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7
 8 IN THE UNITED STATES DISTRICT COURT
 9 EASTERN DISTRICT OF CALIFORNIA

10
 11 PACIFIC BELL TELEPHONE COMPANY,

12 Plaintiff,

13 v.

14 UNITED STATES OF AMERICA,

15 Defendant.

Case No. 2:09-cv-00769 MCE-EFB

**STIPULATION FOR
 DISMISSAL WITH PREJUDICE;
 ORDER THEREON**

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 17 It is hereby stipulated by and between PACIFIC BELL TELEPHONE COMPANY
 18 (“PACIFIC BELL”) and the UNITED STATES OF AMERICA (“UNITED STATES”) as follows:

19 1. PACIFIC BELL does hereby agree to settle and compromise each and every claim of any
 20 kind, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise
 21 to the above-captioned action under the terms and conditions set forth in this Stipulation.

22 2. The UNITED STATES agrees to pay to PACIFIC BELL the sum of Ninety Thousand
 23 Dollars (\$90,000.00), which sum shall be in full settlement and satisfaction of any and all claims,
 24 demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any
 25 and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property
 26 and the consequences thereof, resulting, and to result, from the subject matter of this action, including
 27 any future claims for wrongful death, for which PACIFIC BELL and any parent, subsidiary, division,
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1 member, affiliated entities, or assigns, and each of them, now have or may hereafter acquire against the
2 UNITED STATES, its agents, servants, and employees.

3 3. PACIFIC BELL and any parent, subsidiary, division, member, affiliated entities, or
4 assigns, and any person or entity acting on behalf of any of the foregoing, agrees to accept the Ninety
5 Thousand Dollars (\$90,000.00) in full settlement and satisfaction of any and all claims, demands,
6 rights, and causes of action of whatsoever kind and nature, including claims for wrongful death, arising
7 from, and by reason of, any and all known and unknown, foreseen and unforeseen bodily and personal
8 injuries, damage to property and the consequences thereof which they may have or hereafter acquire
9 against the UNITED STATES, its agents, servants, and employees on account of the same subject
10 matter that gave rise to the above-captioned action, including any future claim or lawsuit of any kind or
11 type whatsoever, whether known or unknown, and whether for compensatory or exemplary damages.
12 PACIFIC BELL and any parent, subsidiary, division, member, affiliated entities, or assigns, and any
13 person or entity acting on behalf of any of the foregoing, further agree to reimburse, indemnify and
14 hold harmless the UNITED STATES and its agents, servants and employees from and against any and
15 all causes of action, claims, liens, rights, or subrogated or contribution interests incident to or resulting
16 from further litigation or the prosecution of claims arising from the subject matter of this action against
17 any third party or against the UNITED STATES, including claims for wrongful death.

18 4. PACIFIC BELL expressly waives any rights or benefits available pursuant to Section
19 1542 of the Civil Code of the State of California, which provides as follows:

20 **A general release does not extend to claims which the creditor does**
21 **not know or suspect to exist in his or her favor at the time of executing**
22 **the release, which if known by him or her must have materially**
23 **affected his or her settlement with the debtor.**

24 The parties understand and agree that this Stipulation shall act as a release of future claims that may
25 arise from the subject matter of the above-captioned action, whether such claims are currently known,
26 unknown, foreseen or unforeseen. The parties understand and acknowledge the significance and
27 consequences of the specific waiver of section 1542 and hereby assume full responsibility for any
28 injury, loss, damage or liability that may be incurred hereafter by reason of or related to the subject
matter that gave rise to this action.

1 5. This Stipulation is not, is in no way intended to be, and should not be construed as, an
2 admission of liability or fault on the part of the UNITED STATES, its agents, servants, or employees,
3 and it is specifically denied that they are liable to PACIFIC BELL. This settlement is entered into by
4 PACIFIC BELL and the UNITED STATES for the purpose of compromising disputed claims under the
5 Federal Tort Claims Act and avoiding the expenses and risks of further litigation.

6 6. The parties agree that they will each bear their own costs, fees, and expenses; that any
7 attorney's fees owed by PACIFIC BELL shall not exceed 25% of the settlement amount (28 U.S.C.
8 § 2678) and will be paid out of the settlement amount and not in addition thereto; and that all
9 outstanding or future bills and liens will be the sole responsibility of PACIFIC BELL.

10 7. Payment of the settlement amount from the UNITED STATES will be made by check
11 drawn on the Treasury of the United States for Ninety Thousand Dollars (\$90,000.00) and made
12 payable to "PACIFIC BELL TELEPHONE COMPANY," Tax ID No. 94-0745535. The check will be
13 mailed to PACIFIC BELL's attorney at the following address.

14 Gerard J. Donnellan
15 General Attorney
16 AT&T Services, Inc. Legal Dept.
 525 Market Street, Room 2008
 San Francisco, CA 94105

17 8. The parties agree to execute and deliver such other and further documents as may be
18 required to carry out the terms of this Stipulation.

19 9. Each person signing this Stipulation warrants and represents that he or she possesses full
20 authority to bind the person[s] on whose behalf he or she is signing to the terms of the Stipulation.

21 10. Each person signing this Stipulation warrants and represents that no promises,
22 inducements, or other agreements not expressly contained herein have been made; that this Stipulation
23 contains the entire agreement between the parties; and that the terms of this Stipulation are contractual
24 and not mere recitals. This Stipulation may not be altered, amended, modified, or otherwise changed in
25 any respect, except by a writing duly executed by the party to be charged. All prior oral understandings,
26 agreements, and writings are superseded by this Stipulation and are of no force or effect.

1 11. Each person executing this Stipulation represents that he or she has read and understands
2 its contents; that he or she executes this Stipulation voluntarily; that he or she has not been influenced
3 by any person acting on behalf of any party.

4 12. This Stipulation may be executed in counterparts. All such counterparts and signature
5 pages, together, shall be deemed to be one document.

6 13. Upon approval by the Court as provided below, PACIFIC BELL's action against the
7 UNITED STATES is hereby DISMISSED WITH PREJUDICE in its entirety and the Clerk of the
8 Court is requested to enter this dismissal and release in the official docket and to close the case.

9 14. Notwithstanding the entry of a dismissal herein, the parties agree that that the Honorable
10 Morrison C. England, Jr. shall retain jurisdiction to enforce the terms of this compromise settlement.

11 DATED: June 20, 2011

BENJAMIN B. WAGNER
United States Attorney

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13 By: /s/ Jason Ehrlinspiel
14 JASON EHRLINSPIEL
15 LYNN TRINKA ERNCE
Assistant United States Attorneys

16 DATED: June 15, 2011

AT&T SERVICES, INC. - LEGAL
DEPARTMENT

17
18 By: /s/ Gerard J. Donnellan
19 GERARD J. DONNELLAN
20 Counsel for Plaintiff
Pacific Bell Telephone Company

21 DATED: June 16, 2011

PACIFIC BELL TELEPHONE COMPANY

22 /s/ Virginia Needleman
23 By: Virginia Needleman
Its: Area Manager-Regulatory

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ORDER

Pursuant to the foregoing stipulation, this matter is dismissed in its entirety, with prejudice.

The Clerk of Court is hereby directed to close the file.

Date: June 23, 2011


MORRISON C. ENGLAND, JR
UNITED STATES DISTRICT JUDGE

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