

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



FILED

11-30-09
04:59 PM

Driftwood Dairy,

Complainant

v.

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

Defendant

Case No. 09-10-026
(Filed October 23, 2009)

**ANSWER OF PACIFIC BELL TELEPHONE COMPANY
D/B/A AT&T CALIFORNIA (U 1001 C)
TO THE COMPLAINT OF DRIFTWOOD DAIRY**

David J. Miller
AT&T Services Legal Department
525 Market Street, Room 2018
San Francisco, CA 94105
Tel.: (415) 778-1393
Fax: (281) 664-9478
davidjmillier@att.com

November 30, 2009

Defendant Pacific Bell Telephone Company d/b/a AT&T California (U 1001 C) (“AT&T California”) hereby answers the Complaint of Driftwood Dairy filed October 23, 2009 (the “Complaint”). As indicated below, it appears the Complaint involves a contract between Driftwood Dairy and SBC Long Distance, LC d/b/a AT&T Long Distance. Accordingly, this answer is provided on behalf of both AT&T California and AT&T Long Distance (collectively, “AT&T”).

Except as expressly admitted below, AT&T denies each and every allegation of the Complaint and further denies that Driftwood Dairy is entitled to any relief. To the contrary, pursuant to the contract between Driftwood Dairy and AT&T Long distance, AT&T Long Distance is entitled to recover charges that result from Driftwood Dairy’s termination of the contract during the applicable term commitment. AT&T reserves the right to amend, add, or delete portions of this answer or add affirmative defenses resulting from information ascertained through further investigation and discovery. For convenience, the paragraphs in this answer respond to the same paragraph numbers in the Complaint.

A. Paragraph A of the Complaint identifies Driftwood Dairy as the Complainant. AT&T lacks information or belief, and on that basis denies the allegations of paragraph A of the Complaint.

B. Paragraph B of the Complaint identifies “AT&T of California” as the defendant. AT&T denies any affiliation with any entity named “AT&T of California.” The instant complaint was served on AT&T California and appears to involve a contract

between Driftwood Dairy and AT&T Long Distance, accordingly this answer is provided on behalf of both AT&T California and AT&T Long Distance (collectively, “AT&T”).

C. AT&T lacks information or belief, and on that basis denies the allegations of paragraph C of the Complaint.

D. AT&T lacks information or belief, and on that basis denies the allegations of paragraph D of the Complaint.

E. AT&T denies that Suzanne M. Acosta or Jacquelyn Boyce, either individually or collectively, are proper defendants to the Complaint.

F. AT&T denies the allegations of paragraph F of the Complaint.

G. AT&T admits that the proper category for this proceeding is adjudicatory, but denies that hearings are needed. AT&T admits the Complaint was filed as a “Regular Complaint.” AT&T denies the allegations in subpart (4) of paragraph G. AT&T lacks information or belief regarding Driftwood Dairy’s “sourcing bids” with “others,” and on that basis denies those allegations.

H. AT&T denies that Driftwood Dairy is entitled to the relief it seeks in paragraph H of the Complaint.

I. This paragraph of the Complaint is administrative and requires no response from AT&T.

J. This paragraph of the Complaint is administrative and requires no response from AT&T.

K. This paragraph of the Complaint is administrative and requires no response from AT&T.

L. AT&T alleges that AT&T Long Distance is entitled to termination charges pursuant to its contract with Driftwood Dairy. This contract was executed by Mr. Bill Steiner as an officer of Driftwood Dairy, and provides for specified charges in the event that Driftwood Dairy terminates the contract during the applicable term commitment. Driftwood Dairy terminated the contract during the applicable term commitment, and AT&T Long Distance invoiced Driftwood Dairy for termination charges.

**CATEGORY OF PROCEEDING; NEED FOR HEARING;
ISSUES AND PROPOSED SCHEDULE**

M. AT&T agrees that the proper categorization of this proceeding is adjudicatory, but denies that hearings are necessary. The issue for determination is: Whether Driftwood Dairy must perform its obligations under the contract it signed with AT&T Long Distance.

N. AT&T proposes the following schedule:

Prehearing Conference	December 2009
Concurrent Opening Declarations	February 2010
Concurrent Reply Declarations	March 2010
Opening Briefs	April 2010
Reply Briefs	May 2010

AFFIRMATIVE DEFENSES

First Affirmative Defense (Non-Discrimination)

O. The Complainant's prayer for relief, if granted, would violate Section 453(a) of the Public Utilities Code, which provides as follows:

No public utility shall, as to rates, charges, services, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.

The contract between Driftwood Dairy and AT&T Long Distance requires Driftwood Dairy to pay termination charges under certain circumstances. In seeking to avoid these charges, Driftwood Dairy is seeking an unlawful preference not accorded to other customers.

Second Affirmative Defense (Vagueness)

P. The complaint violates Rule 4.2 of the Commission's Rules of Practice and Procedure because it is vague. Rule 4.2 provides in pertinent part:

The complaint shall be so drawn as to completely advise the defendant and the Commission of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief which is desired.

The complaint does not adequately advise AT&T or the Commission of what AT&T has purportedly done to injure complainant.

WHEREFORE, AT&T prays that Driftwood Dairy's Complaint be denied, and that Driftwood Dairy not be awarded any relief pursuant to its Complaint.

DATED: November 30, 2009

Respectfully submitted,

/s/

David J. Miller
General Attorney
AT&T Services Legal Department
525 Market Street, Room 2018
San Francisco, CA 94105
(415) 778-1393
davidjmiller@att.com

441138

VERIFICATION

David J. Miller, 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 (U 1001 C), a corporation, and for its affiliate, SBC Long Distance, LLC doing business as AT&T Long Distance (U 5800 C), a limited liability corporation. I make this verification for and on behalf of Pacific Bell Telephone Company because there is at present no corporate officer for the company in the county where my office is located. I declare under penalty of perjury that I have read the foregoing **ANSWER OF PACIFIC BELL TELEPHONE COMPANY D/B/A AT&T CALIFORNIA (U 1001 C) TO THE COMPLAINT OF DRIFTWOOD DAIRY** in **C.09-10-026** and am informed and believe, and on that ground allege, that the matters stated in it are true.

Dated at San Francisco, California, this 30th day of November 2009.

/s/
David J. Miller
General Attorney
AT&T Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **ANSWER OF PACIFIC BELL TELEPHONE COMPANY D/B/A AT&T CALIFORNIA (U 1001 C) TO THE COMPLAINT OF DRIFTWOOD DAIRY**, on assigned Administrative Law Judge Robert A. Barnett, as well as to all known parties to **C.09-10-026** as indicated in the attached Service List by electronic mail, U.S. Mail, and/or hand-delivery.

Executed this 4th day of December 2009, at San Francisco, California.

AT&T SERVICES, INC.
525 Market Street, Room 2023
San Francisco, CA 94105

/s/

Thomas J. Selhorst

CALIFORNIA PUBLIC UTILITIES COMMISSION

Service Lists

Proceeding: C0910026 - DRIFTWOOD DAIRE VS P

Filer: Driftwood Dairy

List Name: LIST

Last changed: October 23, 2009

[Download the Comma-delimited File](#)
[About Comma-delimited Files](#)

[Back to Service Lists Index](#)

Parties

DAVID TRENKENSCHUH
DRIFTWOOD DAIRY
10724 E. LOWER AZUSA ROAD
EL MONTE, CA 91731
FOR: DRIFTWOOD DAIRY

[Top of Page](#)

[Back to INDEX OF SERVICE LISTS](#)