

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



**FILED**

05-11-10  
04:59 PM

California Building Industry Association,  
  
Complainant,  
  
vs.  
  
Pacific Bell Telephone Company d/b/a AT&T  
California (U1001C),  
  
Defendant.

Case No. 09-09-016  
(Filed September 18, 2009)

**RESPONSE OF THE CALIFORNIA BUILDING INDUSTRY  
ASSOCIATION TO MOTION OF PACIFIC BELL TELEPHONE  
COMPANY d/b/a AT&T CALIFORNIA TO STRIKE PORTIONS OF  
THE COMPLAINT**

GOODIN, MACBRIDE, SQUERI,  
DAY & LAMPREY, LLP  
James D. Squeri  
Marlo A. Go  
505 Sansome Street, Suite 900  
San Francisco, CA 94111  
Telephone: (415) 392-7900  
Facsimile: (415) 398-4321  
E-mail: [jsqueri@goodinmacbride.com](mailto:jsqueri@goodinmacbride.com)  
E-mail: [mgo@goodinmacbride.com](mailto:mgo@goodinmacbride.com)

Attorneys for California Building Industry  
Association

Date: May 11, 2010

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

California Building Industry Association,	Case No. 09-09-016 (Filed September 18, 2009)
Complainant,	
vs.	
Pacific Bell Telephone Company d/b/a AT&T California (U1001C),	
Defendant.	

**RESPONSE OF THE CALIFORNIA BUILDING INDUSTRY  
ASSOCIATION TO MOTION OF PACIFIC BELL TELEPHONE  
COMPANY d/b/a AT&T CALIFORNIA TO STRIKE PORTIONS OF  
THE COMPLAINT**

**I. INTRODUCTION**

Pursuant to Rule 11.1(e) of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the California Building Industry Association (“CBIA”) hereby submits its response to the motion of Pacific Bell Telephone Company, doing business as AT&T California (“AT&T”), to strike portions of CBIA’s Amended Complaint<sup>1</sup> that seek relief not only on behalf of CBIA’s members but also on behalf of all similarly situated. In accordance with Rule 11.1(e), which set the due date for responses to the motion on May 11, 2010, this response is timely filed.

**II. DISCUSSION**

In its Motion, AT&T acknowledges that the Commission’s resolution of the

---

<sup>1</sup> Amended Complaint of California Building Industry Association, Case No. 09-09-016 (filed Feb. 16, 2010).

complaint may extend to others who applied to have AT&T convert aerial to underground facilities. “Indeed, it would make no sense for a tariff to be interpreted in one manner as to one person and in another manner as to others.”<sup>2</sup> CBIA agrees that any relief granted as a result of this complaint should extend to all similarly situated persons whether or not those persons are parties to the instant proceeding.

As AT&T indicates in its Motion, class actions are not necessary at the Commission because Commission decisions generally apply to all similarly situated persons.<sup>3</sup> In D.08-08-001, for example, where CBIA brought a complaint against Southern California Edison (“SCE”), the Commission ordered SCE to make refunds to all affected developers and not just CBIA members.<sup>4</sup> Also, in D.98-09-058, *Florsheim Brothers v. Pacific Gas & Electric Company* (“PG&E”), where CBIA intervened, the Commission encouraged PG&E to make refunds to “other similarly situated applicants for line extensions.”<sup>5</sup>

In other complaint cases, the Commission ordered investigations to determine the extent to which similarly situated customers have been harmed. In *Z.I.P., Inc., v. Pacific Bell*, the Commission ordered an investigation to determine “the extent to which similarly situated Pacific Bell customers have paid charges to Pac Bell such as

---

<sup>2</sup> AT&T Motion to Strike at 4.

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *California Building Industry Assoc. v. Southern California Edison*, Decision No. 08-08-001 (July 31, 2008) (“2. Within 30 days after the effective date of this decision, Southern California Edison Company (Edison) shall issue refunds, with interest, to those developers that have paid bills...3. Within 30 days after the effective date of this decision, Edison shall cancel the outstanding bills that have not been paid by developers....”)

<sup>5</sup> *Florsheim Brothers v. Pacific Gas and Electric Company*, Decision No. 98-09-058 (Sept. 17, 1998).

those at issue in [the] proceeding.”<sup>6</sup> In *Hassoun v. Fruitridge Vista Water Company*, the Commission directed the staff to investigate the defendant’s notice practices and “present a recommendation for further remedial action by the Commission, including the possibility of refunds to all similarly situated customers.”<sup>7</sup> Thus, the Commission frequently extends the relief granted in a complaint to similarly situated customers who were not parties to the complaint proceeding.

In line with Commission precedent, any remedy the Commission grants to CBIA members as a result of this proceeding should extend to similarly situated persons harmed by AT&T’s practices whether or not those persons are parties to this proceeding. With the understanding that any relief granted as part of the resolution of this complaint will extend to others who have applied to AT&T for underground conversions, CBIA is willing to consent to striking the portions of its Amended Complaint that seek relief on behalf of anyone other than its members.

---

<sup>6</sup> *Z.I.P. Inc. v. Pacific Bell*, Decision No. 92-07-019 (July 1, 1992).

<sup>7</sup> *Joseph Hassoun v. Fruitage Vista Water Company*, Decision No. 94-07-029 (July 8, 1994).



**CERTIFICATE OF SERVICE**

I, Lisa Chapman, certify that I have on this 11th day of May 2010 caused a copy of the foregoing

**RESPONSE OF THE CALIFORNIA BUILDING INDUSTRY  
ASSOCIATION TO MOTION OF PACIFIC BELL TELEPHONE  
COMPANY d/b/a AT&T CALIFORNIA TO STRIKE PORTIONS  
OF THE COMPLAINT**

to be served on all known parties to C.09-09-016 listed on the most recently updated service list available on the California Public Utilities Commission website, via email to those listed with email and via U.S. mail to those without email service. I also caused courtesy copies to be hand-delivered as follows:

Commissioner Dian Grueneich  
California Public Utilities Commission  
State Building, Room 5207  
505 Van Ness Avenue  
San Francisco, CA 94102

ALJ Myra J. Prestidge  
California Public Utilities Commission  
State Building, Room 5041  
505 Van Ness Avenue  
San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct. Executed this 11th day of May 2010 at San Francisco, California.

/s/ Lisa Chapman  
Lisa Chapman

Service List C.09-09-016  
Last Updated 4/23/10

STEPHANIE E. HOLLAND  
stephanie.holland@att.com

JAMES D. SQUERI  
jsqueri@goodinmacbride.com

MICHELLE CHOO  
michelle.choo@att.com

ROSS JOHNSON  
rdj@att.com

MARLO A. GO  
mgo@goodinmacbride.com

Myra J. Prestidge  
tom@cpuc.ca.gov

PUC/X119081.v1  
05/11/10