BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Fones4All Corporation (U 6338 C), Complainant v. Pacific Bell Telephone Company d/b/a AT&T California (U 1001 C), Defendant	Case No. 07-12-030 (Filed December 28, 2007)
And Related Matter.	Case No. 08-02-009 (Filed February 8, 2008)

JOINT RESPONSE OF CHAPTER 7 TRUSTEE FOR FONES4ALL CORPORATION (U 6338 C) AND PACIFIC BELL TELEPHONE COMPANY D/B/A AT&T CALIFORNIA (U 1001 C) TO THE ADMINISTRATIVE LAW JUDGE'S RULING SEEKING AN UPDTATED STATUS REPORT AS TO THE BANKRUPTCY PROCEEDING INVOLVING FONES4ALL AND WHETHER THESE PROCEEDINGS MAY MOVE FORWARD OR BE DISMISSED, FILED JULY 19, 2012

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I. INTRODUCTION

The Chapter 7 Trustee (the "Trustee") for Fones4All Corporation (U 6338 C) ("Fones4All") and Pacific Bell Telephone Company d/b/a AT&T California (U 1001 C) ("AT&T California" or "AT&T") hereby jointly respond to the **Administrative Law Judge's Ruling Seeking An Updated Status Report As To The Bankruptcy Proceeding Involving Fones4All And Whether These Proceedings May Move Forward Or Be Dismissed** filed July 19, 2012 (hereinafter "July 19 Ruling"). The July 19 Ruling requests an update on the current status of the Fones4All bankruptcy proceeding and an explanation of why these matters, presently stayed until December 2, 2012, cannot either be moved forward or dismissed.

AT&T California and Fones4All, through the Bankruptcy Trustee, continue to agree that because of the interconnectedness between the parties' claims against the other, it remains unfair and impractical to proceed with Fones4All's claim against AT&T California when AT&T's counterclaim is stayed. Moreover, the parties in the Fones4All bankruptcy proceeding have reached a global settlement in principle. The contemplated settlement—which would dispose of all claims between the parties in the Fones4All bankruptcy *and* in the consolidated actions before the CPUC (Case 07-12-030 and 08-02-009)—is subject to the due execution and delivery of definitive settlement documents, and approval by the Bankruptcy Court. The parties anticipate executing final settlement documentation by early August 2012, and then seeking Bankruptcy Court approval, which could take several months. Accordingly, the Trustee and AT&T California respectfully request the Commission continue to stay the proceedings in this action until at least December 2, 2012, pending the expected finalization and approval of the settlement in Fones4All's bankruptcy proceedings.

II. FACTUAL BACKGROUND

On December 28, 2007, Fones4All commenced an action against AT&T before the Commission, styled as *Fones4All Corporation (U6338C) v. Pacific Bell Telephone Company d/b/a AT&T California (U1001C)*, Case 07-12-030, and on February 8, 2008, AT&T commenced an action against Fones4All presently pending before the Commission, styled as *Pacific Bell Telephone Company d/b/a AT&T California (U1001C) v. Fones4All Corporation (U6338C)*, Case 08-02-009, which cases were consolidated by ruling dated March 21, 2008 (collectively, the "Consolidated CPUC Actions"). In Case 08-02-009, AT&T seeks, among other things, damages from Fones4All for non-payment of amounts due and owing pursuant to a certain interconnection agreement totaling at least $4,483,617.74. By ruling dated January 13, 2009, the Commission stayed the Consolidated CPUC Actions because of Fones4All's bankruptcy proceeding and, by order dated November 10, 2011, the Commission continued the stay until December 2, 2012.

As mentioned, after extensive efforts, the parties in the Fones4All bankruptcy proceeding have reached a global settlement in principle. The contemplated settlement—which would dispose of all claims between the parties in the Fones4All bankruptcy *and* in the Consolidated CPUC Actions—is subject to the due execution and delivery of definitive settlement documents, as well as approval by the Bankruptcy Court. The parties are optimistic that final settlement documentation will be completed by early August, 2012. Shortly thereafter, the parties will seek Bankruptcy Court approval of the settlement, which could take several months.

III. CONTINUING THE STAY PENDING FINALIZATION AND BANKRUPTCY COURT APPROVAL OF THE GLOBAL SETTLEMENT WOULD PROMOTE THE INTERESTS OF FAIRNESS AND JUDICIAL ECONOMY

The Commission has found "good cause" to grant a motion to stay proceedings when doing so promotes the interests of fairness and judicial economy. For example, the Commission

has stayed its proceedings to allow the parties to present a settlement agreement that would resolve pending issues in multiple Commission proceedings.[1] The Commission has also stayed its proceedings to permit the parties to file a negotiated agreement pursuant to the advice letter process described in CPUC Resolution ALJ-181,[2] and to permit defendants to file a motion to dismiss within four months "[b]ased on defendants' representation that their motion to dismiss may resolve this complaint and avoid the time, expense and disruption of intensive discovery."[3]

State and federal courts considering similar issues have held that a court may stay proceedings as part of its inherent authority "to control the disposition of the cases on its docket with economy of time and effort for itself, for counsel, and for litigants."[4] A court's use of this power "calls for the exercise of judgment, which must weigh competing interests and maintain an even balance."[5] It is within a court's discretion to grant or deny a stay.[6] For example, courts have stayed proceedings pending the outcome of related proceedings "to promote the expeditious and efficient settlement of disputes and eliminate multiplicity of actions."[7] In *Sysangyong Corp.*, the Ninth Circuit upheld a stay of an entire proceeding even though only a few of the issues in the case were being litigated in the alternative forum.[8] The court explained:

> [a] trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case. This rule applies

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[1] *See Order Instituting Investigation Into the Gas Market Activities of Southern California Gas Company et al.*, Investigation No. 02-11-040 (CPUC Nov. 21, 2002) and *Order Instituting Investigation Whether San Diego Gas & Electric Company et al. Complied With Relevant Statutes and Commission Decisions*, Investigation No. 03-02-033 (CPUC Feb. 27, 2003).

[2] *Petition of Level 3 Communications, LLC (U-5941-C) for Arbitration*, Application No. 04-06-004 (CPUC June 1, 2004).

[3] *Chevron Products Co. v. Equilon Enterprises*, Case 05-12-004 (CPUC Dec. 5, 2005).

[4] *Sunnyside Dev. Co. v. Cambridge Display Tech*, No. C 08-01780, 2008 U.S. Dist. LEXIS 74850, at *11 (N.D. Cal. Sept. 26, 2008) (quoting *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936)).

[5] *Cambridge Display Tech*, 2008 U.S. Dist. LEXIS at *12 (quoting *Landis*, 299 U.S. at 254-55).

[6] *Id.* at *12 (quoting *Landis*, 299 U.S. at 254-55).

[7] *Marcus v. Superior Court*, 75 Cal. App. 3d 204, 211 (Cal. App. 4th Dist. 1977). *See also Mediterranean Enters. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983).

[8] *Id.*

> whether the separate proceedings are judicial, administrative, or arbitral in character, and does not require that the issues in such proceedings are necessarily controlling of the action before the court.[9]

Here, good cause exists to continue the stay of the Consolidated CPUC Actions pending finalization and Bankruptcy Court Approval of the global settlement. *First*, the Commission consolidated the two cases, and the briefing and testimony on issues in the two cases is inextricably intertwined. AT&T California and Fones4All have already exchanged testimony regarding the disputed issues in the complaints, have passed the evidentiary hearing stage, and have filed opening briefing. Both parties will benefit from having the Commission continue to hear their claims together. If the Commission moves forward with Fones4All's claim, then AT&T California will be forced to seek relief from the automatic bankruptcy stay to permit both cases to proceed together. Such a course of action would cause significant, needless expense to all parties, especially in light of the settlement. *Second*, the parties are hopeful that all claims between the parties will be resolved through the settlement in principle reached in the bankruptcy proceedings. Like litigation stays imposed in favor of claims subject to arbitration in another forum, it makes sense to stay the Commission proceeding for the sake of judicial efficiency. Because the claims should be resolved in the bankruptcy proceeding, the Commission's consideration of them likely is unnecessary. Continuing the stay of the proceeding therefore will help promote the efficient resolution of the parties' claims and eliminate the possibility of multiple actions. On the other hand, proceeding with Fones4All's claim against AT&T California will result in unnecessary litigation and a waste of the Commission's, and the parties', valuable resources.

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[9] *Id.*

Accordingly, pending finalization of the settlement in Fones4All's bankruptcy proceedings, good cause exists to continue the stay of the Consolidated CPUC Actions until at least December 2, 2012—the date the stay presently is set to expire pursuant to the Commission's order dated November 10, 2011.

IV. CONCLUSION

For the foregoing reasons, the Trustee and AT&T California jointly request the Commission continue the stay of the Consolidated CPUC Actions until at least December 2, 2012.

DATED: July 26, 2012

Respectfully submitted,

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