

TAS/lil 5/13/2011



**FILED**

05-13-11  
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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Setton Pistachio of Terra Bella, Inc.

Complainant,

v.

Pacific Bell Telephone Company, d/b/a  
AT&T California (U1001C),

Defendant.

Case 11-01-007  
(Filed January 11, 2011)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER**

**1. Summary**

Pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure (Rules),<sup>1</sup> this Scoping Memo and Ruling sets forth the procedural schedule, assigns the presiding officer, addresses the scope of this proceeding, as well as other procedural matters, following the prehearing conference held on March 21, 2011.

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<sup>1</sup> All references to Rules are to the Commission's Rules of Practice and Procedure, which are available on the Commission's website at:

[http://docs.cpuc.ca.gov/word\\_pdf/RULES\\_PRAC/70731.pdf](http://docs.cpuc.ca.gov/word_pdf/RULES_PRAC/70731.pdf).

## **2. The Parties**

Setton Pistachio of Terra Bella, Inc., (Setton or Complainant) is a California corporation. Setton is grower, processor, packager and distributor of pistachio nuts. Setton's products are sold domestically as well as internationally. The company is located in Terra Bella, California.

Defendant, Pacific Bell Telephone Company, doing business as AT&T California (AT&T or Defendant), is a provider of intra- and interstate telephone and communications services. AT&T is a public utility under the jurisdiction of the Commission.

## **3. Factual and Procedural Background**

On January 11, 2011, Setton filed the above-captioned complaint against AT&T. AT&T filed an answer to the complaint on February 22, 2011. The complaint alleges that AT&T violated Section 451 of the Public Utilities Code by furnishing inadequate, inefficient, unjust or unreasonable service to Setton by failing for four business days to provide outgoing telephone service to Complainant's facility in Terra Bella following a line cutover on December 3, 2010.<sup>2</sup> Complainant also alleges that during the same time period, AT&T failed for five business days to connect incoming calls to its (Complainant's) facility.<sup>3</sup> In addition, Complainant alleges that AT&T failed to provide reliable or quality telephone service from soon after the cutover to the filing of the instant complaint and failed to respond to the previously referenced incidents in a timely manner.<sup>4</sup> Lastly, while recognizing that the issue is outside

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<sup>2</sup> Setton Pistachio of Terra Bella Complaint at 1.

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

<sup>4</sup> *Id.*, at 1 - 2.

of the Commission's jurisdiction, Setton contends that its AT&T broadband internet service was inoperative between January 4 and January 7, 2011 and is indicative of AT&T's level of service. Complainant requests that the Commission order defendant to restore and maintain adequate, efficient, just and reasonable telephone service.

AT&T admits that after the service cutover in December, it made an internal error which caused ten of the Complainant's fourteen phone lines to lose dial tone. AT&T contends that the issue was resolved in one day. AT&T acknowledges that Setton complained about static on its lines and the inability to receive calls. AT&T acknowledges that there was static on (at least) one of Setton's phone lines which could have been caused by severe weather. AT&T asserts that it responded to Setton's complaints in a timely manner. AT&T points out that during the period in question a severe rainstorm occurred, prompting the Governor to declare a state of emergency in several counties including Tulare County, where the Complainant's facility is located. Given the weather conditions and the extraordinary high level of calls for service received by the Defendant, AT&T contends that the level of service provided to the Complainant was more than reasonable.<sup>5</sup> Lastly, AT&T points out the issue of broadband internet services is outside of the Commission's jurisdiction and that said service is provided by an affiliate not regulated by the Commission.

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<sup>5</sup> AT&T Answer at 2.

**4. Scope of the Proceeding**

The issues to be addressed in this proceeding are:

1. What were the exact dates, duration and nature of Complainant's outages and calls for service to Defendant?
2. When did Defendant respond to each outage or call for service set forth in Issue #1 and how many times did Defendant respond before service was restored?
3. Was Complainant billed for service during the period of any of the outages?
4. What is the current status of the Complainant's telephone service?
5. If Complainant prevails in the instant proceeding what, if any, is the appropriate remedy?

**5. Discovery**

The assigned Administrative Law Judge (ALJ) informed the parties at the prehearing conference that they could immediately engage in discovery.

Discovery is to be completed by May 13, 2011. If the parties have discovery disputes that they are unable to resolve by meeting and conferring they should raise these disputes with the Commission pursuant to Rule 11.3 of the Commission's Rules of Practice and Procedure (Rules).

**6. Schedule**

The schedule for this proceeding is as follows:

**SCHEDULE**

<b>Event</b>	<b>Date</b>
Prehearing Conference, Held	March 21, 2011
Discovery, Completed	May 13, 2011
Settlement Status, reported (via email to ALJ)	May 20, 2011
Joint List of Stipulated Facts, Filed	May 25, 2011
Complainant's Opening Testimony, Served	June 3, 2011
Defendant's Testimony, Served	June 17, 2011
Complainant's Rebuttal Testimony, Served	June 27, 2011
Evidentiary Hearings, Held Commission Hearing Room State Office Building 505 Van Ness Avenue, San Francisco, CA 94102, at 10:00 a.m.	July 15, 2011
Opening Briefs (Concurrent), Filed	August 1, 2011
Reply Briefs (Concurrent), Filed Case Submitted	August 11, 2011
Presiding Officer's Decision, Issued	By October 10, 2011

Consistent with Pub. Util. Code § 1701.2(d), it is anticipated that this proceeding will be completed by January 10, 2012, within 12 months from its filing.

## **7. Filings and Service of Documents**

All documents required to be filed in the proceeding shall be filed with the Commission's Docket Office in accordance with the Commission's Rules of Practice and Procedure. Article 1 of the Rules contains all of the Commission's filing requirements. Prepared testimony is only served, not filed. The parties must serve all prepared testimony and other documents required to be filed in this proceeding on each other, with a copy to the assigned ALJ, by the deadlines stated in this ruling. Service must be via personal delivery, facsimile, overnight mail or by e-mail. The parties must comply with Rule 1.10 regarding the service of documents via e-mail. As previously noted, prepared testimony should not be filed with the Docket Office but is to be served on the opposing party and all members of the service list and submitted to the assigned ALJ. Parties are encouraged to file and serve electronically, whenever possible, as it speeds processing of the filings and allows them to be posted on the Commission's website. More information about electronic filing is available at <http://www.cpuc.ca.gov/puc/efiling>.

E-mail communication about this case should include, at a minimum, the following information on the subject line of the e-mail: Case 11-01-007 Setton Pistachio of Terra Bella, Inc. v. Pacific Bell Telephone Company, d/b/a AT&T California. In addition, the party sending the e-mail should briefly describe the nature of the attached communication; for example, Comments. The official service list for this proceeding is available on the Commission's web page. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process Office, the service list, and the ALJ. Prior to serving any document, each party must ensure that it is using the most up-to-date service list. The service list on the Commission's

website meets that definition. Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures should contact the Commission's Public Advisor at (866) 849-8390 or (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

**8. Exhibits**

The parties must comply with Rule 13.7 regarding exhibits.

**9. Proceeding Category and Need for Hearing**

The instructions to answer categorized this proceeding as adjudicatory and no party appealed that categorization (see Rule 7.1(b)). This ruling confirms the preliminary designation in the instructions to answer that there is a need for hearing.

**10. Alternative Dispute Resolution**

The parties are encouraged to avail themselves of the Commission's Alternative Dispute Resolution Program (ADR). ADR should shorten, not prolong, the proceedings, but even if a negotiated settlement takes longer, the result may be more beneficial to both parties. The ADR processes require confidentiality so that the parties' fundamental interests can be explored. Parties may jointly request ADR by email or any party may file (and serve on the other party) a written request for ADR. This should also be served on ALJ Jean Vieth (ADR Coordinator). The parties may call ALJ Vieth (415-703-2194) or send her an e-mail at [xjv@cpuc.ca.gov](mailto:xjv@cpuc.ca.gov). Please include your name, telephone number, e-mail address, the proceeding number and a brief description of the dispute.

**11. Ex Parte Rules**

*Ex parte* communications are prohibited in adjudicatory proceedings pursuant to Pub. Util. Code § 1701.2(b) and Rule 8.2(b).

**12. Presiding Officer**

Pursuant to Rule 13.2(a), ALJ W. Anthony Colbert, is designated as the Presiding Officer.

**IT IS RULED** that:

1. The scope, issues, and schedule are set forth in the body of this ruling unless amended by a subsequent ruling.
2. Pursuant to Rule 13.2(a) of the Commission's Rules of Practice and Procedure, Administrative Law Judge W. Anthony Colbert is the Presiding Officer.
3. *Ex Parte* communications are prohibited in adjudicatory proceedings, in accordance with Public Utilities Code Section 1701.2(b) and Rule 8.2(b).
4. Pursuant to Rule 7.1(b) of the Commission's Rules of Practice and Procedure, this is an adjudicatory proceeding and there is a need for evidentiary hearings.

Dated May 13, 2011, at San Francisco, California

/s/ TIMOTHY ALAN SIMON  
Timothy Alan Simon  
Assigned Commissioner