

CITY OF SAN DIEGO

**CONSENT TO ARTICLES OF MERGER OF PACIFIC BELL WIRELESS, LLC AND
PACIFIC BELL MOBILE SERVICES**

The City of San Diego ("City") consents to the Articles of Merger of Pacific Bell Wireless, LLC ("PB Wireless") and Pacific Bell Mobile Services ("PB Mobile") dated July 31, 1999 ("Articles of Merger"), attached as Exhibit "A".

RECITALS

This Consent to Articles of Merger is made with regard to the following facts:

A. City and PB Mobile have entered into the following Right of Entry Permits ("Permits"):

- i. City/Pacific Bell Mobile Services for City-owned property at Spring Canyon Road and Reisling, APN 319-211-35, dated October 1, 1996. [PB Mobile Site SD-219]
- ii. City/Pacific Bell Mobile Services for City-owned property at 3020 Coronado Avenue, San Diego, CA, dated November 23, 1998. [PB Mobile Site SD-294]
- iii. City/Pacific Bell Mobile Services for City-owned property at 1521 Statton Court, San Diego, CA, dated November 23, 1998. [PB Mobile Site SD-326-01]
- iv. City/Pacific Bell Mobile Services for City-owned property San Ysidro View Park, San Diego, CA, dated December 11, 1998. [PB Mobile Site SD-361-01]
- v. City/Pacific Bell Mobile Services for City-owned property at 10056, Scripps Poway Parkway, San Diego, CA, dated December 1, 1999. [PB Mobile Site SD-345-01]

B. City has consented to Sublease Agreements ("Consent to Sublease") with PB Mobile as a sub-tenant of the master lessee in the following leases and operating agreements ("Master Lease"):

- i. Master Lease - City/Wave House Belmont Park LLC, dated June 1, 1988, filed as Document RR-266064 in the Office of the City Clerk of City. Consent to Sublease a portion of City property at 3146 Mission Blvd., dated February 10, 1997. [PB Mobile Site SD 162-03]
- ii. Master Lease - City/Arena Group 2000 L.P., dated March 29, 1993, filed as Document RR-281708-3 in the Office of the City Clerk of City. Consent to Sublease a portion of City property at 3500 Sports Arena Boulevard dated November 11, 1998. [PB Mobile Site SD-320-02]

- iii. Master Lease - City/Zoological Society of San Diego, dated July 23, 1979, filed as Document 767195 in the Office of the City Clerk of City. Consent to Sublease a portion of City property at San Diego Zoo, dated August 24, 2000. [PB Mobile Sites SD-002-27 and SD-198-02]

- C. PB Wireless desires to obtain City's consent to the Articles of Merger and City is willing to consent to the Articles of Merger on the following terms and conditions.

NOW THEREFORE, in consideration of the mutual covenants contained in this Consent to Articles of Merger, and for valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. Assumption. PB Wireless expressly assumes and agrees for the benefit of the City to be bound by, and to conform and comply with, every obligation of PB Mobile under the Permits, Sublease Agreements, and Consent to Subleases.
2. Subsequent Assignments. This Consent to Articles of Merger does not constitute a consent to any PB Wireless subletting or assignment and does not relieve PB Wireless or any person claiming under or through PB Wireless of the obligation to obtain the consent of the City to any assignment of Permits and Sublease Agreements.
3. Holdover. PB Wireless acknowledges that for those Permits that are currently on holdover this Consent to Articles of Merger does not, in any way, grant PB Wireless any extension of the term of the Permits.
4. Default Under the Permits, Sublease Agreements, and Consent to Subleases. In the event of breach by PB Wireless of any terms of any Permit or Consent to Sublease, such Permit or Consent to Sublease shall be subject to immediate termination by City. In event of breach by PB Wireless of any terms of any Sublease Agreements under the Master Leases or any inconsistency between Master Leases and Sublease Agreements, the terms of Consent to Subleases and Master Leases shall prevail. City may proceed directly against PB Wireless, any guarantors, or anyone else liable under the Permits or Consent to Subleases without first exhausting City's remedies against any other person or entity liable under the Permits or Consent to Subleases.
5. Hold Harmless. PB Wireless shall assume the defense of, indemnify, and hold harmless City, its elected officials, officers, representatives, agents, and employees from all claims, expenses, and liability of every nature, directly or indirectly arising from or alleged to have arisen from the operations conducted on the premises leased under the Master Lease and subleased under Sublease Agreements, or pursuant to a Right of Entry Permit, the condition of the

premises or from any act or omission of PB Wireless, its agents, and invitees; provided, however, PB Wireless's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence or sole willful misconduct of the City, its agents, officers or employees.

6. Insurance. PB Wireless shall be insured by an insurance carrier acceptable to the City against loss from public liability arising from the use or condition of or operation conducted on or from the lease premises under the Master Lease and subleased premises under the Sublease Agreements or the premises pursuant to Permits. Minimum coverage shall be Two Million Dollars (\$2,000,000) COMBINED SINGLE LIMIT LIABILITY. PB Wireless shall name "The City of San Diego, its elected officials, officers, representatives, agents, and employees" as additional insureds and PB Wireless shall provide City with a certificate of insurance confirming such and showing the policy limits. The certificate of insurance shall specify that the above-coverage may not be terminated, altered or canceled without thirty (30) days prior written notice by PB Wireless to the City.
7. General Provisions.
 - i. Controlling Law. The terms and provisions of this Consent to Articles of Merger will be construed in accordance with and will be governed by the laws of the State of California.
 - ii. Captions. Captions to the sections in this Consent to Articles of Merger are included for convenience only and do not modify any of the terms of this Consent to Articles of Merger.
 - iii. Capitalized Terms. All terms spelled with initial capital letters in this Consent to Articles of Merger that are not expressly defined in this Consent to Articles of Merger will have the same respective meaning given such terms in the Permit and Consent to Subleases.
 - iv. Entire Agreement; Waiver. This Consent to Articles of Merger constitutes the final, complete, and exclusive statement between the parties to this Consent to Articles of Merger pertaining to the terms of the City's consent to the merger of PB Wireless and PB Mobile pursuant to Articles of Merger, supercedes all prior and contemporaneous understandings or agreements of the parties, and is binding on and inures to the benefit of their respective heirs, representatives, successors or assigns. No party has been induced to enter into this Consent to Articles of Merger by, nor is any party relying on, any representation or warranty outside those expressly set

forth in this Consent to Articles of Merger. Any agreement made after the date of this Consent to Articles of Merger is ineffective to modify, waive or terminate this Consent to Articles of Merger, in whole or in part, unless that agreement is in writing, is signed by the parties to this Consent, and specifically states that agreement modifies this Consent to Articles of Merger.

- v. Attorney Fees. If any party commences litigation against any other party for the specific performance, for damages for the breach or for the enforcement of any remedy pursuant to this Consent to Articles of Merger, the prevailing party shall be entitled to recover from the applicable party such costs and reasonable attorney fees as have been incurred.
- vi. Waiver. Nothing contained in this Consent to Articles of Merger will be deemed or construed to modify, waive, impair, or affect any of the covenants, agreements, terms, provisions, or conditions contained in the Permits, Sublease Agreements, and Consent to Subleases. In the event of any conflict or inconsistency between the covenants, agreement, terms, provisions, or conditions contained in this Consent to Articles of Merger and those contained in the Permits, Sublease Agreements, and Consent to Subleases, then the covenants, agreement, terms, provisions, or conditions contained in the Consent to Articles of Merger will govern and control.
- vii. Notice. Any notice that may or must be given by any party under this Consent to Articles of Merger will be delivered (i) personally, (ii) by certified mail, return receipt requested, or (iii) by a nationally recognized overnight courier, addressed to the party to whom it is intended. Any notice given to City or PB Wireless shall be sent to the respective address set forth on the signature page below, or such other address as that party may designate for service of notice by a notice given in accordance with the provisions of this Section 7.vii. A notice sent pursuant to the terms of this Section 7.vii shall be deemed delivered (A) when delivery is attempted, if delivered personally, (B) three (3) business days after deposit into the United States mail, or (C) the day following deposit with a nationally recognized overnight courier.
- viii. Numbers. All words in the singular number shall include the plural, when the tense requires.

City and PB Wireless have executed this Consent to Articles of Merger as of the date shown.

PACIFIC BELL WIRELESS, LLC

Date 8/16/05, 2005

By: [Signature]
Name: Dave Miller

Title: General Counsel

Address of PB Wireless: 12920 S.E. 38th Street, Bellevue, WA, 98006

CITY OF SAN DIEGO

Date 8/23, 2005

By: [Signature]
City Manager

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE, City Attorney

Date 9/1, 2005

By: [Signature]
Deputy City Attorney

VEB/cb

8/05/05

L:\WP0\2005\BALOTSKY\CONSENT-PACIFIC BELL WIRELESS.wpd

LEASE FILE: PACIFIC BELL MOBILE SERVICES

FILED
IN THE OFFICE OF THE
SECRETARY OF STATE OF THE
STATE OF NEVADA

JUL 30 1999

No. LLC 5446-99
Dean Heller
DEAN HELLER, SECRETARY OF STATE

ARTICLES OF MERGER
OF
PACIFIC BELL WIRELESS, LLC
AND
PACIFIC BELL MOBILE SERVICES

INV.
(\$125.-)
EXHIBIT A

The undersigned manager of the surviving domestic constituent entity and officers of the foreign constituent entity to a plan of merger submit the following Articles of Merger pursuant to the provisions of Chapter 92A of the Nevada Revised Statutes.

ARTICLE I**Name**

The name and jurisdiction of organization of each constituent entity is:

A. PACIFIC BELL WIRELESS, LLC, a limited liability company organized pursuant to Nevada law (the "Surviving Entity").

B. PACIFIC BELL MOBILE SERVICES, a corporation organized pursuant to California law ("PBMS" or the "Disappearing Corporation").

ARTICLE II**Adoption and Owners' Approval
of the Plan of Merger**

A. **Surviving Entity.** The managers of the Surviving Entity have unanimously adopted a Plan of Merger and Merger Agreement dated effective as of July 31, 1999 (the "Plan of Merger"). The Plan of Merger was duly submitted to the sole member of the Surviving Entity, pursuant to Nevada Revised Statutes Chapter 92A, and approved by the sole Member of the Surviving Entity, which approval is sufficient for the approval of the Plan of Merger by the owner of the Surviving Entity.

B. **Disappearing Corporation.** The Board of Directors of PBMS has duly and validly adopted the Plan of Merger. Approval of the Plan of Merger by the owners of the parent of PBMS is not required. The Plan of Merger was duly submitted to the sole stockholder of PBMS, pursuant to the Nevada Revised Statutes and approved by written consent of the sole stockholder of PBMS, which approval is sufficient for the approval of the Plan of Merger by the owner of PBMS.

ARTICLE III**Amendments to the Articles of Organization
of the Surviving Entity**

X

The Articles of Organization of the Surviving Entity as in effect immediately prior to the Merger shall continue as the Articles of Organization of the Surviving Entity.

ARTICLE IV
Plan of Merger

The complete executed Plan of Merger is on file at the Surviving Entity's registered office.

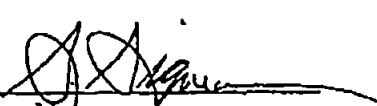
ARTICLE V
Effective Date of Merger

The effective date of the merger of the Disappearing Corporation with and into the Surviving Entity is July 31, 1999 (the "Effective Date"), which Effective Date is not more than ninety (90) days after the filing of these Articles of Merger.

IN WITNESS WHEREOF, the Surviving Entity and the Disappearing Corporation have caused these Articles of Merger to be signed by, in the case of the Surviving Entity, a Manager, and, in the case of each of the Disappearing Corporations, their Presidents and Secretaries effective on the 31st of July, 1999.

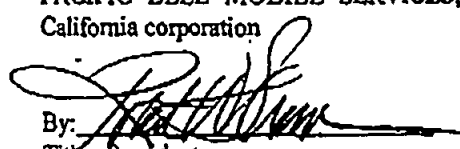
SURVIVING ENTITY:

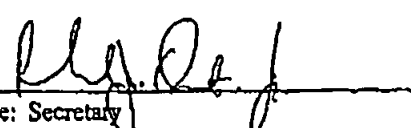
PACIFIC BELL WIRELESS, LLC,

By: 
Title: Manager
Name: Stan T. Sigman

DISAPPEARING CORPORATION:

PACIFIC BELL MOBILE SERVICES, a
California corporation

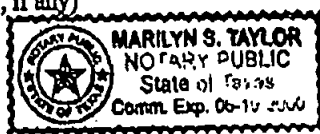
By: 
Title: President
Name: Robert W. Shaner

By: 
Title: Secretary
Name: Richard J. Quist, Jr.

STATE OF TEXAS)
) ss.
COUNTY OF BEXAR)

This instrument was acknowledged before me on July 24, 1999, by Stan T. Sigman as a Manager of Pacific Bell Wireless, LLC, a Nevada limited liability company.

(Seal, if any)

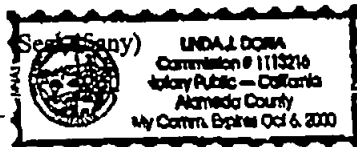


Marilyn S. Taylor
Notary

(My commission expires: 6/14/2000)

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

This instrument was acknowledged before me on July 22, 1999, by Robert W. Shaner President of Pacific Bell Mobile Services, a California corporation.



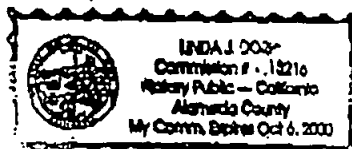
Linda J. Dorra
Notary

(My commission expires: 10/6/00)

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

This instrument was acknowledged before me on July 29, 1999, by Richard J. Quist, Jr., Secretary of Pacific Bell Mobile Services, a California corporation.

(Seal, if any)



Linda J. Dorra
Notary

(My commission expires: 10/6/00)