permanently or temporarily relocating existing facilities of a telephone corporation or cable television system, the developer or subdivider *shall* reimburse the telephone corporation or cable television system for all costs for the replacement, undergrounding, or relocation. All these costs *shall* be billed after they are incurred, and shall include a credit for any required advance payments and for the salvage value of any facilities replaced.²⁶

Significantly, this statute is not permissive. It *requires* the developer or subdivider to reimburse AT&T for “all costs” and requires those costs to be “billed after they are incurred.”²⁷ It is well established law that a specific statutory provision on a particular subject controls over a general statutory provision on the same subject.²⁸ Here, Section 66473.6 specifically requires AT&T to charge “all costs for the replacement, undergrounding, or relocation” of existing telephone facilities and for the developer or subdivider to pay such costs. Section 454 of the Public Utilities Code, by contrast, does not explicitly address the costs AT&T may recover for such work. Instead, it generally prohibits public utilities from altering any rates or practices that have the effect of resulting in a new rate. Because Section 66473.6 of the Government Code expressly requires AT&T to charge and developers/subdividers to pay actual costs, it preempts the more general provisions of Section 454.

Third, CBIA's cause of action for violation of Section 454 is premised upon the erroneous assumption that Tariff Rule 32 does not permit AT&T to charge actual costs. As

²⁶ Cal. Gov. Code Section 66473.6 (emphasis added).

²⁷ *Id.*

²⁸ Richardson-Tunnell v. School Ins. Program for Employees, 157 Cal. App. 4th 1056 (4th Dist. 2007).

discussed below, nothing in Tariff Rule 32 prohibits AT&T from charging such costs.

Consequently, AT&T's imposition of such charges did not require "a showing before the commission and a finding by the commission that the new rate is justified" under Section 454.

Finally, as discussed in Section IV.A. above, the evidence establishes that, prior to 2006, AT&T already had been using ACB pricing for Tariff Rule 32 conversions estimated to exceed \$25,000. As such, even if Section 454 did prohibit AT&T from lowering this threshold to \$10,000 in 2006 (which it did not), the only Tariff Rule 32 conversions affected were those whose estimated costs were below \$25,000 and above \$10,000.

2. Tariff Rule 32 Does Not Prohibit AT&T From Charging Actual Costs. Moreover, To The Extent Rule 32 Is Silent On Whether Actual Costs May Be Billed At The Conclusion Of A Job, Cal. Gov. Code Section 66437.6 And AT&T's Rule 32 Contracts Expressly Require Such Charges and Payment.

According to CBIA, "Rule 32 only refers to 'estimates' and makes no mention 'actuals' [sic] nor authorizes Defendant's practice of billing on an actual cost basis."²⁹ The record refutes CBIA's assertions in this regard. As evidenced from the plain language of the tariff, Subparts A.1 and A.2 of Tariff Rule 32 do not even use the word "estimate" or the phrase "estimated costs," nor do they contain any restriction prohibiting AT&T from charging actual costs. The only tariff reference to estimated cost is contained in subpart A.3 of Tariff Rule 32 and is used to set forth a condition precedent for construction to begin for individual applicants seeking the replacement of aerial facilities with underground facilities. That is, under subpart A.3, if an individual applicant requested aerial facilities to be replaced with underground facilities, the applicant first would have to pay "a nonrefundable sum equal to the estimated cost of construction less the estimated net salvage value of the replaced aerial facilities" before AT&T will commence work on the project. Nothing in subpart A.3 restricts AT&T either from refunding to the applicant or billing the applicant for the difference between the estimated cost and the actual cost of construction at the conclusion of the job.

²⁹ Amended Complaint, ¶ 13.

To the extent Tariff Rule 32 is silent on whether AT&T may bill an applicant at the conclusion of a job for the actual costs incurred (or credit the applicant where actual costs are less than the upfront estimated cost payment made by the applicant), Section 66437.6 of the Government Code, as well as AT&T's Rule 32 contracts, fill in the gaps. Section 66437.6 expressly requires developers and subdividers to pay AT&T "all costs for the replacement, undergrounding, or relocation" of existing telephone facilities.³⁰ Additionally, as evidenced by the contracts of the undergrounding applicants CBIA has identified in this proceeding,³¹ AT&T had a contractual right to bill Rule 32 projects on an actual cost basis.³² As such, AT&T's imposition of actual costs after 2006 for projects estimated to exceed \$10,000 is lawful.

3. The Imposition of Actual Costs Does Not Violate Section 8.2.1 of G.O. 96-B.

Section 8.2.1 of General Order ("G.O.") 96-B makes it a violation for a utility to deviate from the rates and conditions in its tariffs unless "authorized by statute." The language of Section 8.2.1 reads, in relevant part:

Except for nontariffed or detariffed service, *or a deviation* (whether by contract or otherwise), *authorized by statute* or Commission order, a utility shall serve its California customers only at rates and under conditions contained in its tariffs then in effect. (Emphasis added.)

In order for CBIA to prevail on a claim for violation of Section 8.2.1 of G.O. 96-B, CBIA must show not only that AT&T's imposition of actual costs violates Tariff Rule 32 but also that the imposition of actual costs does not constitute a deviation authorized by statute. CBIA cannot establish either point.

As discussed in Section IV.B.2 above, nothing in Tariff Rule 32 prohibits AT&T from charging actual costs. As such, the imposition of actual costs cannot be found to be a tariff deviation that violates Section 8.2.1 of G.O. 96-B.

³⁰ As discussed above, because Tariff Rule 32 does not prohibit AT&T from charging actual costs, AT&T may bill an applicant for such costs even where the applicant is not a developer or subdivider and Section 66437.6 does not apply.

³¹ These contracts are set forth in Exh. 4, Shortle Testimony, Attachment 1.

³² Exh. 4, Shortle Testimony, Q&A 11.

However, even if the charging of actual costs were a tariff deviation (which it is not), such a deviation is expressly required by Section 66473.6 of the Government Code. As discussed in Sections IV.B.1 and 2 above, Section 66473.6 requires a telephone corporation to charge and the developer or subdivider to pay “all costs for the replacement, undergrounding, or relocation” of existing telephone facilities where the conversion is imposed by a city or county as a condition to permitting construction on or development of land. As such, the only way AT&T could be found in violation of Section 8.2.1 of G.O. 96-B is if CBIA were to prove, by a preponderance of the evidence, that the Government Code did not apply to particular Tariff Rule 32 projects. CBIA has not offered any evidence to carry this burden of proof. As such, there is basis in the record for finding that AT&T has violated Section 8.2.1 of G.O. 96-B.

4. The Imposition of Actual Costs Does Not Violate Section 8.4 of G.O. 96-B.

Section 8.4 of G.O. 96-B states:

An advice letter requesting approval of a change to a tarified rate, charge, term, or condition, if the change is required to be submitted for review and disposition by Tier 3 advice letter, must demonstrate that the rate, charge, term, or condition, as proposed to be changed, would be just and reasonable.

In order to prevail on a claim for violation of this rule, CBIA must show that AT&T was obligated to file a Tier 3 advice letter “requesting approval of a change to a tarified rate, charge, term or condition” before it could lawfully charge actual costs for Tariff Rule 32 undergrounding projects. Again, CBIA has failed to carry its burden.

As discussed above, because Tariff Rule 32 contains no rates or charges, AT&T’s imposition of actual costs cannot be found to constitute a change to any tarified rates or charges. Moreover, because the language of Tariff Rule 32 does not prohibit AT&T from charging actual costs, Rule 32 did not need to be changed in order to permit the imposition of such charges. Consequently, there is no basis upon which to conclude that AT&T violated Section 8.4 of G.O. 96-B.

V. CONCLUSION.

As the complainant, CBIA has the burden to establish, by a preponderance of the evidence, that AT&T violated a law, rule or tariff. As to each of its causes of action, CBIA has failed to meet its burden. Consequently, CBIA's Complaint should be dismissed in its entirety.

Dated at San Francisco, California, this 13th day of August 2010.

Respectfully submitted,

A handwritten signature in black ink that reads "Stephanie Holland". The signature is written in a cursive style with a horizontal line underneath it.

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ATTACHMENT 1

NETWORK AND EXCHANGE SERVICES

A2. GENERAL REGULATIONS

2.1 RULES (Cont'd)

2.1.32 RULE NO. 32 - FACILITIES TO PROVIDE REPLACEMENT OF AERIAL WITH UNDERGROUND FACILITIES

A. REPLACEMENT OF AERIAL WITH UNDERGROUND FACILITIES

1. In Areas Affected By General Public Interest.

The Company will, at its expense, replace its existing aerial facilities (T) with underground facilities along public streets and roads and on public lands and private property across which rights-of-way satisfactory to the Company have been obtained or may be obtained without cost or (T) condemnation, by the Company, provided that the governing body of the (T) city or county in which such facilities are located has:

a. Determined after consultation with the Company and after holding public (T) hearings on the subject, that undergrounding is in the general public interest in a specified area for one or more of the following reasons:

- (1) Such undergrounding will avoid or eliminate an unusually heavy concentration of aerial facilities;
- (2) Said street, or road or right-of-way is in an area extensively used by the general public and carries a heavy volume of pedestrian or vehicular traffic;
- (3) Said street, road or right-of-way adjoins or passes through a civic area or public recreation area or an area of unusual scenic interest to the general public.

b. Adopted an ordinance creating an underground district in the area requiring, among other things:

- (1) That all existing and future electric and communication distribution facilities will be placed underground, and
- (2) That each property owner will provide and maintain the underground supporting structure needed on their property to furnish service to them from the underground facilities of the Company when such are (T) available, except as provided in A.1.c following.

Continued

NETWORK AND EXCHANGE SERVICES

A2. GENERAL REGULATIONS

2.1 RULES (Cont'd)

2.1.32 RULE NO. 32 - FACILITIES TO PROVIDE REPLACEMENT OF AERIAL WITH UNDERGROUND FACILITIES (Cont'd)

A. REPLACEMENT OF AERIAL WITH UNDERGROUND FACILITIES (Cont'd)

1. In Areas Affected By General Public Interest (Cont'd)

- c. Upon request of the governing body the Company will pay for the installation of no more than 100 feet of each customer's underground service connection facility occasioned by the undergrounding. The governing body may establish a smaller footage allowance or may limit the amount of money to be expended on a single customer's service, or the total amount to be expended on consumer services in a particular project. The Company will pay for the installation of each customer's underground service connection facility at the time and only to the extent that the electric utility pays for the customer's underground electric service lateral. (T)
- d. The Company will replace its aerial facilities at the time and only to the extent that the overhead electric distribution facilities are replaced. (T)

2. At the Request of Governmental Agencies or Groups of Applicants.

In circumstances other than those covered by 1. preceding, the Company will replace its aerial facilities located in a specified area with underground facilities along public streets and roads and on public lands and private property across which rights-of-way satisfactory to the Company have been obtained, or may be obtained without cost or condemnation, by the Company upon request by a responsible party representing a governmental agency or group of applicants where all of the following conditions are met: (T)

- a. All property owners served by the aerial facilities to be replaced within a specific area designated by the governmental agency or group of applicants first agree in writing or are required by suitable legislation to pay the cost or to provide and to transfer ownership to the Company of the underground supporting structure along the public way and other Company rights-of-way in the area¹, and (T)
- b. All property owners in the area are required by ordinance or other legislation, or all agree in writing, to provide and maintain the underground supporting structure on their property, and (T)

NOTE 1: Includes Income Tax gross-up amount, as listed in ScheduleCal.P.U.C. No. A2.1.3,D.

Continued

NETWORK AND EXCHANGE SERVICES

A2. GENERAL REGULATIONS

2.1 RULES (Cont'd)

2.1.32 RULE NO. 32 - FACILITIES TO PROVIDE REPLACEMENT OF AERIAL WITH UNDERGROUND FACILITIES (Cont'd)

A. REPLACEMENT OF AERIAL WITH UNDERGROUND FACILITIES (Cont'd)

2. At the Request of Governmental Agencies or Groups of Applicants. (Cont'd)

c. The area to be undergrounded includes both sides of a street for at least one block, and

D. ARRANGEMENTS ARE MADE FOR THE CONCURRENT REMOVAL OF ALL ELECTRIC AND COMMUNICATION AERIAL DISTRIBUTION FACILITIES IN THE AREA.

3. At the Request of Individual Applicants.

In circumstances other than those covered by 1. or 2. preceding, where mutually agreed upon by the Company and an applicant, aerial facilities may be replaced with underground facilities, provided the applicant requesting the change pays, in advance, a nonrefundable sum equal to the estimated cost of construction less the estimated net salvage value of the replaced aerial facilities¹. (T)

4. At Company Initiative. (T)

The Company may from time to time replace sections of its aerial facilities with underground facilities at Company expense for structural design considerations or its operating convenience. (T)

NOTE 1: Includes Income Tax gross-up amount, as listed in Schedule Cal.P.U.C. No. A2.1.3,D.

Continued

NETWORK AND EXCHANGE SERVICES

A2. GENERAL REGULATIONS

2.1 RULES (Cont'd)

2.1.32 RULE NO. 32 - FACILITIES TO PROVIDE REPLACEMENT OF AERIAL WITH UNDERGROUND FACILITIES (Cont'd)

A. REPLACEMENT OF AERIAL WITH UNDERGROUND FACILITIES (Cont'd)

5. San Diego Underground Surcharge

a. Description

In Decision No. 06-12-039, the California Public Utilities Commission authorized AT&T California to establish a surcharge to recover the cost of moving overhead utility lines underground in accordance with the City of San Diego's Underground Utilities Procedural Ordinance. Complete details of the surcharge are contained in the cited decision.

b. Applicability

Ordering Paragraph 2 of D.06-12-039 states that the surcharge applies as follows:

"All local telephone service provided over SBC lines in San Diego shall be subject to the Surcharge, including SBC customers that take service pursuant to Local Wholesale Complete, Individual Case Basis, Express, and Government contracts. Local telephone customers that receive service from competitive local exchange carriers over SBC lines are also subject to the Surcharge. Lifeline customers of any provider are exempt from the Surcharge."

c. Rate

Ordering Paragraph 5 of D.06-12-039 states that the surcharge "shall be assessed as a fixed amount per line...[and] shall be recalculated annually via advice letter filing."

Initial surcharge, effective July 1, 2007:	\$0.77 per line.	
Surcharge modified effective July 9, 2009:	\$1.46 per line.	z
Surcharge modified effective March 15, 2010:	\$1.99 (I) per line.	(N)

z Correction - In accordance with approval of Advice Letter No. 34851.

Continued

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the **OPENING BRIEF OF PACIFIC BELL TELEPHONE COMPANY (U 1001 C) d/b/a AT&T CALIFORNIA** in **C.09-09-016** by electronic mail and/or hand-delivery to the persons below for this proceeding.

Executed this 13th day of August 2010, at San Francisco, California.

AT&T CALIFORNIA
525 Market Street, 20th Floor
San Francisco, CA 94105



Michelle K. Choo

CALIFORNIA PUBLIC UTILITIES COMMISSION

Service Lists

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Filer: CALIFORNIA BUILDING INDUSTRY ASSOCIATION
List Name: LIST
Last changed: July 28, 2010

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