

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



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Application of Webpass Telecommunications, LLC (U 7278 C) pursuant to Decision 98-10-058 for Arbitration of Dispute over Denial by Pacific Bell Telephone Company (U 1001 C) of Nondiscriminatory Access to Utility Support Structures.

A.16-05-015
(Filed May 26, 2016)

**PACIFIC BELL TELEPHONE COMPANY'S (U 1001 C) RESPONSE
TO APPLICATION BY WEBPASS TELECOMMUNICATIONS, LLC (U 7278 C)
FOR ARBITRATION OF DISPUTE**

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Pursuant to Commission Rule of Practice and Procedure 2.6(a) and Decision 98-10-058, Pacific Bell Telephone Company d/b/a AT&T California (“AT&T California”) hereby files its response to the Application by Webpass Telecommunications, LLC (U 7278 C) for Arbitration of Dispute.

I. OVERVIEW

AT&T California respectfully requests that Webpass’ Application be denied. As an initial matter, and as detailed in AT&T California’s pending Motion to Dismiss, Decision 98-10-058 does not apply here and is therefore unavailable for resolution of disputes pursuant to the dispute resolution mechanisms in the parties’ governing interconnection agreement (“ICA”).

Moreover, AT&T California has provided Webpass with access to its conduit systems (for example, Webpass can place its splice cases in handholes on the same basis as other parties), and AT&T California is continuing to work with Webpass on each of its pending applications on a good-faith and individual basis to address the specific challenges of infrastructure in San Francisco, including the placement of splice cases inside manholes if warranted. Most recently, AT&T California invited Webpass to resubmit its applications in order to resolve the pending issues, but Webpass so far has declined to do so. In addition, AT&T California is not indefinitely reserving space in its conduit system for its own use; the reservation of space is to ensure that a maintenance duct is available for use by all parties. This is fully consistent with the ICA between AT&T California and Webpass. In short, AT&T California has complied with its duties under the ICA and applicable law.

II. PROCEDURAL BACKGROUND

On May 26, 2016, Webpass Telecommunications, LLC (“Webpass”) filed an Application for Arbitration of Dispute (“Application”) regarding a pending right-of-way (“ROW”) dispute with AT&T California regarding “access to AT&T California’s conduit systems.”¹ In its Application, Webpass requested an expedited arbitration schedule pursuant to

¹ Application, p. 1.

Decision 98-10-058, which provides that an arbitration would occur only 25 days after the application was filed.² Webpass does not dispute that it entered into an ICA with AT&T California, and that ICA provides Webpass with access to AT&T California's utility infrastructure.³

On June 3, 2016, AT&T California filed a Motion to Dismiss ("Motion") requesting that Webpass' Application be dismissed on the grounds that the procedure outlined under Decision 98-10-058 does not apply to the situation here (where the parties have already negotiated and executed an ICA and where access has been granted) and that, in any event, the parties' ICA does not provide for arbitration under Decision 98-10-058 and the parties are bound by the dispute resolution mechanisms set forth in their agreement.

No ruling on the Motion has yet been issued. An evidentiary hearing on the Application has been scheduled for June 17, 2016.

III. FACTUAL BACKGROUND

Webpass has presented two general "issues" here: (1) whether it is entitled to install splice cases inside AT&T California's manholes; and (2) whether it has been precluded from installing its cable either because of inner-ducts or an available maintenance spare. Each of these topics is addressed in turn below.

A. Splice Cases

1. The Parties' ICA Does Not Give Webpass the Right to Determine Where to Place Its Splice Cases.

The ICA between the parties provides Webpass with access to AT&T California's conduit systems so that Webpass can build out its network.⁴ Before placing any facilities in

² *Id.* at 1, 13.

³ *Id.* at 3.

⁴ *See, e.g.*, Section 3.1.1 of Attachment 3 Structure Access ("Structure Access Attachment") to the ICA (noting that AT&T California undertakes to provide Webpass "with equal and nondiscriminatory access to Pole space, Conduits, Ducts, and ROW . . ."). Relevant sections of the ICA are attached to AT&T California's Motion to Dismiss.

AT&T California's conduit systems, Webpass must first apply for and receive a written license from AT&T California.⁵ Each license application is evaluated on "an individual basis."⁶

A cable splice is how two or more cables are joined together, and a splice case is an enclosure that is placed around such a splice. The splice case provides protection to the cable splice and also acts as a future access point when additional cables may be connected or reconnected to new cables or in a different configuration.

No provision in the ICA entitles Webpass to install splice cases in AT&T California's conduit systems. While certain provisions of the Structure Access Attachment *reference* splices in AT&T California's conduit system (*i.e.*, Sections 4.4.1.3, 4.6.1 and 4.14.1), these provisions do not give Webpass the *right* to install splice cases in AT&T California's conduit system, much less at a particular location of its choosing. AT&T California's policy is to allow installation of splice cases in its conduit system only under extenuating circumstances, which may include the inability to obtain a permit to place a handhole or prohibitive construction conditions. This is consistent with how AT&T California treats all parties seeking to use its conduit system. In short, the language in the ICA does not support Webpass' position regarding the placement of splice cases.

2. AT&T California Treats Webpass in the Same Manner as Others Regarding Splice Cases.

Webpass claims it has been unfairly discriminated against because it cannot place its splice cases inside AT&T's manholes. Based on the license applications submitted by Webpass, Webpass intends to place a splice case in manholes owned by AT&T California that are located in the streets outside of *each* of Webpass' customers' locations. Webpass has informed AT&T California that this would include *hundreds* of manholes. Importantly, Webpass concedes that it

⁵ *Id.* at Section 6.1.1.

⁶ *Id.* at Section 10.1.1.

can install its own handhole, rather than place a splice case in AT&T's manhole, but it claims that it is not pursuing such options because of alleged costs and expenses.

AT&T California's general policy is to have applicants (such as Webpass) maintain their splice cases *outside* of AT&T's manholes. There are important reasons for this. First, placing splice cases outside the manholes reduces congestion in AT&T California's manholes, maximizing the space available for all parties to install their cables. Manholes as well as other parts of the AT&T California conduit system are limited in space and must be shared not only with Webpass but with other parties using AT&T California's conduit. Congestion caused by splice cases complicates future fiber cable installations by other conduit users, and increases the likelihood of an individual inadvertently causing a service outage for another provider while attempting to access the splice case placed by that individual's company.

Second, the policy also allows for more efficient management of resources for AT&T California and applicants because future access to the splice cases will not require coordination between the applicant and AT&T California to schedule an AT&T California representative to be present (which is required unless no representatives are available) while the applicant performs its work.

AT&T California consistently applies this policy to other facilities-based competitive local exchange carriers ("CLECs") in California, including those with much larger networks by geography, without incident. Nor is AT&T California the only conduit owner to promulgate these policies. In fact, AT&T California itself follows this identical policy enforced by Verizon when AT&T California accesses Verizon's conduit.

AT&T California also recognizes that placing new splice cases outside AT&T California's (or any other entity's) existing manholes in San Francisco can be challenging given the City's unique density and topography. AT&T California therefore has been working with Webpass to find viable solutions for each of Webpass' applications on a case-by-case basis. As is its practice with all providers, AT&T California has worked, and continues to work, with Webpass to investigate alternative solutions when Webpass encounters a difficult facility

placement. Where permitting placement of a splice case in an AT&T manhole is the only viable alternative based on the particular circumstances of a proposed build, AT&T California is willing to permit it. In fact, AT&T California has indicated this in discussions with Webpass representatives and, to facilitate the process, has proposed that Webpass submit specific applications for reconsideration. However, as of the filing of this Response, Webpass has not resubmitted any specific applications.

B. Cable Installation Issues: Maintenance Duct and Overriding

Webpass also contends that AT&T California has acted improperly in how it has handled Webpass' license applications to install certain fiber optic cables in inner-ducts that already house other similar cables (either AT&T California's or other third parties). As defined in the ICA, a "duct" is essentially a single tube or pipe that encloses and carries cables.⁷ An "inner-duct" is a pathway created by subdividing a duct into smaller channels, allowing multiple cables to be deployed while ensuring they are kept physically separate (and thus more protected).⁸ Installing a cable within an already-occupied inner-duct is called "overriding."

1. The Parties' ICA Clearly Allows the Reservation of a Spare Maintenance Duct, Which Is Offered on a Non-Discriminatory Basis.

Webpass avers that AT&T California "will never allow joint occupation of available space in conduit unless a 'full vacant spare' remains available to AT&T California," and that AT&T is indefinitely reserving a vacant spare conduit for its own purposes.⁹ Both contentions are meritless. The space Webpass refers to is being reserved as a maintenance duct, which is explicitly allowed by the ICA and available on a non-discriminatory basis.

Sections 2 and 15 of the Structure Access Attachment relate to maintenance spares. In particular, Section 2.29 of the Structure Access Attachment defines "Spare Capacity" as "any

⁷ *Id.* at Section 2.12.

⁸ *Id.* at Section 2.15.

⁹ Application, pp. 1, 12.

Poles, Conduit, Duct or Inner-Duct not currently assigned or subject to a pending Application for attachment/Occupancy.” It then explicitly provides that “Spare Capacity does not include an Inner-Duct (not to exceed one Inner-Duct per party) reserved by AT&T-22STATE, CLEC, or a Third Party for maintenance, repair, or emergency restoration.”

Section 15.1.3 provides that “Maintenance Ducts shall be available, on a nondiscriminatory basis, for emergency repair activities by any entity with Facilities in the Conduit section in which the maintenance Duct is located.... Existing spare Ducts may be used for restoration purposes providing the spare Ducts are restored after restoration work is complete. Any spare Ducts not returned will be included to be assigned to the user of the Duct and an occupancy permit issued.”

Section 15.1.4 provides that “The Attaching Party shall either vacate the maintenance Duct within thirty (30) calendar days or, with [AT&T California’s] consent, rearrange its Facilities to ensure that at least one full-sized replacement maintenance Duct (or, if the designated maintenance Duct was an inner-Duct, a suitable replacement inner-Duct) is available for use by all occupants in the Conduit section within thirty (30) calendar days after such Attaching Party occupies the maintenance Ducts. If Attaching Party fails to vacate the maintenance Duct as described above, [AT&T California] may install a maintenance conduit at the Attaching Party’s expense.”

For conduit between AT&T California’s manholes, splice cases, and handholes, AT&T California reserves a maintenance spare to be used for emergency restorations. As described in Section 15 of the Structure Access Attachment, the maintenance spare is available for service restoration in the event of an emergency. AT&T California and the parties that occupy the conduits may make use of the maintenance spare under the terms of the agreement. A conduit user is allowed to temporarily use the maintenance spare conduit when available, without incurring additional charges, for emergency maintenance purposes. The conduit user would then replace the damaged or non-working cable and remove the emergency cable within 30 days. The above terms of Section 15 are consistent with AT&T California’s longstanding policy related to

maintenance spares. Moreover, the use of maintenance ducts is a long-accepted and reasonable practice that has been affirmed by the Federal Communications Commission (“FCC”).¹⁰

All of the above is consistent with (1) the provisions of the ICA,¹¹ (2) what AT&T California has told Webpass, and (3) how AT&T California has treated Webpass and all other providers. Regarding the particular license applications at issue here, AT&T California also offered Webpass the opportunity to resubmit its applications for further consideration, but Webpass has declined to do so. Instead, and in the midst of these ongoing discussions, Webpass filed its Application.

In short, the above sections show that the parties clearly have agreed that AT&T California will reserve a spare maintenance duct—for use by all parties for emergency situations—and will make it available on a nondiscriminatory basis.

2. AT&T’s Policies Regarding Overriding Are Applied Equally to All Parties.

“Overriding” describes a situation in which new facilities are placed inside of a conduit that is already occupied by a copper or fiber optic cable. This is done by using a fiber glass rod to push a rope through the conduit from one manhole to another. This rope is then used to pull fiber or inner-duct back through the conduit, over the existing cable.

AT&T California’s policy restricts overriding existing facilities that are not protected by inner-duct. Again, there are important reasons for this policy that apply to all applicants. The practice of rodding, roping, and pulling new facilities over existing cables has caused damage to existing cables in the past. The rod can puncture the sheath of the cable, causing damage such as air pressure leaks in pulp copper cable, or outages that may occur the next time water enters the

¹⁰ See *In the Matter of Amendment of Rules and Policies Governing Pole Attachments*, CS Docket No. 97-98, *Report and Order*, 15 FCC Rcd. 6453, FCC 00-116 (rel. Apr. 3, 2000), ¶ 89 (“A utility may designate a maintenance duct so that if a cable in another duct fails, a temporary cable may be placed in the maintenance duct and spliced into the damaged cable. A duct so designated is usable in the event it is needed and, therefore, is part of the conduit capacity.” (citations omitted)).

¹¹ See ICA, Structure Access Attachment, Sections 2.29, 15.1.3 and 15.1.4 quoted above.

conduit due to rain. Also, the existing cable might be subject to friction damage, caused by the rubbing of the rope, cable, or inner-duct on the existing cable. When the existing cable is protected by inner-duct, there is an added layer of protection from potential damage.

Under certain limited conditions, AT&T California has overrode its own cable and inner-ducts where there is a copper cable in the conduit. However, AT&T California only pursues this option when: (1) it is the last available space besides the maintenance spare conduit; (2) the maintenance spare conduit remains available in case the override creates a cable failure in order to facilitate expedited service restoration; and (3) both conduits are free of blockages.

As it does for itself and has offered to Webpass, AT&T California will allow Webpass to override copper cable if Webpass arranges to have AT&T California personnel on site to immediately repair any damage to the copper cable that occurs, if such immediate repair is possible. For example, damage could occur in the duct between manholes and require the structure to be dug up and repaired, which would require excavation contractors and AT&T California personnel, depending on the extent of damage to the copper cable. Moreover, in relation to other applications submitted by Webpass to AT&T California, AT&T California has recently granted Webpass a permit that allowed an override.

IV. RESPONSE TO WEBPASS' "COMPLIANCE WITH DECISION 98-10-058"

A. Statement of All Unresolved Issues

As set forth above and in AT&T California's motion to dismiss, Decision 98-10-058 is inapplicable here and accordingly there are no issues that the Commission needs to resolve. Webpass has presented two issues in its Application¹²:

(1) Is AT&T California entitled to require Webpass to install splice cases and similar equipment in Webpass-owned structures even when there is available space for such equipment in AT&T California's conduit system?

¹² See Application, p. 11.

(2) Is AT&T California entitled to preclude or otherwise limit Webpass' right to install cable in available space within conduits in which AT&T California has already installed cable?

The issues presented by Webpass do not accurately describe the unresolved issue. Instead, the unresolved issue is:

Whether the specific applications submitted by Webpass are consistent with the parties' ICA and applicable law, and should be granted by AT&T California.

B. Description of Parties' Positions on Unresolved Issues

As set forth above, any unresolved issues between the parties should be resolved through the dispute mechanisms chosen by the parties, which does not include the expedited arbitration procedures invoked by Webpass. AT&T California further states in response that:

(1) Under the ICA and its governing policy, AT&T California may limit on a non-discriminatory basis whether Webpass can install its splice cases inside AT&T California's manholes, including to avoid congestion and for other policy reasons.

(2) AT&T California may limit so-called overrides under the parties' ICA and may also reserve a maintenance duct that is available to all parties, including Webpass.

C. Proposed Agreement

The parties already have a binding ICA that covers structure access, thus there is no agreement to propose. This is another indication that the expedited dispute resolution process invoked by Webpass does not apply to this dispute.

D. Direct Testimony

According to Webpass' Application, it was instructed not to file any direct testimony with its Application. Accordingly, AT&T California is not filing any testimony in its Response.

E. Webpass' Compliance with Time Requirements

AT&T California responds that Webpass has not exhausted efforts to negotiate with AT&T California relating to access to AT&T California's conduit systems. Regarding the

particular license applications at issue here, AT&T California recommended that Webpass resubmit its applications for further consideration, but Webpass has so far declined to do so.

V. RESPONSE TO WEBPASS' CATEGORIZING AND SCOPING PROPOSAL

As set forth above and in AT&T California's motion to dismiss, Decision 98-10-058 is inapplicable here and accordingly there are no issues that the Commission needs to resolve via a hearing or otherwise.

A. Proposed Category

Webpass has proposed this proceeding be categorized as a "ratemaking" procedure. AT&T California recommends that the proceeding be categorized as adjudicatory.

B. Need for Hearing and Proposed Schedule

AT&T California disputes Webpass' invocation of the expedited arbitration procedures here and accordingly disagrees with Webpass' expedited schedule. Should Webpass' Application not be dismissed, AT&T California hereby requests an evidentiary hearing. The presiding Administrative Law Judge has already scheduled that hearing.

VI. CONCLUSION

For the reasons set forth above, AT&T California respectfully requests that Webpass' Application for Arbitration of Dispute be dismissed.

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Respectfully submitted,

/s/
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