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10 Attorneys for Complainants, LA COLLINA DAL LAGO, L.P. and BERNAU
DEVELOPMENT CORPORATION.
11

12 **BEFORE THE PUBLIC UTILITIES COMMISSION**
13 **OF THE STATE OF CALIFORNIA**

15 LA COLLINA DAL LAGO, L.P.;
and BERNAU DEVELOPMENT
16 CORPORATION,

17 Complainants,

18 Vs.

19 PACIFIC BELL TELEPHONE
COMPANY, dba AT&T California
20 (U1001C),

21 Defendant.
22

Case No. 09-08-021

COMPLAINANTS' WITNESS LIST

Hearing Date: October 4-7, 2011

The Hon. Myra J. Prestidge

23 Complainants in this matter respectfully submit the following list of witnesses to the
24 Honorable Myra J. Prestidge, Administrative Law Judge.

25 Complainants are La Collina Dal Lago, L.P and Bernau Development Corporation.

26 Defendant is Pacific Bell Telephone Company, dba AT&T California, U1001C
27 ("AT&T").

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COMPLAINANTS' WITNESS LIST

1 In the present matter, Complainants will present written testimony and rebuttal
2 testimony from the following witnesses.

3 **Percipient Witnesses – Property Developers.**

4 1. Jerry Bernau, representative of both Complainants. Percipient Witness.

5 Mr. Bernau will explain how (1) AT&T effectually required each Complainant to
6 install line extensions to AT&T’s landline network; (2) AT&T did not negotiate these
7 matters with either Complainant, but rather imposed the terms and conditions on which each
8 Complainant would install these line extensions; (3) AT&T subsequently under-reimbursed
9 or failed to pay any reimbursement at all to each Complainant for trenching and/or materials
10 that each provided for AT&T’s developer-provided line extensions; and (4) all reasonably
11 related points.

12 2. Allen Knight, representative of both Complainants. Percipient Witness.

13 Mr. Knight, who is a project manager with direct responsibility for utility installations,
14 will explain how (1) AT&T effectually required each Complainant to install line extensions
15 to AT&T’s landline network; (2) AT&T did not negotiate these matters with either
16 Complainant, but rather imposed the terms and conditions on which each Complainant would
17 install these line extensions; (3) AT&T subsequently under-reimbursed or failed to pay any
18 reimbursement at all to each Complainant for trenching and/or materials that each provided
19 for AT&T’s developer-provided line extensions; and (4) all reasonably related points.

20 3. Michael Pattinson, formerly the president of Barratt America, Inc. (“Barratt”).

21 Percipient witness. Barratt, which was liquidated in bankruptcy last year, used to be one of
22 the largest, most successful developers and home builders in the United States. Mr. Pattinson
23 was president of Barratt, and in addition he used to serve as the president of the California
24 Building Industry Association, and before then he served as the president of the San Diego
25 Building Industry Association. Mr. Pattinson will explain how (1) AT&T effectually required
26 Barratt to install line extensions to AT&T’s landline network; (2) AT&T did not negotiate
27 these matters with Barratt, but rather imposed the terms and conditions on which Barratt
28 would install these line extensions; (3) AT&T subsequently under-reimbursed or failed to

1 pay any reimbursement at all to Barratt for trenching and/or materials that Barratt provided
2 for AT&T's developer-provided line extensions; and (4) all reasonably related points.

3 4. Peter Nedley, formerly an employee of Barratt. Percipient Witness. Barratt,
4 which was liquidated in bankruptcy last year, used to be one of the largest, most successful
5 developers and home builders in the United States. Mr. Nedley will explain how (1) AT&T
6 effectually required Barratt to install line extensions to AT&T's landline network; (2) AT&T
7 did not negotiate these matters with Barratt, but rather imposed the terms and conditions on
8 which Barratt would install these line extensions; (3) AT&T subsequently under-reimbursed
9 or failed to pay any reimbursement at all to Barratt for trenching and/or materials that Barratt
10 provided for AT&T's developer-provided line extensions; and (4) all reasonably related
11 points.

12 5. If appropriate and not overly duplicative, Chris Bardis of Reynin & Bardis, Inc.
13 ("R&B"). Percipient Witness.

14 Mr. Bardis will explain how (1) AT&T effectually required R&B to install line
15 extensions to AT&T's landline network; (2) AT&T did not negotiate these matters with
16 R&B, but rather imposed the terms and conditions on which R&B would install these line
17 extensions; (3) AT&T subsequently under-reimbursed or failed to pay any reimbursement at
18 all to R&B for trenching and materials for trenching and/or materials that Barratt provided
19 for AT&T's developer-provided line extensions; and (4) all reasonably related points.

20 **Percipient Witnesses/Designated Representative Witnesses – AT&T's**
21 **Witnesses.**

22 6. Melissa Stanton (formerly of AT&T) (deposition testimony on video).
23 Percipient Witness and AT&T's Designated Representative Witness.

24 Ms. Stanton, who testified as AT&T's designated witness under Federal Rule of Civil
25 Procedure 30 (b) (6), and who was AT&T's subject-matter expert on Rule 15, confirmed the
26 following points on behalf of AT&T: AT&T must reimburse developers for any material or
27 trenching that developers provide to AT&T if the following two conditions are met: (1)
28 AT&T requires the developers to provide the material or trenching; and (2) Rule 15

1 otherwise requires AT&T to provide the material and trenching in question at its own
2 expense. Ms. Stanton also confirmed the following additional points: (1) AT&T does not
3 negotiate the prices that it pays to reimburse developers for materials that they place in its
4 line extensions, but rather unilaterally imposes the reimbursement rates that it will pay them
5 for these materials; (2) even when AT&T acts on its avowed obligation to “reimburse”
6 developers for these materials, its sets the “reimbursement” prices according to internal
7 policies and does not reimburse the developers according to the costs that the developers
8 have actually incurred, nor does AT&T even consider these actual costs when setting its
9 “reimbursement” rates; (3) AT&T’s policy is to inform developers that it prefers to install
10 direct-buried installations; (4) except as stated above, AT&T does not reimburse developers
11 for materials that developers place in its line extensions, even after the developers have
12 transferred ownership of these materials to AT&T; and (5) all reasonably related points as
13 well as such other matters as Ms. Stanton addressed in her prior deposition testimony.

14 7. Robert Nolasco (AT&T) (deposition testimony on video). Percipient Witness
15 and AT&T’s Designated Representative Witness. Mr. Nolasco, who testified as AT&T’s
16 designated witness under Federal Rule of Civil Procedure 30 (b) (6), and who was AT&T’s
17 subject-matter expert on developer-provided landline extensions, confirmed the following
18 points on behalf of AT&T: AT&T must reimburse developers for any material or trenching
19 that developers provide to AT&T if the following two conditions are met: (1) AT&T
20 requires the developers to provide the material or trenching; and (2) Rule 15 otherwise
21 requires AT&T to provide the material and trenching in question at its own expense. Mr.
22 Nolasco also confirmed the following additional points: (1) AT&T does not negotiate the
23 prices that it pays to reimburse developers for materials that they place in its line extensions,
24 but rather unilaterally imposes the reimbursement rates that it will pay them for these
25 materials; (2) even when AT&T acts on its avowed obligation to “reimburse” developers for
26 these materials, it sets the “reimbursement” prices according to internal policies and does not
27 reimburse the developers according to the costs that the developers have actually incurred,
28 nor does AT&T even consider these actual costs when setting its “reimbursement” rates; (3)

1 AT&T knowingly proposes to install line extensions installations on a calendar that is
2 unacceptable and commercially infeasible for the developers; (4) AT&T established a policy
3 of requiring all developers to purchase precast vaults made by Oldcastle at the same time as it
4 obtained a price-list from Oldcastle that was appended to a direct-supply contract made
5 between AT&T and Oldcastle; and (5) all reasonably related points as well as such other
6 matters as Mr. Nolasco addressed in his prior deposition testimony.

7 8. Bob Pickard (AT&T) (deposition testimony on video). Percipient Witness and
8 AT&T's Designated Representative Witness.

9 Mr. Pickard, who testified as AT&T's designated witness under Federal Rule of Civil
10 Procedure 30 (b) (6), confirmed the following points on behalf of AT&T: (1) In AT&T's
11 North Bay District, AT&T does not negotiate the prices that it pays to reimburse developers
12 for the materials and trenching used in developer-provided line extensions, but rather
13 unilaterally imposes the "reimbursement" rates that it will pay to them without regard to the
14 actual costs that the developers incurred; and (2) all reasonably related points as well as such
15 other matters as Mr. Pickard addressed in his prior deposition testimony.

16 9. Nicole Orta (AT&T) (deposition testimony on video). Percipient Witness and
17 AT&T's Designated Representative Witness.

18 Ms. Orta, who testified as AT&T's designated witness under Federal Rule of Civil
19 Procedure 30 (b) (6), confirmed the following points on behalf of AT&T: (1) In AT&T's
20 South Bay District (San Jose Region), AT&T does not negotiate the prices that it pays to
21 reimburse developers for the materials and trenching used in developer-provided line
22 extensions, but rather unilaterally imposes the "reimbursement" rates that it will pay to them
23 without regard to the actual costs that the developers incurred; and (2) all reasonably related
24 points as well as such other matters as Ms. Orta addressed in her prior deposition testimony.

25 10. Michelle Cooper (AT&T) (deposition testimony on video). Percipient Witness
26 and AT&T's Designated Representative Witness.

27 Ms. Cooper, who testified as AT&T's designated witness under Federal Rule of Civil
28 Procedure 30 (b) (6), confirmed the following points on behalf of AT&T: (1) In AT&T's

1 Northern District, AT&T does not negotiate the prices that it pays to reimburse developers
2 for the materials and trenching used in developer-provided line extensions, but rather
3 unilaterally imposes the “reimbursement” rates that it will pay to them without regard to the
4 actual costs that the developers incurred; and (2) all reasonably related points as well as such
5 other matters as Ms. Cooper addressed in her prior deposition testimony.

6 11. Michelle Pierce (AT&T) (deposition testimony on video). Percipient Witness
7 and AT&T’s Designated Representative Witness.

8 Ms. Pierce, who testified as AT&T’s designated witness under Federal Rule of Civil
9 Procedure 30 (b) (6), confirmed the following points on behalf of AT&T: (1) In AT&T’s
10 Sacramento District, AT&T does not negotiate the prices that it pays to reimburse developers
11 for the materials and trenching used in developer-provided line extensions, but rather
12 unilaterally imposes the “reimbursement” rates that it will pay to them without regard to the
13 actual costs that the developers incurred; and (2) all reasonably related points as well as such
14 other matters as Ms. Pierce addressed in her prior deposition testimony.

15 12. Orly Baird (AT&T) (deposition testimony on video). Percipient Witness and
16 AT&T’s Designated Representative Witness.

17 Mr. Baird, who testified as AT&T’s designated witness under Federal Rule of Civil
18 Procedure 30 (b) (6), confirmed the following points on behalf of AT&T: (1) In AT&T’s San
19 Diego-Imperial District, AT&T does not negotiate the prices that it pays to reimburse
20 developers for the materials and trenching used in developer-provided line extensions, but
21 rather unilaterally imposes the “reimbursement” rates that it will pay to them without regard
22 to the actual costs that the developers incurred; (2) AT&T prefers conduit installations to
23 direct-buried installations; and (3) all reasonably related points as well as such other matters
24 as Mr. Baird addressed in his prior deposition testimony.

25 13. Craig Akin (AT&T) (deposition testimony on video). Percipient Witness and
26 AT&T’s Designated Representative Witness.

27 Mr. Akin, who testified as AT&T’s designated witness under Federal Rule of Civil
28 Procedure 30 (b) (6), confirmed the following points on behalf of AT&T: (1) In AT&T’s

1 Orange-Riverside-North San Diego District, AT&T does not negotiate the prices that it pays
2 to reimburse developers for the materials and trenching used in developer-provided line
3 extensions, but rather unilaterally imposes the “reimbursement” rates that it will pay to them
4 without regard to the actual costs that the developers incurred; and (2) all reasonably related
5 points as well as such other matters as Mr. Akin in his prior deposition testimony.

6 14. Jeff Tossie (AT&T) (deposition testimony on video). Percipient Witness and
7 AT&T’s Designated Representative Witness.

8 Mr. Tossie, who testified as AT&T’s designated witness under Federal Rule of Civil
9 Procedure 30 (b) (6), confirmed the following points on behalf of AT&T: (1) In AT&T’s Los
10 Angeles-San Fernando-San Gabriel District, AT&T does not negotiate the prices that it pays
11 to reimburse developers for the materials and trenching used in developer-provided line
12 extensions, but rather unilaterally imposes the “reimbursement” rates that it will pay to them
13 without regard to the actual costs that the developers incurred; and (2) all reasonably related
14 points as well as such other matters as Mr. Tossie in his prior deposition testimony.

15 15. Ray Kozul (AT&T) (videotape testimony). Percipient Witness and AT&T’s
16 Designated Representative Witness.

17 Mr. Kozul, who testified as AT&T’s designated witness under Federal Rule of Civil
18 Procedure 30 (b) (6), confirmed the following points on behalf of AT&T: AT&T granted
19 Oldcastle sole-supplier status (at least 80% of “ALL” sales) in exchange for a price list from
20 Oldcastle that established AT&T’s “current costs” for these products at below-market prices.
21 Upon obtaining these prices, AT&T entered them into its data base, thereby establishing its
22 so-called “current costs” for these products; and AT&T was able to use contracts that it calls
23 “trench agreements” in order to oblige the developers to purchase these products only from
24 Oldcastle; and all reasonably related points. Mr. Kozul also testified as to how AT&T used
25 PIDS and corresponding prices.

26 16. Vince Nuskin (AT&T) (videotape testimony). Percipient Witness and AT&T’s
27 Designated Representative Witness. Mr. Nuskin, who testified as AT&T’s designated
28 witness under Federal Rule of Civil Procedure 30 (b) (6), confirmed the following points on

1 behalf of AT&T: Mr. Nuskin testified as to how AT&T uses PIDS and corresponding prices
2 in order to establish its so-called “current costs” for specified products.

3 **Percipient Witnesses – Suppliers of Precast Concrete Vaults.**

4 17. Mike Scott of Oldcastle Precast, Inc. Percipient Witness/Adverse Witness.

5 Mr. Scott has personal knowledge of the following matters. AT&T granted Oldcastle
6 “sole-supplier” status for the sale of precast vaults to all developers in California for use
7 developer-provided line extensions to AT&T’s system. AT&T granted this concession in
8 exchange for a price-list from Oldcastle that established AT&T’s so-called “current costs”
9 for these products at depressed below-market prices. AT&T principally used the price-list
10 not to make actual purchases directly from Oldcastle, but rather to set the prices at which
11 AT&T reimbursed the developers for the vaults that it obliged them to purchase from
12 Oldcastle at Oldcastle’s substantially higher market prices. The purpose and effect of this
13 arrangement were that Oldcastle was “rewarded” with “sole-supplier” status for making sales
14 to developers at unrestricted market prices, and in exchange it gave its below-market price-
15 list to AT&T, thereby establishing AT&T’s depressed, below-market “current costs” for the
16 products in question. Under this arrangement, Oldcastle sold 90-95% of these products to
17 developers at profitable market prices and only 5-10% of these products directly to AT&T at
18 the depressed below-market prices set forth in the price list. Mr. Scott’s testimony will also
19 address all reasonably related points.

20 18. David Shedd of Oldcastle Precast, Inc. Percipient Witness/Adverse Witness.

21 Mr. Shedd has personal knowledge that AT&T granted Oldcastle exclusive-supplier
22 status to the developers for developer-provided precast vaults in exchange for a price list
23 from Oldcastle that established AT&T’s so-called “current costs” for these products at
24 below-market prices; and all reasonably related points.

25 19. Mike Gipson (former employee of AT&T and current employee of Jensen
26 Precast, Inc.). Percipient Witness.

27 Mr. Gipson, formerly an employee of AT&T-Nevada Bell, used to have direct
28 responsibility for setting the “reimbursement” rates at which AT&T-Nevada Bell reimbursed

1 developers for precast manholes that the developers placed in its line extensions in Nevada.
2 Mr. Gipson offered a declaration in the Jensen case that explains how AT&T-Nevada Bell set
3 these prices before and after it obtained a procurement contract and price-list from Oldcastle.
4 Mr. Gipson stated that so far as he understood AT&T-Pacific Bell observes the same
5 practices. His declaration makes clear that AT&T used the price-list from Oldcastle in order
6 to establish its so-called “current costs” for precast concrete vaults used in its line extensions.
7 Mr. Gipson also confirmed that in his experience at least 95% of line extensions are provided
8 to AT&T by developers rather than installed directly by AT&T. His declaration sets forth
9 various other matters that are relevant to the present matter.

10 **Expert Witnesses.**

11 20. Dave Warner of Utility Specialists Southwest, Inc. Expert witness.

12 Mr. Warner will explain the following points: (1) AT&T prevails on substantially all
13 developers in the San Diego District of California to perform developer-provided
14 installations of line extensions (*i.e.*, developers do *not* freely choose to provide trenching and
15 materials for AT&T’s line extensions, but rather AT&T effectually coerces them into
16 providing these items to AT&T); (2) AT&T does not negotiate with the developers, but
17 rather imposes the terms and conditions on which developers must provide these line
18 extensions; (3) collectively, developers pay vastly more than they receive in so-called
19 “reimbursement” from AT&T for AT&T’s pro rata share of trenching and the materials that
20 they provide to AT&T for these line extensions; (4) AT&T acknowledges an obligation to
21 reimburse the developers for these expenses, but it routinely manipulates its calculation of
22 this reimbursement so as to pay only partial reimbursement of the developers’ actual costs;
23 (5) AT&T misuses its “direct-buried” policy in order to oblige the developers to provide
24 conduit installations that it then requires them to donate to AT&T on the pretense that they
25 “preferred” to install a conduit installation rather than await AT&T’s disingenuous offer to
26 provide a direct-buried installation on an unworkable calendar, and AT&T even obliges the
27 developers to reimburse it for the tax that it must pay in exchange for its receipt of free
28 capital goods and free professional installation services; and (6) reasonably related matters.

1 By these means, and by related practices, AT&T has largely avoided its clear financial
2 obligations under Rule 15 and has re-allocated to the developers its own burden under this
3 tariff.

4 21. Michelle Goldberg of Utility Specialists Southwest, Inc. Expert witness.

5 Ms. Goldberg will explain the following points: (1) AT&T sometimes prevails on all
6 developers in its Orange County-Riverside-North San Diego District to perform developer-
7 provided installations of line extensions (*i.e.*, these developers do *not* freely choose to
8 provide trenching and materials for AT&T's line extensions, but rather AT&T effectually
9 coerces them into providing these items to AT&T); (2) when doing so, and when agreeing to
10 reimburse developers for pro rata trenching costs, AT&T does not negotiate with the
11 developers, but rather imposes the terms and conditions on which developers must provide
12 the trenching and/or materials used in these line extensions; (3) collectively, the developers
13 pay vastly more than they receive in "reimbursement" from AT&T for AT&T's pro rata
14 share of trenching and the materials that they provide to AT&T for these line extensions; and
15 (6) reasonably related matters. By these means, and by related practices, AT&T has largely
16 avoided its clear financial obligations under Rule 15 and has re-allocated its own burden
17 under this tariff to the developers.

18 22. Professor Robert Hall of Stanford University and the Hoover Institution
19 (Deposition testimony and expert reports). Expert witness. Professor Hall analyzed
20 Oldcastle's invoices of its sales of AT&T-specific precast vaults both to developers and
21 directly to AT&T or to AT&T's own contractors. He concluded that Oldcastle's actual
22 prices when selling to developers were substantially and systematically higher than the prices
23 set forth in the price-list that it gave to AT&T. On this basis, and on the assumption that
24 AT&T used this price list or an approximation of the price list to set its "reimbursements" to
25 the developers for these products, Professor Hall concluded that the vast majority of
26 developers in the AT&T region of California were substantially and systematically under-
27 reimbursed for precast vaults that they purchased, installed in AT&T's line extensions, and
28 then transferred to AT&T in exchange for so-called "reimbursement." Dr. Hall made a

1 number of other significant findings that he disclosed in his reports and during his
2 depositions.

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DATED: June 30, 2010

Respectfully re-submitted,
MALDONADO & MARKHAM, LLP
/s/ William Markham

By:

William A. Markham,
Attorneys for Complainants,
LA COLLINA DAL LAGO, L.P. and
BERNAU DEVELOPMENT CORPORATION.