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.	**I.**_____

ORDER INSTITUTING INVESTIGATION

1. Introduction

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

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

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

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

While any increase in the combined share of the wireless market is possible cause for concern, we recognize the context of the merger given the larger telecommunications market. We will review and address any market issues in our companion rulemaking to evaluate the status of Telecommunications Competition in California and its implications for regulatory policies (Competition OIR). One such companion regulatory issue is that the affiliated ILECs maintain the majority of the "backhaul" or "special access" facilities (between the cell tower and the local exchange carrier's central office or other switching location) on which wireless telecommunications services, including those provided by the other wireless competitors (Sprint/Nextel, MetroPCS, and Cricket, for example) depend. If the merger is completed, there will be a smaller pool of independent backhaul purchasers, with potentially less buying power.[2] Wholesale, or special access services are recognized by this Commission as having great importance to the competitive retail market and prior decisions have maintained the requirement for special access services to be tariffed. However, nearly all of the special access services purchased by competing wireless providers are purchased from the federal

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

tariffs. The FCC has a pending proceeding addressing the issue of special access in which this Commission has intervened. To the extent there are intra-state special access service matters that need to be addressed, the more appropriate venue may be the Competition OIR.

The purpose of this Investigation is to investigate, gather, and analyze information relevant to the proposed merger to determine the specific impact of the merger on California such that this Commission can file comments at the FCC. This Order Instituting Investigation (OII) will analyze what, if any, conditions on a federal level may be appropriate.

2. The Commission's Authority to Review the Merger

Wireless carriers are "telephone corporations" and therefore public utilities under Public Utilities Code Sections 216, 233 and 234.[3] (*See, e.g.,* Decision (D.) 01-07-030, Appendix A, *Interim Rules Governing Non-Communications-Related Charges on Telephone Bills,* at 1, 6.) This Commission has asserted its jurisdiction to protect consumers of wireless/cellular telephone services:

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

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

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

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

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

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

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

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

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

Footnote continued on next page

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

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

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

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

(House Report No. 103-111, at 251. Emphasis added.) The FCC also confirmed the CPUC's jurisdiction over "other terms and conditions" when it stated that it anticipated that the CPUC would continue to conduct appropriate complaint proceedings and to monitor the structure, conduct, and performance of CMRS providers. (*See* May 19, 1995 FCC Order Denying the CPUC's petition to continue to regulate CMRS rates.)

Commission's jurisdiction over transfers of ownership was "not preempted," the Commission decided as a matter of public policy to "forbear from exercising such authority," except where such review or further analysis is "necessary in the public interest." (*Id.* at CoLs 15, 18; Ordering Paragraph 3; *see also id.*. at p. 16) (standing merger approval process "could inhibit the growth of competition to impose more restrictive requirements on CMRS providers than is necessary to discharge our responsibilities to protect the public interest"). Thus, the Commission established procedures whereby wireless carriers are required to provide 30-days advance notice to the Director of the Communications Division for certain types of transfers, including any proposed transactions involving a change of ownership in which an entity acquires a larger ownership share than the largest holding of any current owner. (D.95-10-032, OP 3.) Further, pursuant to D.95-10-032, no preapproval is required unless the Commission notifies the carrier within the 30-day period that further information is needed or that a formal application is required. (D.95-10-032, OP 3.)

As set forth more fully below, we have concluded that detailed gathering and analysis of information of the AT&T/T-Mobile merger is required, however, once that analysis is complete the suspension of the 30-day period should be lifted. Therefore, we shall set September 8, 2011, as the date that the tolling shall be terminated unless extended by a vote of the Commission. September 8, 2011 is selected as the date to lift the suspension because that is the Commission meeting date at which the Commission will vote on comments to be filed with the FCC.

3. Procedural Background

On April 21, 2011, AT&T provided this Commission an initial notice of the proposed transfer. On May 3, 2011, AT&T vacated its initial notice and provided

a revised notice pursuant to Rule 6.1 (information-only filings) of General Order (GO) 96-B. The Director of the Communications Division (CD) designated the notice as Advice Letter (AL) 160 for tracking purposes only. On May 19, 2011, Sprint filed a "protest" to the AL 160.[6]

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

4. Federal Communications Commission Proceeding

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

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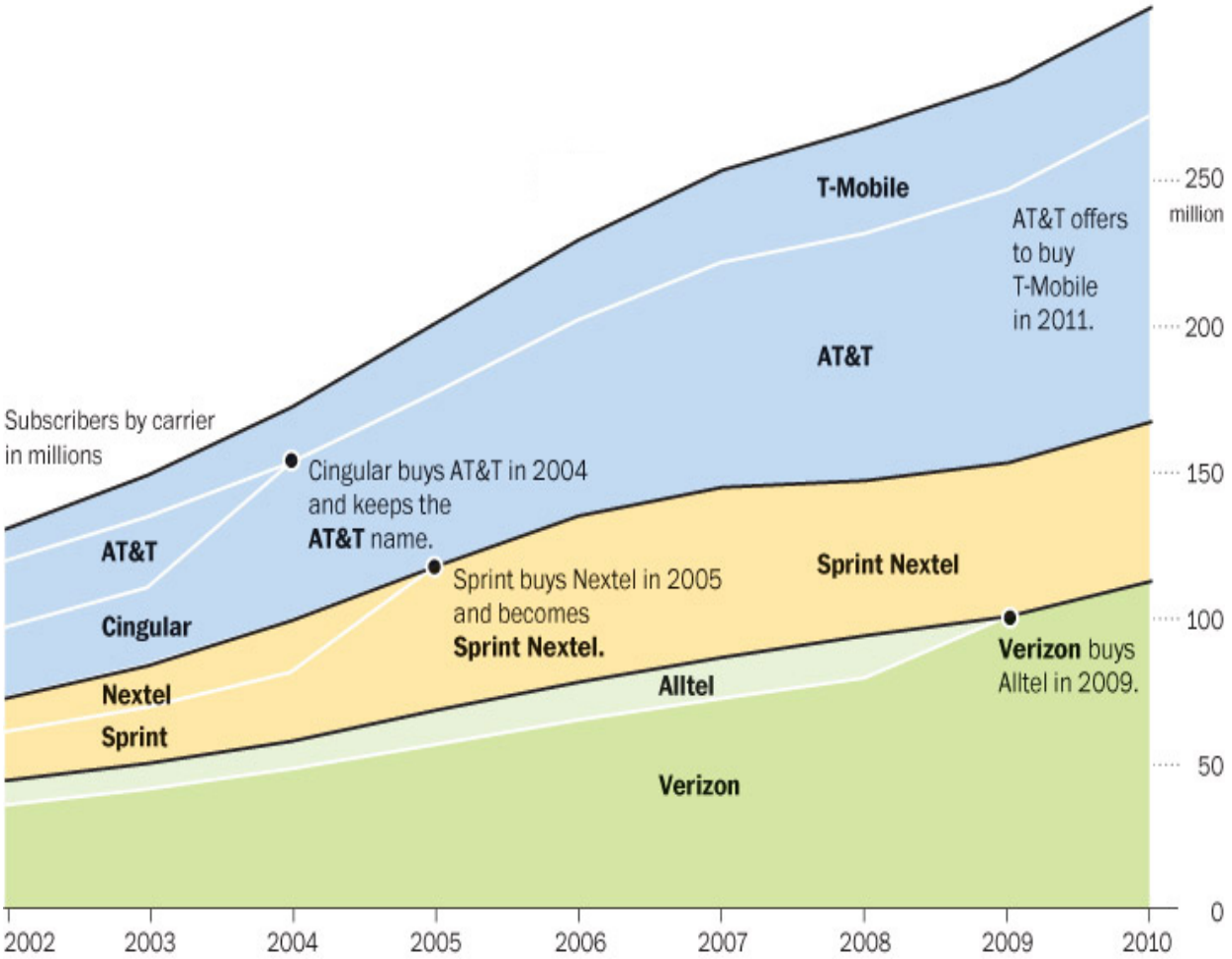
[6] Since information-only filings do not seek relief, they are not subject to protest. (GO 96-B, Rule 6.2.)

Therefore, it appears that the FCC may issue a decision granting or denying the merger by the end of October 2011.

5. Analysis of the Merger is Reasonable

Since 2002, the wireless telecommunications industry has consolidated from seven major wireless carriers to four in 2010. If AT&T's proposed merger were approved, only three major wireless carriers with substantial market share would remain, as shown in the following chart:[7]

[7] Source: Strategy Analytics, published by the Washington Post website, and available at http://www.washingtonpost.com/business/economy/wireless-company-mergers-since-2002/2011/03/21/AByLkf9_graphic.html.

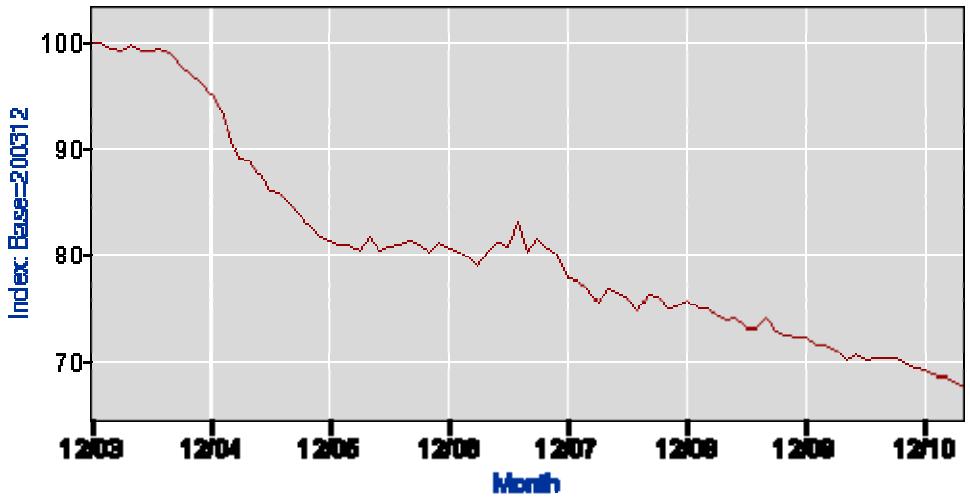


While there are smaller, regional carriers in the market (like MetroPCS and Leaf/Cricket, having an aggregate 9.7% national market share (smaller in California),[8] as well as pure resellers like TracFone Wireless, Inc., the loss of a

[8] National figures are derived from July 2010 GAO Report, "Enhanced Data Collection Could Help FCC Better Monitor Competition in the Wireless Industry," available at http://www.gao.gov/products/GAO-10-779. The smaller California figure, derived from aggregate Form 477 data, reflects a 6.7% market share for the smaller, regional carriers.

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

Regardless of the merger activity and resultant increases in market share, the wireless market has remained innovative, dynamic and competitive. The national producer price index price for wireless services has decreased over 30 percent.[10]



Further, the capabilities of wireless devices and network capabilities have revolutionized communications. The wireless network of today is vastly different than the network of 2002. We are mindful that regulatory policies should not impede these innovative, dynamic and competitive processes. For these reasons, we find it appropriate to review the larger communications

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

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

6. Order Instituting Investigation

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

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

7. Respondents and Interested Parties

We make the following utilities Respondents in this case:

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[10] See: http://www.bls.gov/data/; Producer Price Index Industry, Data Series Id:PCU51721-51721- Wireless telecommunications carriers.

- New Cingular Wireless PCS, LLC (U3060C) and affiliated wireless entities;[11] and
- T-Mobile West Corporation d/b/a T-Mobile (U3056C).

We designate the following utilities as Interested Parties:

- Pacific Bell d/b/a AT&T California (U1001C) and affiliated local exchange carrier entities;[12]
- Verizon California, Inc. (U1002C) and affiliated local exchange carrier entities;[13]
- Verizon Wireless, LLC (U3029C) and affiliated wireless entities;[14]
- Sprint Telephony PCS, LP (U3064C) and affiliated wireless and local exchange carrier entities;[15]
- MetroPCS, Inc. (U3079C); and
- Cricket Communications, Inc. (U3076C).

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

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

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

[13] MCI Metro Access Transmission Services (U5253C) and Verizon Select Services, Inc. (U5494C).

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

8. Preliminary Scope of the Proceeding

As required by Rule 7.1(c)[16] of the Commission's Rules of Practice and Procedure, this OII includes a Preliminary Scoping Memo. In this Preliminary Scoping Memo, we describe the issues to be considered in this proceeding and the timetable for resolving the proceeding.

8.1. Issues to be Addressed

The scope of this Investigation includes gathering all information and data that are relevant to the proposed merger's impacts on California to inform this Commission in order to file comments with the FCC including any recommended conditions that should be placed upon a merged entity at a federal level.

We seek answers to the following set of questions. Parties are free to suggest additional topics.

1. Is this proposed merger in the public interest?
   a. Would the merger, which is planned as a nationwide transaction, have specific or different effects in California? For example, would the merger result in less competition in the California marketplace for wireless telephone customers as compared to wireless telephone customers nationally?
   b. How should the relevant market(s) be defined? How should the product market(s) be defined, as wireless telephone carriers, as

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

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

smart phone carriers, or some other way? How should the relevant geographic market(s) be defined? Locally according to carriers available to consumers in a locality, regionally, by the state, or nationally?

c. Would the merger give the resulting entity monopsony power or increase the tendency to monopsony power including market power over equipment suppliers? If yes, then what impact would the merger have on choice and competition in handsets and related equipment?

d. How long, and to what extent, would the lower-priced T-Mobile plans continue to be available after the merger? Would the merger serve Californians who depend on low-priced wireless plans?

2. What merger-specific and verifiable efficiencies would likely be realized by the merger?

3. Would innovation be promoted or constrained by the merger? For example, would the merger increase, maintain or diminish facilities and competition for wireless transmission services such as distributed antenna systems (DAS) and open distributed antenna systems (O-DAS)?

4. What impact would the merger have on the market for special access or backhaul services?

    a. What alternatives to incumbents' special access backhaul facilities currently exist, and what alternatives would exist after the merger, for independent, competitive wireless carriers?

    b. Would the smaller post-merger pool of independent, competitive wireless carriers purchasing special access backhaul from local exchange carriers affect the market power of those special access backhaul customers? Would the merger increase the market power of the local exchange carriers and/or their wireless affiliates with respect to special access backhaul services?

c. Would the merger increase the ability of the merging parties to impose exclusive or requirements contracts on purchasers of backhaul services? Would the merger increase the ability of the merging parties or their wireline affiliates to require that the entity seeking backhaul services buy a certain percentage of their backhaul services from the wireline affiliates of the merging parties?

5. Would the merger maintain or improve the quality of service to California consumers?

   a. Is acquisition of T-Mobile's spectrum necessary to extend AT&T's service area or improve AT&T's existing service? Is AT&T using the spectrum it now has? Does it have concrete plans to build out the spectrum licensed to it? We note that in February 2011, AT&T filed an application with the FCC to acquire the 700 mhz wireless spectrum currently licensed to Qualcom including the licenses to serve Los Angeles and San Francisco. How would these combined spectrum holdings, if approved, affect AT&T's wireless service, competition, and the California market? Is acquisition of both T-Mobile's and Qualcom's California spectrum necessary to achieve the benefits AT&T plans to bring about through these transactions?

   b. Is the merger necessary to provide T-Mobile customers with advanced services, such as LTE (Long Term Evolution) services that facilitate data transfers and offer greater speed?

6. What California utility(ies) would operate the merged properties in California? Would the merger preserve the jurisdiction of the Commission and the capacity of the Commission to effectively regulate those utility operations in the state?

7. How does this merger affect the merging companies' employees, shareholders, subscribers, communities in which they operate, and the State as a whole?

8. Would the benefits of the merger likely exceed any detrimental effects of the merger?
9. Should the Commission consider and propose or impose conditions to prevent significant adverse consequences which may result from the merger? What, if any, should those conditions be?

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

To assist in addressing these issues in this Investigation, the Respondents and Interested Parties are ordered to file responses to the Data Requests appended hereto as Appendix A. The obligation to respond to these Data Requests is an independent statutory obligation under Public Utilities Code Sections 311, 314, 581, 582, and 584, and is not dependent on the results of any motion practice initiated by Respondents or Interested Parties. AT&T should file its application submitted to the FCC in WT Docket No. 11-65, and the Respondents and Interested Parties should file in this proceeding full responses to all Commission staff data requests regarding the proposed merger. (The Commission staff data requests issued to date are appended hereto as Appendix B; any subsequent staff data requests will include deadlines for filing responses in this proceeding.) Section 9 below addresses the treatment of information and documents that the entities view as proprietary or confidential.

8.2. Schedule

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

June 20, 2011	Deadline for parties to suggest additional data requests in letters to the Director of Communications Division, with service on all parties.
June 24, 2011	Deadline for AT&T to file in this proceeding its application filed at the FCC in WT Docket No. 11-65 and for Respondents and Interested Parties to file responses already provided to Commission staff data requests regarding the proposed merger.
June 24, 2011	Deadline to file responses to Data Requests in Appendix A and any remaining responses to staff Data Requests in Appendix B.
July 1, 2011	Deadline to file Opening Comments and factual showings in Declarations. Comments may include legal analyses and must be limited to 50 pages. Each Declaration must be verified, consistent with Rule 1.11, by a representative knowledgeable about its contents.
July 7 or 8, 2011	Public Workshop in San Francisco re: facilities-based competition issues, with a particular focus on special access backhaul, lease and other contract arrangements, interconnection, and related issues. A Public Participation Hearing will also be held in San Francisco.
July 15 or 29, 2011	Public Workshop in Silicon Valley re: innovation issues. This shall include, but is not limited to,

	handsets; distributed antenna systems, broadband, data transfer, etc.
July 20 or 21, 2011	Public Workshop in Los Angeles re: customer issues, including, but not limited to, price, service quality, customer service – small/individual, small business, and large enterprise customer representatives. A Public Participation Hearing will also be held in Los Angeles.
July (dates TBD)	Public Participation Hearings in Orange County and the Central Valley
August 5, 2011	Deadline for filing Reply Comments (limited in scope to matters raised in Opening Comments and workshops, and limited to 25 pages), and supplemental factual showings in verified Declarations.
September 2, 2011	Target date for Proposed Decision, with subsequent comments (limited to 25 pages) and reply comments (limited to 5 pages) consistent with Rule 14.3.
September 8, 2011	Commission vote on comments to be filed with the FCC. Tolling of AT&T's information-only Advice Letter 160 is ended, unless extended by Commission vote.

For the public workshops, Respondents are directed to designate and provide as participants their employee or employees most knowledgeable regarding these subjects. Interested persons or organizations may also be invited to participate in the workshops. Workshop participants will be required to identify themselves, their relationship, if any, to the parties to the proposed transaction (including those filing Petitions to Deny at the FCC, e.g., Sprint Nextel), and whether the organization they represent has received funding in the past twelve months or has been promised funding from AT&T and/or T-Mobile,

Sprint, or any other wireless or wireline telephone company or their foundation. Commenters and workshop participants are reminded that their statements are subject to Commission Rule 1.1, and must be true, correct, and complete to the best of the participant's knowledge.

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

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

9. Treatment of Information and Documents Considered to be Confidential

Due to the expedited nature of this proceeding, the Commission will modify its standing procedures for the submission of information claimed to be confidential (Rule 11.4). The submitting party is not required to file a motion for submission of information and documents under seal. However, the designation of any document or information as confidential, highly confidential, or additional copying prohibited (see Protective Order incorporated as Appendix C below) shall constitute a representation by the submitting party, subject to the Commission's Rule 1.1, that the confidential, highly confidential or copying prohibited documents meet the requirements set forth for such designations.

Other parties may challenge, via motion, the implied representation that such documents and/or information are confidential. Information and documents submitted under seal will be afforded the protections provided by General Order 66 and Public Utilities Code section 583, absent a ruling otherwise by the assigned ALJ or a law and motion ALJ designated by the Chief ALJ.

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

Confidentiality issues will be handled by the assigned ALJ, or by a law and motion ALJ designated by the Chief ALJ. We expect the parties to cooperate in the facilitation of this Investigation, and to evince good faith with regard to such confidentiality issues. If necessary, the assigned ALJ or a law and motion ALJ may modify the Protective Order in Appendix C.

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

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

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

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

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

11.1. Creation of Service List

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

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

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

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

become a party should be served using electronic service pursuant to Rule 1.10. Responses to motions to become a party must be filed within 2 days of filing.

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

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

11.2. Updating Information

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

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

11.3. Serving and Filing Documents

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

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

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

11.4. Subscription Service

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

12. Public Advisor

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

(866) 849-8391, or e-mail public.advisor.la@cpuc.ca.gov. The TYY number is (866) 836-7825.

13. Intervenor Compensation

Any party that expects to claim intervenor compensation for its participation in this Investigation shall file its notice of intent to claim intervenor compensation no later than 30 days after the deadline for filing Reply Comments, or pursuant to a date set forth in a later ruling which may be issued by the assigned Commissioner or assigned ALJ.

O R D E R

Therefore, **IT IS ORDERED** that:

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

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

3. The following entities are Interested Parties in this proceeding: Pacific Bell d/b/a AT&T California; AT&T Communications of California; TCG San Francisco; TCG Los Angeles, Inc.; TCG San Diego; Verizon California, Inc.; MCI Metro Access Transmission Services; Verizon Select Services, Inc.; Verizon

Wireless, LLC; Sprint Telephony PCS, LP; Nextel Boost of California, LLC; Sprint Communications Company, LP; Nextel of California, Inc.; Wirelessco, LP; MetroPCS, Inc.; and Cricket Communications, Inc. For each Interested Party, Process Office shall place the person designated to receive service as the Interested Party's representative on the service list.

4. Written motions to become a party filed pursuant to Rule 1.4(a)(4) must be served using electronic service pursuant to Rule 1.10. Responses to motions to become a party must be filed within 2 days after the motion is filed.

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

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

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

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

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

10. Draft comments to the FCC shall be prepared for this Commission's vote at its September 8, 2011, meeting.

11. Tolling of AT&T's information-only filing (designated as Advice Letter 160) is ended on September 8, 2011, unless extended by a vote of the Commission.

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

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

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

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

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

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

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

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

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

This order is effective today.

Dated: _____, in San Francisco, California.

APPENDIX A
DATA REQUESTS TO RESPONDENTS and INTERESTED PARTIES

The Order Instituting Investigation (OII) directs the Respondents and Interested Parties to file the documents and information identified below.

Definitions

Unless stated otherwise here, the definitions applicable to these data requests shall be those used in the FCC data requests to Respondents found at http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0527/DOC-306888A2.pdf and http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0527/DOC-306890A2.pdf.

1. "AT&T" means AT&T Inc., its parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing, and most particularly its California wireless affiliate, New Cingular Wireless LLC, as set forth in the OII. The terms "parent", "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (10 percent or more) or total ownership or control between the company and any other person.

2. "T-Mobile" means T-Mobile USA, Inc., Deutsche Telkom AG, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing, and most particularly its California affiliate T-Mobile West Corporation. The terms "parents", "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (10 percent or more) or total ownership or control between Deutsche Telekom and any other person.

3. "You" means Respondents and Interested Parties, and each of them (limited only to the extent indicated in the following requests).

4. "Merger" and "Merger Application" shall refer to the proposed acquisition by AT&T Inc. of all of the issued and outstanding shares in T-Mobile USA, Inc., as reflected in AT&T's Application in WT Docket No. 11-65 at the FCC.

5. "Wireless service" refers to Commercial Mobile Radio Services (CMRS).

Instructions

Unless stated otherwise here, the instructions applicable to these data requests shall be those used in the FCC data requests to Respondents found at the FCC web pages cited above.

File responses to both information and document requests as directed in the OII. Information and documents may be filed under seal, as directed in the OII.

All written materials necessary to understand any document or information responsive to these requests shall also be filed.

Respondents AT&T and T-Mobile are asked to respond separately to data requests propounded "To Respondents and their Affiliates," unless specifically directed to one or the other.

If you believe any of these requests are unclear, you may contact Bill Johnston in the Communications Division (wej@cpuc.ca.gov). Communications Division may clarify the requests if appropriate.

To AT&T and T-Mobile

1. Provide corporate organization charts, indicating the relationship of the California Respondents herein, respectively, to the larger AT&T and T-Mobile corporate families, and particularly disclosing any corporate affiliates active in providing service to California customers.
2. What California utility(ies) would own, operate and control the merged wireless facilities and operations in California?
3. Provide executed exemplars of all forms of contract, and all tariff pages whether federal or intrastate, used with regard to California special access

or backhaul facilities which AT&T sells or leases or otherwise provides to T-Mobile (currently), and Interested Parties Sprint, MetroPCS, and Cricket, in California.

a. (For AT&T alone) Building on your response to Staff's previous Data Request 8(b)(i), provide for the most recent month available the total number of DS1, DS3, and any other backhaul for wireless services provided by AT&T for channel terminations in service in California, and identify the type of backhaul involved (DS1, DS3, other), as well as the total numbers billed at intrastate and interstate rates.

b. Provide a clear description, including the range of rates and the average rate, for DS1 and DS3 channel terminations (non-recurring - first and additional, and recurring charges, etc.) and DS1 and DS3 channel mileage (rates per mile, by fixed mileage, etc.) charges offered by AT&T for wireless backhaul service:

    i. charged to AT&T affiliates (if any);

    ii. charged to Verizon affiliates;

    iii. charged to Sprint, MetroPCS, and Cricket; and

    iv. charged to T-Mobile.

c. (For T-Mobile Only) Provide, as of the date of this Request, the total number of California cell sites where T-Mobile purchases its backhaul capacity (i) individually; (ii) on a shared basis with AT&T; and (iii) on a shared basis with a mobile wireless service provider other than AT&T. Please provide all standard forms of contract, other contracts, and/or tariffs which provide the terms, conditions, and rates for such purchases.

4. Regarding manufacturers from which you currently obtain handsets used on your networks:

a. Provide by manufacturer and percent the distribution of wireless handsets (including smart devices) currently used on your networks. In addition to national figures, please provide data (or your best estimate) identifying by manufacturer and percent the distribution of wireless handsets on your California network.

b. State your current policy with regard to "the Apps Store" as it relates to the Android handset – specifically, do you and will you continue to allow consumers to download independent or unaffiliated applications onto devices designed to allow such downloads?

   i. (For AT&T only) Provide an official policy statement or statements from AT&T regarding the accessibility of third party applications, like those of the Amazon App Store (see http://www.wired.com/gadgetlab/2011/05/att-sideload-android-amazon/), for Android devices on AT&T's system.

5. Provide a status report on the construction of, or plans for construction of, distributed antenna systems (DAS) in California. Provide any agreements or other documentation of any understanding between you, or either of you (AT&T, T-Mobile), and any California municipality or other public body regarding the construction of DAS or O-DAS systems. Provide a clear description and drawings or other visualizations that would facilitate understanding of your DAS plans and operations in California, and indicate how and on what terms it will be open to other carriers, if at all.

To Respondents and All Interested Parties

6. Provide your best estimate of the market share of Respondents, MetroPCS, Sprint, Cricket and other wireless telephone providers in California, and do so on a state-wide basis, as well as providing such a market share analysis for each major metropolitan area in the State (see Appendix A to the AT&T merger "Public Interest Statement" filed at the FCC).

7. With regard to the Appendix A to the AT&T merger "Public Interest Statement" filed at the FCC (see http://fjallfoss.fcc.gov/ecfs/document/view?id=7021240429), state separately the total Cellular, PCS, 700 MHZ AWS and otherwise described

spectrum which you own, hold, or otherwise control in each of the California markets identified in the above-referenced FCC Appendix A, what you believe to be the total spectrum available for wireless transmission in those markets, and spectrum known by you to be owned, held or otherwise controlled by those wireless carriers today.

a. (For AT&T only) Identify the spectrum you propose to acquire from T-Mobile and Qualcomm in California.

8. Provide your view of the spectrum efficiencies, if any, that will be obtained by the proposed acquisition by AT&T of T-Mobile's spectrum and operations.

   a. What other merger-specific and verifiable efficiencies would likely be realized by the merger?

   b. Is AT&T using the spectrum it now has? Does it have concrete plans to build out the spectrum licensed to it?

   c. If AT&T acquires the Qualcomm spectrum, as it has proposed(http://transition.fcc.gov/transaction/att-qualcomm.html), how would these combined spectrum holdings, if approved, affect AT&T's wireless service, competition, and the California market? Specifically, how does this Qualcomm spectrum compare to AT&T's current spectrum holdings in the State and/or nation? How does it compare to the spectrum licenses AT&T would acquire from T-Mobile USA were the transaction approved as proposed? How would this additional spectrum from Qualcomm be utilized to deploy LTE? What additional capabilities would the Qualcomm spectrum provide the merged entity that would not be provided by the acquisition of the T-Mobile USA licenses?

      i. Is the acquisition of both the Qualcomm and T-Mobile spectrum necessary to achieve the efficiencies and public interest benefits that AT&T hopes will result from the merger?

9. Would the merger, which is planned as a nationwide transaction, have specific or different effects in California? For example, would the merger result in less competition in the California marketplace for wireless telephone customers?

10. How should the relevant market(s) be defined? How should the product market (or markets) be defined, as wireless telephone carriers, as smart phone carriers, or some other way? How should the relevant geographic

market (or markets) be defined? Locally according to carriers available to consumers in a locality, regionally, by state, nationally, or some combination of these? Provide citations to studies that exemplify the kind of market analysis that addresses the above,

11. Would the merger give the resulting entity monopsony power or increase the tendency to monopsony power including market power over equipment suppliers? If yes, then what impact would the merger have on choice and competition in handsets and related equipment?
12. Would innovation be promoted or constrained by the merger?
    a. For example, would the merger increase, maintain or diminish facilities and competition for wireless transmission services such as distributed antenna systems (DAS) and open distributed antenna systems (O-DAS)?
    b. How would the merger affect handset competition and innovation?
13. What impact would the merger have on the market for special access or backhaul services?
    a. What alternatives to incumbents' special access backhaul facilities currently exist, and what alternatives would exist after the merger, for independent, competitive wireless carriers?
    b. Would the smaller post-merger pool of independent, competitive wireless carriers purchasing special access backhaul from local exchange carriers affect the market power of those special access backhaul customers? Would the merger increase the market power of the local exchange carriers and/or their wireless affiliates with respect to special access backhaul services?
    c. Would the merger increase the ability of the merging parties to impose exclusive or requirements contracts on purchasers of backhaul services? Would the merger increase the ability of the merging parties or their wireline affiliates to require that the entity seeking backhaul services buy a certain percentage of their backhaul services from the wireline affiliates of the merging parties?

14. What affect, if any, might the merger have on roaming agreements and arrangements between AT&T and other wireless carriers?

To AT&T, Verizon California, Inc., and Verizon Wireless

15. Describe and provide all documents comprising any agreement or understanding, written or oral, in effect between either Verizon Wireless and/or Verizon Communications Inc., and AT&T or T-Mobile, as of the date of this Request, in which either has any preferential rights, including rights of first refusal or lower rates, on collocation on or backhaul provided by the other to cell sites.

To Interested Parties Sprint, Cricket, Metro PCS

16. Provide executed exemplars of all forms of contract, and all tariff pages whether federal or intrastate, used with regard to California special access or backhaul facilities which you purchase or lease or otherwise obtain from AT&T in California.

    a. Provide for the most recent month available the total number of DS1, DS3, and any other channel termination backhaul services provided to your company by AT&T for channel terminations in California, and identify the type of backhaul involved (DS1, DS3, other), as well as the total numbers of such facilities billed at intrastate and interstate rates.

    b. Provide your understanding of AT&T's special access offerings for wireless backhaul including the range of rates, and the average rate, for channel termination (first, non-recurring, and recurring charges, etc.) and channel mileage (rates per mile, by fixed mileage, etc.).

    c. Provide contracts and tariff pages, and an explanation similar to the one requested above, for Verizon special access offerings, to the extent they differ materially from those offered by AT&T.

17. If you believe that the merger will lead to increased market concentration in California, should the Commission consider and propose or impose conditions to prevent significant adverse consequences which may result from the merger? What, if any, should those conditions be?

(END OF APPENDIX A)

APPENDIX B

INITIAL DATA REQUESTS PROPOUNDED BY COMMUNICATIONS DIVISION

I. Data Requests to AT&T/T-Mobile

1) Subscribers

a. Please provide current and respective customer counts in California for each Merging Party.

b. How many of these current customers, respectively, reside in the Sacramento, San Francisco, Los Angeles, and San Diego markets.

c. Please identify the total telephone numbers with a California NPA currently assigned to each company, and the total telephone numbers with a California NPA currently in use by each company's subscribers.

2) Service Plans

Please confirm that existing T-Mobile customers will retain their existing service/ plan/ rates, as stated in your May 3, 2011, letter to CPUC.

a. With regard to that commitment, please provide the following information:

i. For how long will customers be able to keep existing service/plan/rates?

ii. For how long are Merging Parties willing to commit to offer existing service/plan/rates:

1. For existing customers?

2. For new customers?

iii. What will trigger a new plan/ pricing/ handset requirement for existing customers?

iv. Will existing customers be allowed to switch between current T-Mobile service plans post-merger or will any change require an AT&T plan?

b. Please provide your proposed schedule for transitioning customers from T-Mobile to AT&T customer service, or otherwise arranging for the following aspects of customer service:

i. Billing

ii. Customer information and technical support

iii. Handset support

3) Cell Towers/Sites

a. How many cell sites or cell towers (as those terms are used in your "Public Interest Statement" at the FCC) are currently operated by each Merging Party in California?

i. Please identify any distinction between the two terms as used in the Public Interest Statement.

b. How many cell sites or cell towers does each Merging Party have budgeted to build and activate in California in the next twelve months?

c. How many total cell sites or cell towers will the merged-entity operate in California should this merger be approved?

d. Please provide current and planned cell tower locations for each Merging Party in California via shapefile and/ or list of Lat/Long points.

4) Spectrum

a. Please identify, by type (700 MHz, Cellular/850 MHz, PCS/GSM, or ASW, etc.), and specific geographic location within California, all spectrum currently owned or controlled by each Merging Party in California.

b. Of the spectrum identified in "a" above, please identify the portion of same that is currently being utilized by each Merging Party to provide wireless service to paying customers in California.

c. Of the spectrum identified in "a" above, please identify how it is to be used in the next three years

   i. If merger is approved; and

   ii. If merger is not approved.

5) Long Term Evolution 4G

Transition to 4G LTE:

a. Please define 4G LTE as each of the merging parties intends to provide it in California, and its roll-out to California subscribers,

   i. If the merger is approved; and

   ii. If the merger is not approved.

b. What is the proposed timing for LTE roll-out in California, assuming the merger is approved?

c. Provide a schedule of roll out within California, showing quarterly projections for build-out, with geographical specificity. This specificity may be provided by reference to Sales Region, Metropolitan Statistical Area (MSA), principal service area, or other meaningful and specific geographical category.

d. How long will existing 3G & 4G T-Mobile plans be supported?

e. Will T-Mobile's 4G offering remain available to its current customers and to new customers?

f. For how long?

g. For current 3G and T-Mobile 4G customers, how will the migration to AT&T's 4G ***LTE*** be handled?

   i. Is there a timeframe for this transition?

   ii. Is this LTE transition's timing different for AT&T customers and existing T-Mobile customers?

   iii. Will existing T-Mobile customers receive any additional consideration or discount on the new plans and/or handsets with the merged entity during this LTE transition?

   iv. Will the LTE migration trigger new service contracts and offerings, and/or extension of existing contracts and offerings?

6) Customer service

a. Do Merging Parties have plans to increase call center employees/hours to accommodate concerns/questions regarding this merger, if approved?

   i. What do these plans entail?

b. Please provide the following information regarding retail stores and locations:

   i. How many stores, storefronts, or other points of face-to-face sales do each of Merging Parties currently have in California?

ii. How many of these stores will be closed after the merger? On what schedule?

iii. What is the intended signage for the remaining stores?

c. Changes to Service

i. What changes to service, if any, should T-Mobile customers expect?

ii. What changes to service, if any, should AT&T customers expect?

iii. Are there any anticipated disruptions in service for either customer group during the merger/ system integration?

iv. What are your plans to implement and monitor integration of the two Merging Parties' service?

d. How will customers be notified of this merger and changes to their service? Please describe detailed plan explanation for each of the following:

i. Bill inserts? What about those who receive bills electronically?

ii. Information on websites?

iii. Advertising?

iv. What other outreach be done in California?

7) Employment

a. How many employees does each Merging Party currently have in California?

b. How many of these employee positions will be terminated or otherwise eliminated in California?

c. What is the anticipated net change in your total employee numbers for the merged entity in California?

d. Please provide national figures in each of these categories.

8) **Special Access and other Wholesale Services** Provided to Competitors

a. What number and percent of T-Mobile's California cell sites are currently serviced by AT&T special access lines or other backhaul facilities? As used herein, "special access" refers to any telecommunications transport facilities provided by AT&T – whether denominated as special access, transport, backhaul, middle mile or other terminology – used by a cell site or cell tower operator to connect to a central office and/or the public telephone network.

   i. Of the total aggregate number, please identify how many are T1, DS1, DS3, or other types of transport.

b. What number and percent of AT&T's California cell sites are currently serviced by AT&T special access lines?

   i. Of the total aggregate number, please identify how many are T1, DS1, DS3, or other types of transport.

   ii. What entities provide special access backhaul for the remainder of AT&T's California cell sites or cell towers?

c. Please provide the number of cell towers owned or operated by each of AT&T's California competitors (excluding T-Mobile) which are serviced by AT&T special access lines.

   i. If you contend these entities may assert confidentiality claims with regard to these numbers, please affirm, if possible, that Merging Parties have no objection to the production of this information

ii. On an aggregate basis, how many of AT&T's current competitors' cell towers are serviced by ATT special access lines?

d. Have AT&T's wireless competitors complained to AT&T regarding the price or service quality of AT&T special access lines?

1. Please provide the total number of complaints received by AT&T over the last three years from its wireless competitors, regarding the price or quality of AT&T special access lines.

2. Please produce any complaints publicly filed by AT&T's wireless competitors at the FCC or this Commission relating to provision of special access services, backhaul, or interconnection generally.

9) Early Termination Fees

a. For each of the merging parties, please state the current early termination policy and fee schedule.

b. What will be the early termination policy and fee schedule for the merged entity?

c. Will T-Mobile subscribers be able to leave their contracts without penalty prior to the merger being approved and after the merger is approved, given the change of ownership?

d. Does the change of control entailed in the merger constitute a *material change* such that service contracts are automatically suspended?

e. Will T-Mobile subscribers be treated differently than AT&T Mobility subscribers with respect to Early Termination Fees? If so, how?

10) Market Concentration

a. Please provide the definition the merging entities are using to define the market for analysis of the merged company's market share, market power, and market concentration in the expected antitrust analysis.

b. Using available data, please provide the pre- and post-merger Herfindahl-Hirschman Index (HHI) of market concentration for the wireless voice and data markets in California and nationally and for the total telecommunications market.

c. Please provide the pre- and post-merger HHI in California and nationally for the combined wireless and wireline communications market, including cable companies.

II. Data Requests to Sprint

DATA REQUEST 1-S:

1. How many cell sites/towers does Sprint Nextel currently have in California?
2. How many cell sites/towers does Sprint Nextel plan to activate in California over the next 12 months?
3. How many of these cell towers/sites are served by AT&T special access or other backhaul facilities from AT&T? How many are served by Verizon?
4. Please provide any correspondence or complaints made by Sprint with regard to AT&T's special access lines, at the FCC, this Commission, or elsewhere.

III. Data Requests to Verizon

DATA REQUEST 1-V:

1. How many cell sites/towers does Verizon Wireless currently have in California?
2. How many cell sites/towers does Verizon Wireless plan to activate in California over the next 12 months?

3. How many of these cell towers/sites are served by AT&T special access or other backhaul facilities from AT&T? How many are self-provisioned by Verizon? How many by other special access/backhaul providers?

(END OF APPENDIX B)

APPENDIX C

Protective Order

Investigation 11-06-XXX

1. In this Protective Order, we adopt procedures to limit access to confidential information that may be filed in this proceeding. We anticipate that such information will be necessary to develop a complete record on which to base the Commission's decision and comments to the Federal Communications Commission. While we are mindful of its sensitive nature, we are also mindful of the right of the parties to participate in this proceeding in a meaningful way. We therefore will make such information available to parties[1] in this proceeding, but only pursuant to this Protective Order. We conclude that the procedures we adopt in this Protective Order give appropriate access to parties while protecting confidential information from improper disclosure, and that the procedures thereby serve the public interest.[2]

2. Definitions. As used herein, capitalized terms shall have the following meanings:

> "Acknowledgement" means the Acknowledgement of Confidentiality attached as Attachment 2 hereto.

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[1] Parties are determined pursuant to Rule 1.4 of the Commission's Rules of Practice and Procedure.

[2] This Protective Order does not constitute a resolution of the merits concerning whether any information submitted under the Protective Order would be released publicly by the Commission upon a proper request under the Freedom of Information Act (FOIA) or otherwise.

"Competitive Decision-Making" means that a person's activities, association, or relationship with any of its clients involve advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or a business relationship with the Submitting Party.

"Confidential Information" means information that a party (either the Submitting Party or the party who provided the information to the Submitting Party) reasonably claims to be confidential information and, if revealed, would place the company at an unfair business advantage.

"Counsel" means In-House Counsel and Outside Counsel of Record.

"Employee" means a person employed by a party to this proceeding or employed by an affiliated entity and who is actively engaged in the conduct of this proceeding, provided that such person is not involved in Competitive Decision-Making.

"Highly Confidential Information" means information that the Submitting Party has kept strictly confidential; that is subject to protection under the Freedom of Information Act; that the Submitting Party claims constitutes some of its most sensitive business data which, if released to competitors or those with whom the Submitting Party does business, would allow those persons to gain a significant advantage in the marketplace or in negotiations; and that is described in Attachment 1 to this Protective Order, as the same may be amended from time to time.

"In-House Counsel" means an attorney employed by a party to this proceeding or employed by an affiliated entity and who is actively engaged in the conduct of this proceeding, provided that such attorney is not involved in Competitive Decision-Making.

"Outside Counsel of Record" or "Outside Counsel" means the attorney(s), firm(s) of attorneys, or sole practitioner(s), as the case may be, representing a party in this proceeding, provided that such attorneys are not involved in Competitive Decision-Making. The term "Outside Counsel of Record" includes any attorney representing a non-

commercial party in this proceeding, provided that such attorney is not involved in Competitive Decision-Making.

"Outside Consultant" means a consultant or expert retained for the purpose of assisting Counsel or a party in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making. The term "Outside Consultant" includes any consultant or expert employed by a noncommercial party in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making.

"Redacted Confidential Document" means a copy of a Stamped Confidential Document where the Confidential Information has been redacted.

"Redacted Highly Confidential Document" means a copy of a Stamped Highly Confidential Document where the Highly Confidential Information has been redacted.

"Reviewing Representative" means a party or a party's Counsel, Employee or Outside Consultant who has obtained access to Stamped Confidential Documents or to Stamped Highly Confidential Documents pursuant to paragraphs 5, 6, or 8 of this Protective Order.

"Stamped Confidential Document" means any document, or any part thereof, that contains Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL INFORMATION -SUBJECT TO PROTECTIVE ORDER IN I.11-06-XXX." The term "document" means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person. By designating a document a "Stamped Confidential Document," a Submitting Party signifies and represents that it contains Confidential Information.

"Stamped Highly Confidential Document" means any document, or any part thereof, that contains Highly Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "HIGHLY CONFIDENTIAL INFORMATION -SUBJECT

TO PROTECTIVE ORDER IN I.11-06-XXX." The term "document" means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person. By designating a document a "Stamped Highly Confidential Document," a Submitting Party signifies and represents that it contains Highly Confidential Information.

"Submitting Party" means a party who files Confidential Information and/or Highly Confidential Information in the proceeding.

3. Submitting Party's Obligations in Designating Documents. By this Protective Order, the Commission has modified its standing procedures for the submission of information claimed to be confidential (Rule 11.4), due to the expedited nature of this proceeding. The Submitting Party is not required to file a motion for submission of information and documents under seal. However, the designation of any document or information as Confidential, Highly Confidential, or Additional Copying Prohibited (see below) shall constitute a representation by the Submitting Party, subject to the Commission's Rule 1.1, that the Confidential, Highly Confidential or Additional Copying Prohibited documents meet the requirements set forth herein for such designations.

4 Copying Sensitive Documents. If, in the reasonable judgment of the Submitting Party, a Stamped Confidential Document or Stamped Highly Confidential Document contains information so sensitive that copying of it should be restricted, the Submitting Party may mark the document with the legend "Additional Copying Prohibited." A party shall receive only one copy of the document and no further copies of such document, in any form, shall be made. Motions for relief from this restriction against further copying may be filed in the proceeding.

5. Procedure for Obtaining Access to Stamped Confidential Documents. Any person seeking access to Stamped Confidential Documents and Confidential Information shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of the Protective Order; and the party on whose behalf the person seeks such access shall file the Acknowledgment in the proceeding and electronically serve it pursuant to Rule 1.10 of the Commission's Rules of Practice and Procedure. Each Submitting Party may file an objection to the disclosure of its Stamped Confidential Documents or Confidential Information to any such person no later than three business days of the date that the Acknowledgment was filed. Until any such objection is resolved by the assigned Administrative Law Judge or a law and motion Administrative Law Judge, a person subject to an objection from a Submitting Party shall not have access to Stamped Confidential Documents or Confidential Information. The provisions of this paragraph shall not be construed to apply to the Commission or its staff.

6. Access to Stamped Highly Confidential Documents. Only a party's Outside Counsel of Record, Outside Consultants and experts whom they retain to assist them in this proceeding, and their Outside Counsel's and Outside Consultants' employees may access Stamped Highly Confidential Documents and Highly Confidential Information. Any person seeking access to Stamped Highly Confidential Documents and Highly Confidential Information shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of the Protective Order; and the party on whose behalf the person seeks such access shall file the Acknowledgment in the proceeding and electronically serve it pursuant to Rule 1.10 of the Commission's Rules of Practice and Procedure. Each Submitting Party may

file an objection to the disclosure of its Stamped Highly Confidential Documents or Highly Confidential Information to any such person no later than three business days of the date that the Acknowledgment was filed. Until any such objection is resolved by the assigned Administrative Law Judge or a law and motion Administrative Law Judge, a person subject to an objection from a Submitting Party shall not have access to Stamped Highly Confidential Documents or Highly Confidential Information. The provisions of this paragraph shall not be construed to apply to the Commission or its staff.

7. Use of Confidential Information and Highly Confidential Information. Persons obtaining access to Confidential Information (including Stamped Confidential Documents) or Highly Confidential Information (including Stamped Highly Confidential Documents) under this Protective Order shall use the information solely for the preparation and conduct of this proceeding before the Commission and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings. The provisions of this paragraph shall not be construed to apply to the Commission or its staff.

8. Permissible Disclosure. A Reviewing Representative may discuss and share the contents of the Stamped Confidential Documents, Confidential Information, Stamped Highly Confidential Documents, and Highly Confidential Information with another Reviewing Representative who has obtained access to such documents and with the Commission and its staff. A

Submitting Party's Stamped Confidential Documents, Confidential Information, Stamped Highly Confidential Documents, and Highly Confidential Information may also be disclosed to Employees and Counsel of the Submitting Party. Subject to the requirements of paragraphs 5 and 6, a Reviewing Representative may disclose Stamped Confidential Documents, Confidential Information, Stamped Highly Confidential Documents, or Highly Confidential Information to: (1) paralegals or other employees of such Reviewing Party assisting them in this proceeding; and (2) employees of third-party contractors involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to documents connected with this proceeding.

9. Filings with the Commission. A party may in any document that it files in this proceeding disclose Confidential Information or Highly Confidential Information only if it files the Confidential Information or Highly Confidential Information under seal.

10. Non-Disclosure of Stamped Confidential Documents and Stamped Highly Confidential Documents. Except with the prior written consent of the Submitting Party, or upon further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge, or a law and motion Administrative Law Judge, neither a Stamped Confidential Document nor any Confidential Information, nor a Stamped Highly Confidential Document, nor any Highly Confidential Information may be disclosed further.

11. Protection of Stamped Confidential Documents, Confidential Information, Stamped Highly Confidential Documents, and Highly Confidential Information. A Reviewing Representative shall have the obligation to ensure that access to Stamped Confidential Documents, Confidential Information, Stamped Highly Confidential Documents, and Highly Confidential Information is strictly limited as prescribed in this Protective Order. A Reviewing Representative shall further have the obligation to ensure that Stamped Confidential Documents, Confidential Information, Stamped Highly Confidential Documents, and Highly Confidential Information are used only as provided in this Protective Order.

12 Client Consultation. Nothing in this Protective Order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Stamped Confidential Documents, Confidential Information, Stamped Highly Confidential Documents, or Highly Confidential Information; provided, however, that in rendering such advice and otherwise communicating with such client, Counsel shall not disclose Stamped Confidential Documents, Confidential Information, Stamped Highly Confidential Documents, or Highly Confidential Information.

13. No Waiver of Confidentiality. Disclosure of Confidential Information or Highly Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information or Highly Confidential Information. Reviewing Representatives, by viewing this

material, agree: (1) not to assert any such waiver; (2) not to use Confidential Information or Highly Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential Information or Highly Confidential Information by a Submitting Party shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

14. Subpoena by Courts, Departments, or Agencies. If a court, or a federal or state department or agency issues a subpoena for or orders the production of Stamped Confidential Documents, Confidential Information, Stamped Highly Confidential Documents, or Highly Confidential Information that a party has obtained under terms of this Protective Order, such party shall promptly notify each Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document, Confidential Information, Stamped Highly Confidential Document, or Highly Confidential Information.

15. Violations of Protective Order. Should a Reviewing Representative violate any of the terms of this Protective Order, such Reviewing Representative shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Confidential Information or Highly Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate

sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel from practice before the Commission; forfeitures, cease and desist orders, and denial of further access to Confidential Information or Highly Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or in equity against any person using Confidential Information or Highly Confidential Information in a manner not authorized by this Protective Order.

16. Termination of Proceeding. The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, Reviewing Representatives shall destroy or return to the Submitting Party Stamped Confidential Documents and Stamped Highly Confidential Documents and all copies of the same. No material whatsoever derived from Stamped Confidential Documents or Stamped Highly Confidential Documents may be retained by any person having access thereto, except Counsel may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) prepared in whole or in part by that party that contain Confidential Information, and Outside Counsel may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) prepared in whole or in part by that party that contain Highly Confidential Information . All Counsel shall certify compliance with these terms and shall deliver such certification to Counsel for the Submitting Party not more than three weeks after conclusion of this proceeding. The

provisions of this paragraph regarding retention of Stamped Confidential Documents, Stamped Highly Confidential Documents, and copies of the same, and Confidential Information and Highly Confidential Information shall not be construed to apply to the Commission or its staff.

APPENDIX C, ATTACHMENT 1
Highly Confidential Information and Documents

As specified in this Protective Order, only information and documents set forth in this Attachment, and that otherwise meet the definition of Highly Confidential Information or Highly Confidential Documents may be designated as Highly Confidential. This Attachment will be updated as necessary.

1. Annex F to the Stock Purchase Agreement by and between Deutsche Telekom AG and AT&T Inc., dated as of March 20, 2011 (the "Stock Purchase Agreement").
2. Schedule 3.2q to the Seller Disclosure Letter, as that term is defined in the Stock Purchase Agreement, to the extent it discloses customer data disaggregated by local markets.
3. Schedule 4.16 to the Seller Disclosure Letter, to the extent it describes future business plans.
4. Schedules 4.6(b)(i) and 4.6(b)(ii) to the Purchaser Disclosure Letter, as that term is defined in the Stock Purchase Agreement.

APPENDIX C, ATTACHMENT 2
Acknowledgment of Confidentiality
Investigation 11-06-XXX

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, and I understand it. I agree that I am bound by the Protective Order and that I shall not disclose or use Stamped Confidential Documents, Confidential Information, Stamped Highly Confidential Documents, or Highly Confidential Information except as allowed by the Protective Order.

I acknowledge that a violation of the Protective Order is a violation of an order of the California Public Utilities Commission.

I certify that I am not involved in Competitive Decision-Making.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as a person described in paragraph 8 of the foregoing Protective Order and agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Stamped Confidential Documents and Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Protective Order.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Stamped Confidential Documents, Confidential Information, Stamped Highly Confidential Documents, and Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

[Fill in and initial the following as appropriate]: I certify that I seek access to Confidential Information, Stamped Confidential Documents, Highly Confidential Information, and/or Stamped Highly Confidential Documents on behalf of the following party: _____

and in the following role:

____ In-house Counsel or Employee of the party identified above, or a person described in paragraph 8 of the Protective Order, seeking access to Stamped Confidential Documents and Confidential Information only.

____ Outside Counsel or Outside Consultant retained by the party identified above, or a person described in paragraph 8 of the Protective Order, seeking access to Stamped Confidential Documents, Confidential Information, Stamped Highly Confidential Documents, and Highly Confidential Information.

Executed this ___ day of _____, 2011.

_____

[Name]

[Position and Company]

[Address]

[Telephone]

(END OF APPENDIX C)