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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.

Investigation 11-06-009
(June 9, 2011)

JOINT ASSIGNED COMMISSIONER'S AND ADMINISTRATIVE LAW JUDGE'S RULING ADDRESSING VARIOUS PROCEDURAL ISSUES

This ruling addresses several procedural and substantive matters related to Commission Investigation (I.) 11-06-009. Respondents and parties named in I.11-06-009 are required to provide as participants in the July 8, 2011, workshop their employee or employees most knowledgeable regarding the workshop subjects, as specified below; other parties also may nominate potential participants for this workshop. The names of all potential workshop participants shall be served on the service list to this proceeding not later than July 1, 2011. Also as discussed below, the respondents and parties named in I.11-06-009 shall respond to the data request questions contained in Appendix 1 to this ruling not later than July 6, 2011, and shall comply with the other requirements set forth in this ruling.

1. Background

The Commission opened this Order Instituting Investigation (OII) on June 9, 2011, to investigate, gather, and analyze information relevant to the

proposed purchase and acquisition of T-Mobile USA, Inc., by AT&T, Inc., “to determine the specific impact of the merger on California.”¹ Consistent with direction in the OII, the Assigned Administrative Law Judge (ALJ) held a telephonic scheduling conference with parties on June 22, 2011, to discuss, among other things, the schedule, treatment of confidential information, and procedures for filing and service of discovery. The instructions given and agreements reached during that teleconference are memorialized in this ruling, which also provides additional direction for parties.

2. Party Status and Acknowledgements of Confidentiality

By separate ruling, the assigned ALJ has granted the motions for party status of the Division of Ratepayer Advocates (DRA), the Greenling Institute (Greenlining), Free Press, The Utility Reform Network (TURN), the California Association of Competitive Telecommunications Companies (CALTEL), the Black Economic Council, the Latino Business Chamber of Greater Los Angeles, the National Asian American Coalition, and the Utility Consumer’s Action Network (UCAN) and its affiliated projects.² Parties are reminded to ensure that their contact information on the Commission’s service list remains current, as described in the initiating OII at Section 11.2.

As noted at Section 11.1 of the OII, entities that are not yet parties to this proceeding may request party status by filing a written motion (Rule 1.4(a)(4)),³

¹ I.11-06-009 at 2.

² Collectively referred to as the “intervening parties.”

³ All references to Rules are to the Commission’s Rules of Practice and Procedure, see <http://www.cpuc.ca.gov/PUC/documents/codelawspolicies.htm>.

or making an oral motion (Rule 1.4(a)(3)) at a public workshop or public participation hearing. In order to assist me/staff in keeping track of motions for party status, oral motions must be followed-up by a written version of same. Motions for party status must also comply with Rule 1.4(b).

To date, several parties have executed the Acknowledgement of Confidentiality included as Attachment 2 to Appendix C of I.11-06-009. As the Assigned ALJ stated at the telephonic scheduling conference, parties desiring access to confidential data, including confidential data responses, should execute this Acknowledgement as soon as possible, and file it in this proceeding in accordance with the provisions set forth in Appendix C to I.11-06-009, the Protective Order adopted for this proceeding.

3. Discovery

3.1. Guidelines for Service and Distribution

Also as discussed at the scheduling teleconference, the respondents and market participant parties are expected to serve all discovery responses on all parties at the same time they are filed, consistent with the instructions in the OII, and shall ensure that all parties that properly executed, filed, and served the Acknowledgement of Confidentiality receive all confidential discovery responses. This applies to all discovery responses provided in this proceeding, and extends to all future filings. Similarly, parties that properly execute the Acknowledgement of Confidentiality may request directly from the filing entity copies of any confidential documents that were filed and served in this proceeding before the date that the party signed the Acknowledgement. All parties are expected to cooperate with such requests and provide all requested materials immediately and in good faith. Information provided in this proceeding and covered by these directives includes, but is not limited to, all

data responses and information required to be filed pursuant to Ordering Paragraphs 6 and 7 of the OII, the additional data requests contained in Appendix 1 of this ruling, and any future data requests issued by Commission staff.

3.2. Guidelines for Document Formatting

Parties shall ensure that all filings are made in a format acceptable to the Commission's Docket Office. All documents produced in response to Ordering Paragraphs 6 and 7 of the OII, and to any existing or future Commission data requests, should be Bates-stamped. Service of required data responses may be done electronically, with the exception that, as parties agreed during the scheduling teleconference, all parties shall provide at least one courtesy hard-copy of all data responses to Commission Staff. Documents other than the data responses (such as opening and reply comments and verified declarations) must be served consistent with the requirements set forth in Section 11.3 of the OII and the Commission's Rules of Practice and Procedure.

3.3. Additional Data Requests

DRA, TURN, Greenlining, CALTEL, and (jointly) the Black Economic Council, the Latino Business Chamber of Greater Los Angeles, and the National Asian American Coalition submitted potential data request questions to the Director of the Commission's Communications Division in accordance with the schedule established in the OII. Based on staff's review of these submissions, we require respondents and market participant parties named in the OII to respond to the additional data requests found in Appendix 1 to this ruling. The respondents and market participant parties are required to respond to the additional data request questions set forth in Appendix 1. Responses to these

data requests are due by July 6, 2010, and should be filed and served in this proceeding consistent with the procedures discussed in Section 3.2, above.

In addition, Commission staff make the following clarifications to the data requests contained in Appendix A to the OII:

- a. "Market share" referenced in Appendix A request 6 refers to share of customers, not revenues.
- b. The words "special access or backhaul facilities" used in Appendix A request 16 refer to special access or backhaul facilities used to transport wireless telephone (CMRS) traffic from cell towers to serving wire centers.⁴

As noted in the OII, we emphasize that staff has the authority to issue data requests without a Commission decision or ruling. The data requests attached to this ruling, like those attached to the OII, are intended to streamline and expedite the discovery process. Staff has the discretion to clarify and add any additional data request it finds appropriate.

4. Party Participation in the July 8, 2011 Public Workshop

Consistent with the notice filed in this proceeding on June 24, 2011, and further described in an electronic mail ruling from the ALJ on June 27, 2011, the first public workshop in this proceeding will take place in San Francisco on July 8, 2011. As established in the OII, this public workshop will focus on "facilities-based competition issues," in the Milton Marks conference Center (lower level), at the Hiram W. Johnson State Office Building, 455 Golden Gate Avenue, San

⁴ While we believe the intent of these inquiries was reasonably clear, if parties believe they need to file and serve responses supplemental to those filed and served on June 24, 2011 in order to answer the data requests in light of these two clarifications, leave is hereby granted to do so.

Francisco, California. The Workshop will begin promptly at 9:30 a.m., and is scheduled to end at 4:30 p.m. A more detailed agenda for this workshop will be released closer to the workshop date. Commissioners from the CPUC may attend and participate in this workshop. While a quorum of the CPUC may attend the workshop, no action will be taken. The workshop will be transcribed by court reporters, and may otherwise be recorded on audio or video media.

The workshop will open with discussion of the workshop topics by independent experts, followed by panel discussions on each of topic by appropriate representatives of the parties. As required in the OII, the respondents shall designate and make available to participate in the workshop their employee or employees most knowledgeable regarding the following three subject matter areas: special access backhaul for wireless carriers; spectrum; and roaming. The market participant parties named in the OII are encouraged to designate their own employee or employees most knowledgeable on these topics to participate in this workshop, and the intervening parties may also recommend knowledgeable participants.

Not later than Friday, July 1, 2011, each respondent⁵ shall provide to Commission staff the names and resumes of its designated employee participants for Commission review. July 1, 2011, is also the deadline for other parties to recommend panelists by providing their names and qualifications to Commission staff. All parties must submit this information by electronic mail to Commission staff at wej@cpuc.ca.gov and wit@cpuc.ca.gov. The resumes

⁵ The merger proponents are reminded that, pursuant to the Hart Scott Rodino Act they are prohibited from acting jointly until the merger is approved.

submitted to staff should indicate, or the parties should otherwise describe, each potential participant's qualifications to speak on the relevant issues set forth at pages 12-14 of the OII, as well as the relevant data requests in Appendices A and B.⁶ The goal of these requirements is to provide for the most informative discussion possible at this workshop, and towards that end, staff will have final approval of workshop participants.

As noted in the schedule below, we will follow the same process to identify participants for the July 15, 2011, workshop at Santa Clara University and the July 22, 2011, workshop in Los Angeles.

The use of PowerPoint presentations at the workshops is discouraged. Instead, and only to the extent necessary, participants may bring a large-format schematic drawing, chart, or table that provides specific factual information relevant to the participant's role at the workshop. Participants choosing to exercise this option must also provide a smaller format (but otherwise identical) copy of the drawing, chart, or table, that complies with Rule 13.7 (setting forth the Commission's formatting requirements for exhibits), which will be entered into the proceeding record as appropriate.

The parties, workshop speakers and other participants are reminded that their designations, recommendations, data responses, and workshop statements are subject to Commission Rule 1.1, and must be true, correct, and complete to

⁶ In making such designations or recommendations, the parties should particularly refer to these portions of the OII: Question 4 and related sub-questions regarding special access/backhaul; Question 5 and related sub-questions regarding spectrum; and Appendix A, question 14 in regard to roaming issues. The questions relevant to the July 15, 2011, and July 22, 2011, workshop may be identified and distributed to the service list by staff in advance of the workshop.

the best of the participant’s knowledge. As required in the OII, all speakers at all workshops will be required to identify themselves, and speakers other than “most knowledgeable employees” will be required to disclose their relationship, if any, to the parties to the proposed transaction, and, if purporting to speak as a member or on behalf of an organization, whether that organization has received or been promised funding from or on behalf of the respondents or any other party to this proceeding.

5. Schedule

The schedule for filings in this proceeding remains as established in the OII, with exception that opening comments are now due on Tuesday, July 6, 2011. Parties were informed of this change via e-mail on June 24, 2011, and the change is confirmed here.

The schedule for the workshops and public participation hearings in this proceeding is not yet final, but the following schedule contains the information that is available at this time, including confirmed time and location information on the three public workshops anticipated in the OII:

Activity	OII Date	Actual Date
Deadline for parties to suggest additional data requests in letters to the Director of Communications Division, with service on all parties.	June 20, 2011	June 20, 2011
Scheduling Teleconference	To Be Determined (TBD)	June 22, 2011
Respondents and Market Participant Parties file and serve initial data responses	June 24, 2011	June 24, 2011

<p>Consistent with Section 4, above, respondents shall provide information on their employee or employees most knowledgeable on the subjects of Workshop 1, in advance of their participation in that workshop. Other parties that choose to recommend possible panelists shall provide similar information on the qualifications of their recommended participants.</p>	<p>Not Applicable (N/A)</p>	<p>July 1, 2011</p>
<p>Opening comments (limited to 50 pages) and accompanying declarations filed and served.</p>	<p>July 1, 2011</p>	<p>July 6, 2011</p>
<p>Public Participation Hearing in San Francisco</p>	<p>TBD</p>	<p>July 7, 2011 6:00 p.m. Commission Auditorium State Office Building 505 Van Ness Ave. San Francisco, California</p>
<p>Consistent with Section 4, above, respondents shall provide information on their employee or employees most knowledgeable on the subjects of Workshop 2, in advance of their participation in that workshop. Other parties that choose to recommend possible panelists shall provide similar information on the qualifications of their recommended participants.</p>	<p>Not Applicable (N/A)</p>	<p>July 7, 2011</p>
<p>Public Workshop 1: on facilities-based competition issues, with a particular focus on special access backhaul, lease and other contract arrangements, interconnection,</p>	<p>N/A</p>	<p>July 8, 2011 9:30 a.m. - 4:30 p.m. Hiram W. Johnson State Office Building Milton Marks</p>

<p>and related issues (see more information below).</p>		<p>Conference Center (lower level) 455 Golden Gate Ave., San Francisco</p>
<p>Consistent with Section 4, above, respondents shall provide information on their employee or employees most knowledgeable on the subjects of Workshop 3, in advance of their participation in that workshop. Other parties that choose to recommend possible panelists shall provide similar information on the qualifications of their recommended participants.</p>	<p>Not Applicable (N/A)</p>	<p>July 14, 2011</p>
<p>Public Workshop 2: on innovation issues, including (but not limited to) handsets; distributed antenna systems, broadband, and data transfer.</p>	<p>July 15 or 29, 2011</p>	<p>July 15, 2011 9:30 a.m. – 4:30 p.m. Locatelli Center at Santa Clara University 500 El Camino Real, Santa Clara, CA, 95050</p>
<p>Public Workshop 3: on customer issues, including (but not limited to) price, service quality, customer service – small/individual, small business, and large enterprise customer representatives.</p>	<p>July 20 or 21, 2011</p>	<p>July 22, 2011 9:30 a.m. – 4:30 p.m. California Department of Transportation Building Conference Room A 100 S. Main Street Los Angeles, CA 90012</p>
<p>Public Participation Hearings in Los Angeles, Orange County, San Diego, and/or the central valley</p>	<p>TBD, but three to be held not later than July 29, 2011</p>	<p>TBD</p>

Reply comments (not to exceed 25 pages) and accompanying verified declarations.	August 5, 2011	August 5, 2011
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The Assigned Commissioner or assigned Administrative Law Judge may modify the schedule adopted herein as necessary for the reasonable and efficient conduct of this proceeding.

Therefore, **IT IS RULED** that:

1. The respondents and market participant parties shall file and serve responses to the data request questions set forth in Appendix 1 of this ruling not later than July 6, 2011.
2. All parties shall comply with the filing and service requirements set forth in Section 3.2, above.
3. The modified schedule for this proceeding is as set forth in Section 4 of this ruling.
4. Each respondent shall, and each market participant party named in the OII may, designate and make available to participate in the July 8, 2011, workshop their employee or employees most knowledgeable regarding the following three subject matter areas: special access backhaul for wireless carriers; spectrum; and roaming. Other parties may recommend their own experts for participation in panels at this workshop.
5. Information on the qualifications of potential panelists for the July 8, 2011 workshop, including the respondents' employees most knowledgeable about the workshop topics, shall be provided to Commission staff not later than Friday, July 1, 2011, as discussed in Section 4 of this ruling.
6. Each respondent shall, and each market participant party named in the OII may, designate and make available to participate in the July 15, 2011, and

July 22, 2011, workshops their employee or employees most knowledgeable regarding the following subject matter of those workshops. Other parties may recommend their own experts for participation in panels at this workshop.

7. Information on the qualifications of potential panelists for the July 15, 2011 and July 22, 2011 workshops, including the respondents' employees most knowledgeable about the topics of those workshops, shall be provided to Commission staff not later than Thursday, July 7, 2011 (for the July 15th workshop), and Thursday, July 14, 2011 (for the July 22nd workshop), as discussed in Section 4 of this ruling.

8. The Assigned Commissioner or assigned Administrative Law Judge may modify the schedule set forth herein as necessary for the reasonable and efficient conduct of this proceeding.

9. The Assigned Commissioner or assigned Administrative Law Judge may provide further direction regarding filing or other procedural matters as necessary for the reasonable and efficient conduct of this proceeding.

10. The Assigned Commissioner or assigned Administrative Law Judge may provide additional direction on the workshops or filings described in this ruling, necessary for a full and complete development of the record.

Dated June 28, 2011, at San Francisco, California.

/s/ MELISSA SLAWSON for
Catherine J.K. Sandoval
Assigned Commissioner

/s/ MICHELLE COOKE for
Jessica T. Hecht
Administrative Law Judge

**APPENDIX 1
FURTHER DATA REQUESTS**

The definitions and instructions found in OII Appendix A shall apply here. In particular, "wireless backhaul," as used herein, is intended to be synonymous with the "special access or backhaul facilities" referenced in Appendix A request 16, as both refer to the facilities used to transport wireless telephone (CMRS) traffic from cell towers to serving wire centers.

For AT&T (particularly Pacific Bell Tel. Co. dba AT&T California and its affiliates):

1. Are you selling special access for wireless backhaul outside of your tariffs (see "a" and "b" below)? Please identify the percentage of such wireless backhaul lines in California that are: (a) sold out of your Tariff FCC No. 1, pages 7.1 and following; (b) your intrastate/California special access tariffs; and (c) other. Produce all forms of contract used, either in conjunction with such tariffs or as stand-alone contracts, to document the provision of AT&T special access for wireless backhaul in California.

2. With reference to the total number of wireless backhaul lines in California, what number and percentage are provided pursuant to tariffs or contracts that effectively require the purchaser to obtain 80% or more of its wireless backhaul or special access requirements from AT&T, or pay a premium for such services? See, e.g., 6th Revised Page 7.140.4 from your FCC Tariff.

3. AT&T declarants before the FCC have reportedly stated that they assume that AT&T will not move T-Mobile backhaul to AT&T facilities unless AT&T can provide such backhaul at lower prices than alternative backhaul suppliers. What percentage of wireless backhaul does New Cingular Wireless, LLC (or any affiliate of same operating in California on behalf of New Cingular Wireless LLC) currently purchase from alternative backhaul providers?

For T-Mobile

4. What percentage of the wireless backhaul service which you currently obtain from AT&T do you purchase under tariffs or contracts which effectively require you to obtain 80% or more of your wireless backhaul or special access

requirements from AT&T, or pay a premium for such services? See, e.g., 6th Revised Page 7.140.4 from AT&T's FCC Tariff.

5. What percentage of your total wireless backhaul requirement in California do you currently obtain from alternative suppliers, i.e., suppliers other than the AT&T and Verizon wireline carriers? Please list those alternative wireless backhaul service providers, and the percentage of your California requirement supplied by each of them.

For AT&T and T-Mobile

6. Provide all amendments, schedules, disclosure letters, exhibits, side-letters or other documents which structure, regulate or condition the terms of the Stock Purchase Agreement appended to your FCC Application.

7. Provide the number and percentage of your customers who purchase their service pursuant to traditional postpaid contracts, prepaid contracts, and to no contracts (i.e., on a strictly prepaid basis). Please provide these numbers and percentages for voice only customers, data and voice, and data only customers.

8. Provide numbering resource utilization/forecast (NRUF) data for California's economic areas (EAs), and include sub-EA county-level data, in electronic form.

For AT&T Wireless (New Cingular Wireless [PCS], LLC), T-Mobile, Verizon Wireless, Sprint, MetroPCS, and Leap/Cricket

9. With regard to your California wireless backhaul, please respond further to OII Appendix A request 16 (originally directed only at the non-merging, non-ILEC affiliated wireless companies) by populating the attached spreadsheet entitled Special Access Backhaul – Data Template. For your convenience, a working copy of such spreadsheet has been placed on the Commission's website, at www.cpuc.gov/template [or whatever].