



11 February 2003

California Public Utilities Commission

To Whom It May Concern:

The attached formal complaint against Caltrans is being submitted by the Redwood Technology Consortium (RTC) and Redwood Region Economic Development Commission (RREDC).

The RTC is a non-profit public benefit corporation organized to serve as an information and educational resource on issues related to the technology industry on the California North Coast.

RREDC is a Joint Powers Authority of Humboldt County communities dedicated to the ongoing implementation of the comprehensive economic development strategy, Prosperity! The RREDC communities and districts include cities of Arcata, Blue Lake, Eureka, Ferndale, Fortuna, Rio Dell, and Trinidad; Hoopa Valley Tribe; Humboldt Bay Harbor, Recreation, and Conservation District; Redwoods Community College District; Humboldt Bay Municipal Water District; and the following community services districts: Manila, McKinleyville, Willow Creek, Orick, Orleans, and Redway.

Our respective organizations are united in an effort to resolve a dispute between SBC and the California Department of Transportation (Caltrans) regarding the completion of a fiber optic project that will bring needed capacity and advanced services to Humboldt County. This project has been stalled for more than a year due to a dispute between SBC and Caltrans over encroachment compensation on a 21-mile stretch of Highway 101. Face to face meetings and letters to Caltrans, SBC, and elected officials have not yielded results.

SBC microwave systems from Eureka to Santa Rosa and Redding have been at capacity for several years. SBC services are the *lifeline* for telecommunications in and out of Humboldt County. Businesses, government, economic development, healthcare, and educational systems are continuing to suffer until the fiber optic project is completed. This matter is being litigated in Federal Court, which could take *years*, further impeding our region's economic growth.

Our organizations and the community are requesting that hearings be held in Humboldt County due to the number of residents who wish to attend the hearings (200-300), and the fact that it would be a financial hardship for us to attend hearings in San Francisco, which is 300 miles from our County Seat, Eureka. We would also like to have an expedited complaint (ECP) since there is no actual disputed amount involved. The attached complaint is a summary of information; we have extensive additional information to present at a hearing.

Thank you for your consideration.

Regards,

Tina Nerat
Board Member and Treasurer, North Coast Redwood Technology Consortium

Dennis Hunter
Chairman of Board of Directors, Redwood Region Economic Development Commission

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

North Coast Redwood Technology Consortium

CASE _____)

Redwood Region Economic Development Commission

Have you tried to resolve this matter informally with the Commission's Consumer Affairs Staff?

vs.

YES _____ NO _____

California Department of Transportation (Caltrans)

Has staff responded to your complaint?

YES _____ NO _____

Did you appeal to the Consumer Affairs Manager?

YES _____ NO _____

Do you have money on deposit with the Commission?

YES _____ NO _____

Is your service now disconnected?

YES _____ NO _____

The complaint of

North Coast Redwood Technology Consortium

c/o RREDC

520 E Street

Eureka CA 95501

Tina Nerat, Board Member and Treasurer 707-268-0666

Redwood Region Economic Development Commission

520 E Street

Eureka CA 95501

Dennis Hunter, Chairman of Board of Directors 707-445-9651

respectfully shows that:

1. Defendant

California Department of Transportation (Caltrans)

1120 N Street

Sacramento

916-654-5266

2. Explain fully and clearly the details of your complaint.

This complaint is against Caltrans for withholding permits from SBC along 21 miles of Highway 101. SBC, franchised to provide telecommunications to most of Humboldt County, is trying to bring fiber optics to Eureka in order to provide additional capacity, high speed data access, and advanced services. Caltrans and SBC are disputing the encroachment fees. This complaint does not render an opinion on the appropriateness of the fees, but rather the fact that the legal dispute may hold up needed Humboldt County telecommunications services for years. Our organizations are not “taking sides”; the purpose of this complaint is to get the construction completed so we may avail ourselves of the needed telecommunications services.

For more than a year, the SBC project has been at a halt due to Caltrans’ request for over \$2 million in encroachment fees for 21-mile stretch of fiber optics right of way, rather than the usual cost recovery fees. SBC has refused to pay the fees and has filed a lawsuit in Federal Court in San Francisco. There appears to be no hope for a quick resolution and years of litigation potentially lie ahead. We acknowledge that the lawsuit is important for this precedent-setting case.

Without this 21 mile stretch in the 168 mile long fiber optic project, businesses, government, educational institutions, and residents do not have all the services they need to compete in a networked world. Pacific Bell has spent \$21 million so far to complete this project. It is estimated that it would take two months to complete the 21 miles of work.

Letter-writing campaigns to local, state, and federal elected officials, Governor Davis, and Caltrans had no results. Those who wrote letters to Caltrans got identical replies from Joseph Hecker, Chief of Traffic Operations, that SBC “...has yet to submit a complete application or needs to provide additional information...”. Congressman Mike Thompson wrote a letter to Governor Gray Davis. His response was from Maria Contreras-Sweet, which stated that other telecommunications companies have paid for right-of-way, so SBC should pay. It should be noted that the other companies who have paid Caltrans compensation fees are AT&T, MCI, and Level3, none of which are phone companies of last resort in California. SBC is franchised by the state to provide voice and data services in most of Humboldt County.

The community suggested that SBC and Caltrans put the disputed fees in an interest-bearing escrow account pending the conclusion of the lawsuit. SBC and Caltrans have been unable to come to agreement on terms for this escrow account, which would allow permits to be issued and enable construction to continue on the final 21 miles. It may be years before the Federal Courts resolve this dispute.

3. Scoping Information

- a. The proposed category for the Complaint is (check one):
 - adjudicatory
 - ratesetting (if the complaint challenges the reasonableness of a rate)
- b. Are hearings needed? YES, and request hearings to be in Humboldt County.
- c. The issues to be considered are:

Without completion of this project, challenges exist for many sectors of the community:

- Education – Humboldt County has unequal access to educational resources compared to the rest of the state. College of the Redwoods (CR) has been denied funding due to lack of telecommunications capacity. Humboldt State University (HSU) and CR are denied access to the Digital California K-12 Project. CR is unable to provide remote education programs and services to their employees. HSU

has been denied funding for the Klamath Economic Zone. HSU requires capacity for videoconferencing and for a new administrative system in 2004.

- Healthcare – Local hospitals are unable to get the bandwidth they need for transmission of radiology studies, access to patient information, videoconferencing, and telemedicine. North Coast Clinics Network faces telecommunications challenges in providing telehealth and telemedicine services.
- Government/Economic Development - Basic telecommunications infrastructure is standing in the way of economic development in Humboldt County, and high speed data is an important factor in our future to provide economic diversification. Technology-based businesses are important for our future and lack of bandwidth will cripple growth of business and prevent attraction of new businesses. There is currently a “brain drain” of talented people having to leave the area to find employment.
- Business - Many businesses fear they will have to relocate or they will fail if current and future bandwidth needs are not met. The Chamber of Commerce reports that we are having trouble attracting new businesses and expanding existing businesses due to lack of basic telecommunications infrastructure. File transfers are a huge issue for some companies who have to transfer huge (20mb-4gb) files around the world. Shipping of electronic data gives a negative image to customers that local companies aren’t capable of working in a networked world. There are companies in Humboldt County who have a large percentage of their customers out of the area, even in other parts of the world.
- Arts - There is a very active Arts community in Humboldt County that has been denied funding due to lack of bandwidth. They do not have the basic bandwidth infrastructure in place to receive funding, are unable to collaborate on live art projects or to share information with other non-profits, and are unable to webcast local arts events.

We are living in a networked world, and all industries rely on this technology, whether the industry is timber, fisheries, railroad, harbor, retail, graphic design, banking, dairy, software development, manufacturing, health, or education. Humboldt County’s economy – already at a disadvantage due to a shift away from a resource-based economy - will continue to suffer until the fiber optic project is completed.

- d. The proposed schedule for resolving the complaint within 12 months (if categorized as adjudicatory) or 18 months (if categorized as ratesetting) is as follows:

Prehearing Conference: 30-40 days from the date of filing of the Complaint.

Hearing: 50-70 days from the date of filing of the Complaint.

Explain here if you propose a schedule different from the above guidelines.

Humboldt County has been waiting for over 15 months for this project to be completed, only to see Caltrans and SBC headed to Federal Court, with possible years until resolution of the dispute. Waiting another 12 months for CPUC adjudicatory resolution will only intensify the local issues. Resolution is requested within 6 months.

Wherefore, complainants request an order: State clearly the exact relief desired.

We request one of the following as specific action:

1. Caltrans be required to issue interim or conditional permits immediately. The interim permits would allow SBC to complete its project, yet preserve Caltrans’ legal rights, if any, in connection with their demand for encroachment fees. At the conclusion of the litigation, the interim permits would become permanent and encroachment fees would be paid or not paid pursuant to any agreement by the parties or by order of the court.
2. CPUC take action to oversee a speedy mediation between Caltrans and SBC, the goal of which would be to get the parties to agree to specific terms of an escrow agreement. Ideally, the agreement would

call for SBC to submit the disputed encroachment fees into a protected account, Caltrans would immediately issue permits and both parties would maintain all rights to pursue all of their legal rights in court.

Dated Eureka, California, this 11th day of February, 2003.

Tina Nerat
Board Member and Treasurer
North Coast Redwood Technology Consortium

Dennis Hunter
Chairman of Board of Directors
Redwood Region Economic Development Commission

(Signature, address, and telephone number of
representative, if any)

**VERIFICATION
(For a Corporation)**

I am an officer of the complaining corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 11 February, 2003, at Eureka, California.

Tina Nerat
Board Member and Treasurer
North Coast Redwood Technology Consortium

Dennis Hunter
Chairman of Board of Directors
Redwood Region Economic Development Commission

File the original complaint plus 7 copies, plus 1 copy for each named defendant, with the Commission.

Mail to: California Public Utilities Commission
Attn: Docket Office
505 Van Ness Avenue, Room 2001
San Francisco, CA 94102