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14 Attorneys for Plaintiff and Petitioner,  
PACIFIC BELL TELEPHONE COMPANY,  
15 doing business as AT&T California

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF CONTRA COSTA

18  
19 PACIFIC BELL TELEPHONE COMPANY,  
a California corporation doing business as  
20 AT&T CALIFORNIA,

21 Petitioner,

22 vs.

23 THE CITY OF WALNUT CREEK and THE  
CITY COUNCIL OF THE CITY OF  
24 WALNUT CREEK,

25 Respondents.  
26

27 The motion for judgment on peremptory writ filed by petitioner PACIFIC BELL  
28 TELEPHONE COMPANY, doing business as AT&T California ("AT&T" or "Petitioner"),

FILED  
DEC 11 2006

E. TORRE, CLERK OF THE COURT  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA  
by M. OLSON  
Deputy Clerk

1 was scheduled for hearing on December 5, 2006 in Department 9 of the above-entitled Court,  
2 the Honorable Judith Craddick presiding. The Court, having considered the papers submitted  
3 in support of and in opposition to the motion, issued a tentative ruling on December 4, 2006  
4 granting the motion and AT&T's Petition for Writ of Mandamus. A copy of the Court's  
5 tentative ruling is attached hereto as Exhibit A.

6 In response to a request by counsel for respondents, The City of Walnut Creek and The  
7 City Council of the City of Walnut Creek (together, "the City"), a hearing on the motion was  
8 held on December 5, 2006. Ronald E. Van Buskirk and Christopher R. Ball appeared for  
9 AT&T; and Kirk E. Trost and Paul Valle-Riestra appeared for the City. The Court, having  
10 considered the papers submitted in support of and in opposition to the motion, and having heard  
11 the arguments of counsel, and good cause appearing, affirms the tentative ruling. Accordingly,

12 IT IS HEREBY ORDERED THAT:

13 1. The Petition for Writ of Mandamus is granted. Petitioner has a vested right,  
14 pursuant to Pub. Util. Code § 7901, to use the public highways to install its facilities. Pursuant  
15 to Pacific Tel. & Tel. Co. v. Los Angeles (1955) 44 Cal. 2d 272, 281-82, § 7901 places no  
16 restrictions upon what may be transmitted by means of electrical impulses over those lines.  
17 The fact that Petitioner will be using its telephone lines, in part, to transport video services does  
18 not abrogate this right. Williams Communications v. City of Riverside (2003) 114 Cal. App.  
19 4th 642, 654. The court does not find Gov. Code § 53066 has any application here, since it is  
20 not convinced that Petitioner, by its Project Lightspeed, is "commencing the construction" of a  
21 cable service.

22 2. Petitioner's original request for judicial notice is granted; its supplemental  
23 request for judicial notice is denied. The City's objections to the Di Bene declaration are  
24 sustained.

25 3. Judgment shall be entered in favor of AT&T and a peremptory writ shall issue  
26 commanding the City to set aside and rescind the cable television franchise condition the City  
27 imposed on Encroachment Permit No. EP05-0434, and to refrain from imposing such a  
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1 condition on future permits or work by AT&T to install, repair, maintain, or upgrade its  
2 telephone lines in the public rights-of-way in Walnut Creek.

3 4. The judgment shall include an award of costs to petitioner pursuant to law.

4 IT IS SO ORDERED.

5 Dated: December 7<sup>th</sup>, 2006.

**JUDITH S. CRADDICK**

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Judge of the Superior Court

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# CONTRA COSTA SUPERIOR COURT

MARTINEZ, CALIFORNIA  
DEPARTMENT: 09  
HEARING DATE: 12/05/06

**8. TIME: 9:00 CASE#: MSC06-00850**

**CASE NAME: PACIFIC BELL TELEPHONE VS CITY**

**HEARING ON MOTION TO/FOR JUDGMENT ON PEREMPTORY WRIT FILED BY  
PACIFIC BELL TELEPHONE COMPANY**

**\* TENTATIVE RULING: \***

The Petition for Writ of Mandamus is granted. Petitioner has a vested right, pursuant to Pub. Util. Code § 7901, to use the public highways to install its facilities. Pursuant to Pacific Tel. & Tel. Co. v. Los Angeles (1955) 44 Cal. 2d 272, 281-82, § 7901 places no restrictions upon what may be transmitted by means of electrical impulses over those lines. The fact that Petitioner will be using its telephone lines, in part, to transport video services does not abrogate this right. Williams Communications v. City of Riverside (2003) 114 Cal. App. 4th 642, 654. The court does not find Gov. Code § 53066 has any application here, since it is not convinced that Petitioner, by its Project Lightspeed, is "commencing the construction" of a cable service.

Petitioner's original request for judicial notice is granted; its supplemental request for judicial notice is denied. The City's objections to the Di Bene declaration are sustained.