

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight and Programs Branch**

**RESOLUTION T-17368
June 21, 2012**

R E S O L U T I O N

**Resolution T-17368 Approval of Changes to AT &T's Tariff Rule 32 in
Compliance with Decision 12-02-029**

AT&T Advice Letter No. 40391

Summary

This resolution approves the revision to AT&T's Tariff Rule No. 32 - Facilities to Provide Replacement of Aerial with Underground Facilities in compliance with Ordering Paragraph 2 of Decision (D) 12-02-029. In the revision of AT&T's Tariff Rule No. 32, Subsection 3, AT&T specifies that the applicant requesting the change from aerial to underground facilities, pays in advance, the estimated cost of construction less the estimated salvage value of the replaced aerial facilities. At the conclusion of the project, however, AT&T would reimburse the applicant for any amount paid in excess of the actual cost.

Background

In D. 12-02-029, the Commission resolved the complaint filed by the California Building Industry Association (CBIA)¹ against Pacific Bell Telephone Company, doing business as AT&T California (AT&T) alleging that AT&T has changed its billing practice for undergrounding construction, resulting in an increase in charges under its tariff, without filing for or receiving prior Commission approval that such an increase is justified. CBIA alleged that AT&T's action violated Public Utilities Code § 454 and General Order (G. O.) 96-B.

In its complaint, CBIA requested a) that the Commission enjoin AT&T from administering the provisions for replacement of aerial facilities with underground facilities in conformance with Tariff Rule 32², and b) that the Commission order AT&T

¹ CBIA is a statewide trade association representing over 5,000 homebuilders and homebuilding professionals, including trade contractors, architects, engineers, designers, suppliers, and other industry professionals. CBIA filed its original complaint on September 18, 2009 and an amended complaint on February 16, 2010.

² Tariff Rule 32 is the section of AT&T's California tariff regarding payment for relocation construction costs, including aerial conversions. The meaning of Subsection A.3 of Tariff Rule 32 is in dispute.

to issue refunds to CBIA on behalf of its members and all other similarly situated applicants as a result of the alleged unauthorized change in practice.

In D.12-02-029, the Commission made the following findings:

- The language of Tariff Rule 32, Subsection A.3 neither expressly authorizes nor prohibits AT&T from using actual cost billing practices such as the kind set out in the new contract provision.
- Subsections A.1 and A.2 of Tariff Rule 32 only contain the word “costs” and do not describe the costs to be “estimated” or “actual.”
- The language of Tariff Rule 32, Subsection A.3 is ambiguous.
- Government Code Section 66473.6 has been in effect since 1985 and applies specifically to developers or subdividers who are requesting undergrounding of aerial facilities due to conditions imposed by a city or county.
- Some applicants who apply to underground lines under Subsection A.3 of Tariff Rule 32 will be subject to Government Code Section 66473.6, while others will not.
- The language of Subsection A.3 of Tariff Rule 32 is not fully consistent with Government Code Section 66473.6.

Thus, the Commission ordered:

- AT&T California to file a Tier 2 advice letter updating Subsection A.3 of its Tariff Rule 32 to reflect the requirements of Government Code Section 66473.6 no later than 30 days after the effective date of this decision.
- To the extent AT&T California wishes to continue to use a \$10,000 threshold below which projects only pay the estimated cost, AT&T must file for permission to do so via a Tier 3 advice letter showing how this practice is in conformance with Government Code § 66473.6.
- Refunds will not be awarded to California Building Industry Association members or non-members.

Following the Commission’s order, AT&T filed Tier 2 Advice Letter No. 40390 and Tier 3 Advice Letter No. 40391.

On May 2, 2012, the Communications Division (CD) approved AT&T’s Advice Letter No. 40390 which updated Subsection A.3 of its Tariff Rule 32 to reflect the requirements of Government Section 66473.6.

Discussion

AT&T filed Tier 3 Advice Letter No. 40391 on March 16, 2012, in compliance with Ordering Paragraph 2 of D.12-02-029, which states:

To the extent that AT&T California wishes to implement actual cost billing with or without a threshold for applicants not subject to Government Code Section 66473.6, AT&T California must file a Tier 3 advice letter requesting such changes to Tariff Rule 32.

In its proposed revision to Tariff Rule 32, AT&T chose not to implement a threshold for applicants not subject to Government Code § 66473.6. Subsection A.3 of AT&T's Tariff Rule 32 would read as proposed in Advice Letter No. 40391 (changes and new language in italics):

In circumstances other than those covered by 1. or 2. preceding, where mutually agreed upon by the Company and an applicant, aerial facilities may be replaced with underground facilities, provided the applicant requesting the change pays, in advance, an amount equal to the estimated cost of construction less the estimated net salvage value of the replaced aerial facilities. At the conclusion of the project, the Company shall reimburse the applicant for any amount paid in excess of the actual cost. If the estimated cost paid by the applicant was less than the actual cost incurred by the Company, the applicant shall pay the Company the difference at the conclusion of the project.³

Pursuant to Government Code § 66473.6, whenever a city or county imposes as a condition to its approval of a tentative map or a parcel map a requirement that necessitates replacing, undergrounding, or permanently or temporarily relocating existing facilities, the applicant shall pay the Company, in advance, a sum equal to the estimated cost of the construction less that estimated net salvage value of the replaced aerial facilities. At the conclusion of the project, the Company shall reimburse the applicant for any amount paid in excess of the actual cost. If the estimated cost paid by the applicant is less than the actual cost incurred by the Company, the applicant shall pay the Company the difference at the conclusion of the project.⁴

Through this Resolution, CD recommends the approval of AT&T's Tier 3 Advice Letter No. 40391, which would modify its existing Rule 32 tariff in compliance with Ordering Paragraph 2 of D.12-02-029. The Commission agrees with CD and consequently, the Commission approves Advice Letter No. 40391.

³ As proposed in AT&T Advice Letter No. 40391.

⁴ Approved in AT&T Advice Letter No. 40390.

Comments

In compliance with PU Code § 311 (g), a Notice of Availability was e-mailed on May 22, 2012, parties on the service list of Advice letter 40391 informing these parties that the draft of this Resolution is available at the Commission's website <http://www.cpuc.ca.gov/> and is available for public comments. In addition, CD informed these parties of the subsequent availability of the conformed resolution, when adopted by the Commission, at the Commission's website as indicated above.

Findings

1. In Decision (D.)12-02-029, the Commission resolved the complaint filed by the California Building Industry Association (CBIA) against Pacific Bell Telephone Company, doing business as AT&T California (AT&T) alleging that AT&T has changed its billing practice for undergrounding construction, resulting in an increase in charges under its tariff, without filing for or receiving prior Commission approval that such an increase is justified. CBIA alleges that this is in violation of Public Utilities Code § 454 and General Order (G. O.) 96-B.
2. In its complaint, CBIA requested a) an order from the Commission enjoining AT&T from administering the provisions for replacement of aerial facilities with underground facilities in conformance with Tariff Rule 32, and b) that the Commission order AT&T to issue refunds to CBIA on behalf of its members and all other similarly situated applicants as a result of the alleged unauthorized change in practice.
3. In D.12-02-029, the Commission made the following findings:
 - The language of Tariff Rule 32, Subsection A.3 neither expressly authorizes nor prohibits AT&T from using actual cost billing practices such as the kind set out in the new contract provision.
 - Subsections A.1 and A.2 of Tariff Rule 32 only contain the word "costs" and do not describe the costs to be "estimated" or "actual."
 - The language of Tariff Rule 32, Subsection A.3 is ambiguous.
 - Government Code Section 66473.6 has been in effect since 1985 and applies specifically to developers or subdividers who are requesting undergrounding of aerial facilities due to conditions imposed by a city or county.
 - Some applicants who apply to underground lines under Subsection A.3 of Tariff Rule 32 will be subject to Government Code Section 66473.6, while others will not.
 - The language of Subsection A.3 of Tariff Rule 32 is not fully consistent with Government Code Section 66473.6.

4. In the same Decision, the Commission ordered:
 - AT&T California to file a Tier 2 advice letter updating Subsection A.3 of its Tariff Rule 32 to reflect the requirements of Government Code Section 66473.6 no later than 30 days after the effective date of this decision.
 - If AT&T California wishes to continue to use a \$10,000 threshold below which projects only pay the estimated cost, AT&T must file for permission to do so via a Tier 3 advice letter showing how this practice is in conformance with Government Code § 66473.6.
 - Refunds will not be awarded to California Building Industry Association members or non-members.
5. Following the Commission's order, AT&T filed Tier 2 Advice Letter No. 40390 and Tier 3 Advice Letter No. 40391 to comply with Ordering Paragraph 4 of D.12-02-029.
6. In Advice Letter No. 40390 which was approved by the Communications Division (CD) on May 2, 2012, AT&T updated Subsection A.3 of its Tariff Rule 32 to reflect the requirements of Government Code Section 66473.6.
7. AT&T filed Tier 3 Advice Letter No. 40391 on March 16, 2012, in compliance with Ordering Paragraph 2 of D.12-02-029.
8. In its proposed revision to Tariff Rule 32, AT&T chose not to implement a threshold for applicants not subject to the Government Code § 66473.6. Subsection A.3 of AT&T's Tariff Rule 32 would read as proposed in Advice Letter No. 40391 (changes and new language in italics):

In circumstances other than those covered by 1. or 2. preceding, where mutually agreed upon by the Company and an applicant, aerial facilities may be replaced with underground facilities, provided the applicant requesting the change pays, in advance, *an amount equal to the estimated cost of construction less the estimated net salvage value of the replaced aerial facilities. At the conclusion of the project, the Company shall reimburse the applicant for any amount paid in excess of the actual cost. If the estimated cost paid by the applicant was less than the actual cost incurred by the Company, the applicant shall pay the Company the difference at the conclusion of the project.*⁵

Pursuant to Government Code § 66473.6, whenever a city or county imposes as a condition to its approval of a tentative map or a parcel map a requirement that necessitates replacing, undergrounding, or permanently or temporarily relocating

⁵ As proposed in AT&T Advice Letter No. 40391

existing facilities, the applicant shall pay the Company, in advance, a sum equal to the estimated cost of the construction less that estimated net salvage value of the replaced aerial facilities. At the conclusion of the project, the Company shall reimburse the applicant for any amount paid in excess of the actual cost. If the estimated cost paid by the applicant is less than the actual cost incurred by the Company, the applicant shall pay the Company the difference at the conclusion of the project.⁶

9. CD recommends the approval of AT&T's Tier 3 Advice Letter No. 40391 which would modify its existing Rule 32 Tariff in compliance with Ordering Paragraph 2 of D. 12 -02-029.
10. The Commission agrees with CD and consequently, the Commission approves Advice Letter No. 40391.
11. In compliance with PU Code § 311 (g), a Notice of Availability was e-mailed on May 22, 2012, to parties on the service list of Advice Letter No. 40391 informing these parties that the draft of this Resolution is available at the Commission's website <http://www.cpuc.ca.gov/> and is available for public comments. In addition, CD informed these parties of the subsequent availability of the conformed resolution, when adopted by the Commission, at the Commission's website as indicated above.

⁶ Approved in Advice Letter No. 40390.

THEREFORE, IT IS ORDERED that:

1. AT &T's Advice Letter No. 40391 revising AT&T's Tariff Rule No. 32 - Facilities to Provide Replacement of Aerial with Underground Facilities, Subsection A.3 is approved.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on June 21, 2012. The following Commissioners approved it:

PAUL CLANON
Executive Director