



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

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

6 Complainants,

7 v.

8 Pacific Bell Telephone Company, dba AT&T
9 California (U 1001 C)

10 Defendant.

Case No. 09-08-021
(Filed August 27, 2009)

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13 **PREHEARING CONFERENCE STATEMENT**
14 **OF PACIFIC BELL TELEPHONE COMPANY**
15 **d/b/a AT&T CALIFORNIA (U 1001 C)**

16 Pacific Bell Telephone Company, doing business as AT&T California (“AT&T” or
17 “AT&T California”), respectfully submits this Prehearing Conference Statement.

1 **I. INTRODUCTION**

2 This case began as a putative class action filed in the Sacramento Superior Court by
3 Complainants La Collina dal Lago (“La Collina”) and Bernau Development Corporation
4 (“BDC”) against Defendants Pacific Bell Telephone Company and AT&T Services, Inc. In
5 response to a demurrer filed by the Defendants, the Sacramento Superior Court referred the
6 matter to this Commission, under the doctrine of primary jurisdiction, and sought information
7 from the Commission regarding the tariff interpretation question that is at issue in this
8 proceeding.

9 Complainants allege that Pacific Bell Telephone Company (“AT&T”) has illegally failed
10 to provide reimbursement to property developers for their costs in constructing underground
11 telephone structures that connect new developments to AT&T’s telephone network. Specifically,
12 Complainants allege that Schedule CAL.P.U.C. No. A2.1.15 in AT&T’s tariff – commonly
13 known as “Rule 15” – requires AT&T to reimburse developers for the cost of installing
14 infrastructure in AT&T’s rights of way.

15 Contrary to the allegations of the complaint, Rule 15 does not set forth any specific
16 standard or rate of reimbursement for developers who choose to install infrastructure to connect
17 their developments to AT&T’s network. Absent some clear restriction in the tariff, there is also
18 no legal principle that prevents AT&T and developers from negotiating and agreeing to mutually
19 acceptable terms and conditions with regard to the construction of communication facilities
20 installed to serve new developments in California. Furthermore, on the basis of the authority
21 granted to it by the Commission in Decision 06-08-030 (issued August 24, 2006), which found
22 the California telecommunications market to be competitive, AT&T has the freedom to modify
23 and maintain its tariffs as appropriate to meet its business needs and in response to prevailing
24 market conditions.

1 **II. AN EVIDENTIARY HEARING IS REQUIRED.**

2 The issues to be decided at the evidentiary hearing in this matter are those set forth in the
3 Superior Court's order following AT&T's demurrer and motion to strike, and are as follows:

4 A. Whether Defendants' actions as alleged in the administrative complaint constitute
5 a violation of Rule 15.

6 B. Whether Rule 15 applies (and to what extent, if any) to line extensions installed by
7 developers rather than the Utility.

8 C. Whether Rule 15 requires reimbursement by the Utility to developers for any
9 portion of their costs incurred in installing line extensions and, if so, the basis and manner for
10 determining the amount of such reimbursement.

11 D. Whether it is permissible for the Utility to enter into "trench agreements" with
12 developers with respect to the installation of line extensions and whether the amount of
13 reimbursement set forth in such agreements is binding on the parties regardless of what Rule 15
14 might otherwise require in the absence of such agreements.

15 E. If the Commission determines that Defendants' actions as alleged in the
16 administrative complaint constitute a violation of Rule 15, whether Plaintiffs were damaged by
17 the violation, the nature of the damage, the amount of damage, and the manner in which the
18 damage was calculated.

19 F. Whether any revisions or changes to Rule 15 are needed going forward and if so,
20 the specifics of such revisions or changes.

21
22 **III. SETTLEMENT**

23 AT&T does not believe that settlement discussions are appropriate at this time.
24

25 **IV. DISCOVERY, WITNESSES, LENGTH OF HEARING, AND SCHEDULE**

26 Plaintiffs have proposed that AT&T is somehow judicially estopped from making certain
27 assertions in this matter. AT&T believes that this issue must be briefed and argued before any

1 determinations can be made regarding any further discovery or scheduling in the case. AT&T
2 respectfully submits that once the Commission sets a hearing date and briefing schedule for
3 Plaintiff's motion, and rules on that motion, the parties can then make their respective
4 determinations regarding the remaining discovery and scheduling in this matter.

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6 Dated: November 10, 2009

Respectfully submitted,

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8 By: _____ /s/
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CALIFORNIA PUBLIC UTILITIES COMMISSION

Service Lists

Proceeding: C0908021 - LA COLLINA DAL LAGO
Filer: BERNAU DEVELOPMENT CORPORATION
List Name: LIST
Last changed: October 5, 2009

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