

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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O1 Communications, Inc. (U6065C),

Complainant,

v.

New Cingular Wireless PCS, LLC (U3060C) and
AT&T Mobility Wireless Operations Holdings, Inc.
(U3021C),

Defendants.

C.15-12-020
(Filed December 28, 2015)

**AMENDED MOTION OF
NEW CINGULAR WIRELESS PCS, LLC (U-3060-C)
AND
AT&T WIRELESS OPERATIONS HOLDINGS, INC. (U-3021-C)
TO HOLD IN ABEYANCE
O1 COMMUNICATIONS' PARTIAL MOTION FOR SUMMARY JUDGMENT
AND
SEEKING EXPEDITED TREATMENT OF THIS MOTION**

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Pursuant to Rule 11.1, New Cingular Wireless PCS, LLC (U-3060-C) and AT&T Mobility Wireless Operations Holdings, Inc. (U-3021-C) (collectively referred to as “AT&T Mobility”) hereby respectfully request that the Commission hold in abeyance O1 Communications’ Motion for Partial Summary Judgment (“O1’s Motion”) until the Commission votes on whether to adopt the Proposed Decision of ALJ Gerald Kelly (“PD”), which would grant AT&T Mobility’s Motion to Dismiss. Given that AT&T Mobility’s response to O1’s Motion would be due on Thursday, September 1, 2016, AT&T Mobility requests expedited consideration of this motion.

O1’s Motion is procedurally improper. It was filed after the PD was issued, as an obvious attempt to circumvent the PD and established Commission practice. As provided in the Commission’s rules, the appropriate procedural vehicle for O1 to point out alleged errors in the PD is to file comments, which O1 has done. Thereafter, if O1 believes the decision adopted by the Commission contains errors, O1 may file an application for rehearing and even a challenge in court. Nowhere do the Commission’s rules provide for a party to attempt to negate a PD by filing a motion for summary judgment after the PD has been issued.

Nonetheless, AT&T Mobility merely requests that O1’s Motion be held in abeyance, pending a vote on the PD. If the pending PD is adopted, it would fully resolve this matter, thus rendering O1’s Motion moot. If the PD is not adopted, O1’s Motion for Partial Summary Judgment can be considered in due course. In this manner, there would be no prejudice to either party. Moreover, holding O1’s Motion in abeyance would preserve a potential waste of resources by the parties and the Commission in responding to and ruling on O1’s Motion. If the PD is adopted, any effort expended by the Commission and the parties on O1’s Motion will have been wasted.

