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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
(Filed June 9, 2011)

**ADMINISTRATIVE LAW JUDGE'S RULING
PLACING WORKSHOP MATERIALS IN THE RECORD AND
MEMORIALIZING SEVERAL ELECTRONIC MAIL RULINGS**

This ruling places materials associated with two of the three workshops held in this proceeding in July 2011 into the record of this proceeding for parties' reference and comment, and addresses several other procedural issues. The materials added to the record through this ruling are copies of the written testimony of two of the independent panelists at the July 15, 2011 workshop. In addition, this ruling requires parties to file and serve written information provided to staff in response to questions asked at the July workshops, memorializes several electronic mail rulings, and provides an updated schedule based on those electronic mail rulings and recent developments related to this proceeding.

1. Written Comments

The first panel at each of the three workshops held in this proceeding was comprised of independent panelists (not affiliated with the parties to the

proceeding) who provided perspectives on the issues or questions that they think would be relevant to the Commission's evaluation of the proposed merger. Two of these independent panelists, Susan Crawford of Cardozo Law School and Glenn Woroch of the University of California at Berkeley Economics Department, specifically requested that the written comments on which their workshop remarks were based be included in the record for the parties' reference. These documents were distributed by electronic mail (e-mail) on August 25, 2011, along with notification that the comments would be included in the proceeding record.¹ These documents are attached to this ruling as Attachment 2 (the Crawford Comments) and Attachment 3 (Woroch Comments), and are hereby entered into the record of this proceeding.

2. Market Participant Party Responses to Commissioners' Questions at the Workshops

During the various workshops held in July, the Commissioners in attendance asked several questions of representatives of the respondents and market participant parties. In a few cases, these representatives asserted that the information requested by the Commissioners was not immediately available, and committed to providing written responses to these questions after the workshop. These follow-up responses were provided to the relevant Commissioners and Commission staff, but have not yet been filed in this proceeding.² Parties are required to file and serve copies of any written information provided to the

¹ A copy of this electronic mail is attached to ruling as Attachment 1.

² This includes but may not be limited to information submitted to staff by AT&T on July 29, 2011, and August 19, 2011, in response to questions asked by Commissioners Sandoval and Ferron at the July workshops.

Commission in response to questions asked at the workshops. These documents will conform to the formatting instructions and technical and other requirements established in the Order Instituting Investigation (OII) and previous rulings in this proceeding, and are due as provided in the schedule below.

3. Official Notice of United States Department of Justice Complaint

On September 8, 2011, the Utility Reform Network (TURN) filed a motion requesting that the Commission take official notice of the United States Department of Justice (DOJ) Complaint to enjoin the merger of AT&T, Inc. and T-Mobile USA, Inc. DOJ filed this complaint in United States District Court for the District of Columbia on August 31, 2011. Rule 13.9 of the Commission's Rules of Practice and Procedure provides that "[o]fficial notice may be taken of such matters as may be judicially noticed by the courts of the State of California pursuant to Evidence Code Section 450 et seq." TURN does not ask the Commission to take official notice of the accuracy or truthfulness of the assertions made in the DOJ Complaint, but only of the fact that DOJ filed such a complaint and that DOJ made the arguments contained therein.

The DOJ Complaint is an official act of a department of the United States government, as well as a record of a court of the United States, and as such, the existence of this complaint is a matter of which the Commission may take official notice. Granting the request for official notice of the complaint does not establish the truth of the matters set forth therein. The request for official notice is granted.

4. Memorializing Electronic Mail Rulings

Due to the expedited nature of this proceeding and the rapidly changing context in which it is taking place, I have made several schedule adjustments and

other procedural rulings in this case via electronic mail (e-mail). These messages, included as Attachments 4-7 to this ruling, have 1) responded to motions for schedule changes from parties, and 2) provided parties with guidance on the procedural impacts on this proceeding of outside events, such as the filing of the United States Department of Justice lawsuit to block the proposed acquisition of T-Mobile by AT&T at the federal level. These electronic mail rulings are summarized as follows:

- **Attachment 4**

This e-mail ruling, sent on August 18, 2011, extended the comment period from August 22, 2011, to September 1, 2011 for Question 8 contained in Section 3 of my August 11, 2011, formal ruling. The ruling also set a new deadline of September 9, 2011, for the filing of replies to the comments on that one question.

- **Attachment 5**

This e-mail ruling sent on August 31, 2011, acknowledged the filing by the DOJ of a lawsuit to block the AT&T acquisition of T-Mobile at the federal level. This ruling suspended the two due dates established in Attachment 4 while the Commission assessed the impact of that lawsuit on this proceeding.

- **Attachment 6**

This e-mail ruling, sent on September 2, 2011, extended deadlines for filing of information covered by protective orders in the Federal Communications Commission (FCC) proceeding *Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations* (WT Docket No. 11-65). The deadlines were established in a formal ruling mailed on August 31, 2011, which provided guidance on the technical and procedural requirements for filings containing information covered by those FCC protective orders. The extensions contained in that e-mail tied the new due dates for filing of covered information

to the FCC’s notice to its parties of the request for these materials.

- **Attachment 7**

This e-mail ruling, sent on September 7, 2011, extended the due date established for filing of Notices of Intent to claim intervener compensation from September 6, 2011, as provided in Ordering Paragraph 18 in the OIL, to September 12, 2011.

These e-mail rulings are attached to and memorialized by this formal ruling, and the current schedule recognizing these changes is confirmed in Section 5, below.

5. Schedule

The following schedule reflects recent and planned dates and activities in this proceeding, to the extent that those dates and activities are known:

Activity	Actual Date
Opening briefs served and filed on the definitions of the relevant product and geographic markets for studying the effects of the proposed merger.	August 5, 2011
Responses to the requests for information and analysis in Section 3 of the August 11, 2011 Ruling, <i>with the exception of Question 8</i> , filed and served.	August 22, 2011
Combined reply comments and briefing filed and served. The following items were to be included in these filings: (1) reply comments limited in scope to matters raised in the Opening Comments filed July 6, 2011 and the workshops that took place in July; (2) comments on or replies to the information and analysis filed on August 22, 2011 in response to this Ruling; and (3) replies to the briefs filed on August 5, 2011, regarding definition of relevant product and geographical markets.	August 29, 2011
FCC Issued Notice of Commission Request for Information covered by FCC Protective Orders.	September 7, 2011

Notices of Intent to Claim Intervener Compensation filed and served.	September 12, 2011
Deadline to resubmit to the Commission's docket office, in a format that complies with Commission filing requirements, any previously provided information not covered by FCC protective Orders.	September 16, 2011
Deadline to submit to the Commission objections to production of information covered by the FCC Protective Orders.	September 19, 2011 (10 days after FCC notice)
Deadline to resubmit to the Commission's docket office, in a format that complies with Commission filing requirements, any previously provided information covered by FCC protective Orders. Applies to any information not subject to an objection or for which any objections are overruled.	September 27, 2011 (20 days after FCC notice)
AT&T shall file a copy of the un-redacted transcript of the Economists' Workshop held at the FCC on July 13, 2011.	September 27, 2011 (20 days after FCC notice)
Parties shall file and serve copies of any written information provided to the Commission in response to questions asked at the workshops.	September 27, 2011
Parties shall file analysis on Question 8 contained in Section 3 of the August 11, 2011, formal ruling.	To Be Determined (TBD) postponed from September 1, 2011
Parties shall file and serve responses to the analysis on Question 8 contained in Section 3 of the August 11, 2011, formal ruling.	TBD postponed from September 9, 2011
Target date for mailing a Proposed Decision.	TBD
First possible date for a Commission vote on a Proposed Decision.	TBD

IT IS RULED that:

1. The written testimony of Susan Crawford and Glenn Woroch, attached to this ruling as Attachments 2 and 3, are hereby entered into the record of this proceeding.
2. Parties shall file and serve copies of any written information provided to the Commission in response to questions asked at the workshops held in this proceeding in July 2011. The filed documents shall conform to the formatting instructions and technical and other requirements established in the Order Instituting Investigation and previous rulings in this proceeding.
3. The motion filed by The Utility Reform Network requesting that the Commission take official notice of the complaint to enjoin the merger of AT&T, Inc. and T-Mobile USA, Inc., which was filed by the United States Department of Justice in United States District Court for the District of Columbia on August 31, 2011, is granted.
4. The modified schedule for this proceeding is as set forth in Section 5 of this ruling.
5. 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.

Dated September 19, 2011, at San Francisco, California.

/s/ JESSICA T. HECHT
Jessica T. Hecht
Administrative Law Judge

ATTACHMENT 1

E-mail regarding workshop remarks of Crawford and Woroch

I.11-06-009 JHE/acr

From: Hecht, Jessica T.

Sent: Thursday, August 25, 2011 2:53 PM

To: mwood@freepress.net; bill.wallace@verizonwireless.com; jean.kiddoo@bingham.com; jcorralej@lbcgla.org; art@newmediarights.org; mike@ucan.org; pshiple@cricketcommunications.com; thnxvm@gmail.com; bautistafaith@yahoo.com; mdjoseph@adamsbroadwell.com; Lippi, Kimberly; bnusbaum@turn.org; att-regulatory-ca@att.com; rudy.reyes@verizon.com; stephen.h.kukta@sprint.com; james.young@pillsburylaw.com; Sarah DeYoung; selbytelecom@gmail.com; lencanty@BlackEconomicCouncil.org; tracy@media-alliance.org; enriqueg@greenlining.org; jim@tobinlaw.us; susan.lipper@t-mobile.com; dwtcpucdockets@dwt.com; judykau@dwt.com; trevor@RoycroftConsulting.org; debbie@cwa-union.org; lisa.zurmuhlen@lw.com; alexander.maltas@lw.com; james.barker@lw.com; ABush@skadden.com; JBeahn@skadden.com; GStrobel@lawlernetzger.com; GKeeney@lawlernetzger.com; kenneth.schifman@sprint.com; gsarosi@metropcs.com; mstachiw@metropcs.com; laura@consumerwatchdog.org; chuck.carrathers@verizon.com; lorraine.kocen@verizon.com; stephen.strang@verizon.com; robertgnaizda@gmail.com; sswaroop@naacoalition.org; eklebaner@adamsbroadwell.com; cmailoux@turn.org; rcosta@turn.org; steve.bowen@bowenlawgroup.com; dd2526@att.com; regtss@att.com; jon.david.tate@att.com; margo.ormiston@verizon.com; thomas.selhorst@att.com; marg@tobiaslo.com; ashm@telepacific.com; pacasciato@gmail.com; jarmstrong@goodinmacbride.com; mday@goodinmacbride.com; janewhang@dwt.com; suzannetoller@dwt.com; clay@deanhardtllaw.com; lmb@wblaw.net; paulg@greenlining.org; stephaniec@greenlining.org; Charlie.Born@ftr.com; Phyllis.Whitten@ftr.com; Teri.Ohta@t-mobile.com; Lee, Alik; Mulqueen, April; Fong, Brewster; Witteman, Chris; Chow, Christopher; Piiru, Dale; Mann, Denise; Podolinsky, Elizabeth; Mickiewicz, Helen M.; Hecht, Jessica T.; Leung, Joanne; Allen, Judith; Zafar, Marzia; Wullenjohn, Robert J.; Lehman, Robert; Schwartz, Robert; Esquivias, Roland; Scott, Roxanne L.; Thomas, Sarah R.; Boles, Sheri; Green, Stephanie; Johnston, William

Subject: I.11-06-009: Workshop remarks of Crawford and Woroch

This message's attachments have been archived by the Barracuda Message Archiver.

[Woroch remarks at CPUC workshop.pdf](#) (109.2K)

[crawford july 15 testimony \(final\).pdf](#) (148.4K)

Parties to I.11-06-009, □□This electronic mail ruling places copies of the written remarks of two of the independent panelists at the July 15, 2011 workshop into the record of this proceeding. This e-mail ruling will be confirmed in a future formal ruling. □□The first panel at each of the three workshops held in this proceeding was comprised of independent panelists (not affiliated with the parties to the proceeding) who provided perspectives on issues or questions that they thought would be relevant to the Commission's evaluation of the proposed merger. Two of these independent panelists, Susan Crawford of Cardozo Law School and Glenn Woroch of the University of California at Berkeley, specifically requested that the written remarks on which their workshop comments were based be included in the record for the parties' reference. These documents, which are attached to this message and will be attached to a future formal ruling, are entered into the record of this proceeding. □□Jessica T. Hecht □Administrative Law Judge □California Public Utilities Commission □jessica.hecht@cpuc.ca.gov □□□□

(END OF ATTACHMENT 1)

ATTACHMENT 2

Written Statement of Susan Crawford, Professor, Cardozo Law School

WRITTEN STATEMENT OF
SUSAN CRAWFORD, PROFESSOR, CARDOZO LAW SCHOOL

HEARING ON:
APPLICATIONS OF AT&T, INC. AND DEUTSCHE TELECOM FOR CONSENT TO
ASSIGN OR TRANSFER CONTROL OF LICENSES AND AUTHORIZATIONS
BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION
July 15, 2011

WRITTEN STATEMENT OF
SUSAN CRAWFORD, PROFESSOR, CARDOZO LAW SCHOOL
HEARING ON:
APPLICATIONS OF AT&T, INC. AND DEUTSCHE TELECOM FOR CONSENT TO
ASSIGN OR TRANSFER CONTROL OF LICENSES AND AUTHORIZATIONS
BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION

July 15, 2011

Thank you for inviting me to testify. It is an honor for me to be here.

By way of background, I practiced law for 13 years in Los Angeles and Washington D.C., working with Internet-related companies. In January of 2003, I left WilmerHale and began my current job as a professor of law, teaching communications law and Internet law. I was a member of the board of the Internet Corporation for Assigned Names and Numbers from 2005 through 2008. In the fall of 2008, while I was a professor at the University of Michigan Law School, I took a leave to co-lead the FCC transition for the Obama administration and then to serve as Special Assistant to the President for Science, Technology, and Innovation Policy for 2009. In the fall of 2010, I returned to Cardozo Law School, and for 2012 I will be a Visiting Professor at Harvard's Kennedy School and a Fellow at Harvard Law School.

Cardozo and Santa Clara are sharing the expense of my travel here. I have been careful since I left government not to take on any clients or consulting arrangements.

I understand that the principal reason you have asked me to come before you today is to discuss the relationship between the proposed merger between AT&T and T-Mobile and innovation. The question is whether the proposed combination will have positive or negative effects on innovation throughout the wireless ecosystem in America.

I think there are three key points to keep in mind:

- First, that the suggested merger sheds light on the fact that we are heading towards - and

may already have - a duopoly in the market for wireless access, with a yawning, insurmountable gap between the two big wireless carriers and everyone else;

- Second, that there are insufficient protections in place for innovation in connection with these wireless networks, and if this merger is permitted to proceed, the resulting unregulated duopoly will have ample incentive and ability to keep profit margins as high as possible by discriminating against uses and services these companies believe are undermining their business plans. The mere threat of this discrimination will cast a cloud over investment in new ideas and new ways of making a living for all Americans, and particularly for California's entrepreneurs;

- Third, that California should take the opportunity of the merger to consider what enforceable concessions AT&T could be required to make as a condition of its privilege to continue providing services to Californians, who are among America's most innovative citizens.

Society reaps increasing economic returns from the existence of ubiquitous high-speed communications infrastructure, and it is appropriate to incentivize and support the creation of this infrastructure. But those social returns come because the benefits of ubiquitous, general-purpose, nondiscriminatory communications infrastructure spill over to all of us, not just to a few large companies. The complete discretion already enjoyed by AT&T and Verizon to capture economic rents and choose winners and losers from among the companies that use their networks to launch businesses of their own - and to raise their prices and set the terms and locations of their services at will - means that their private incentives are already not necessarily aligned with California's social incentives. The merger between AT&T and T-Mobile will further solidify this duopoly, and will remove from the field a challenger that was providing an open platform to application developers, offering lower-price options for consumers, and taking on the duopoly in the policy realm in Washington. And it will not necessarily result in greater investment in infrastructure, capacity, or innovation by AT&T; indeed, as in the merger between Comcast and NBCU approved earlier this year, it is difficult to identify the public interest

benefits of the combination.

I will discuss each of these three points briefly but first want to put the merger's potential effect on California into context.

The Context for the AT&T/T-Mobile Merger

We have had a highly-concentrated market in wireless transmission for some time at the national level, and the merger would increase that concentration. It would give AT&T and Verizon, together, somewhere between 76% (all retail subscribers) and 82% (postpaid) of wireless subscribers nationwide and would increase Herfindahl Hirschman Index (HHI) levels to 3198, far above the 2500 level that DOJ/FTC consider to be highly concentrated.

AT&T has argued strongly that the relevant markets are local, and that there is plenty of competition in local markets because Metro PCS, Leap, US Cellular, and the (not-yet operating and apparently doomed) LightSquared are also present. This is like asserting that my former hometown of Washington, DC has several football teams: the Redskins, the Georgetown University team, and the Gonzaga High School team. It's strange to say that the last two are substitutable for the first. AT&T and Verizon provide reliable nationwide service without extra roaming charges; the pre-paid players offer only unsubsidized handsets, routinely impose roaming charges, have puny data plans, and reach a much less affluent segment of the American public.

Nonetheless, even taking AT&T at its word, and ignoring the fact that AT&T runs its business on a standardized national basis, three of the country's largest 50 "Economic Areas" in California are already highly-concentrated, even absent the merger: Los Angeles/Riverside/Orange County, the second-largest EA, had a 2008 HHI of 2488; San Francisco/Oakland/San Jose, the fifth-largest, had a 2008 HHI of 2610; and

Sacramento/Yolo, the twenty-seventh largest, had a 2008 HHI of 2621. In all three of these local markets, AT&T's *existing*, pre-merger spectrum holdings already exceed the FCC's trigger for close examination (its "spectrum screen").

These companies have become consolidated for very good reasons. Wireless is a highfixed-cost business; it costs a great deal to install towers, feed them with wires (and update those wires to fiber), and buy spectrum. Indeed, wireless access service has all the hallmarks of a natural monopoly, with its high up-front costs, sharply declining costs to add additional subscribers, and barriers to entry in the form of tower-siting approvals and licenses to use spectrum. Very few companies are able to achieve the scale necessary to make a go of it, and so they routinely combine rather than compete.

When the cellular phone emerged as a consumer product in the 1980s, it operated in 800 MHz frequencies, for which the FCC initially gave away two licenses for 40 MHz of spectrum in each of the 306 market areas in the United States - one to a wireless provider and one to a wired provider. Small-market licenses frustrated the buildup of viable nationwide wireless infrastructure; companies in urban areas only had a few voice channels, which wasn't enough capacity to serve demand, and companies in rural areas couldn't produce enough revenue to survive. No one could operate at the scale needed to make the business worthwhile.

The 1980s licensing process led, predictably, to quick consolidation and market-division agreements among the applicants. This desirable "beachfront" low-frequency spectrum went to the corporate ancestors of today's AT&T and Verizon. It represents a significant windfall advantage to these companies that cannot be replicated by Sprint or T-Mobile, much less the pre-paid providers; there is, as a result, an enormous gap between AT&T and Verizon, on the one hand, and everyone else, on the other, in terms of subscribers, revenues, margins, and free cash flow.

This gap only increased following the FCC's 2008 700 MHz auction, for which no spectrum caps were imposed. AT&T and Verizon collectively accounted for more than

four-fifths of the auction proceeds, spending almost \$20 billion; because it was clear to T-Mobile that the foreclosure value to the two giants of keeping a new competitor out of the arena would exceed any reasonable market value for this spectrum, and because the giants weren't barred from the game even though they already had enormous holdings in desirable "beachfront" low-frequency spectrum, T-Mobile didn't even enter the 700 MHz auction.

I want to underscore the importance of T-Mobile's inability to get access to "beachfront" lower frequencies. Data rates go up with T-Mobile's higher frequencies (1900 MHz PCS band, 1700-2100 MHz AWS band), but the distance data can travel goes down. So when you get into the gigahertz bands, which is where T-Mobile is today, you can indeed carry gigabits of information, but you might have to have cell towers at an impossible every 100 yards in order to do that. (This explains why Wi-Fi (high-frequency) speeds are faster than commercial wireless speeds but travel only short distances.) This means that a carrier with "better" (lower) spectrum can build fewer base stations, which is a major cost advantage. These spectrum issues have created a yawning gap between T-Mobile (and Sprint) and the two big wireless carriers, with their broad, unchallenged holdings in the 700 MHz and 850 MHz bands.

Nonetheless, T-Mobile's management told investors in January 2011 that the company was "a very good asset" that was generating positive annual free cash flow of between \$2.5 billion and \$3 billion a year, with a strong network architecture in which half its towers were already fed by fiber, with terrific smartphones, the best value proposition for consumers, great customer service, and with higher (and growing) margin on revenue than Sprint. Why the optimism? Management also said during that same call: "We're absolutely positive and optimistic about [the] commercial option in [the 700 MHz] D block." ("T-Mobile Investor Day - Transcript," Jan. 20, 2011.) When the Administration appeared to take the possibility of auction for commercial use of the 700 MHz D Block off the table not long ago, Deutsche Telecom apparently could not see a path forward and decided a merger was the best route.

So California is already home to highly-concentrated local markets for wireless access. I do not believe that Metro PCS, Leap, or any of the other pre-paid carriers exercise any pricing or service discipline on AT&T.

I also suspect, given my observation of the cable industry, that Verizon Wireless and AT&T tacitly divide the market in California for *wired* services that they provide ("you take Sacramento, I'll take LA") and for the provision of backhaul middle-mile links to one another. I urge you to look into this matter; 95% of any wireless network is made up of wires, and Politico reported in late June that the independent backhaul business is threatened by an alleged reciprocal arrangement between AT&T and Verizon to provide infrastructure to connect each other's wireless data traffic. ("AT&T-Verizon Pact Alarms Backhaul Provider," June 21, 2011.) It is beyond question that Verizon and AT&T are in a position to tacitly collude, divide markets, and protect their joint interest in pricing power over wireless services.

We Face A Duopoly for Wireless Services

This is a business that requires operating at scale in order to survive and thrive. Right now, only Verizon and AT&T have real scale in wireless. The suggested merger sheds light on the fact that we will have a duopoly in the market for wireless access, even if the merger itself never happens.

Let me explain. Even though most of AT&T's and Verizon's assets are actually *wires*, not *wireless* connections, both companies are losing money hand-over-fist on the wired side of their businesses. Pokey DSL high-speed Internet access, which operates over traditional copper phone wires, cannot compete with the cable distributors' DOCSIS 3.0 connections; the differential is arguably more than Redskins v. Gonzaga High - it's akin to rushing river v. water fountain. Wall Street investors can't stand the long-term nature of the investments necessary for these telephone companies to install new fiber networks that would compete with DOCSIS 3.0, and so the telcos have dramatically backed off on these investments. Cable snaps up 90% of all new wired broadband subscribers these

days; Americans love cable's high-speed wired connections, and new high-data applications are continuing to drive this love affair.

This merger comes before you at a time in which Americans are thirsty for high-data-rate applications. The mobile world - in which communications operate in a harsh world of interference and degrade sharply over distance - cannot compete with the wired world when it comes to data transmission. Each "wire" in a wireless network (each tower) has to serve 436 times as many homes as a cable network, which serves one home at a time; each wireless network spot has 1/37th the capacity as a cable wire; and there is vanishingly low interference inside a cable network.

So AT&T and Verizon have no choice but to focus entirely on the separate world of wireless, where they are still wringing out some profits. But they face enormous threats on the wireless side as well. Their margins for *voice* services are ten times higher than their margins for *data* services, but Americans love data services and data usage is skyrocketing. AT&T and Verizon have every incentive to ensure that their wireless operations keep data usage as low as possible for as long as possible by managing scarcity: imposing usage-based billing and avoiding installing fiber to their towers wherever they respectably can.

Usage-based billing allows AT&T and Verizon to reduce the attractiveness of potentially competing data services and other nonaffiliated products crossing their wireless networks; consumers won't want to use competing services, even if they technically can, because they'll be subject to large overage charges, cut-off of service, or other remedies imposed within the carrier's discretion.

Avoiding capital-intensive fiber installations where possible will both please investors and continue to shape users' expectations; we'll be used to relatively slow, crippled, heavily-curated and compressed mobile services as the status quo.

Adoption of the LTE protocol will give AT&T and Verizon enhanced technical ability to charge premiums for their own or affiliated products and afford them "Quality of Service" treatment; LTE is a protocol that is optimized on billing.

All of this is rational; it is done in the service of keeping margins as high as possible so as to please Wall Street.

AT&T's choice to merge with T-Mobile makes sense; it is trying to force a natural monopoly, utility communications service (like water and electricity), with its extraordinarily high upfront costs and sharply declining cost curves, into a private, profit-making, Wall-Street-attractive service, and the only way to do that is to continue to scale, tightly ration capacity, price-discriminate, keep capital costs down, and eliminate competitive ideas - like the low-priced services, open development platforms, and policy positions pushed by T-Mobile in DC - that would undermine this mindset. Folding in T-Mobile holds the potential for AT&T to add subscribers without adding to its employee headcount, and may permit it to possibly lower its ratio of employees to subscribers.

By the way, AT&T says that it needs to merge in order to address the flood of data across its network, but even *doubling* the available spectrum for wireless broadband wouldn't change the laws of physics - we'd be out of capacity again in a year or so if usage growth isn't stemmed. So the only way for AT&T and Verizon to keep on top of the situation is to maintain the market power that makes rationing the new normal for all American consumers.

All of this is to make one simple point: AT&T and Verizon's top priority must be to maintain and enhance their scale advantages and market power in the separate world of mobile communications in order to keep their margins high and please investors, and this merger serves that end.

The Duopoly Threatens Innovation

The future question for California, as it is for the FCC, is what regulatory environment will make sense given the utility, natural-monopoly nature of wireless transmission services. Someone is bound to notice that these actors are trying to pretend they are media companies when, in fact, they are more frequently seen by Americans as basic transport providers; what they are providing is access to the Internet.

The Internet Changes Everything. Let's spell this out a bit. We used to assume that there was a necessary association between a particular form of infrastructure (like telephone and cable wires) and a particular functional capacity. So we assumed that each wire could do only one thing, and we had to have a separate network for each thing we wanted to do. This led to business models where a network owner was also the provider of whatever particular service—phone, cable, etc.—was carried over that particular kind of wire.

The Internet has completely overturned that assumption. The Internet is best understood as a collective agreement to use a particular language (the Internet Protocol) when connecting computing machines to telephone, fiber, and cable lines that are interconnected around the world. The innovation of this language was to allow computers or other devices connected to the Internet (including wireless handsets, televisions, fax machines, and TiVOs) to send and receive information of any kind via data streams over many different types of physical wires or fibers or wireless transmissions. The Internet Protocol can run over anything. And any different use (phone calls, television, news) can be communicated over the Internet Protocol. These uses may be provided by the network infrastructure owners, or they may be provided by other people (including any one of us). Phone services can come from Skype—over the Internet. Video on demand can come from Amazon's online movie rental store. Television shows can come directly from the servers of users. And so on.

“The Internet” is thus not the same thing as Verizon’s or AT&T’s lines, fibers, or wireless connections. Though that infrastructure is important, these actors are merely providing one set of connections that allow users and businesses to connect to the constant, dynamic, decentralized interaction and communication using data that the Internet Protocol facilitates.

The Internet threatens vertically-integrated private carriers seeking high returns. Now, the Internet is taking over the functions of all of the communications networks we used to have. *Each of the vertically-integrated network access providers in this country sees this change as a threat.* AT&T and Verizon offer their own television services, music services, and premium content. The open Internet is the greatest competitor they have ever seen—precisely because it is not one competitor, but a general purpose vehicle for thousands of entrepreneurs across the country, and most particularly in California, to offer innovative new products.

As things stand now, both of these dominant network access wireless providers has the freedom to act as an editor or gatekeeper for its own commercial purposes. They would like their services to be much more like cable programming than general-purpose communications—edited and constricted communications offerings. AT&T and Verizon have succeeded in persuading federal regulators that they should not be treated as communications providers, and see the future potential for vertically-integrated services that they control and monetize. They have a giant built-in conflict of interest.

Verizon and AT&T are fans of the cable distribution model. Although they've lost the battle on the wired side of their businesses to the cable companies, Verizon and AT&T are admirers of the cable distribution business model and the tens of billions of dollars it throws off in fees each year to programmers and distributors alike. The major Internet companies that support this merger (Microsoft, Facebook, Qualcomm, Oracle, Yahoo!, Avaya, Brocade, venture capital firms Kleiner Perkins Caufield & Byers and Sequoia Partners, and BlackBerry maker Research in Motion) are also fans of this model. You can think of Facebook as the ESPN of the wireless world: It's an addictive, must

have channel that has deep exclusive relationships with its audience and the power to command prime, first-tier fees and placement from the distributors. AT&T needs Facebook, just as Time Warner Cable needs ESPN.

In this model, both programmers and distributors win. One loser is the consumer, who faces ever-increasing costs and homogenized choices that have been edited by a powerful distributor; another loser is the innovator - independent channels that don't want to pay the freight to the distributor or otherwise meet whatever arbitrary conditions the dominant carrier imposes don't get carried. (Notice that Al Jazeera can topple authoritarian regimes but cannot get carried by Comcast.) Facebook could not have been born absent the regulatory regime that allowed for introduction of online applications without the permission of communications carriers; now that Facebook has achieved massive scale, it is willing to shut the door of innovation behind it.

To make the whole thing work, you need gatekeeper control at the distribution level so that price increases can be forced down, services can be tiered and channeled and charged-for reliably, and consumer expectations of an expensive, bundled service can be set and maintained. This merger, backed by a \$20 billion non-recourse loan from JP Morgan, ensures that AT&T's strength as a wireless distributor will stay in place.

The problem for America presented by deregulation in both the wired and the wireless worlds is that the increasing returns made possible by ubiquitous Internet access will be captured in the form of revenues that will go only in the pockets of a few very large companies. That kind of spillover won't necessarily serve all of our interests. What we should want, instead, are increasing returns for society as a whole. Increasing returns for all Americans will be prompted by new ideas and new ways of making a living. Those ideas, in turn, will be facilitated by widespread, open, ubiquitous Internet access, which has been and will continue to be a playground for innovation unlike any the world has ever seen.

Instead, we have handed to the carriers the ability to decide what innovations make sense for America. We have created through deregulation a context for communications that is the equivalent of the “orderly marketplace” beloved of the early 20th-Century trusts and combinations.

The lack of network-operator competition we currently have, and the concomitant control the operators have, provides the opportunity for discrimination and gatekeeping on a mammoth scale when it comes to new data applications, new uses of these networks, and new devices. After-the-fact rationalizations for “management” of these networks (“discrimination” using a more neutral name) are so easy to craft. The real danger to innovation is the pervasive threat inherent in the ability to “manage.” An application developer unwilling to “partner” with the carrier cannot attract investment, because the network provider may degrade the functionality of the application at any time – imagine a highway designed to favor only particular kinds of cars at particular moments, and then imagine the frustration of an auto entrepreneur with a new kind of design ready for funding. Arbitrariness, by itself, is enormously threatening to innovation. The risk to American innovation is that almost anything – including discrimination for commercial reasons as well as viewpoint-related reasons – can fit within “reasonable network management.”

Because the AT&T/T-Mobile merger will solidify AT&T's and Verizon's ability to dictate the business model for wireless communications in America, and will ensure AT&T's continued ability to decide what “programming” it “carries,” what devices it permits to attach to its networks, and on what conditions, it will enhance the arbitrariness of the mobile platform as an innovation ecosystem in America. That can't be good for the development of the new ideas and new ways of making a living that our country needs so much.

California Should Exact Conditions

AT&T has demonstrated over time that it is very good at getting its proposed mergers approved. It can, today, make promises aimed at helping solve seemingly intractable policy issues confronted by the FCC, including fixing intercarrier compensation and Universal Service funding, assisting public safety with their communications needs, and raising adoption numbers for (relatively slow) Internet access in rural areas.

Your charge, I would think, is to ensure that the regulatory environment in California delivers cost-efficient, timely and cutting-edge telecommunications services on an ongoing, fair and equitable basis to all existing and potential users in California. You may want to consider what promises you'd like to see AT&T make that would concretely serve these social interests. And you may want to consider the toughest possible mechanisms to ensure those promises are adhered to. Promises made in the context of merger discussions often, in the end, don't stick for a host of reasons.

For example, AT&T may be promising you and your governor that it will make substantial investments in California if the merger is approved. But one condition of the deal is that AT&T will send \$25 billion to Deutsche Telekom in Germany, where it will predictably be spent on share buy-backs and reduction of DT's debt, not on building US network infrastructure. (AT&T is itself interested in share buy-backs that its investors will like: Between 2006 and mid 2008 AT&T spent \$18.8 billion on repurchasing its shares.) Because it is very difficult for outsiders to tell whether investments have or have not actually been made, and for what purposes, these investment promises are difficult to enforce.

And, as the New Zealand's Telecommunications Commissioner, Dr. Ross Patterson, said in a speech in Wellington on May 19, 2011:

Although incumbents in all jurisdictions have, during regulatory processes, made the investment boycott threat – if you regulate we will cease investment- the reality is that the incumbent is forced to invest

(often unwillingly) in response to competitive pressure. A regulatory regime which promotes competition stimulates investment.

The problem is that California cannot, I believe, by itself create that necessary regulatory regime in America.

I have four ideas for you.

First, AT&T has recently brought free wireless access to NYC city parks. This can't have been easy for them to do; my current hometown's bureaucracy is impressive. But they did it. Perhaps California could require that free highest-speed-possible (read: many fiber-fed cell towers) wireless access be provided in perpetuity throughout California's major cities. Taipei and Hong Kong have free wireless access; why shouldn't the home of digital innovation in America have it as well?

Second, the BTOP grants program run by NTIA within the Department of Commerce is making investments aimed at ensuring that the country has examples of installations of open fiber to "anchor institutions" (schools, libraries, hospitals, community centers) to which any local last-mile provider can connect on reasonable terms. AT&T no doubt controls ample fiber within the state; you could require that it wire these anchors and open those connections on standard, reasonable terms to anyone who asks. You would need to provide unambiguous and enforceable deadlines and benchmarks; a strong, nonleaky written right to be connected; strong guidance on the terms on which such interconnection is to be granted; and be ready to step in quickly to resolve disputes if it should prove impossible for the parties to reach agreement. The spillover effects for communities in California that are served by these anchors would be dramatic.

Third, you should consider enlisting AT&T's concrete aid in the building of community-owned fiber networks throughout California, and should yourselves encourage the creation of these networks. The FCC recommended this in its National Broadband Plan of March 2010, saying, "Rec. 8:19: Congress should make clear that Tribal, state, regional and local governments can build broadband networks." There is very little of this in

Western states, but today nearly 60 cities in the US, big and small, own citywide fiber networks while another 79 own citywide cable networks. Over three million people have access to telecommunications networks whose objective is to maximize value to the community in which they are located rather than to distant stockholders and corporate executives. These networks bring jobs and energy to the cities they serve.

Finally, a major problem confronted by regulators across the world is the difficulty in grasping the facts of their private communications providers' operations. Requiring that AT&T permit accredited auditors of network performance (e.g., California's CAIDA) to observe network traffic patterns in real time would be a real service to Internet research worldwide; at the moment, we are essentially making policy in the dark. Requiring that AT&T open its financial books to a meaningful audit function would greatly increase California's understanding of the reality of the margins reaped and expenditures made in connection with this essential service. Right now, regulators must take the carriers' word for this information, which makes it very difficult for resource-constrained public servants to regulate.

It's worth noting that, as with the cable world, AT&T and Verizon are aiming their scaling and bundling efforts at the richest Americans, the consumers who are willing to continually pay more. In serving this market, they are unaffected by products offered by low-price pre-paid carriers; those accounts aren't the ones they want. German T-Mobile noticed this - in that same investor call in January, Rene Obermann said:

"[T]he US market has a relatively benign pricing environment although usage is much higher so you could argue price per minute or price per megabyte or so are significantly lower but the overall willingness of customers to spend higher. [A]RPU's per month is here in the US is higher and the packages which are being sold and the price points which are being sold are quite favorable in comparison to most European markets. That does create, if you look at the evidence in Germany and Italy and some other markets, it does create scope for successful challenging strategies and it's also worthwhile noticing that different to Europe we are speaking about a market that is mostly free from price regulation."

This "benign pricing environment" is the context in which AT&T and Verizon want to reap their increasing private returns from their existing infrastructure investment. In our country, the rich are getting richer as a matter of communications capacity as in all other things; as Bernstein recently pointed out, "more affluent customers are racing to iPhones, 4G data speeds and richer data plans, while the lower end is furiously trading down to pre-paid wireless and even government-subsidized Assurance plans." (Bernstein, "U.S. Telecommunications and Cable & Satellite: The Poverty Problem," May 2011.) Recently, two-thirds of gross wireless subscriptions were for pre-paid services, and pre-paid contracts are the fastest-growing segment of wireless services.

This merger sheds light on this deep problem of social equity; just as, in 1905, rich Americans believed that electricity was a luxury that should be reserved for the affluent (see Peter di Cola's recent article, "The Killer App of 1900"), so too, now, rich Americans (and rich policymakers) believe that smartphones and truly high-speed Internet access are luxuries that not all should be able to afford. They are not luxuries; they are now essentials. The middle of the wireless market, like the middle of America, is hollowing out. We should be wary of AT&T's promises to bring slow wireless access to rural and poor Americans; it will be second-class access.

Thank you again for the opportunity to testify here today.

(END OF ATTACHMENT 2)

ATTACHMENT 3

Workshop remarks of Crawford and Woroch

Remarks before the California Public Utility Commission
Public Workshop on the Proposed Acquisition by AT&T Inc. of T-Mobile USA Inc.

15 July 2011
University of Santa Clara School of Law

by
Glenn A. Woroch
University of California, Berkeley

GOOD MORNING ALJ Hecht, Commissioners Sandoval and Simon, my fellow panel members and distinguished workshop participants. My name is Glenn Woroch. I am the Executive Director of the Center for Research on Telecommunications Policy at UC Berkeley, and also an Adjunct Professor in Cal's Economics Department.

I was asked by Commissioner Sandoval to appear today to present what I believe are the economic principles that should guide the Commission as it investigates the proposed acquisition of T-Mobile USA by AT&T. This will be a selective, high level survey of Antitrust Economics 101. While I'll spend most of my time at cruising altitude, I will often come down to ground level to show how these principles apply to this particular transaction. I will not, however, offer an opinion on how the Commission should rule with regard to this merger.

Let me begin with a basic question: On what economic criteria should this transaction be evaluated? The short answer is: On its effect on the economic well being of California consumers.

As written, the nation's antitrust laws seek to protect competition. Economists concentrate on the effects of commercial arrangements on consumers because, in part, it is their welfare that acts as a thermometer of how "hot" is competition in the marketplace. Merger analysis, by focusing on the consumer, ignores economic consequences for other actors,

including some parties that fall under the Commission's public interest standard. The well-worn adage that "antitrust protects competition, not competitors" advises that the impact on sales and profits of AT&T's and T-Mobile's competitors should not enter the economic calculation. The Commission should, nonetheless, be vigilant as to how the deal might affect competition in upstream markets that supply the merging parties and their competitors. If, for instance, the merged entity was able to drive up the price of communications equipment or backhaul service above competitive levels, and thereby raising the costs of its competitors, then the Commission should be concerned. On the other hand, the merger might achieve scale economies that result in lower prices, in which case the losses in market shares of downstream competitors should not concern the Commission.

The principal competitive threat posed by a merger is its effect of increasing market power, i.e., the ability to raise price above competitive levels. Under current practice in the U.S. and abroad, competition policy evaluates mergers by predicting how the increase in concentration affects consumer prices and other market outcomes that, in turn, affect consumer welfare. This is an exercise in forecasting, and to be perfectly honest, economists have a poor track record when it comes to forecasting, especially our macroeconomic colleagues.

The most common methods for forecasting unilateral effects of mergers are based on a causal relationship between concentration of sales and the level of consumer prices. Under this view, prices will tend to rise because the merger reduces the number of suppliers and increases their average size, easing some of the downward pressure of price competition. The standard procedure to establish the concentration-price connection is laid out in the various versions of the FTC-DOJ Horizontal Merger Guidelines including the one published last year. Central to this procedure are two steps: first, delineate the market in which the merging parties operate, and second, measure the increase in concentration in that market caused by the proposed transaction. Other steps are essential to the Guidelines' analysis, but these two get the most attention. Defining the relevant market is especially contentious since it determines much of the follow-on conclusions.

Rather than delve into how the Guidelines might be applied to this particular transaction, I want to draw the Commission's attention to the fact that the premises that underpin this concentration-based approach have been called into question lately. Merger enforcement has accommodated new economic concepts specific to high-tech industries and a string of major antitrust cases in those industries. Most of the relevant cases involve unilateral conduct (such as landmark U.S. and EC cases against Microsoft and the FTC investigation of Intel) but there have been plenty of high-profile acquisitions in this sector (Oracle's acquisition of Peoplesoft and Sun Microsystems, Google's acquisitions of DoubleClick and AdMob, and Microsoft's recent acquisition of Skype).

An element in each of these cases was a relatively new economic concept in which the benefits of size derive not from textbook scale and scope economies, but from the demand-side counterpart often referred to as "network effects." That label was chosen because these economies are best illustrated by communications networks of the sort that AT&T, T-Mobile and other fixed and mobile providers build and operate. The Commission should be aware of the potential for such economies when evaluating this merger. A simple source of network effects would arise, for example, when customers of the combined companies' eliminate charges for roaming on each other's networks and expand the possibilities for on-net pricing discounts.

A second insight from high-tech antitrust cases is the critical role played by dynamic competition and dynamic efficiencies relative to their static counterparts. Without a doubt, mobile wireless communication is a highly dynamic industry, now widely viewed as the platform that will host the next generation of computing and communications. It is breathtaking how quickly new products and technologies burst on the mobile scene and go on to restructure the industry, or to simply disappear from sight. We sit today in the heart of Silicon Valley, the wellspring of so many disruptive technologies. I commend the Commission for setting aside one of the three planned workshops to concentrate on the innovation aspects of this merger. I think it is critical that the Commission ask two questions that will determine how this merger will affect the future pace and direction of innovation in this industry. Will a combined AT&T and TMobile realize scale economies in R&D, or will its more secure position diminish incentives to invest in innovation? Can we count on product and process innovations to counteract any

increase in static market power brought about by the merger? I regret that the economics profession offers few clear-cut predictions about innovation that could help answer these questions. In fact, we cannot point to any unambiguous theoretical or empirical connections that have been established between the intensity of competition and the level of innovative activity.

As an illustration of the unpredictable nature of innovation, I would contend, and I think most observers would agree, that the creation of the Apple iPhone is the single most innovative development in the wireless industry over the last decade. It is noteworthy that the source of this innovation was not a service provider, nor a traditional handset maker, but rather a company that had never before built a cell phone. Soon after the iPhone, another major innovation—the Android operating system and its ecosystem—was launched by the super star of online search and another newcomer to the wireless space. These two episodes challenge the assertion that concentration in this industry, especially concentration at a single level of the mobile supply chain, is detrimental to innovation.

A third lesson of these high-tech cases has to do with the multiplicity of markets in which firms meet one another and the diversity of relationships they form. In addition to product markets in which firms compete head to head, there are many other products and services that are not substitutes but rather highly complementary to one another. In the mobile space, just think about all the hundreds of components that go into a cellular handset and the services that support a mobile applications store. Especially in the high-tech cases involving technical standards, the benefits of coordination among firms are enormous. Hardware makers, software developers and service providers all strive to differentiate their products. In the process, they leave competition authorities with the huge task of sorting out the extent of substitution, and to do so in a very short span of time.

The lessons learned from this case history have, in part, lead practitioners and scholars to seek out improved methods to assess mergers. The Commission ought to consider these alternatives because they may be more relevant to this merger than traditional approaches. I want to highlight an approach that has been developed by my colleagues Professors Joe Farrell and Carl Shapiro who are currently chief economists at the FTC and DOJ, respectively. They

focus directly on the price effects, rather than taking the usual detour through the concentration price connection. They propose to forecast the likely price change that follows a merger by first calculating (1) the extent to which the products of the two parties are substitutes before the merger as measured by their “diversion ratio” and (2) the profitability of incremental sales as approximated by pre-merger price-cost margins. The product of these two numbers gives the profits that would be diverted to the other party from raising price which, after the merger, would be captured by a separate division. As a result it measures the “upward pricing pressure” (UPP) unleashed by a merger of two firms.

A strong appeal of the UPP approach is that its two key ingredients can usually be extracted from ordinary financial information supplied by the parties. This applies to the diversion ratios as well as to the profit margins. The Commission may consider gathering its own evidence on patterns of consumer behavior if the record is not representative of the California market. This could be done with a consumer survey. With the help of the internet, surveys have gotten steadily faster and cheaper to do. They have begun to show up in merger assessments. A shopper survey was conducted in the FTC challenge to the Whole Foods’ acquisition of Wild Oats, and while that deal was clearly low-tech, the results purported to inform such items as diversion ratios.

To complete any assessment of unilateral price effects, it is necessary to take into account potential efficiencies that are brought about by the merger. This requires a comparison of the predicted price increase following the merger with the price decrease enabled by any efficiencies. In the case of the UPP approach, the “net UPP” is computed by subtracting from upward pricing pressure the anticipated per-unit price decrease that is expected to flow from cost reductions. A positive net UPP would then indicate the deal would be harmful to consumers—at least in terms of price elevation. Of course, the prospective efficiencies should be specific to the merger, meaning that they could not be realized by some other commercial arrangement that was less harmful to competition. So, for example, if cost to AT&T and T-Mobile could be reduced by sharing scarce resources—e.g., cellular antennas or radio spectrum or rights of way—then the Commission ought to ask whether such sharing is most effective under joint ownership through a

merger, or whether it could be accomplished through some arm's length contractual arrangement.

Cost savings are not beneficial to consumers unless they are passed along in the form of lower prices. Otherwise they simply drop to the bottom line of the companies. Typically, pass through requires reduction in variable costs. Fixed cost reductions will not reduce prices since fixed costs should not affect price level. One exception to this economic principle arises when those fixed costs are dollars spent on R&D which in turn lead to lower costs such as more efficient utilization of radio spectrum. Here again mechanical application of standard merger enforcement may give inadequate attention to the role of innovation.

The UPP approach is especially helpful when the merging parties supply many differentiated products—a feature of the AT&T-T-Mobile deal. Both carriers provide a wide array of interdependent services, and the economic relation between them is not entirely clear. Does text messaging substitute for phone calls or trigger more phone calls? Does broadband mobile substitute for fixed broadband over DSL and cable modem service, or are they distinct services because mobile offers unique capabilities of location and mobility? To what extent does internet service on either fixed or mobile platform enable IP voice services that substitute for circuit-switched voice? Increasingly, providers tend to offer these services with complex array of pricing plans and also bundle services in various packages, further complicating the task of predicting unilateral price effects using estimates of cross-price substitution.

In my own research I have asked whether mobile and fixed line services are substitutes for one another or whether they are complements instead. The answer would seem to be obvious given the ubiquity of cell phones and the steady decline of the home landline. In fact, during the early days of mobile phone service, consumers tended to use fixed and mobile services as complements and only later did they begin to substitute one for the other in large numbers. Keep in mind that, despite over 300 million mobile phones in service, the vast majority of U.S. households still subscribe to fixed-line service. In California, about 85% of homes have a landline today even as mobile penetration in the state approaches 100%.

Both methods for assessing a merger's unilateral effects—the traditional concentration approach and Upward Pricing Pressure—evaluate the transaction based on current information, much of which will be supplied by the parties. I suggest that the Commission cast a wider net for relevant information, and in particular look to history for insights into the merger's likely effects. “Natural experiments” involving some structural change in the industry in the past can shed light on the effects of the proposed acquisition. The Commission's O.I.I. took note of the major mergers in the U.S. wireless industry, namely, Sprint's acquisition of Nextel, Verizon's acquisition of Alltel, and AT&T's acquisition of Cingular. These mergers generate before-and-after comparisons that may reveal the price and non-price effects we should anticipate from this proposed merger. In addition, the Commission would be advised to look beyond the borders of California to learn how mergers affect mobile markets. I believe that the experience of other countries could be helpful, especially countries such as Canada and United Kingdom whose mobile industries are similar to our own.

Policy interventions can also generate useful information about how concentration affects market performance, and in particular, how the merger will affect California consumers. As one example, the imposition of wireless number portability in 2003 could provide information regarding consumers' willingness to substitute among carriers, possibly giving insight into the AT&T-T-Mobile diversion ratios. In my own research, I have looked at another policy intervention, the federal Lifeline Assistance program. Variation in the Lifeline discounts across states and across households within each state revealed how consumers' subscriptions to fixed and mobile services depend on prices.

Of course, past mergers and policy interventions do not meet the conditions of “controlled experiment” as would clinical trials that test a new prescription drug. Instead they themselves are likely the product of market conditions. Nor do they perfectly replicate the conditions that prevail for the proposed AT&T-T-Mobile merger. Applying the patterns found in natural experiments always require a leap to current conditions. Despite the challenges, I urge the Commission to adopt an evidenced-based approach and to avoid depending on anecdotal and idiosyncratic details that will be found in responses to discovery requests. The projections and

forecasts that appear in these documents and emails may make for colorful reading, but they should not be the sole basis for assessing the economic impact of this deal.

In closing I want to repeat that this brief recitation of economic principles of antitrust is necessarily incomplete. I have said little or nothing about topics directly relevant to the effects of this merger such as the roles of handset exclusivity, spectrum allocation, local-national market definition, and the relationship to fixed-line services. I would like to add one last point to the Commission's already lengthy to-do list: as difficult it is to forecast the likely effects of this acquisition, the Commission should perform yet another forecast by predicting what will happen absent the merger. This "counterfactual" is essential if we are to determine the net effect that this merger will have. How will the state's telecommunications industry evolve in coming years if the merger is blocked? Will prices continue to fall at their current pace? Will service coverage be more limited? Will 4G technology spread as quickly? Some of these questions may simply be imponderable, but answers to others may be less prone to error given the option of just projecting "business as usual." In the end, I believe that the all efforts expended by the Commission to conduct evidence-based analysis using current and historical market data, while not easy, will be rewarded with conclusions that are more consistent with economic principles, and will ensure that the citizens of the state will be well served.

THANK YOU.

(END OF ATTACHMENT 3)

ATTACHMENT 4

E-mail Ruling on TURN's Motion for an Extension of Time

From: Hecht, Jessica T.

Sent: Thursday, August 18, 2011 11:58 AM

To: mwood@freepress.net; bill.wallace@verizonwireless.com; jean.kiddoo@bingham.com; jcorralejo@lbcgla.org; art@newmediarights.org; mike@ucan.org; pshiple@cricketcommunications.com; thnxvm@gmail.com; bautistafaith@yahoo.com; mdjoseph@adamsbroadwell.com; Lippi, Kimberly; bnusbaum@turn.org; att-regulatory-ca@att.com; rudy.reyes@verizon.com; stephen.h.kukta@sprint.com; james.young@pillsburylaw.com; dyoung@caltel.org; selbytelecom@gmail.com; lencanty@BlackEconomicCouncil.org; tracy@media-alliance.org; enriqueg@greenlining.org; jim@tobinlaw.us; susan.lipper@t-mobile.com; dwtcpcudockets@dwt.com; judykau@dwt.com; trevor@RoycroftConsulting.org; debbie@cwa-union.org; lisa.zurmuhlen@lw.com; alexander.maltas@lw.com; james.barker@lw.com; ABush@skadden.com; JBeahn@skadden.com; GStrobel@lawlermetzger.com; GKeeney@lawlermetzger.com; kenneth.schifman@sprint.com; gsarosi@metropcs.com; mstachiw@metropcs.com; laura@consumerwatchdog.org; chuck.carrathers@verizon.com; lorraine.kocen@verizon.com; stephen.strang@verizon.com; robertgnaizda@gmail.com; sswaroop@naacoalition.org; eklebaner@adamsbroadwell.com; cmailloux@turn.org; rcosta@turn.org; steve.bowen@bowenlawgroup.com; dd2526@att.com; regtss@att.com; jon.david.tate@att.com; margo.ormiston@verizon.com; thomas.selhorst@att.com; marg@tobiaslo.com; ashm@telepacific.com; pacasciato@gmail.com; jarmstrong@goodinmacbride.com; mday@goodinmacbride.com; janewhang@dwt.com; suzannetoller@dwt.com; clay@deanhardtllaw.com; lmb@wblaw.net; paulg@greenlining.org; stephaniec@greenlining.org; Charlie.Born@ftr.com; Phyllis.Whitten@ftr.com; Teri.Ohta@t-mobile.com; Lee, Alik; Mulqueen, April; Fong, Brewster; Witteman, Chris; Chow, Christopher; Piiru, Dale; Mann, Denise; Podolinsky, Elizabeth; Mickiewicz, Helen M.; Hecht, Jessica T.; Leung, Joanne; Allen, Judith; Zafar, Marzia; Wullenjohn, Robert J.; Lehman, Robert; Schwartz, Robert; Esquivias, Roland; Scott, Roxanne L.; Thomas, Sarah R.; Boles, Sheri; Green, Stephanie; Johnston, William

Subject: Ruling on TURN's Motion for an Extension of Time

Importance: High

Parties to I.11-06-009,

Yesterday morning, TURN filed the attached motion requesting an extension of time to file responses to questions included in Section 3 of the ruling I issued in this proceeding on August 11, 2011. TURN's motion describes difficulties it has encountered in its attempts to review engineering and economic models that the respondents to this proceeding have filed with the Federal Communications Commission (FCC), and based on these difficulties (as well as the apparent complexity of the models), requests an extension until September 6, 2011, of the August 22, 2011 due date established in the August 11, 2011 ruling. TURN also requests an extension until September 19, 2011, of the filing deadline for combined reply briefs and reply comments established in that same ruling.

As of this morning, three parties have responded to the TURN motion. AT&T opposes the TURN request for an extension, the Greenlining Institute supports the request, and CalTel opposes the request for an extension for any filings related to backhaul issues, but does not oppose an extension for other issues.

Yesterday I also became aware that the respondents to this proceeding may have filed with the FCC an updated version of the models referred to by TURN, and it is not clear at this point whether these updated versions have been made available to parties in this proceeding.

Given these circumstances, I am granting a brief extension for the filing of comments on Question 9 in Section 3 of the August 11, 2011 ruling. This question states:

Please analyze and discuss the implications, if any, for California of the economic and engineering analysis that the respondents filed at the FCC in WT Docket No. 11-65 on July 25-26, 2011.

The responses to *this question only* may be filed not later than September 1, 2011, with replies to those comments due not later than September 9, 2011. The due dates established in the August 11, 2011, ruling for all other filings, including the responses to the other questions contained in that ruling and the reply comments and briefs on all other issues, remain in place.

In the meantime, we expect the respondents to ensure that accessible versions of all filings made with the FCC are filed in this proceeding (I.10-06-009) and served on parties to this proceeding (subject to confidentiality restrictions and non-disclosure agreements) within two business days of their filing at the FCC. Printable versions of all materials provided electronically must also be provided.

In addition, we require AT&T to provide a technical expert to meet with Commission staff not later than Monday, August 22, 2011, to provide a briefing on the operation and results of the engineering and economic models, as well as the differences between the original and any more recent versions of these models. If necessary, AT&T will provide technical experts for additional briefings of staff and others, which may be scheduled in the next several weeks.

I expect to memorialize this electronic mail ruling in a formal written ruling in the future.

Jessica T. Hecht
Administrative Law Judge
California Public Utilities Commission
(415)703-2027
jessica.hecht@cpuc.ca.gov

From: Jeffrey Johnson [<mailto:adminassistant@turn.org>]
Sent: Wednesday, August 17, 2011 11:42 AM
To: mwood@freepress.net; bill.wallace@verizonwireless.com; jean.kiddoo@bingham.com; jcorrалеjo@lbcgla.org; art@newmediarights.org; mike@ucan.org; pshiple@cricketcommunications.com; thnxvm@gmail.com; bautistafaith@yahoo.com; mdjoseph@adamsbroadwell.com; Lippi, Kimberly; bnusbaum@turn.org; att-regulatory-ca@att.com; rudymreyes@verizon.com; stephen.h.kukta@sprint.com; james.young@pillsburylaw.com; deyoung@caltel.org; selbytelecom@gmail.com; lencanty@BlackEconomicCouncil.org; tracy@media-alliance.org; enriqueg@greenlining.org; jim@tobinlaw.us; susan.lipper@t-mobile.com; dwtcpucdockets@dwt.com; judy-pau@dwt.com; trevor@RoycroftConsulting.org; debbie@cwa-union.org; lisa.zurmuhlen@lw.com; alexander.maltas@lw.com; james.barker@lw.com; ABush@skadden.com; JBeahn@skadden.com; GStrobel@lawlernetzger.com; GKeeney@lawlernetzger.com; kenneth.schifman@sprint.com; gsarosi@metropcs.com; mstachiw@metropcs.com; laura@consumerwatchdog.org; chuck.carrathers@verizon.com; lorraine.kocen@verizon.com; stephen.strang@verizon.com; robertgnaizda@gmail.com; sswaroop@naacoalition.org; eklebaner@adamsbroadwell.com; cmailloux@turn.org; rcosta@turn.org; steve.bowen@bowenlawgroup.com; dd2526@att.com; regtss@att.com; jon.david.tate@att.com; margo.ormiston@verizon.com; thomas.selhorst@att.com;

marg@tobiaslo.com; ashm@telepacific.com; pacasciato@gmail.com; jarmstrong@goodinmacbride.com; mday@goodinmacbride.com; janewhang@dwt.com; suzannetoller@dwt.com; clay@deanhardtllaw.com; lmb@wblaw.net; paulg@greenlining.org; stephaniec@greenlining.org; Charlie.Born@ftr.com; Phyllis.Whitten@ftr.com; Teri.Ohta@t-mobile.com; Lee, Alik; Mulqueen, April; Fong, Brewster; Witteman, Chris; Chow, Christopher; Piiru, Dale; Mann, Denise; Podolinsky, Elizabeth; Mickiewicz, Helen M.; Hecht, Jessica T.; Leung, Joanne; Allen, Judith; Zafar, Marzia; Wullenjohn, Robert J.; Lehman, Robert; Schwartz, Robert; Esquivias, Roland; Scott, Roxanne L.; Thomas, Sarah R.; Boles, Sheri; Green, Stephanie; Johnston, William
Cc: Bob Finkelstein; Larry Wong; Mark Toney; Richard Perez
Subject: I1106009 TURN's Motion for an Extension of Time (Second Revised Email)

ALJ Hecht & Parties:

Attached is a Motion for an Extension of Time in the above-captioned proceeding. Given the difficulties TURN has been having accessing and trying to understand AT&T's new economic model TURN is seeking to extend the current schedule moving the Aug. 22 deadline to Sept. 6 and the Aug. 29 deadline to Sept. 19. TURN is also requesting an expedited review of this Motion and a shortening of the time allowed for responses. If you have any questions please contact Bill Nusbaum at 415-929-8876 x309 or at bnusbaum@turn.org. Also Per Rule 1.10 (c), I also attached the Certificate of service and the Service List as a separate document. Please contact me if you have difficulty opening these attachments.

□

Thank You,

Jeffrey Johnson
Administrative Assistant
The Utility Reform Network
115 Sansome Street, 9th Floor
San Francisco, CA 94104
Tel: (415) 929-8876 x300
Fax: (415) 929-1132
E-Mail: adminassistant@turn.org

(END OF ATTACHMENT 4)

ATTACHMENT 5

E-mail Regarding Suspension Of Immediate Due Dates

I.11-06-009 JHE/acr

From: Hecht, Jessica T.

Sent: Wednesday, August 31, 2011 3:12 PM

To: 'mwood@freepress.net'; 'bill.wallace@verizonwireless.com'; 'jean.kiddoo@bingham.com'; 'jcorralej@lbcgla.org'; 'art@newmediarights.org'; 'mike@ucan.org'; 'pshiple@cricketcommunications.com'; 'thnxvm@gmail.com'; 'bautistafaith@yahoo.com'; 'mdjoseph@adamsbroadwell.com'; Lippi, Kimberly; 'bnusbaum@turn.org'; 'att-regulatory-ca@att.com'; 'rudy.reyes@verizon.com'; 'stephen.h.kukta@sprint.com'; 'james.young@pillsburylaw.com'; 'deyoung@caltel.org'; 'selbytelecom@gmail.com'; 'lencanty@BlackEconomicCouncil.org'; 'tracy@media-alliance.org'; 'enriqueg@greenlining.org'; 'jim@tobinlaw.us'; 'susan.lipper@t-mobile.com'; 'dwtcpcdockets@dwt.com'; 'judykau@dwt.com'; 'trevor@RoycroftConsulting.org'; 'debbie@cwa-union.org'; 'lisa.zurmuhlen@lw.com'; 'alexander.maltas@lw.com'; 'james.barker@lw.com'; 'ABush@skadden.com'; 'JBeahn@skadden.com'; 'GStrobel@lawlermetzger.com'; 'GKeeney@lawlermetzger.com'; 'kenneth.schifman@sprint.com'; 'gsarosi@metropcs.com'; 'mstachiw@metropcs.com'; 'laura@consumerwatchdog.org'; 'chuck.carrathers@verizon.com'; 'lorraine.kocen@verizon.com'; 'stephen.strang@verizon.com'; 'robertgnaizda@gmail.com'; 'sswaroop@naacoalition.org'; 'eklebaner@adamsbroadwell.com'; 'cmailloux@turn.org'; 'rcosta@turn.org'; 'steve.bowen@bowenlawgroup.com'; 'dd2526@att.com'; 'regtss@att.com'; 'jon.david.tate@att.com'; 'margo.ormiston@verizon.com'; 'thomas.selhorst@att.com'; 'marg@tobiaslo.com'; 'ashm@telepacific.com'; 'pacasciato@gmail.com'; 'jarmstrong@goodinmacbride.com'; 'mday@goodinmacbride.com'; 'janewhang@dwt.com'; 'suzannetoller@dwt.com'; 'clay@deanhardtllaw.com'; 'lmb@wblaw.net'; 'service@cforat.org'; 'paulg@greenlining.org'; 'stephaniec@greenlining.org'; 'Charlie.Born@ftr.com'; 'Phyllis.Whitten@ftr.com'; 'Teri.Ohta@t-mobile.com'; Lee, Alik; Mulqueen, April; Fong, Brewster; Witteman, Chris; Chow, Christopher; Piiru, Dale; Mann, Denise; Podolinsky, Elizabeth; Mickiewicz, Helen M.; Hecht, Jessica T.; Leung, Joanne; Allen, Judith; Zafar, Marzia; Wullenjohn, Robert J.; Lehman, Robert; Schwartz, Robert; Esquivias, Roland; Scott, Roxanne L.; Thomas, Sarah R.; Boles, Sheri; Green, Stephanie; Johnston, William

Subject: I.11-06-009: Suspension of Immediate Due Dates

Parties to I.11-06-009,

As you are probably aware, this morning the United States Department of Justice filed a complaint in Federal District Court seeking to block the proposed acquisition of T-Mobile by AT&T Wireless. Through this e-mail ruling, I am suspending the due dates for the comments and reply comments on the AT&T economic model that were previously scheduled for September 1, 2011 (tomorrow), and September 9, 2011, respectively. I am currently working with the assigned Commissioner's office and Commission staff to assess the effect of this development on our proceeding, and further guidance and information on the schedule for this proceeding will be released when it is available.

Thank you.

I.11-09-009 JHE/acr

Jessica T. Hecht
Administrative Law Judge
California Public Utilities Commission
(415)703-2027
jessica.hecht@cpuc.ca.gov

(END OF ATTACHMENT 5)

ATTACHMENT 6

E-mail Regarding Schedule Modifications

-----Original Message-----

From: Hecht, Jessica T.

Sent: Friday, September 02, 2011 3:00 PM

To: mwood@freepress.net; bill.wallace@verizonwireless.com;
jean.kiddoo@bingham.com; jcorralejo@lbcgla.org; art@newmediarights.org;
mike@ucan.org; pshiple@cricketcommunications.com; thnxvm@gmail.com;
bautistafaith@yahoo.com; mdjoseph@adamsbroadwell.com; Lippi, Kimberly;
bnusbaum@turn.org; att-regulatory-ca@att.com; rudy.reyes@verizon.com;
stephen.h.kukta@sprint.com; james.young@pillsburylaw.com; Sarah DeYoung;
selbytelecom@gmail.com; lencanty@BlackEconomicCouncil.org;
tracy@media-alliance.org; enriqueg@greenlining.org; jim@tobinlaw.us;
susan.lipper@t-mobile.com; dwtcpucdockets@dwt.com; judypau@dwt.com;
trevor@RoycroftConsulting.org; debbie@cwa-union.org;
lisa.zurmuhlen@lw.com; alexander.maltas@lw.com; james.barker@lw.com;
ABush@skadden.com; JBeahn@skadden.com; GStrobel@lawlernetzger.com;
GKeeney@lawlernetzger.com; kenneth.schifman@sprint.com;
gsarosi@metropcs.com; mstachiw@metropcs.com;
laura@consumerwatchdog.org;
chuck.carrathers@verizon.com; lorraine.kocen@verizon.com;
stephen.strang@verizon.com; robertgnaizda@gmail.com;
sswaroop@naacoalition.org; eklebaner@adamsbroadwell.com;
cmailloux@turn.org; rcosta@turn.org; steve.bowen@bowenlawgroup.com;
dd2526@att.com; regtss@att.com; jon.david.tate@att.com;
margo.ormiston@verizon.com; thomas.selhorst@att.com; marg@tobiaslo.com;
ashm@telepacific.com; pacasciato@gmail.com;
jarmstrong@goodinmacbride.com; mday@goodinmacbride.com;
janewhang@dwt.com; suzannetoller@dwt.com; clay@deanhardtllaw.com;
lmb@wblaw.net; service@cforat.org; paulg@greenlining.org;
stephaniec@greenlining.org; Charlie.Born@ftr.com;
Phyllis.Whitten@ftr.com; Teri.Ohta@t-mobile.com; Lee, Alik; Mulqueen,
April; Fong, Brewster; Witteman, Chris; Chow, Christopher; Piiru, Dale;
Mann, Denise; Podolinsky, Elizabeth; Mickiewicz, Helen M.; Hecht,
Jessica T.; Leung, Joanne; Allen, Judith; Zafar, Marzia; Wullenjohn,
Robert J.; Lehman, Robert; Schwartz, Robert; Esquivias, Roland; Scott,
Roxanne L.; Thomas, Sarah R.; Boles, Sheri; Green, Stephanie; Johnston,
William

Subject: I.11-06-009: Schedule Modifications

Parties to I.11-06-009,

Several parties have contacted me and/or other Commission staff members requesting an extension of some deadlines set forth in the formal Ruling

issued in this proceeding on August 31, 2011. Such an extension would provide sufficient time for notice of the release of confidential information to be provided to parties under the relevant protective orders at the Federal Communications Commission (FCC), as discussed in the Ruling at p. 6. Certain deadlines specified in that ruling are adjusted as follows. These adjustments should ensure that the FCC has time to provide notice to parties affected by the request for confidential information, and provide additional time for the preparation of filings in a format compliant with our docket office requirements.

1. Objections to production of FCC info (Ruling Paragraph 1) Original Due Date: September 6, 2011 New Date: 10 days after the FCC issues notice to parties of the August 31, 2011, Ruling's request for release of information.

2. Production of FCC information (Ruling Paragraph 2) Original Due Date: September 7, 2011 New Date: 20 days after the FCC issues notice to parties of the August 31, 2011, Ruling's request for release of information.

3. Filing of FCC transcript (Ordering Paragraph 3) Original Due Date: September 7, 2011 New Date: 20 days after the FCC issues notice to parties of the August 31, 2011, Ruling's request for release of information.

4. Resubmission of non-compliant data responses in a compliant format: Original Due Date: September 7, 2011 New Date: September 16, 2011, for information not subject to the FCC notice requirement, and (if necessary) 20 days after the FCC issues notice to parties of the August 31, 2011, Ruling's request for release of information for information that is subject to that notice requirement.

Dates not specifically extended in this e-mail remain unchanged from those specified in the August 31, 2011, ruling. As discussed in that ruling, it remains the Commission's intention to assemble a clear and complete record in this matter, and I urge the parties to remain diligent in doing so. Also as suggested in that ruling, parties with additional questions or needing further clarification about filing deadlines or procedures should contact Commission staff.

I.11-09-009 JHE/acr

Jessica T. Hecht
Administrative Law Judge
California Public Utilities Commission
jessica.hecht@cpuc.ca.gov

(END OF ATTACHMENT 6)

ATTACHMENT 7

Email Ruling Establishing New Deadline for Filing of Notices of Intent
to Claim Intervenor Compensation

From: Hecht, Jessica T.

Sent: Wednesday, September 07, 2011 3:52 PM

To: 'mwood@freepress.net'; 'bill.wallace@verizonwireless.com'; 'jean.kiddoo@bingham.com'; 'jcorralejo@lbcgla.org'; 'art@newmediarights.org'; 'mike@ucan.org'; 'pshiple@cricketcommunications.com'; 'thnxvm@gmail.com'; 'bautistafaith@yahoo.com'; 'mdjoseph@adamsbroadwell.com'; Lippi, Kimberly; 'bnusbaum@turn.org'; 'att-regulatory-ca@att.com'; 'rudy.reyes@verizon.com'; 'stephen.h.kukta@sprint.com'; 'james.young@pillsburylaw.com'; 'deyoung@caltel.org'; 'selbytelecom@gmail.com'; 'lencanty@BlackEconomicCouncil.org'; 'tracy@media-alliance.org'; 'enriqueg@greenlining.org'; 'jim@tobinlaw.us'; 'susan.lipper@t-mobile.com'; 'dwtcpucdockets@dwt.com'; 'judypau@dwt.com'; 'trevor@RoycroftConsulting.org'; 'debbie@cwa-union.org'; 'lisa.zurmuhlen@lw.com'; 'alexander.maltas@lw.com'; 'james.barker@lw.com'; 'ABush@skadden.com'; 'JBeahn@skadden.com'; 'GStrobel@lawlernetzger.com'; 'GKeeney@lawlernetzger.com'; 'kenneth.schifman@sprint.com'; 'gsarosi@metropcs.com'; 'mstachiw@metropcs.com'; 'laura@consumerwatchdog.org'; 'chuck.carrathers@verizon.com'; 'lorraine.kocen@verizon.com'; 'stephen.strang@verizon.com'; 'robertgnaizda@gmail.com'; 'sswaroop@naacoalition.org'; 'eklebaner@adamsbroadwell.com'; 'cmailloux@turn.org'; 'rcosta@turn.org'; 'steve.bowen@bowenlawgroup.com'; 'dd2526@att.com'; 'regtss@att.com'; 'jon.david.tate@att.com'; 'margo.ormiston@verizon.com'; 'thomas.selhorst@att.com'; 'marg@tobiaslo.com'; 'ashm@telepacific.com'; 'pacasciato@gmail.com'; 'jarmstrong@goodinmacbride.com'; 'mday@goodinmacbride.com'; 'janewhang@dwt.com'; 'suzannetoller@dwt.com'; 'clay@deanhardtllaw.com'; 'lmb@wblaw.net'; 'service@cforat.org'; 'paulg@greenlining.org'; 'stephaniec@greenlining.org'; 'Charlie.Born@ftr.com'; 'Phyllis.Whitten@ftr.com'; 'Teri.Ohta@t-mobile.com'; Lee, Alik; Mulqueen, April; Fong, Brewster; Witterman, Chris; Chow, Christopher; Piiru, Dale; Mann, Denise; Podolinsky, Elizabeth; Mickiewicz, Helen M.; Hecht, Jessica T.; Leung, Joanne; Allen, Judith; Zafar, Marzia; Wullenjohn, Robert J.; Lehman, Robert; Schwartz, Robert; Esquivias, Roland; Scott, Roxanne L.; Thomas, Sarah R.; Boles, Sheri; Green, Stephanie; Johnston, William

Subject: I.11-06-009: Ruling Establishing New Deadline for Filing of Notices of Intent to Claim Intervenor Compensation

Parties to I.11-06-009,

It came to my attention late yesterday afternoon that there was some ambiguity in the due date specified in the Order Instituting Investigation for filing of Notices of Intent to claim intervenor compensation (NOIs) in this proceeding. In the last 24 hours or so I have received inquiries from several parties requesting clarification of the NOI due date or asking permission to late-file their NOIs if they were in fact due yesterday.

Ordering Paragraph 18 of I.11-06-009 specifies that NOIs must be filed "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." Based on this ordering paragraph and in the absence of a ruling specifically modifying the date, NOIs were due on September 6, 2011 (yesterday). However, this ordering paragraph is not entirely consistent with the language on filing of NOIs in Section 13 of that same document, and this

inconsistency appears to have led to some confusion among parties.

To address parties' confusion, this electronic mail ruling sets a new deadline of September 12, 2011, for filing of NOIs in this proceeding. Any NOIs filed on or before September 12, 2011, will be considered timely; NOIs should not be filed after that date. I am notifying the Commission's Docket Office of this change to the filing date specified in the OII, and I intend to confirm this change in a formal ruling to be issued in the future. I hope this direction is helpful.

Jessica T. Hecht
Administrative Law Judge
California Public Utilities Commission
(415)703-2027
jessica.hecht@cpuc.ca.gov

(END OF ATTACHMENT 7)