

# **ATTACHMENT A**

**ASSIGNED COMMISSIONER AND CHIEF ADMINISTRATIVE LAW JUDGE'S  
RULING CONTAINING INSTRUCTIONS TO ANSWER, SETTING DATE OF  
FILING RESPONSE TO MOTION FOR SUMMARY JUDGMENT,  
NOTICE OF PREHEARING CONFERENCE/EVIDENTIARY HEARING,  
AND SCOPING MEMO**

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

Verizon California, Inc. a California corporation  
(U1002C),

Complainant,

vs.

Paul M. Carrick III, an individual; Robert Mitchell Herman as Trustee of the Herman Family Trust, an individual; John N. Dukes, an individual; Gwyneth F. Dukes, an individual; Sidney Sue Slade as Successor Trustee of the MacDonald Family Trust UAD October 18, 1979, an individual; Paul R. Wilens, an individual; Cathy Wilens, an individual; Ramon Arredondo, an individual; Alice M. Reed, an individual; Sherry L. Wothers, an individual; Lawrence H. Selman, an individual; Martha Jean Selman, an individual; Brian Bean, an individual; Lawrence L. Howard, an individual; Armen Markarian, an individual; Hearst-Argyle Stations, Inc., a Nevada corporation; Consuelo L. Hernandez, an individual; Alan H. Reid, an individual; Kathleen Reid, an individual; Robert W. Tucker, an individual; Shelley Tucker, an individual; Leonard Steven Johnson, an individual; James P. Boyle, an individual; Angela M. Boyle, an individual; Elena Rauen, an individual; Kent A. Uhlenhopp, an individual; Shanne Carvalho, an individual; Barry Wothers, an individual; John Moore, an individual; Robert Ronald Cash, an individual; David Ow, an

(EDM)  
Case 07-11-019  
(Filed November 28, 2007)

individual; Judd Wiesjahn, an individual;  
Annalisa Wiesjahn, an individual;  
Camilo Wilson, an individual; Anna Wilson, an individual; Irene Hall, an individual;  
Sarah Apostoleris, an individual; Jeff L. Osborn, an individual; Dana Matthew-Osborn, an individual; Stanley Towle, an individual;  
Cynthia A. Bird, an individual; Donald Brown, an individual; Charles W. Brown, an individual;  
David Tymn, an individual; Mark S. Hamlin, an individual; Thomas E. Atchison II, an individual;  
Rhonda Atchison, an individual;  
Faydra Atchison, an individual;  
Richard L. Wakeman, an individual;  
Dana Wakeman, an individual; The D'Orio Family, a limited partnership; Alicia P. Herman, an individual; Charles R. Cortsen, an individual; Susan P. Cortsen, an individual; Beatrice Supnet, an individual; Richard Nathanson, an individual;  
Xuan T. Casey, an individual; Yossef Zaguri, an individual; Arlette Sabag-Zaguri, an individual;  
Maryann C. Parsons, an individual; Debrae Joan Lopes, an individual; Michele Margaret Landegger, an individual; Richard Nohrden, an individual; Jeffery J. Bradford, an individual;  
Scot S. Reid, an individual; Julie W. Reid, an individual; William A. Pryce, an individual;  
June R. Pryce, an individual; Sanjay Iyer, an individual; Asha Pandya, an individual;  
Richard C. Goldsmith, an individual;  
Laurie B. Goldsmith, an individual; Summit Road Association, an entity of unknown form

Defendants.

**ASSIGNED COMMISSIONER AND CHIEF ADMINISTRATIVE LAW JUDGE'S  
RULING CONTAINING INSTRUCTIONS TO ANSWER, SETTING DATE OF  
FILING RESPONSE TO MOTION FOR SUMMARY JUDGMENT, NOTICE OF  
PREHEARING CONFERENCE/EVIDENTIARY HEARING, AND SCOPING  
MEMO**

**Instructions to Answer**

On November 28, 2007, Verizon California Inc., (Verizon) filed the above-entitled complaint against the defendant property owners of a five-mile stretch of Summit Drive located in Santa Clara and Santa Cruz Counties pursuant to Pub. Util Code § 625 seeking authorization to condemn property for the purpose of offering utility services. Verizon stated in its verified complaint that it served the complaint by mail on certain defendants and known counsel. Verizon subsequently amended its certificate of service to show direct service of additional defendants.

Defendants are directed to answer the complaint in writing no later than December 28, 2007. The answer shall be filed with the California Public Utilities Commission, Attn: Docket Office, 505 Van Ness Avenue, San Francisco, CA 94102, and simultaneously shall be served on Verizon's counsel and on the persons listed on the attached service list.

**Response to Motion for Summary Judgment**

On November 29, 2007, Verizon filed a motion for summary judgment, contending that Pub. Util. Code § 625 does not apply to the case at hand. Defendants may file and serve a response to this motion no later than December 14, 2007. No replies will be accepted.

**Assignment**

This matter has been assigned to Commissioner Timothy Alan Simon and Administrative Law Judge (ALJ) Maribeth A. Bushey. The Complaint is

categorized as adjudicatory (Pub. Util. Code § 625(a)(1)(A)). Ex Parte contacts are prohibited. (Rule 8.2(b) of the Commission's Rules of Practice and Procedures.)

**Notice of Prehearing Conference/Evidentiary Hearing**

Pursuant to Pub. Util. Code § 625(a)(2)(A), the Commission must conduct the hearing in the local jurisdiction that would be affected by the proposed condemnation within 45 days of the date the complaint was filed, unless the defendants establish that an extension of not more than 30 days is necessary for discovery or other hearing preparation.

**NOTICE IS HEREBY GIVEN** that the Public Utilities Commission of the State of California has set a prehearing conference and evidentiary hearing in the above-entitled matter before ALJ Maribeth A. Bushey:

**January 10 and 11, 2008  
10:00 a.m.  
Gilroy City Hall  
Council Chambers  
7351 Rosanna Street  
Gilroy, California**

All parties may appear and be heard. If you have questions about the hearing date, time, or place, call the Commission's Calendar Clerk at (415) 703-1203.

Parties desiring expedited or daily transcripts should advise the Chief Hearing Reporter by telephone at (415) 703-1473, no later than three days prior to the first day of hearing.

Evidentiary hearings may be attended by the public.

## **Schedule**

This schedule is set assuming that defendants do not made an extension request concerning the hearing. Defendants should make any such request as soon as practicable, and no later than December 28, 2007.

All direct and reply testimony shall be in writing and shall be distributed prior to hearing on the schedule set out below. No additional direct or reply testimony shall be accepted at the hearing absent compelling circumstances. The hearing will be transcribed by a court reported and limited to cross examination, under oath, of witnesses presenting evidence on disputed issues of material fact. The testimony shall be limited to factual assertions relevant to an issue of material fact in this proceeding. All testimony of experts shall include a qualification statement, and all experts shall be present to testify at the hearing. Testimony shall not include legal or policy arguments; these matters may be addressed in briefs. All testimony shall be served on each person on the service list attached to this notice, including ALJ Bushey. This written testimony should not be filed with the Commission's Docket Office, but parties must bring two copies of all of their testimony to the hearings.

The purpose of the prehearing conference component of the hearing will be to identify disputed issues of material fact on which cross examination will be permitted.

Due to the short time between service of testimony and hearings, all parties serving testimony shall provide electronic copies to all other parties

requesting such a copy.<sup>1</sup> Administrative Law Judge Bushey shall be provided copies at [mab@cpuc.ca.gov](mailto:mab@cpuc.ca.gov).

Date	Event
December 28, 2007	Defendants file answer to complaint.
December 28, 2007	Last day for Defendants to request hearing extension pursuant to Pub. Util. Code § 625(a)(2)(A).
January 3, 2008	Concurrent written direct testimony served (not filed).
January 9, 2008 <b>NOON</b>	Concurrent written reply testimony served (not filed).
January 10 and 11, 2008	Prehearing conference/ evidentiary hearing at 10:00 a.m.
January 25, 2008 <sup>2</sup>	Concurrent opening briefs filed.
February 4, 2008	Concurrent reply briefs filed.
March 24, 2008	Presiding Officer's decision to be issued.

### Issues to Be Considered

The threshold issue in this proceeding is to determine whether Pub. Util. Code § 625 applies to the proposed condemnation, which will be addressed through the motion for summary judgment and response. On the assumption that the statute does apply, the scope of this proceeding is to determine whether

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<sup>1</sup> Parties seeking courtesy electronic service of documents should provide their electronic mail addresses to the party from whom such service is sought. All parties shall also provide their electronic mail addresses to the Commission's Process Office at [Process\\_office@cpuc.ca.gov](mailto:Process_office@cpuc.ca.gov).

<sup>2</sup> The briefing dates and date of issuance of the presiding officer's decision are subject to modification at the hearing.

the proposed condemnation would serve the public interest, pursuant to Pub. Util. Code § 625(a)(1)(A). In order to make this determination, parties should address the following issues as set out at Pub. Util. Code § 625(b)(2):

- Whether the public interest and necessity require the proposed project;
- Whether the property to be condemned is necessary for the proposed project;
- Whether the public benefit of acquiring the property by eminent domain outweighs the hardship to the owners of the property; and
- Whether the proposed project is located in a manner most compatible with the greatest public good and least private injury.

Additionally, parties should submit testimony addressing the following issues:

- Whether Verizon has made a sufficient demonstration that an exemption to the California Environmental Quality Act would apply to the proposed project; and
- What legal or practical limitations or requirements would be necessary to ensure that Summit Road is restored to a sound engineering standard, compliant with all applicable roadway standards, should trenching be authorized.

### **Designation of Presiding Officer**

Pursuant to Pub. Util. Code § 1701.2(a), ALJ Maribeth A. Bushey shall act as the presiding officer.

Dated December 3, 2007, at San Francisco, California.

/s/ TIMOTHY ALAN SIMON

Timothy Alan Simon  
Assigned Commissioner

/s/ ANGELA K. MINKIN

Angela K. Minkin, Chief  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner and Chief Administrative Law Judge's Ruling Containing Instructions to Answer, Setting Date of Filing Response to Motion for Summary Judgment, Notice of Prehearing Conference/Evidentiary Hearing, and Scoping Memo on all parties of record in this proceeding or their attorneys of record.

Dated December 3, 2007, at San Francisco, California.

/s/ ANTONINA V. SWANSEN  
Antonina V. Swansen

# **ATTACHMENT B**

## **LIST OF DEFENDANTS**

Defendants not represented by Larson but present at hearing

1. Mark S. Hamlin, an individual;

Defendants not present and not represented by Larson

1. Ramon Arredondo, an individual;
2. Thomas E. Atchison II, an individual;
3. Faydra Atchison, an individual;
4. Rhonda Atchison, an individual;
5. Cynthia A. Bird, an individual;
6. James P. Boyle, an individual;
7. Angela M. Boyle, an individual;
8. Xuan T. Casey, an individual;
9. Robert Ronald Cash, an individual;
10. Charles R. Cortsen, an individual;
11. Susan P. Cortsen, an individual;
12. Consuelo L. Hernandez, an individual;
13. Leonard Steven Johnson, an individual;
14. David Ow, an individual;
15. Michele Margaret Landegger, an individual;
16. Debrae Joan Lopes, an individual;
17. John Moore, an individual;
18. Richard Nathanson, an individual;
19. June R. Pryce, an individual;
20. William A. Pryce, an individual;
21. Alice M. Reed, an individual;
22. Elena Rauen, an individual;
23. Hearst-Argyle Stations, Inc., a Nevada corporation;
24. Arlette Sabag-Zaguri, an individual;
25. Beatrice Supnet, an individual;
26. Stanley Towle, an individual;
27. Kent A. Uhlenhopp, an individual;
28. Sanjay Iyer, an individual;
29. Asha Pandya, an individual;
30. Paul R. Wilens, an individual;
31. Cathy Wilens, an individual;
32. Barry Wothers, an individual;

Defendants represented by Larson

1. Sarah Apostoleris, an individual;
2. Brian Bean, an individual;
3. Jeffery J. Bradford, an individual;
4. Donald Brown, an individual;
5. Charles W. Brown, an individual;
6. Paul M. Carrick III, an individual;
7. Shanne Carvalho, an individual;
8. Gwyneth F. Dukes, an individual;
9. John N. Dukes, an individual;
10. Laurie B. Goldsmith, an individual;
11. Richard C. Goldsmith, an individual;
12. Irene Hall, an individual;
13. Alicia P. Herman, an individual;
14. Robert Mitchell Herman as Trustee  
of the Herman Family Trust, an  
individual;
15. Lawrence L. Howard, an individual;
16. Armen Markarian, an individual;
17. Dana Matthew-Osborn, an  
individual;
18. Richard Nohrden, an individual;
19. Jeff L. Osborn, an individual;
20. Maryann C. Parsons, an individual;
21. Alan H. Reid, an individual;
22. Julie W. Reid, an individual;
23. Kathleen Reid, an individual;
24. Scot S. Reid, an individual
25. Lawrence H. Selman, an individual;
26. Martha Jean Selman, an individual;
27. Sidney Sue Slade as Successor  
Trustee of the MacDonald Family  
Trust
28. The D'Orio Family, a limited  
partnership;
29. Robert W. Tucker, an individual;
30. Shelley Tucker, an individual;
31. David Tymn, an individual;
32. Dana Wakeman, an individual;
33. Richard L. Wakeman, an individual;
34. Annalisa Wiesjahn, an individual;
35. Judd Wiesjahn, an individual;
36. Camilo Wilson, an individual;
37. Sherry L. Wothers, an individual;
38. Yossef Zaguri, an individual;

# **ATTACHMENT C**

**Public Utilities Code Section 625**

## Attachment C - Public Utilities Code Section 625

**625.** (a) (1) (A) For the purpose of this article, except as specified in paragraph (4), a public utility that offers competitive services may not condemn any property for the purpose of competing with another entity in the offering of those competitive services, unless the commission finds that such an action would serve the public interest, pursuant to a petition or complaint filed by the public utility, personal notice of which has been served on the owners of the property to be condemned, and an adjudication hearing in accordance with Chapter 9 (commencing with Section 1701), including an opportunity for the public to participate.

(B) The requirements of this section do not apply to the condemnation of any property that is necessary solely for an electrical company or gas corporation to meet its commission-ordered obligation to serve. Proposed exercises of eminent domain by electrical or gas corporations that initially, or subsequently, acquire property for either commission-ordered electrical corporation obligation to serve and competitive telecommunications services or gas corporation obligation to serve and telecommunications services are subject to paragraph (2) of subdivision (b). For property acquired through the exercise of eminent domain after January 1, 2000, by an electrical or gas corporation solely to meet its commission-ordered obligation to serve, any electrical or gas corporation, or subsidiary or affiliate, that intends to install telecommunication equipment on the property for the purpose of providing competitive telecommunications services shall provide notice for the planned installation in the commission calendar.

(2) (A) Before making a finding pursuant to this subdivision, the commission shall conduct the hearing in the local jurisdiction that would be affected by the proposed condemnation. The hearing shall commence within 45 days of the date that the petition or complaint is filed, unless the respondent establishes that an extension of not more than 30 days is necessary for discovery or other hearing preparation. The commission shall provide public notice of the hearing pursuant to the procedures of the commission and shall also notify the local jurisdiction. In addition, the commission shall provide the local jurisdiction with copies of the notice of hearing in time for the local jurisdiction to mail that notice at least seven days in advance of the hearing to all persons who have requested copies of the local jurisdiction's agenda or agenda packet pursuant to Section 54954.1 of the Government Code.

(B) For purposes of subparagraph (A), "local jurisdiction" means each city within whose boundaries property sought to be taken by eminent domain is located, and if property sought to be taken is not located within city boundaries, each county within whose boundaries that property is located. However, where there is more than one local jurisdiction with respect to a single complaint or petition, the commission shall provide notice and copies of notices for mailing to all local jurisdictions involved, but shall hold only a single hearing in any one of those local jurisdictions.

(3) (A) The assigned commissioner or administrative law judge shall render a decision on making a finding in accordance with this subdivision within 45 days of the conclusion of the hearing, unless further briefing is ordered, in which event this period may be extended by up to 30 additional days to allow for briefing.

(B) If the rendering of a decision pursuant to this subdivision

requires review under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), then the time limits contained in subparagraph (A) of paragraph (2) and subparagraph (A) of paragraph (3) shall be extended as needed to accommodate that review.

(4) This subdivision and Section 626 do not apply to a railroad corporation, a refined petroleum product common carrier pipeline corporation, or a water corporation.

(b) The commission may make a finding pursuant to subdivision (a) if, in the determination of the commission, either of the following conditions is met:

(1) The proposed condemnation is necessary to provide service as a provider of last resort to an unserved area, except when there are competing offers from facility-based carriers to serve that area.

(2) The public utility is able to show all of the following with regard to the proposed condemnation:

(A) The public interest and necessity require the proposed project.

(B) The property to be condemned is necessary for the proposed project.

(C) The public benefit of acquiring the property by eminent domain outweighs the hardship to the owners of the property.

(D) The proposed project is located in a manner most compatible with the greatest public good and least private injury.

(c) The commission shall develop procedures to facilitate access for affected property owners to eminent domain proceedings pursuant to this section, and to facilitate the participation of those owners in those proceedings.

(d) Nothing in this section relieves a public utility from complying with Section 1240.030 of the Code of Civil Procedure or any other requirement imposed by law.

(e) A public utility that does not comply with this section may not exercise the power of eminent domain, including, but not limited to, any authority provided by Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure.

(f) The authority provided in this section supplements, and does not replace or otherwise affect any other limitation in law on the exercise of the power of eminent domain, including, but not limited to, any authority provided by Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure.

(g) (1) At the request of a public utility gas corporation, the commission shall hold the local hearing required in subparagraphs (A) and (B) of paragraph (2) of subdivision (a) and make and certify the finding required by paragraph (1) of subdivision (a) as part of the procedure to issue a certificate of public convenience and necessity.

(2) Notwithstanding any other provision of law, if the commission holds public hearings during the certification procedure for the purpose of making the determination required under paragraph (2) of subdivision (b), the commission shall have an additional 45 days beyond the date of any otherwise applicable statutory or regulatory deadline for making a determination.

# ATTACHMENT D

**Excerpt from Information for Property Owners, Utilities, and the Public  
Regarding Senate Bill 177, page 5, can be accessed at:  
[http://docs.cpuc.ca.gov/Word\\_Pdf/sb\\_177/manual\\_sb177.pdf](http://docs.cpuc.ca.gov/Word_Pdf/sb_177/manual_sb177.pdf)**

- Electrical or gas companies when they are condemning property only in order to meet their Commission-ordered obligations to serve.

## **FILING AND SERVICE OF COMPLAINT**

Public utilities that wish to condemn property for the purpose of offering competitive services should file a complaint, using the Commission's complaint form for SB 177 proceedings, with the Commission Docket Office in San Francisco.

Utilities must serve the complaint on:

- the property owner;

Utilities should also serve the complaint on:

- any occupants of the property (if other than the owner);
- other persons who have a legal interest in the property, such as an easement or a deed of trust;
- the owners of adjacent or bordering properties and other properties located within 300 feet of the property to be condemned;
- both the city and the county in which the property is located (each city and each county if the property is located within more than one jurisdiction);
- other public agencies that would be affected by the condemnation, such as special districts which provide services to the property (You may obtain information about the applicable special districts from the County Assessor's Office); and
- other public utilities or entities that are offering or proposing to offer in the same geographic area the type of service for which the public utility is seeking to condemn the property.

# **ATTACHMENT E**

## **Implementation Requirements**

## Implementation Requirements

- a. Cooperation
  - i. Verizon and the Defendants shall meet, confer, and cooperate as necessary to efficiently and effectively ensure the design and construction of a project fully consistent with sound engineering standards and compliant with all applicable roadway standards.
  - ii. Verizon shall review all plans with defendants, and defendants shall inform Verizon of all contemplated construction in the roadway.
- b. Documentation of Conditions
  - i. Verizon shall document the pre construction condition of the entire road with digital photographs or video.
  - ii. Verizon shall document each bore pit immediately after construction is completed.
  - iii. Verizon shall document each bore pit or other roadway disturbance no less than one year after construction and ideally after a significant storm.
- c. Verizon shall comply with public roadway construction standards.
- d. At its own expense, not to exceed \$10,000, Verizon shall hire an Inspector<sup>1</sup> to review the final plans, inspect the final construction of the bore pits in the roadway, and prepare a succinct written report

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<sup>1</sup> The Inspector shall be: (1) not affiliated with the parties, (2) either a registered civil engineer or a skilled and experienced road construction and maintenance expert, and (3) selected by mutual agreement of the parties or, if they can not agree, by the Director of the Commission's Communications Division.

to be distributed to all defendants. The Inspector shall re-inspect the road one year after construction is completed and prepare and distribute a report on the status of the road areas disturbed by Verizon's installations.

- e. Verizon shall adhere to Best Management Practices for all aspects of construction and maintenance of its facilities.
- f. The roadway shall be returned to its condition before construction, or better.
- g. As necessary, Verizon shall inspect and repair any deterioration to the road caused by its facilities for so long as those facilities are in place in Summit Road.
- h. Verizon shall cooperate with all locational information services and shall promptly respond to any requests.
- i. Verizon shall maintain local service personnel for residents to contact regarding road conditions requiring immediate action, especially during storms.
- j. Mitigating Temporary Construction Easement - Verizon shall pay for an extra grading. The SRA shall select and Verizon shall directly pay the contractor not to exceed \$5,000.