

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion Into the Planned Purchase and Acquisition by AT&T Inc. of T-Mobile USA, Inc., and its Effect on California Ratepayers and the California Economy.

FILED
PUBLIC UTILITIES COMMISSION
JUNE 9, 2011
SAN FRANCISCO, CALIFORNIA
INVESTIGATION 11-06-009

ORDER INSTITUTING INVESTIGATION**1. Introduction**

By this Order, the Commission institutes an investigation into the proposed acquisition by AT&T Inc. (AT&T), the parent and/or beneficial owners (through various intermediary corporations) of California telecommunications utilities Pacific Bell d/b/a AT&T California (U1001) and New Cingular Wireless PCS, LLC (U3060C), of all the issued and outstanding shares of capital stock of T-Mobile USA, Inc. (T-Mobile),¹ which is the direct and/or beneficial owner of California telecommunications utility T-Mobile West Corporation (U3056C).

This acquisition, commonly referred to as a merger, affects Californians because the two companies, through their California subsidiaries, would have a combined total of approximately 20 million California wireless telephone and data customers, and over 47% of the California wireless market. The merger is

¹ T-Mobile USA, Inc. is a fully-owned subsidiary (through multiple intermediate corporations) of Deutsche Telekom AG, an *Aktiengesellschaft* organized under the laws of the Federal Republic of Germany (Seller).

also of interest to Californians because it would leave the affiliates of California's two largest incumbent local exchange carriers (ILECs), AT&T California and Verizon California Inc., with over 77% of the California wireless telephone market (voice and data), an increase from their current 65% share.

In addition to controlling the largest wireless carriers in California, the ILECs and their wireline affiliates also control most of the "backhaul" or "special access" facilities (between the cell tower and the local exchange carrier's central office or other switching location) on which wireless telecommunications services, including those provided by the other wireless competitors (Sprint/Nextel, MetroPCS, and Cricket, for example) depend. If the merger is completed, there will be a smaller pool of independent backhaul purchasers, with potentially less buying power.²

Our draft companion rulemaking to evaluate the status of Telecommunications Competition in California and its implications for regulatory policies (Competition OIR) proposes to evaluate market-wide regulatory issues including backhaul and special access policies. Wholesale, or special access services are recognized by this Commission as having great importance to the competitive retail market and prior decisions have maintained the requirement for special access services to be tariffed. However, most of the special access services purchased by competing wireless providers are purchased from the federal tariffs. The Federal Communications Commission (FCC) has a pending proceeding addressing the issue of special access in which this Commission has intervened. This OIR will examine merger-specific effects on

² In that scenario, Sprint/Nextel will be the only large, independent, facilities-based wireless provider remaining in California, with Cricket, MetroPCS and other smaller wireless carriers having smaller shares of the California market (Sprint and the smaller carriers will have an approximate 20% aggregate share of the wireless market).

competition and service, including backhaul and special access. General special access policy, including the longstanding but yet unresolved special access proceeding at the FCC, and intra-state special access service will be addressed in the Telecommunications Competition OIR.

The purpose of this Investigation is to investigate, gather, and analyze information relevant to the proposed merger to determine the specific impact of the merger on California and we will look at applicable law for guidance in reviewing this merger. This Order Instituting Investigation (OII) will analyze what, if any, conditions related to California-specific effects of the merger may be appropriate, and whether additional Commission action is warranted. We anticipate that this investigation will also develop a record to inform additional comments that the Commission may file with regard to the merger application at the Federal Communications Commission (FCC).

2. The Commission's Authority to Review the Merger

Wireless carriers are "telephone corporations" and therefore public utilities under Public Utilities Code Sections 216, 233 and 234.³ (*See, e.g.,* Decision (D.) 01-07-030, Appendix A, *Interim Rules Governing Non-Communications-Related Charges on Telephone Bills*, at 1, 6.) This Commission has asserted its jurisdiction to protect consumers of wireless/cellular telephone services:

Finally, we reiterate that our primary focus in the regulation of the cellular industry is the provision of good service, reasonable rates, and customer convenience.

³ Public Utilities Code section 216 defines "public utility" to include "telephone corporation"; section 234 defines "telephone corporation" to include any corporation controlling, operating, or managing a "telephone line" for compensation; and section 233 defines "telephone line" to include any "fixtures" or "personal property" operated or managed "in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires."

(D.89-07-019, Re Regulation of Cellular Radiotelephone Utilities, 32 CPUC2d 271, 281.)⁴

Before 1993, the Commission had plenary jurisdiction over wireless or Commercial Mobile Radio Service (CMRS) carriers. In 1993, Congress passed the Omnibus Budget Reconciliation Act of 1993 (Budget Act), which amended Section 332(c)(3)(A) of the Communication Act as follows:

. . . no state or local government shall have any authority to regulate the entry of or the rates charged by any Commercial Mobile Service or any Private Mobile Service, except this paragraph shall not prohibit a state from regulating the other terms and conditions of Commercial Mobile Service.⁵

⁴ See also D.01-07-030; D.96-12-071, *Investigation on the Commission's Own Motion into Mobile Telephone Service and Wireless Communications* (1996) 70 CPUC2d 61, 72-73 [stating that "we still remain concerned that the terms and conditions of service offered by each CMRS provider continue to provide adequate protection to consumers"].

CMRS refers to Commercial Mobile Radio Service, and includes Cellular Services, Personal Communications Services (PCS), Wide-Area Specialized Mobile Radio Services (SMR), Radio Telephone Utilities (RTU or paging) services, and many other wireless services. (D.96-12-071, *supra*, 70 CPUC2d 61, 65.) The terms "CMRS" and "wireless" are commonly used interchangeably with "cellular."

⁵ Codified at 47 USC § 332(c)(3)(A) (emphasis added). The legislative history of this provision of the Communications Act indicates what Congress meant by the language "other terms and conditions":

It is the intent of the Committee that the State still will be able to regulate the terms and conditions of these services [CMRS]. By "terms and conditions" the Committee intends to include such matters as customer billing information and packaging and billing disputes and other such consumer protection matters; facility siting issues (e.g., zoning); transfers of control; bundling of services and equipment; and the requirement that carriers make capacity available on a wholesale basis and such other matters as fall within the State's lawful authority. This list is intended to be

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Shortly after passage of the 1993 Budget Act, the Commission instituted an investigation of the cellular industry in order "to develop a comprehensive regulatory framework consistent with the Federal Budget Act and our own statutory responsibilities." (OII 93-12-007, Investigation on the Commission's Own Motion into Mobile Telephone Service and Wireless Communications, 1993 Cal. PUC LEXIS 836.) The Commission's jurisdiction over wireless terms and conditions was subsequently confirmed by the California Court of Appeal. (Pacific Bell Wireless (Cingular) v. CPUC, (2005) 140 Cal.App.4th 718, 738; cf. MetroPCS v. FCC (DC Cir. 2011) 2011 U.S. App. LEXIS 9922 (affirming state jurisdiction to resolve CMRS-wireline interconnection disputes).)

Article 6 of the Public Utilities Code, sections 851-857, requires the Commission to review transfers of utility property. However, pursuant to section 853(b), the Commission may exempt a public utility or class of public utility from the requirements of Article 6. In 1995, the Commission examined its ongoing authority over wireless carriers in light of the 1993 Act.

In D.95-10-032, the Commission concluded that "[t]he transfer of ownership interests in a CMRS entity is not tantamount to [market] entry, and Commission jurisdiction over such transfers is not preempted under the federal legislation." (D.95-10-032, Conclusion of Law (CoL) 9.) However, although the Commission's jurisdiction over transfers of ownership was "not preempted," the Commission decided as a matter of public policy to "forbear from exercising

illustrative only and not meant to preclude other matters generally understood to fall under "terms and conditions."

(House Report No. 103-111, at 251. Emphasis added.) The FCC also confirmed the CPUC's jurisdiction over "other terms and conditions" when it stated that it anticipated that the CPUC would continue to conduct appropriate complaint proceedings and to

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such authority,” except where such review or further analysis is “necessary in the public interest.” (*Id.* at CoLs 15, 18; Ordering Paragraph 3; *see also id.* at p. 16) (standing merger approval process “could inhibit the growth of competition to impose more restrictive requirements on CMRS providers than is necessary to discharge our responsibilities to protect the public interest”). Thus, the Commission established procedures whereby wireless carriers are required to provide 30-days advance notice to the Director of the Communications Division for certain types of transfers, including any proposed transactions involving a change of ownership in which an entity acquires a larger ownership share than the largest holding of any current owner. (D.95-10-032, Ordering Paragraph (OP) 3.) Further, pursuant to D.95-10-032, no preapproval is required unless the Commission notifies the carrier within the 30-day period that further information is needed or that a formal application is required. (D.95-10-032, OP 3.)

As set forth more fully below, we have concluded that further review and analysis of the AT&T/T-Mobile merger is in the public interest.

3. Procedural Background

On April 21, 2011, AT&T provided this Commission an initial notice of the proposed transfer. On May 3, 2011, AT&T vacated its initial notice and provided a revised notice pursuant to Rule 6.1 (information-only filings) of General Order (GO) 96-B. The Director of the Communications Division (CD) designated the

monitor the structure, conduct, and performance of CMRS providers. (*See* May 19, 1995 FCC Order Denying the CPUC’s petition to continue to regulate CMRS rates.)

notice as Advice Letter (AL) 160 for tracking purposes only. On May 19, 2011, Sprint filed a “protest” to the AL 160.⁶

At the May 26, 2011 Commission Meeting, the Commission directed CD staff to notify AT&T that AT&T’s 30-day notice was suspended on the basis of staff’s earlier requests for further information. The Commission also directed staff to draft and present to the Commission an OII into the merger, to gather facts and analyze data relevant to whether the proposal complies with applicable California law. In addition, the Commission directed staff to prepare comments to file at the FCC regarding the Commission’s preliminary investigation of this merger and its OII process. On May 27, 2011, the Director of CD sent AT&T a letter informing AT&T that its information-only letter was suspended.

4. Federal Communications Commission Proceeding

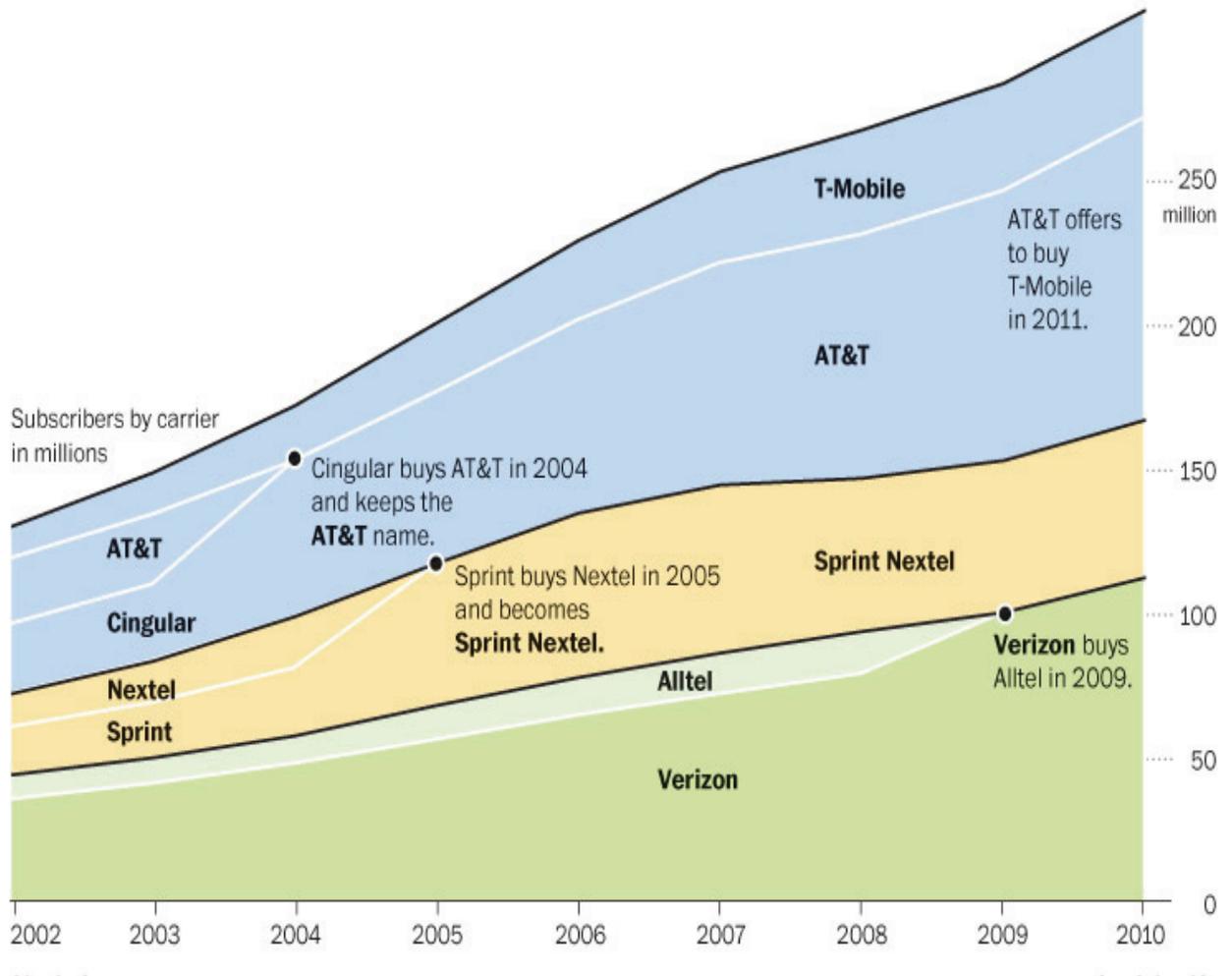
On April 21, 2011, AT&T and Deutsche Telekom AG (T-Mobile’s parent company) filed applications with the FCC pursuant to sections 214 and 310(d) of the Communications Act of 1934 (47 U.S.C. §§ 214, 310(d)), seeking FCC consent to transfer control of the licenses and authorizations held by T-Mobile USA, Inc. and its subsidiaries to AT&T Inc. (WT Docket No. 11-65.) The FCC’s goal is to complete action on transfer of control applications (i.e., granting, designating for hearing, or denying) within 180 days of the release of public notice, which in this case was April 28, 2011. Therefore, it appears that the FCC may issue a decision granting or denying the merger by the end of October 2011.

5. Review of the Merger is Merited

Since 2002, the wireless telecommunications industry has consolidated from seven major wireless carriers to four in 2010. If AT&T’s proposed merger

⁶ Since information-only filings do not seek relief, they are not subject to protest. (GO 96-B, Rule 6.2.)

were approved, only three major wireless carriers with substantial market share would remain, as shown in the following chart:⁷



While there are smaller, regional carriers in the market (like MetroPCS and Leaf/Cricket, having an aggregate 9.7% national market share (smaller in California),⁸ as well as pure resellers like TracFone Wireless, Inc., the loss of a

⁷ Source: Strategy Analytics, published by the Washington Post website, and available at http://www.washingtonpost.com/business/economy/wireless-company-mergers-since-2002/2011/03/21/ABylk9_graphic.html.

⁸ National figures are derived from July 2010 General Accounting Office (GAO) Report, "Enhanced Data Collection Could Help FCC Better Monitor Competition in the Wireless Industry," available at <http://www.gao.gov/products/GAO-10-779>. The smaller

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major carrier requires further analysis by this Commission. Post-merger market concentration will be greater in California than nationally.⁹

We also recognize that the wireless market has been dynamic, gaining more than 100 million customers since 2002 as the above chart demonstrates. Wireless devices and network capabilities have revolutionized communications. Regulatory policies should facilitate innovation, service, and dynamic competition.

However, due to the increase in concentration in the wireless market that would result from this proposed merger, and the fact that the concentration increase would be greater in California than nationally, we find it reasonable to gather facts and receive comments in this Investigation in order to analyze whether the proposed merger comports with California law, and to inquire into the effects of such consolidation on California customers and the California economy.

Concentration in the wireless market would increase significantly as a result of this proposed merger. In addition, the increase in wireless market concentration would be greater in California than nationally if the merger is approved. Consequently, we find it in the public interest to gather facts and receive comments in this Investigation to assess the effects of such consolidation on California customers and the California economy.

California figure, derived from aggregate Form 477 data, reflects a 6.7% market share for the smaller, regional carriers.

⁹ Whereas a post-merger AT&T would have a combined wireless market share of approximately 42% nationally, it would have over 47% in California. The differential would be larger in mobile broadband, where AT&T's post-merger market share in California would be over 55%, whereas nationally it would be in the 42% range.

6. Order Instituting Investigation

As stated above, this Investigation will be the procedural vehicle for the Commission to review the merits of the merger and take appropriate action based on our analysis. This Commission intends to comment on the FCC proceeding. In order to do so, the Commission has targeted the ending date of this proceeding so that it is around the time the FCC has announced its proceeding may finish. Moreover, a number of issues can only be decided by the FCC, including whether to approve the AT&T and T-Mobile merger on a national basis. A lengthy proceeding here, which could continue long after the FCC has made its decision, could prevent us from having meaningful participation in the FCC process.

The scope of the Investigation adopted in this OII allows a thorough consideration of the proposed merger within a schedule consistent with the FCC's anticipated timeline.

7. Respondents and Interested Parties

We make the following utilities Respondents in this case:

- New Cingular Wireless PCS, LLC (U3060C) and affiliated wireless entities;¹⁰ and
- T-Mobile West Corporation d/b/a T-Mobile (U3056C).

We designate the following utilities as Interested Parties:

- Pacific Bell d/b/a AT&T California (U1001C) and affiliated local exchange carrier entities;¹¹

¹⁰ AT&T Mobility Wireless Operations Holdings Inc. (U3021C), Santa Barbara Cellular Systems, Ltd. (U3015C) and AT&T Mobility Wireless Operations Holdings, LLC (U3014C).

¹¹ AT&T Communications of California, Inc. (U5002C), TCG San Francisco (U5454C), TCG Los Angeles, Inc. (U5462C), and TCG San Diego (U5389C).

- Verizon California, Inc. (U1002C) and affiliated local exchange carrier entities;¹²
- Verizon Wireless, LLC (U3029C) and affiliated wireless entities;¹³
- Sprint Telephony PCS, LP (U3064C) and affiliated wireless and local exchange carrier entities;¹⁴
- MetroPCS, Inc. (U3079C); and
- Cricket Communications, Inc. (U3076C).

Utilities designated as Respondents and Interested Parties are required to respond to the data requests and other filing requirements in this proceeding, and may be bound by the outcome of this proceeding.

8. Preliminary Scope of the Proceeding

As required by Rule 7.1(c)¹⁵ of the Commission's Rules of Practice and Procedure, this OII includes a Preliminary Scoping Memo. In this Preliminary Scoping Memo, we describe the issues to be considered in this proceeding and the timetable for resolving the proceeding.

¹² MCI Metro Access Transmission Services (U5253C) and Verizon Select Services, Inc. (U5494C).

¹³ California RSA No. 4 Ltd. Partnership (U3038C), Cellco Partnership (U3001C), Fresno Msa Ltd. Partnership (U3005C), GTE Mobilnet of Ca. Ltd. Partnership (U3002C), GTE Mobilnet of Santa Barbara (U3011C), Los Angeles Smsa Limited Partnership (U3003C), Modoc RSA Limited Partnership (U3032C), and Sacramento Valley Ltd. Partnership (U3004C).

¹⁴ Nextel Boost of California, LLC (U4332C), Sprint Communications Company, LP (U5112C), Nextel of California, Inc. (U3066C), and Wirelessco, LP (U3062C).

¹⁵ Rule 7.1(c) provides: "Investigations. An order instituting investigation shall determine the category of the proceeding, preliminarily determine the need for hearing, and attach a preliminary scoping memo. The order, only as to the category, is appealable under the procedures in Rule 7.6."

8.1. Issues to be Addressed

The scope of this Investigation includes all issues that are relevant to the proposed merger's impacts on California in order to inform this Commission's comments with the FCC, and determine whether any conditions should be placed upon a merged entity.

Bearing in mind the concerns the Legislature has identified in Article 6 of the Public Utilities Code, our limited resources and the FCC's and Department of Justice's concurrent investigations, we intend to focus this investigation on (but do not limit it to) the following issues that have the greatest impact on California:

1. Is this proposed merger in the public interest?
 - a. Would the merger, which is planned as a nationwide transaction, have specific or different effects in California? For example, would the merger result in less competition in the California marketplace for wireless telephone customers as compared to wireless telephone customers nationally?
 - b. How should the relevant market(s) be defined? How should the product market(s) be defined, as wireless telephone carriers, as smart phone carriers, or some other way? How should the relevant geographic market(s) be defined? Locally according to carriers available to consumers in a locality, regionally, by the state, or nationally?
 - c. Would the merger give the resulting entity monopsony power or increase the tendency to monopsony power including market power over equipment suppliers? If yes, then what impact would the merger have on choice and competition in handsets and related equipment?
 - d. How long, and to what extent, would the lower-priced T-Mobile plans continue to be available after the merger? Would the merger serve Californians who depend on low-priced wireless plans? What merger-specific and verifiable efficiencies would likely be realized by the merger?
2. What merger-specific and verifiable efficiencies would likely be realized by the merger?

3. Would innovation be promoted or constrained by the merger? For example, would the merger increase, maintain or diminish facilities and competition for wireless transmission services such as distributed antenna systems (DAS) and open distributed antenna systems (O-DAS)?
4. What impact would the merger have on the market for special access or backhaul services?
 - a. What alternatives to incumbents' special access backhaul facilities currently exist, and what alternatives would exist after the merger, for independent, competitive wireless carriers?
 - b. Would the smaller post-merger pool of independent, competitive wireless carriers purchasing special access backhaul from local exchange carriers affect the market power of those special access backhaul customers? Would the merger increase the market power of the local exchange carriers and/or their wireless affiliates with respect to special access backhaul services?
 - c. Would the merger increase the ability of the merging parties to impose exclusive or requirements contracts on purchasers of backhaul services? Would the merger increase the ability of the merging parties or their wireline affiliates to require that the entity seeking backhaul services buy a certain percentage of their backhaul services from the wireline affiliates of the merging parties?
5. Would the merger maintain or improve the quality of service to California consumers?
 - a. Is acquisition of T-Mobile's spectrum necessary to extend AT&T's service area or improve AT&T's existing service? Is AT&T using the spectrum it now has? Does it have concrete plans to build out the spectrum licensed to it? We note that in February 2011, AT&T filed an application with the FCC to acquire the 700 mhz wireless spectrum currently licensed to Qualcomm including the licenses to serve Los Angeles and San Francisco. How would these combined spectrum holdings, if approved, affect AT&T's wireless service, competition, and the California market? Is acquisition of both T-Mobile's and Qualcomm's California spectrum necessary to

achieve the benefits AT&T plans to bring about through these transactions?

- b. Is the merger necessary to provide T-Mobile customers with advanced services, such as LTE (Long Term Evolution) services that facilitate data transfers and offer greater speed?
6. What California utility(ies) would operate the merged properties in California? Would the merger preserve the jurisdiction of the Commission and the capacity of the Commission to effectively regulate those utility operations in the state?
7. How does this merger affect the merging companies' employees, shareholders, subscribers, communities in which they operate, and the State as a whole?
8. Would the benefits of the merger likely exceed any detrimental effects of the merger?
9. Should the Commission consider conditions or mitigation measures to prevent significant adverse consequences which may result from the merger? What, if any, should those conditions or measures be?

In reviewing other proposed changes of control, the Commission has found that the proposed transaction is exempt from California Environmental Quality Act (CEQA) review. *See*, e.g., D.09-10-056, D.09-08-017, D.06-02-033, and D.05-12-007. Respondents should address whether the proposed merger is exempt from CEQA review.

To assist in addressing these issues in this Investigation, the Respondents and Interested Parties are ordered to file responses to the Data Requests appended hereto as Appendix A.¹⁶ The obligation to respond to these Data Requests is an independent statutory obligation under Public Utilities Code Sections 311, 314, 581, 582, and 584, and is not dependent on the results of any

¹⁶ We emphasize that, while staff has the authority to issue data requests without a Commission decision, we attach data requests to this OII to streamline and expedite the process. Staff has the discretion to clarify and add any additional data request it finds appropriate.

motion practice initiated by Respondents or Interested Parties. AT&T should file its application submitted to the FCC in WT Docket No. 11-65, and the Respondents and Interested Parties should file in this proceeding full responses to all Commission staff data requests regarding the proposed merger. (The Commission staff data requests issued to date are appended hereto as Appendix B; any subsequent staff data requests will include deadlines for filing responses in this proceeding.) Section 9 below addresses the treatment of information and documents that the entities view as proprietary or confidential.

8.2. Schedule

We plan to substantially complete this inquiry in a manner sufficiently timely to provide comment to the FCC. With this goal in mind, we set the following schedule:

June 20, 2011	Deadline for parties to suggest additional data requests in letters to the Director of Communications Division, with service on all parties.
June 24, 2011	Deadline for AT&T to file in this proceeding its application filed at the FCC in WT Docket No. 11-65 and for Respondents and Interested Parties to file responses already provided to Commission staff data requests regarding the proposed merger.
June 24, 2011	Deadline to file responses to Data Requests in Appendix A and any remaining responses to staff Data Requests in Appendix B.
July 1, 2011	Deadline to file Opening Comments and factual showings in Declarations. Comments may include legal analyses and must be limited to 50 pages. Each Declaration must be verified, consistent with Rule 1.11, by a representative knowledgeable about its contents.

July 7 or 8, 2011	Public Workshop in San Francisco re: facilities-based competition issues, with a particular focus on special access backhaul, lease and other contract arrangements, interconnection, and related issues. A public participation hearing will also be held in San Francisco.
July 15 or 29, 2011	Public Workshop in Silicon Valley re: innovation issues. This shall include, but is not limited to, handsets; distributed antenna systems, broadband, data transfer, etc.
July 20 or 21, 2011	Public Workshop in Los Angeles re: customer issues, including, but not limited to, price, service quality, customer service – small/individual, small business, and large enterprise customer representatives. A public participation hearing will also be held in Los Angeles.
July (dates TBD)	Public participation hearings in Orange County and the Central Valley
August 5, 2011	Deadline for filing Reply Comments (limited in scope to matters raised in Opening Comments and workshops, and limited to 25 pages), and supplemental factual showings in verified Declarations.
August 10-30, 2011	Staff may submit the Investigation's record to the FCC.
September 2, 2011	Target date for proposed decision, with subsequent comments (limited to 25 pages) and reply comments (limited to 5 pages) consistent with Rule 14.3.
October 6, 2011	Target date for Commission vote on a proposed decision.

For the public workshops, Respondents are directed to designate and provide as participants their employee or employees most knowledgeable

regarding these subjects. Interested persons or organizations may also be invited to participate in the workshops. Workshop participants will be required to identify themselves, their relationship, if any, to the parties to the proposed transaction (including those filing Petitions to Deny at the FCC, e.g., Sprint Nextel), and whether the organization they represent has received funding in the past twelve months or has been promised funding from AT&T and/or T-Mobile, Sprint, or any other wireless or wireline telephone company or their foundation. Commenters and workshop participants are reminded that their statements are subject to Commission Rule 1.1, and must be true, correct, and complete to the best of the participant's knowledge.

Workshops and public participation hearings will be transcribed by a court reporter. The workshops shall be noticed as a public meeting per the Bagley-Keene requirements, with 10 days notice. If needed, the assigned Commissioner or Administrative Law Judge (ALJ) may modify the dates and locations of the workshops and public participation hearings, as long as all three workshops and four public participation hearings are completed no later than July 29, 2011.

Because of the expedited nature of this proceeding, there will be no Prehearing Conference, but rather the assigned ALJ shall convene an informal telephonic conference with parties as soon as possible after issuance of the OII, to address questions of the parties and procedural issues beyond the schedule set forth above, such as dates for discovery.

9. Treatment of Information and Documents Considered to be Confidential

Due to the expedited nature of this proceeding, the Commission will modify its standing procedures for the submission of information claimed to be confidential (Rule 11.4). The submitting party is not required to file a motion for

submission of information and documents under seal. However, the designation of any document or information as confidential, highly confidential, or additional copying prohibited (see Protective Order incorporated as Appendix C below) shall constitute a representation by the submitting party, subject to the Commission's Rule 1.1, that the confidential, highly confidential or copying prohibited documents meet the requirements set forth for such designations. Other parties may challenge, via motion, the implied representation that such documents and/or information are confidential. Information and documents submitted under seal will be afforded the protections provided by GO 66 and Public Utilities Code section 583, absent a ruling otherwise by the assigned ALJ or a law and motion ALJ designated by the Chief ALJ.

To facilitate access by other parties while ensuring appropriate confidentiality protections, we adopt the Protective Order in Appendix C, which is largely based on the Protective Order and the Second Protective Order adopted by the FCC in its merger proceeding WT Docket No. 11-65. Any document containing information claimed to be "Confidential Information" or "Highly Confidential Information" should be marked as such consistent with the terms of the Protective Order in Appendix C and should be filed under seal, with service only on the assigned Commissioner, assigned ALJ, Commission staff who are on the service list, and persons who have met the conditions for access to such documents under the terms of the Protective Order. A party filing information and documents under seal should file at the same time a public version of such documents, labeled Redacted Confidential Documents and/or Redacted Highly Confidential Documents, as appropriate, as defined in the Protective Order in Appendix C.

Confidentiality issues will be handled by the assigned ALJ, or by a law and motion ALJ designated by the Chief ALJ. We expect the parties to cooperate

in the facilitation of this Investigation, and to evince good faith with regard to such confidentiality issues. If necessary, the assigned ALJ or a law and motion ALJ may modify the Protective Order in Appendix C.

10. Categorization, *Ex Parte* Communications, and Need for Hearing

Rule 7.1(c) of the Commission's Rules of Practice and Procedure provides that the OII shall determine the category of the proceeding and preliminarily determine the need for hearing. This proceeding is categorized as ratesetting.¹⁷ Parties must comply with the *ex parte* rules set forth in Rule 8.2(c) and Rule 8.3 of the Commission's Rules of Practice and Procedure. The determination as to category is appealable under Rule 7.6. We preliminarily determine that formal evidentiary hearings are not needed, but the Commission may set this matter for hearing if contested material issues of fact remain after the initial comments, reply comments, and the three workshops.

11. Service of OII, Creation of Service List, Filing of Documents, and Subscription Service

We will serve this OII on the Respondents and Interested Parties, on the service list (parties, state service list, and information-only category) in I.93-12-007 (the Commission's investigation into mobile telephone service and wireless communications) and on the service list in Rulemaking 09-06-019 (the California High Cost Fund B rulemaking).

¹⁷ When a proceeding does not clearly fit into any of the categories defined in Rule 1.3 (a), (d), or (e), the proceeding will be conducted under the rules applicable to the "ratesetting" category. (Rule 7.1(e)(2).) It is appropriate to classify this proceeding as ratesetting because (1) it does not clearly fit into any other category and (2) the ratesetting category is consistent with the type of review we are conducting here. We note that the Commission's *ex parte* rules for ratesetting proceedings are similar to the "permit-but-report" *ex parte* procedures applicable at the FCC.

11.1. Creation of Service List

The Commission will create an official service list for this proceeding, which will be available at http://www.cpuc.ca.gov/published/service_lists. We anticipate that the official service list will be posted before the first filing deadline in this proceeding. Before serving documents at any time during this proceeding, parties shall ensure they are using the most up-to-date official service list by checking the Commission's website prior to each service date.

The entities named as Respondents and Interested Parties are parties to the proceeding and must participate in this proceeding. Process Office shall place the person designated to receive service as the party's representative on the service list. A Respondent or Interested Party may designate a different representative as described in Section 11.2 below.

Except for the Respondents and Interested Parties, service of the OII does not confer party status in this proceeding upon any person or entity, and does not result in that person or entity being placed on the service list for this proceeding. Procedures are set forth below for those interested in participating in this proceeding or monitoring the OII.

You may request to become a party by filing a motion (Rule 1.4(a)(4)); you may also make an oral motion (Rule 1.4(a)(3)) at a public workshop or public participation hearing. To become a party, you must also comply with Rule 1.4(b). These Rules are in the Commission's Rules of Practice and Procedure, which you can read on the Commission's website. If you want to be on the service list by the first filing deadline (June 24, 2011), you should file your motion to become a party, with the required Rule 1.4(b) showing, no later than June 15, 2011. Because of the expeditious nature of this proceeding, written motions to become a party should be served using electronic service pursuant to Rule 1.10. Responses to motions to become a party must be filed within 2 days of filing.

If you want to be added to the official service list as a non-party (that is, as State Service or Information Only), send your request to the Process Office. You may use e-mail (Process_Office@cpuc.ca.gov) or letter (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102).

Include the following information:

- Docket Number of this Investigation;
- Name (and party represented, if applicable);
- Postal Address;
- Telephone Number;
- E-mail Address; and
- Desired Status (State Service or Information Only).¹⁸

11.2. Updating Information

Once you are on the official service list, you must ensure that the information you have provided is up-to-date. To change your postal address, telephone number, e-mail address, or the name of your representative, send the change to the Process Office by letter or e-mail, and send a copy to everyone on the official service list.

11.3. Serving and Filing Documents

When you serve a document, use the official service list published at the Commission's website as of the date of service. You must comply with Rules 1.9 and 1.10 when you serve a document to be filed with the Commission's Docket Office.

¹⁸ If you want to file comments or otherwise actively participate, you must file a motion or make an oral motion to become a "Party." If you do not want to actively participate but want to follow events and filings as they occur, choose "State Service" status if you are an employee of the State of California; otherwise, choose "Information Only" status.

The Commission encourages electronic filing and e-mail service in this Investigation. You may find information about electronic filing at <http://www.cpuc.ca.gov/PUC/efiling>. E-mail service is governed by Rule 1.10. If you use e-mail service, you must also provide a paper copy to the assigned Commissioner and ALJ. The electronic copy should be in Microsoft Word or Excel formats to the extent possible. The paper copy should be double-sided. E-mail service of documents must occur no later than 5:00 p.m. on the date that service is scheduled to occur.

If you have questions about the Commission's filing and service procedures, contact the Docket Office.

11.4. Subscription Service

This proceeding can also be monitored by subscribing in order to receive electronic copies of documents in this proceeding that are published on the Commission's website. There is no need to be on the service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission's website at <http://subscribecpuc.cpuc.ca.gov/>.

12. Public Advisor

Any person or entity interested in participating in this Investigation who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in San Francisco at (415) 703-2074 or (866) 849-8390 or e-mail public.advisor@cpuc.ca.gov; or in Los Angeles at (213) 576-7055 or (866) 849-8391, or e-mail public.advisor.la@cpuc.ca.gov. The TYY number is (866) 836-7825.

13. Intervenor Compensation

Any party that expects to claim intervenor compensation for its participation in this Investigation shall file its notice of intent to claim intervenor compensation no later than 30 days after the deadline for filing Reply

Comments, or pursuant to a date set forth in a later ruling which may be issued by the assigned Commissioner or assigned ALJ.

ORDER

Therefore, **IT IS ORDERED** that:

1. Pursuant to Rule 5.1 of the Commission's Rules of Practice and Procedure, this Order Instituting Investigation is initiated on the Commission's own motion into the planned acquisition of T-Mobile USA by AT&T Inc. (and its subsidiaries and affiliates). The scope and schedule of the Investigation are as set forth herein.

2. The Respondents in this Investigation are New Cingular Wireless PCS, LLC; AT&T Mobility Wireless Operations Holdings, Inc., Santa Barbara Cellular Systems, Ltd., AT&T Mobility Wireless Operations Holdings, LLC, and T-Mobile-West Corporation d/b/a T-Mobile. For each Respondent, Process Office shall place the person designated to receive service as the Respondent's representative on the service list.

3. The following entities are Interested Parties in this proceeding: Pacific Bell d/b/a AT&T California; AT&T Communications of California; TCG San Francisco; TCG Los Angeles, Inc.; TCG San Diego; Verizon California, Inc.; MCI Metro Access Transmission Services; Verizon Select Services, Inc.; Verizon Wireless, LLC; Sprint Telephony PCS, LP; Nextel Boost of California, LLC; Sprint Communications Company, LP; Nextel of California, Inc.; Wirelessco, LP; MetroPCS, Inc.; and Cricket Communications, Inc. For each Interested Party, Process Office shall place the person designated to receive service as the Interested Party's representative on the service list.

4. Written motions to become a party filed pursuant to Rule 1.4(a)(4) must be served using electronic service pursuant to Rule 1.10. Responses to motions to become a party must be filed within two days after the motion is filed.

5. No later than June 24, 2011, AT&T Inc. shall file in this proceeding its application filed at the Federal Communications Commission in WT Docket No. 11-65.

6. No later than June 24, 2011, the Respondents and Interested Parties identified in Ordering Paragraphs 2 and 3 shall file responses already provided to the Commission staff data requests in Appendix B.

7. To facilitate the completion of this Investigation, and consistent with the provisions of Public Utilities Code §§ 311, 314, 581-82 and 584, Respondents and Interested Parties, as identified in Ordering Paragraphs 2 and 3, shall file the information specified in Appendix A hereto and any remaining answers to the data requests in Appendix B no later than June 24, 2011.

8. Parties may file Opening Comments and related Declarations no later than July 1, 2011, and Reply Comments and related Declarations no later than August 5, 2011, as detailed in Section 8.2 of this Order. Opening Comments shall not exceed 50 pages and Reply Comments shall not exceed 25 pages. Each Declaration must be verified, consistent with Rule 1.11 of the Commission's Rules of Practice and Procedure, by a representative knowledgeable about its contents.

9. Three public workshops and four public participation hearings shall be held on the merger as specified in Section 8.2 of this Order.

10. The assigned Administrative Law Judge shall schedule an informal telephonic conference to address questions of the parties and other procedural issues.

11. Respondents and Interested Parties, as identified in Ordering Paragraphs 2 and 3 above, shall preserve for the pendency of this action all documents which might relate to this Investigation.

12. The Protective Order attached hereto as Appendix C is adopted, and shall govern access to and use by the parties of confidential information in this proceeding.

13. Any party that files a document containing information claimed to be “Confidential Information” or “Highly Confidential Information” must mark the document and information consistent with the terms of the Protective Order in Appendix C and file the document under seal, with service only on the assigned Commissioner, assigned Administrative Law Judge, Commission staff who are on the service list, and persons who have met the conditions for access to such documents under the terms of the Protective Order. A party filing a document under seal must file at the same time a public version of the document, labeled “Redacted Confidential Document” or “Redacted Highly Confidential Document”, as appropriate, as defined in the Protective Order in Appendix C.

14. The assigned Administrative Law Judge or a law and motion Administrative Law Judge may modify the Protective Order if needed.

15. This Investigation is determined to be ratesetting, as that term is defined in Rule 1.3(d). It is preliminarily determined that formal evidentiary hearings are not needed in this proceeding. The categorization of this Investigation as “ratesetting” is appealable under the procedures under Rule 7.6 of the Commission’s Rules of Practice and Procedure.

16. The Executive Director shall cause a copy of this Order to be served on the designated agent for service in California for each of the Respondents and Interested Parties, as identified in Ordering Paragraphs 2 and 3 above, and also on the service lists in Investigation 93-12-007 and Rulemaking 09-06-019.

17. Interested persons shall follow the directions in Section 11 of this Order Instituting Investigation to become a party or be placed on the official service list.

18. Any party that expects to request intervenor compensation for its participation in this investigation shall file its notice of intent to claim intervenor compensation in accordance with Rule 17.1 of the Commission's Rules of Practice and Procedure, no later than September 6, 2011 or pursuant to a date set forth in a ruling which may be issued by the assigned Commissioner or assigned Administrative Law Judge.

This order is effective today.

Dated: June 9, 2011, in San Francisco, California.

MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

I dissent.

/s/ MICHAEL R. PEEVEY
President

I dissent.

/s/ TIMOTHY ALAN SIMON
Commissioner