Decision **DRAFT DECISION OF ALJ SULLIVAN** **(Mailed 9/20/2002)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Comcast Business Communications, Inc. (U-5380-C) for Approval of the Change of Control of Comcast Business Communications, Inc., That Will Occur Indirectly as a Result of the Placement of AT&T Broadband and Comcast Corporation Under a New Parent, AT&T Comcast Corporation.	Application 02-05-010 (Filed May 2, 2002)
In the Matter of the Application of AT&T Broadband Phone of California, LLC (U-5698-C) for Approval of the Change of Control of AT&T Broadband Phone of California, LLC That Will Occur Indirectly as a Result of the Placement of AT&T Broadband and Comcast Corporation Under a New Parent, AT&T Comcast Corporation.	Application 02-05-011 (Filed May 2, 2002)

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DECISION AUTHORIZING CHANGE IN CONTROL

1. Summary

We grant the applications of Comcast Business Communications (CBC) and AT&T Broadband Phone Company of California (AT&T Broadband Phone) for the changes in control that will result in the placement of both these companies under a new parent, AT&T Comcast Corporation (AT&T Comcast). We find that this transaction raises no concerns adverse to the public interest when examined against the public interest criteria enumerated in Pub. Util. Code § 854.[1] Further, the transaction raises no anti-trust or environmental issues. This merger will improve the financial fitness of AT&T Broadband Phone and that the executives of this company have attested to a continuing commitment to California telephony. Thus, the merger and change of control serve the public interest.

2. Background

Application (A.) 02-05-010 of CBC seeks approval of the change in control of CBC that will occur indirectly as a result of the placement of AT&T Broadband Phone and CBC under a new parent, AT&T Comcast. CBC serves approximately 75 customers in California.

Similarly, A.02-05-011 of AT&T Broadband Phone seeks approval of the change of control of AT&T Broadband Phone that will occur indirectly as a result of the placement of AT&T Broadband Phone and CBC under a new parent, AT&T Comcast. AT&T Broadband Phone serves approximately 145,000 customers in California.

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[1] All code section references are to the Public Utilities Code.

Resolution ALJ 176-3088 of May 16, 2002 preliminarily determined that these are ratemaking proceedings for which no hearings would prove necessary.

On June 7, 2002, The Utility Reform Network (TURN) and the Consumer Federation of America (CFA) filed a joint protest to these applications, stating that the proposed financial transaction "constitutes a major change in the status of the company and raises significant public policy issues."[2] The TURN-CFA joint protest states that although "the Commission is not required to conduct the public interest analysis contained in Sections 854(b) and 854(c) [of the Public Utilities Code], the Commission can (and should) still closely scrutinize the transaction using the elements from that public interest test."[3]

In addition, Qwest Communications Corporation (Qwest) filed a protest asking the Commission to order the applicants to serve testimony, permit discovery, and hold evidentiary hearings to resolve any disputed issues of fact. Qwest asked that the Commission "either deny the application, or grant the application subject to conditions to protect the public interest, including, but not limited to, requiring applicants to provide equal access to competitors to provide cable telephone and cable modem services over applicants' cable network facilities."[4]

On June 17, 2002, AT&T Broadband Phone and CBC (Applicants), filing separately, responded to the protests of Qwest and TURN-CFA. The responses asked that the Commission summarily dismiss the protests. The responses

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[2] TURN-CFA Protest, June 7, 2002, p. 1.

[3] *Ibid.*, p. 9.

[4] Qwest Protest June 7, 2002, p. 2.

argued that the protests raise issues not pertinent to the applications and that "the public interest requires rejection of the protests."[5]

On July 19, 2002, the Commission held a joint PHC to determine the next steps in these two proceedings. Discussions focused on the points made by parties in their protests and responses. Discussions also focused on the information needed to develop a scoping memo and a plan for managing a consolidated proceeding.

On August 8, 2002 Assigned Commissioner Peevey and ALJ Sullivan issued a "Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge" (Scoping Memo) affirming that this was a ratesetting case, refining the scope of the proceeding, consolidating the two applications, and establishing a timetable for resolving outstanding issues. In addition, the ruling ordered AT&T Broadband Phone and CBC to make a supplemental filing that demonstrated how the proposed application met the public interest criteria enumerated in Section 854. The ruling also established a schedule for parties to comment on this supplemental filing.

AT&T Broadband Phone and CBC filed and served a "Joint Supplement to Applications of Comcast Business Communications, Inc. and AT&T Broadband Phone of California, LLC." (Joint Supplement) on August 16, 2002. On August 23, 2002, the CFA and Qwest each filed a response to the Joint Supplement. (TURN did not file a response.) In addition, on August 23, consistent with Rule 8(d) of the Commission's Rules of Practice and Procedure, Qwest requested final oral argument in the above-captioned proceedings.

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[5] AT&T Broadband Telephone, Response, June 17, 2002, p. 10; also CBC, Response, June 17, 2002, p. 10.

On August 29, 2002 Qwest filed a "Motion for Leave to File a Supplemental Response to the Joint Supplemental Filing of Comcast Business Communications, Inc. and AT&T Broadband Phone of California, LLC" (Motion for Leave). Attached to the motion as exhibit C was the "Supplemental Response of Qwest Communications Corporation to the Joint Supplemental Filing of Comcast Business Communications, Inc. and AT&T Broadband Phone of California, LLC" (Supplemental Response). On September 5, AT&T Broadband Phone and CBC jointly filed a "Joint Opposition of Comcast Business Communications, Inc. and AT&T Broadband Phone of California, LLC to the Motion of Qwest Communications Corporation to File a Supplemental Response" (Joint Opposition).

3. The Corporate Entities and The Financial Transaction

The primary corporate entities involved in this financial transaction are AT&T Broadband Phone of California, LLC (U-5698-C) and Comcast Business Communications, Inc (U-5830-C), and AT&T Comcast Corporation (AT&T Comcast). The financial transaction is one that places AT&T Broadband Phone and CBC under the newly formed AT&T Comcast.

A. AT&T Broadband Phone

AT&T Broadband Phone, a California non-dominant interexchange carrier (NDIEC) and non-dominant competitive local exchange carrier (CLC), is the end result of the approved acquisition of TCI Telephony Services of California, Inc., dba People Link (TCI),[6] and MediaOne Group, Inc. (MediaOne)[7]

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[6] The Commission approved the acquisition of TCI in Decision (D.) 99-03-019 on March 4, 1999. Previously, TCI was authorized to provide CLC facilities-based and resale services by D.96-10-064 and interexchange (IXC) service by D.97-11-039.

by AT&T Corp and subsequent corporate name changes following each acquisition.[8]

AT&T Broadband Phone provides CLC service to approximately 145,000 customers in California. AT&T Broadband Phone operates in California as part of the AT&T Broadband Division of AT&T Corp., which is the parent of AT&T's cable TV services and separate from the traditional AT&T Consumer Services division and AT&T Business Services division.[9] AT&T Broadband will continue to be headquartered in Englewood, Colorado following the completion of this transaction.

AT&T Broadband is an operating division of AT&T Corp. (AT&T). AT&T is a New York Corporation, publicly traded on the New York Stock

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[7] The Commission approved the acquisition of MediaOne in D.00-05-023 on May 4, 2000. Previously, MediaOne was granted facilities-based CLC authority as Continental Telecommunications of California by D.95-12-057 and CLC resale authority by D.96-02-072 and IXC resale service by D.98-04-020.

[8] On February 1, 2001, AT&T filed with the California Secretary of State to change the TCI name to AT&T Broadband Phone of California, LLC and on April 8, 2001, AT&T filed Advice Letter (AL) 8 to change the name of TCI to AT&T Broadband Phone of California LLC. Similarly, on October 2, 2001, AT&T filed AL 86 to change the name of MediaOne to AT&T Broadband Phone of California, LLC. On February 7, 2002, AT&T filed AL 88 to revoke the MediaOne certificate of public convenience and necessity in recognition of the fact that MediaOne had been fully integrated into AT&T Broadband Phone.

[9] AT&T Consumer Services and AT&T Business Services also provide local exchange, Telephone service within a local access and transport area (intraLATA) toll and interLATA toll services within California through an AT&T wholly-owned subsidiary, AT&T Communications of California, Inc. This other company is not part of this financial transaction. The applicants state that it did not "provide any financial basis for the transaction and AT&T Communications of California, Inc. will continue to operate under the ownership of AT&T." (AT&T Broadband Phone, Application, p. 4, footnote 3).

Exchange, with headquarters at 32 Avenue of the Americas (Sixth Avenue), New York, New York. AT&T, on its own or through a number of subsidiaries, is authorized to provide domestic and international telecommunications services throughout the United States.

B. Comcast Business Communications, Inc. Comcast Corporation

CBC is a Pennsylvania corporation headquartered at 650 Centerton Road, Moorestown, New Jersey, and is a wholly-owned subsidiary of Comcast Business Communications Holdings, Inc. (Holdings), which, in turn, is a wholly-owned, indirect subsidiary of Comcast.[10] CBC is authorized to provide domestic and interstate international service by the Federal Communications Commission (FCC). CBC also is authorized to provide intrastate interexchange services in California and throughout the continental United States.[11] CBC currently serves approximately 4,000 primarily business customers nationwide. CBC does not actively market its services in California at this time and has fewer than 75 interexchange toll customers in California. Holdings, a Delaware corporation headquartered at 1500 Market Street, Philadelphia, Pennsylvania, is a holding company that is not actively engaged in business.

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[10] On August 24, 2001, Comcast and its subsidiaries notified the Commission of the *pro forma* transfer of control of CBC from Comcast Telephony Communications, Inc. (CTC) to Holdings. Prior to this restructuring of CBC's ownership, CBC's direct parent was CTC, and CTC's direct parent was Comcast. After the restructuring, CBC's direct parent became Holdings, and Holdings' direct parent remained Comcast. The ultimate owner of CBC has remained Comcast.

[11] Comcast Business Communications, Inc. (U-5830-C) acquired GlobalCom Telecommunications, Inc. pursuant to authority granted in D.97-12-070. Previously, the Commission granted a CPCN to GlobalCom to provide inter and intraLATA resale service in D.97-08-035.

Comcast is a publicly traded (NASDAQ) Pennsylvania corporation also located at 1500 Market Street, Philadelphia, Pennsylvania. Comcast is principally engaged in the development, management and operation of broadband cable networks. It is one of the country's largest cable operators with systems in 26 states serving 8.5 million customers. In California, Comcast provides cable services to approximately 41,450 customers, primarily in the Santa Maria/Lompoc area. Although Comcast is a publicly traded corporation, approximately 86.7% of the voting power of Comcast is held by Sural LLC, which is controlled by Brian Roberts, President of Comcast. Sural LLC holds approximately 2.86% of the total equity of Comcast, but its shares have enhanced voting rights.

C. AT&T Comcast Corporation

AT&T Comcast Corporation is a Pennsylvania corporation that will be headquartered at 1500 Market Street, Philadelphia, Pennsylvania. AT&T Comcast is currently a shell company owned equally by AT&T Corp. and Comcast and, upon completion of the contemplated transaction, will be the publicly traded holding company for the businesses of Comcast and AT&T Broadband Corporation, a newly-formed Delaware corporation, to which AT&T will spin off its broadband business.

D. Description of Financial Transaction Transferring Control

Comcast and AT&T Corp. plan to place their broadband businesses under a new common ultimate parent company by taking the following steps:

1. AT&T Corp. will contribute the assets of its AT&T Broadband division, including AT&T Broadband Phone, to a new, wholly owned holding company, AT&T Broadband Corporation.

2. AT&T Corp. will then spin off AT&T Broadband Corp. to the shareholders of AT&T Corp.
3. Immediately following this spin off, Comcast and AT&T Broadband Corp. will merge into different, wholly-owned subsidiaries of AT&T Comcast Corporation. (Comcast will merge with Comcast Acquisition Corporation, a newly formed wholly-owned "shell" subsidiary of AT&T Comcast, with Comcast as the surviving entity.)
4. Following these steps, AT&T Comcast will be the corporate parent of AT&T Broadband Corp. and Comcast, which then will be wholly-owned "brother/sister" subsidiaries of AT&T Comcast.

At the time of the closing, Comcast and AT&T Corp. shareholders will exchange their shares in the respective companies for shares in AT&T Comcast, which will become a publicly traded company.[12]

More specifically, upon consummation of the merger, each Comcast stockholder will receive one share of the corresponding class of AT&T Comcast stock for each share of Comcast stock. Each AT&T Broadband Corp. stockholder will receive approximately 0.34 shares of AT&T Comcast stock for each AT&T Broadband Corp. share, subject to adjustment as provided in the Agreement. Current AT&T Corp. stockholders will own approximately 53% of AT&T Comcast's economic interest and, depending on which of two alternative capital structures is implemented according to the terms of the Agreement, either 58% or

[12] The applicants presently contemplate that AT&T Comcast may form a wholly-owned limited liability company to hold the stork of AT&T Broadband Corp. This step, which the applicants believe may be "needed to facilitate financing," (Application of AT&T, p. 8, footnote 7.) would follow the closing of the financial transaction. The applicants seek Commission seek approval of this possible intracorporate change, which they describe as "*pro forma*" (Application of AT&T, p. 8, footnote 7.),

54% of AT&T Comcast's voting power. Comcast stockholders will own approximately 41% of AT&T Comcast's economic interest and, depending on which of the alternative capital structures is implemented, either 3.4% or 7.4% of AT&T Comcast's voting power.[13] Sural LLC will hold approximately a 33% voting interest that is non-dilutable and a 1% economic interest in AT&T Comcast.

The proposed transaction will result in a change in the ultimate owner of AT&T Broadband Phone, but will not involve a change in the manner in which AT&T Broadband Phone currently provides service to its California customers. The services currently provided by AT&T Broadband Phone will continue to be offered immediately following the merger pursuant to tariffs currently on file with the Commission. Moreover, following the change, the applicants anticipate that AT&T Broadband Phone will continue to be led by a team of qualified managers that includes existing AT&T Broadband Phone personnel.

As mentioned above, upon completion of the transaction, CBC will also be a wholly-owned indirect subsidiary of Comcast. Once again, the change in CBC's ultimate control does not involve a change of its operating authority and therefore will not affect the identity of the certified subsidiary providing services

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[13] The applicants note that AT&T Comcast will have one of two capital structures upon completion of the transaction: a "Preferred Structure" that will be implemented if the holders of the Comcast Class A common stock, voting as a single class, approve the Preferred Structure, or an "Alternative Structure" that will be implemented if they do not. If the Preferred Structure is implemented, current AT&T Corp. stockholders will own 58% of AT&T Comcast's voting power. If the Alternative Structure is implemented, AT&T Corp. stockholders will own 54% of AT&T Comcast's voting power.

in California, CBC, or the rates, terms and conditions under which services are currently being provided in California.

4. Jurisdiction and Scope of Proceeding

Applicants filed this application pursuant to § 854 and Rule 35 of the Commission's Rules of Practice and Procedure (Rules). Section 854 precludes any person or corporation from transferring the control of any public utility organized and doing business in the state without first securing authorization to do so from this Commission. Rule 35 sets forth the information needed to be included in an application seeking authority to merge public utility facilities.

Concerning the applicable statutes that control our investigation, no party disputes that § 854(a) applies. Parties, however, dispute what constitutes an appropriate showing of compliance with § 854(a), and whether AT&T has made such a showing.

Section 854(a) is a general statute that simply requires pre-approval of changes of control by the Commission. The primary question to be determined in a transfer of control proceeding is how the transaction affects the public interest. Questions relating to public convenience and necessity usually are not relevant to the transfer proceeding because they were determined in the proceeding in which the certificate was granted.[14]

Over time, the Commission has used its discretion in different ways in reviewing mergers. In D.70829, the Commission approved a transfer of control once determining that the transaction "would not be adverse to the public

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[14] M. Lee (Radio Paging Company), 65 CPUC 635, 637 (1966).

interest."[15] Historically, the Commission has sought more broadly to determine whether a change in control is in the public interest:

> "The Commission is primarily concerned with the question of whether or not the transfer of this property from one ownership to another...will serve the best interests of the public. To determine this, consideration must be given to whether or not the proposed transfer will better service conditions, effect economies in expenditures and efficiencies in operation."[16]

D.97-07-060 notes that over the years, our decisions have identified a number of factors that should be considered in making the determination of whether a transaction will be adverse to the public interest.[17] More recently, D.00-06-079 provides an overview of these factors:

> "Antitrust considerations are also relevant to our consideration of the public interest.[18] In transfer applications we require an applicant to demonstrate that the proposed utility operation will be economically and financially feasible.[19] Part of this analysis is a consideration of the price to be paid considering the value to both the seller and buyer.[20] We have also considered efficiencies and operating costs savings that should result from the proposed merger.[21]

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15 *Ibid.*, Finding of Fact 3, 645.

16 Union Water Co. of California, 19 CRRC 199, 202 (1920) at 200.

17 1997 Cal PUC LEXIS 557 *22-25.

18 65 CPUC at 637, n.1.

19 R. L. Mohr (Advanced Electronics), 69 CPUC 275, 277 (1969). See also, Santa Barbara Cellular, Inc. 32 CPUC2d 478 (1989).

20 Union Water Co. of California, 19 CRRC 199, 202 (1920).

21 Southern Counties Gas Co. of California, 70 CPUC 836, 837 (1970).

> Another factor is whether a merger will produce a broader base for financing with more resultant flexibility.[22]
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> "We have also ascertained whether the new owner is experienced, financially responsible, and adequately equipped to continue the business sought to be acquired. [23] We also look to the technical and managerial competence of the acquiring entity to assure customers of the continuance of the kind and quality of service they have experienced in the past.[24]"[25]

Subsequently, D.00-06-079 assessed the proposed transaction against the seven criteria identified in § 854(c),[26] and included a broad discussion of antitrust and environmental considerations.[27] We therefore conclude that a consideration of these factors constitutes the appropriate scope of this proceeding.

Both protests make the point that the applicants should have presented a record consistent with the criteria in § 854(c) and prior Commission decisions,

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[22] Southern California Gas Co. of California, 74 CPUC 30, 50, modified on other grounds, 74 CPUC 259 (1972).

[23] City Transfer and Storage Co., 46 CRRC 5, 7 (1945).

[24] Communications Industries, Inc. 13 CPUC2d 595, 598 (1993).

[25] D.00-06-079 (2000 Cal PUC LEXIS 645, *17-*20), footnotes included.

[26] Public interest factors enumerated under this code section are whether the merger will" (1) maintain or improve the financial condition of the resulting public utility doing business in California; (2) maintain or improve the quality of service to California ratepayers; (3) maintain or improve the quality of management of the resulting utility doing business in California; (4) be fair and reasonable to the affected utility employees; (5) be fair and reasonable to a majority of the utility shareholders; (6) be beneficial on an overall basis to state and local economies and communities in the area served by the resulting public utility; and (7) preserve the jurisdiction of the Commission and our capacity to effectively regulate and audit public utility operations in California."

[27] D.00-06-079 (2000 Cal. PUC LEXIS 645, *17-*38); see also D.01-06-007 (2001 Cal. PUC LEXIS 390 *25-*26) for a similar list of factors.

but have not yet done so.[28] The Assigned Commissioner and the ALJ concurred with the protests and, as mentioned above, the Scoping Memo required the applicants to supplement their applications with submissions that explicitly use the Commission accepted criteria to show that the proposed transaction serves the public interest. In addition, the Scoping memo established a schedule that permits parties to this proceeding to reply to the new submissions.

5. Do the Proposed Transactions Meet the Public Interest Tests Contained in § 854(c)?

As set out in the Scoping Memo and D.00-06-079, the public interest tests contained in §854(c) concerning the proposed transaction are quite specific. The statute asks whether the change in control in the parent company as proposed by AT&T Broadband Phone and CBC will:

A. Maintain or improve the financial condition of the resulting public utilities doing business in California?

B. Maintain or improve the quality of service to California ratepayers?

C. Maintain or improve the quality of management of the resulting utility doing business in California?

D. Be fair and reasonable to the affected utility employees?

E. Be fair and reasonable to a majority of the utility shareholders?

F. Be beneficial on an overall basis to state and local economies and communities in the area served by the resulting public utility? And

G. Preserve the jurisdiction of the Commission and its capacity to effectively regulate and audit public utility operations in California?

[28] TURN-CFA, Protest, pp. 9-10; Qwest, Protest, pp. 4-5.

Finally, the Commission must consider the anti-trust implications of the applications as well as any environmental impacts.

A. Will the Change of Control Maintain or Improve the Financial Condition of the Resulting Utilities Doing Business in California?

1. Position of Parties

The applicants note that both CBC and AT&T Broadband Phone have provided copies of 10-K reports and an AT&T Comcast *Pro Forma* Financial Statement. These indicate that Comcast had a ratio of debt to 2001 operating cash flow of less than 4 to 1, compared to AT&T Broadband's ratio of over 8 to 1. After the merger, the applicants estimate that the first year combined debt to operating cash flow of less than 5 to 1.[29] Similarly, the applicants point out that Comcast is "currently generating high 'free cash flow' from its operations."[30] The applicants state that these financial results "constitute significant benefits to California customers."[31] In particular, the applicants note that the improved financial condition will make it easier from AT&T Broadband Phone to "continue and expand its service in California."[32]

In addition to the improvements in cash flow statements, the applicants also anticipate that the "parent company merger should result in synergies and efficiencies worth approximately $1.25 to $1.95 billion a year. . ."[33] In support of this statement, the applicants attach a Declaration of Robert Pick,

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[29] AT&T Broadband Phone, Application, p. 12.

[30] Joint Supplement, p. 8.

[31] *Ibid.*

[32] *Ibid.*

[33] *Ibid.*, p. 9.

Comcast Senior Vice President of Corporate Development. In addition, he testified that AT&T Comcast should generate "an additional $600 to $800 million . . . annually by providing cable telephony in Comcast's former service areas."[34]

In its protest, Qwest does not contest that the application will improve the financial condition of AT&T Broadband Phone, but Qwest points out "Comcast's financial condition will worsen."[35] Moreover, Qwest states that AT&T's financial position is weak, and cites recent actions by Moody's Investor Services and Fitch Ratings to downgrade AT&T long-term debt.

Similarly, TURN-CFA argue that the "acquisition price is high" and that the "debt load is heavy."[36] They conclude that the new entity's need to increase cash flow will be severe.

2. Discussion: Transaction Will Create an Important California Operator with Strong Finances

There is no doubt that AT&T Broadband Phone will emerge from this merger with greater financial strength and a greater ability to meet the financial demands needed to expand its California operations. The applicants' demonstration that the ratio of debt to operating cash flow changes from 8 to 1 from 5 to 1 incontrovertibly demonstrates the greater strength of AT&T Broadband Phone. In addition, the promised operating efficiencies and economies of scope and scale will make AT&T Comcast a fitter California operator than AT&T Corp.

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[34] *Ibid.*

[35] Qwest, Protest, p. 5.

[36] TURN-CFA, Protest, p. 4.

Qwest's observation that Comcast will have a weaker financial ability to operate in California is not evidence that shows that the transaction is adverse to the public interest. Although Qwest rightly points out that the ratio of debt to operating cash flow for Comcast erodes from 4 to 1 to about 5 to 1, this erosion is less significant than the improvement of the ratio of the new parent of AT&T Broadband Phone, which improves from 8 to1 to 5 to 1. Further, we note that it is AT&T Broadband Phone (with 145,000 customers in California to CBC's 75 California customers) that has the stronger California presence. CBC, despite its stronger financial ratios, has declined to operate in California's telephony market in a significant way. Thus, we conclude that a principal result of this merger is to strengthen the finances of a principal California provider of telephony services.

Finally, the TURN-CFA argument that the acquisition price is too high and that the debt is heavy is not convincing. The applicants have shown, and TURN-CFA does not contest, that the underlying financial ratios remain strong.

In conclusion, the proposed transaction strengthens the ability of the resulting utilities to provide competitive telecommunications services in California.

B. Will the Merger of the Parent Companies and the Change of Control Maintain or Improve the Quality of Service to California Ratepayers?

1. Position of Parties

The applicants argue that "a purpose of the merger of the parent companies is to obtain the financial flexibility to grow the telephony business."[37] In particular, the applicants submitted a declaration of Gregory Braden, Executive Vice President for Strategy and Business Development for AT&T Broadband that notes that nationally AT&T Broadband has over 1.15 million cable telephony customers and is adding 40,000 customers per month. This strong growth, however, "will continue to need financial support."[38] Thus, the applicants note that this continued expansion of telephony services is facilitated by the financial benefits offered by the merger.

Concerning the day-to-day delivery of service to customers, the applicants note that they "only seek a change of control of their ultimate parent companies."[39] Moreover, the applicants point out that it is "AT&T Broadband that has developed the necessary experience and expertise to deploy efficiently cable telephony services. . ."[40] These assets will move into the new company. Because of these actions, the applicants argue that "California customers will continue to receive the high quality service they now enjoy. . . "[41]

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[37] Joint Supplement, p. 9.

[38] *Ibid.*, p. 8.

[39] *Ibid.*, p. 10.

[40] *Ibid.*

[41] *Ibid.*

Qwest argues that Comcast will clearly have a weaker financial position and that this deserves investigation. In addition, Qwest urges that the Commission "investigate whether the newly formed AT&T Comcast's financial condition will, in fact, as the applicants claim, allow for expanded deployment of cable telephony and cable modem services."[42] Further, Qwest raises the possibility that "Comcast, which has not made any substantial investment in cable telephony, might, upon consummation of the transaction, exercise its substantial voting power in the newly formed AT&T Comcast to slow AT&T's broadband rollout."[43]

2. Discussion: Merger Will Have Positive Effects on Service Quality, if Any

We find that the merger will have positive effects on service quality, if any. First, all of software systems providing services to AT&T Broadband Telephone's customers will remain in AT&T Broadband Telephone. Thus, the merger and change of control should have no impact on these systems that serve customers. Second, the merger strengthens the financial picture of AT&T Broadband Telephone. The additional financial resources make it possible to improve telephony services. Third, CBC provides almost no service to Californians, and its change in ownership will have no effect on California customers. Fourth, there is no credible allegation that this financial transaction will lead to a diminution or deterioration of telephony service in California. Qwest's speculation that the new company may abandon telephony is no more

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[42] Qwest, Protest, p. 6.

[43] *Ibid.*, p. 7.

than speculation, and it is countered by declarations by Comcast and AT&T executives that this is not the case.[44]

In summary, the record in this proceeding leads us to include that there will certainly be no adverse impacts on service quality arising from this change in control. Indeed, the likelihood is that the financial resources that will become available to the newly formed AT&T Comcast hold the promise of improving service quality.

C. Will the Merger of the Parent Companies and Changes of Control Maintain or Improve the Quality of the Management of the Resulting Utility Doing Business in California?

1. Position of Parties

The applicants argue that the merger of the parent companies will maintain or improve the quality of the management of the resulting utility doing business in California. First, the applicants point out "CBC does not provide local exchange service in California and does not actively market its toll service."[45] Second, the applicants state "AT&T Broadband Phone . . . will retain its management expertise both on a California and nationwide basis."[46] Finally, the applicants point out that as a result of the merger, AT&T Broadband Phone "brings its cable telephony expertise, including its management expertise, to the merger of the parent companies."[47]

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[44] *See* Application, Exhibit G and Reply to Protest, Attachment B.

[45] Joint Supplement, p. 11.

[46] *Ibid.*

[47] Joint Response, p. 11.

Qwest responds that the concentration of voting power in Sural LLC makes it unclear "how much of the present AT&T management will remain or what its influence will be."[48]

TURN-CFA similarly criticize the "management structure" of the new company.[49] TURN-CFA note that "Worse still, AT&T management cannot be removed for three years and Comcast management cannot be removed for six years."[50] TURN-CFA argue that this ensures "many layers of entrenched bureaucracy."[51]

2. Discussion: Proposed Transaction will Maintain or Improve Management Quality

We find that the new company will maintain the quality of its management. First, there is no reason to doubt the statements of the applicants concerning its goal of stabilizing management. Moreover, the proposed transfer of control will have no immediate impact on the management of the subsidiaries offering telecommunications services within California. Second, TURN-CFA provides evidence that the very structure of the merger has incorporated safeguards to provide a stable environment for managers. Third, Qwest's argument based on the power of the Sural LLC voting shares carries little weight. Qwest's argument fails to answer the question why would Sural, with its strong stake in the performance of the new company, use its voting power to remove

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[48] Qwest, Protest, pp. 7-8.

[49] TURN-CFA, Protest, p. 5.

[50] *Ibid.*, p. 6.

[51] *Ibid.*

effective managers? Moreover, Qwest overlooks the very safeguards identified by TURN-CFA to protect current management.

In summary, the proposed transaction will maintain management quality.

D. Will the Merger of the Parent Companies and Change of Control Be Fair and Reasonable to the Affected Employees?

1. Position of Parties

AT&T Broadband Phone and CPC state that the merger and change of control will be fair and reasonable to the affected workers. The applicants state that the combination of the "parent companies would not itself impact the level of skilled employees now available to provide cable telephony service in California."[52] The applicants point out since Comcast has only a minor California presence, the new company will need to rely on AT&T Broadband personnel and little change is likely. Although the applicants state that any merger may create change, they note "AT&T Comcast is committed to maintaining a skilled work force and the partners have shown a willingness to work with utility employees.[53]

The applicants document their willingness to work with utility employees by citing filings made by the Communications Workers of America to the Commission's Telecommunication Division. They cite a June 12, 2002 letter as follows:

> "We are writing on behalf of the Communications Workers of America ("CWA") with regard to the protest

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[52] Joint Supplement, p. 12.

[53] *Ibid.*

> filed by CWA concerning Advice Letter No. 16 filed by Comcast Corporation on March 13, 2002, and Advice Letter No. 29, filed by AT&T Corporation on March 7, 2002. (Letter from Katherine S. Poole to Jack Leutza (April 2, 2002 ("Protest"). Since its Protest was filed, CWA has engaged in extensive discussions with AT&T Corporation and Comcast Corporation regarding the concerns raised in its filing. The parties have now resolved those concerns to their mutual satisfaction. CWA, therefore, no longer intends to pursue the issues identified in its Protest before the Commission."[54]

Neither Qwest nor TURN-CFA addresses this issue in their protests.

2. Discussion: Changes will be Fair to Employees

The holding company merger and change of control will be fair to utility employees. First, the likely impacts on utility employees will be small since the changes take place at the holding company level. Second, concerning California operations, we note that there will likely be little change at the level of utility employees because there are almost no CBC employees in California. Third, CWA's protests of associated advice letter filings, its subsequent withdrawal of these protests, its statements, and non-participation in this proceeding indicate that CWA has succeeded in resolving its concerns through discussions with these companies. Fourth, no party protesting this merger raised this issue in their filings.

Based on the information provided, we conclude that the proposed holding company merger and change of control will be fair to utility employees.

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[54] *Ibid.*, pp. 11-12.

E. Will the Merger of the Parent Companies and Change of Control Be Fair and Reasonable to a Majority of the Utility Shareholders?

1. Positions of Parties

The applicants argue that the merger of the parent companies is fair and reasonable to the majority of the utility shareholders. The applicants point out that both companies are publicly traded companies. In addition, the merger proposal is subject to shareholder approval, and both companies have provided their shareholders with full information regarding the transaction, "pursuant to the rules of the Securities and Exchange Commission."[55] In addition, the applicants point to the results of the voting – 99.8% of the votes cast by Comcast's shareholders favored both the merger and the governance provisions of the AT&T Comcast charter. Similarly, 95% of the votes cast by AT&T's shareholders ratified the merger and other aspects of AT&T's Corp.'s restructuring. In addition, the applicants point out that in the proxy statement, the investment banks of Morgan Stanley & Co. Incorporated, JP Morgan Securities Inc., Merrill Lynch Pierce Fenner & Smith Inc., Credit Suisse First Boston Corporation and Goldman Sachs & Co.," opined that the proposed exchange of stock was fair to the Shareholders of the company retaining them."[56]

Neither Qwest nor TURN-CFA challenged the fairness of the transaction to shareholders.

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[55] Joint Supplement, p. 12.

[56] *Ibid.*, p. 13.

2. Discussion: Transaction in the Interest of Shareholders

We conclude that the terms of this transaction are in the interest of the shareholders. First, the supervision of this transaction and the information disclosures by the Securities and Exchange Commission provides us with confidence that shareholders had an accurate picture of the transaction. Second, the shareholders of both companies have overwhelmingly supported this transaction. Third, there is no allegation by any party that this transaction is counter to the interests of shareholders. Thus, for all these reasons we conclude that the transaction is fair to shareholders.

F. Will the Proposed Merger of the Parent Companies and Change of Control Be Beneficial on an Overall Basis to State and Local Economies

1. Position of Parties

The applicants argue that to the extent that there is any impact of the proposed merger of the parent companies and change of control, it will be a positive impact. The applicants cite beneficial outcomes that they believe that the merger will produce. They state that the transaction "will produce a broader base for financing, create efficiencies and operating cost savings and provide addition capital for expansion."[57] The applicants stress AT&T Comcast's continuing commitment to the roll out of "cable telephony to former AT&T systems and to commence the roll-out of cable telephony to former Comcast systems."[58] Moreover, the applicants comment that the changes in the state of the telephony marketplace make successful competition by "small niche players"

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[57] Joint Supplement, p. 14.

[58] *Ibid.*

infeasible.[59] They argue that the merger will create the "kind of major competitor for local exchange service that California regulators have been seeking."[60] Finally, they note that a weaker stand-alone AT&T Broadband Phone will be a less capable provider of telephony service to California.

Qwest argues that on an overall basis, the merger will not prove beneficial to the state or local economies. Qwest argues that an effect of the merger is to dilute the financial strength of Comcast. Qwest speculates that "[a]bsent the proposed transaction, in contrast, if Comcast were interested in investing in cable telephony, its stronger balance sheet, cash flow and ability to raise capital could be put toward increasing competition, rather than either wasted or used to increase monopolization."[61] Qwest further argues that the applicants have failed to provide an adequate record "upon which to determine whether the proposed transaction is beneficial on an overall basis to the state and local economies."[62] Qwest specifically alleges that the applicants "have not demonstrated that the State is better off with one potentially stronger AT&T than with a strong Comcast and a weaker AT&T."[63]

TURN-CFA state that "Comcast management has not previously been committed to local telephone service. . ."[64] In addition, TURN-CFA state that the two companies, once under a common parent, "will not compete with

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59 *Ibid.*

60 *Ibid.*, p. 15.

61 Qwest, Protest, p. 6.

62 Qwest, Response to Joint Supplement, p. 10.

63 *Ibid.*, p. 11.

64 TURN-CFA, Protest, p. 6.

each other for the California consumer's communications business."[65] They conclude that the transaction "must be closely scrutinized to see if there are ways to mitigate this elimination of potential competition in California."[66]

2. Discussion: Transaction Will Benefit Californians

We find that the completion of this transaction will benefit Californians. First, AT&T Comcast will have an increased ability to finance network construction. Second, executives have declared a continuing commitment to the rollout of cable telephony. Third, Qwest's concern for the reduced financial strength of Comcast is misplaced – it does not provide significant telephony services to California, and there is no indication, absent this proposed merger, that it would become significantly involved in broadband telephony in California. Fourth, the TURN-CFA protest is unpersuasive. TURN-CIFA observe that Comcast has not competed to provide telephony service in California, and then speculates that the merger will reduce competition. TURN-CIFA fail to note that since Comcast does not now compete, there is no reduction in competition that directly results from the merger. In addition, TURN-CIFA fail to note that CBC and AT&T Broadband Telephone have no overlapping service areas, thereby making competition virtually impossible.

Thus, we have adequate reasons to conclude that this proposed transaction will benefit Californians by strengthening AT&T Broadband Telephone, which provides service to California customers, and making it better able to compete with other carriers.

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[65] *Ibid.*, p. 6.

[66] *Ibid.*

G. Will the Proposed Merger of the Parent Companies and Change of Control Preserve the Jurisdiction of the Commission and its Capacity to Effectively Regulate and Audit Public Utility Operations in California?

1. Positions of Parties

The applicants state that the change of control "will not in any way denigrate the Commission's authority over the telephony services provided pursuant to the California certificates of public convenience and necessity held by AT&T Broadband Phone of California and CBC."[67] The applicants state that the proposed transaction is similar to that considered by this Commission in AT&T's acquisition of MediaOne. The applicants note that the Commission found "approval of this change in control will have no adverse impact on the Commission's jurisdiction over AT&T's current telecommunications companies under our jurisdiction." (D.00-05-023; 2000 Cal. PUC LEXIS 355 *34.)

TURN-CFA argue that the Limited Liability Company (LLC) form of organization that the applicants propose will make it "more difficult to investigate" the new entity and that the reporting and governance rules "may be substantially different."[68] TURN-CFA urge us to investigate this more fully.

2. Discussion: Transaction will not Diminish Jurisdiction of Commission and its Capacity to Regulate and Audit Utility Operations in California.

We find that the proposed transaction will not diminish the jurisdiction of this Commission or its capacity to regulate and audit utility operations in California. First, the applicants are correct in citing the acquisition of MediaOne by AT&T as similar structure to this acquisition, and correct in

[67] Joint Supplement, p. 14.

[68] TURN-CFA, Protest, p. 5.

noting our finding that it would have no adverse impact on our jurisdiction. In particular, we note that at the level of the entities holding a CPCN, the merger is creating no change. All change takes place at the holding company level. In addition, auditing the relationship between a utility and its parents is always a difficult task. The change in ownership at the holding company level leaves the task of auditing and regulating unchanged.

Finally, TURN-CFA's objection to the proposed LLC is not supported; TURN-CFA merely alleges that a LLC "may" change reporting and governance requirements. We note that a LLC remains a legal form of corporate organization approved by the SEC. Moreover, this issue of corporate governance is also subject to review by shareholders. In summary, the TURN-CFA protest fails to explain how the SEC could approve or shareholders adopt a corporate form of organization that would frustrate review. Thus, we do not believe that an investigation of this commonly used form of corporate governance is needed.

6. Other Issues

A. Does the Proposed Merger of the Parent Companies and Change in Control Create Environmental Issues of Concern?

The applicants state "there is no possibility that the transaction contemplated herein may have a significant effect on the environment."[69] The applicants argue that the application involves only a proposed change in the underlying ownership of facilities, not a change in the facilities themselves.

No party raised any environmental issues concerning the proposed financial transaction.

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[69] Joint Supplement, p. 17.

Pursuant to state law and Commission precedents we find this application raises no environmental issues of concern.

B. Does the Proposed Merger of the Parent Companies and Change in Control Create Anti-Trust Issues of Concern?

1. Position of Parties

The applicants state that "the facts here also compel the conclusion that there are no antitrust . . . concerns with the AT&T Broadband Phone and CBC Applications for change of control."[70] The applicants note that "CBC does not now hold a certificate of public convenience and necessity to provide local exchange service and it does not now actively market toll service in California."[71] In addition, the number of cable local exchange customers – which total about 145,000 – are insignificant for antitrust purposes in a California market with millions of local customers. Further, AT&T Broadband Phone and CBC "would provide service over their respective affiliates' non-contiguous cable properties."[72] Thus, the merger does not eliminate a competitor from any market. In addition, the applicants note that they cannot "preclude an other competitor from providing local service."[73]

Qwest argues that the "proposed transfer of control of AT&T Broadband Phone of California, LLC (AT&T Broadband Phone) and Comcast Business Communications, Inc. to AT&T Comcast will adversely impact Qwest by further limiting its access to cable network facilities and therefore its ability to

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[70] Joint Supplement, p. 15

[71] *Ibid.*, p. 16.

[72] *Ibid.*

[73] *Ibid.*

provide telephone and high speed internet access services to California consumers."[74] Qwest asks that the Commission mitigate this adverse impact by requiring the applicants to provide "equal access (footnote omitted) to their cable facilities to telephone service providers (footnote omitted)."[75] In addition, Qwest argues that there is "an inadequate record to determine if the proposed transaction raises anticompetitive concerns, or has an adverse impact on competition, by expanding AT&T's monopoly over cable telephony services."[76]

TURN-CFA call for the Commission to "analyze whether the increased scope and scale created by this merger will allow the Applicants and their affiliated companies to be even more aggressive in its pricing of telephony and cable modem service, thereby eliminating the opportunity for others to compete."[77] On the other hand, in its same protest, TURN-CFA raise the spector that the merged entities will lack interest in local telephony, and that the companies "will not compete with each other. . ."[78] Finally, CFA asks in its Reply to the Joint Supplement that Commission scrutinize whether the new company remains committed to cable telephony, noting that the high margins in cable operations "cannot be obtained in cable telephony."[79] CFA concludes that discovery pertaining to business plans is needed.

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[74] Qwest, Protest, p. 2.

[75] *Ibid.*, p. 3.

[76] Qwest, Response to Joint Supplement, p. 4.

[77] TURN-CFA, Protest, p. 8.

[78] *Ibid.*, p. 6.

[79] CFA, Reply to the Joint Supplement, August 23, 2002, p. 4.

2. Discussion: Merger of Parents Raises no Anti-Trust Issues

The proposed merger of the parent companies of AT&T Broadband Telephone and CBC raises no anti-trust issues. The relevant market to examine anti-trust issues is local exchange telecommunications services. CBC does not provide these service; AT&T Broadband Telephone has a small market share. Thus, there are no present anti-trust issues.

Since the CBC and AT&T Broadband Telephone networks fail to overlap, there are also no likely future anti-trust issues.

The filings of TURN-CFA indicate that they are concerned about this financial transaction, but their concerns embrace mutually exclusive outcomes – is it too much competition or not enough competition? Is the proper concern over anti-competitive cross subsidy or the failure to enter a non-lucrative telephony market? These protests raise worries, not an issue that requires further investigation.

Finally, since no anti-trust issues arise from this merger, we need not consider mitigation measures proposed by the Qwest. In particular, Qwest's request that the Commission order equal access to the applicants' cable networks makes little sense as a condition of a merger. Indeed, such a change of policy, if appropriate, should apply not to one company, but to all carriers. As a consequence, this is not the proper venue for considering this request.

7. Are Hearings Necessary in this Proceeding?

A. Position of Parties: Request for Hearings, Qwest Motion, and AT&T Response

Qwest argues that the proposed transaction raises "public interest concerns not addressed by the application."[80] Qwest recommends that the Commission require applicants to make an affirmative showing that the change of control is in the public interest. Qwest states that it would "submit evidence that the proposed change in control would adversely impact competition in cable telephony and would therefore harm consumers (footnote omitted)."[81]

Even after the filing of the Joint Supplement by the applicants, Qwest contends that the record remains "inadequate" and that the transaction will expand "AT&T's monopoly over cable telephony services."[82] Qwest also argues that the "Joint Supplement fails to address the public interest from the perspective of Comcast."[83] Qwest also argues "there is still an inadequate record upon which to determine whether the proposed transaction will maintain or improve the financial condition of the utilities,"[84] or the "quality of management."[85] Qwest further argues that discovery is necessary.

Qwest, in its Motion for Leave and Supplemental Response of August 29, 2002, argues that the Commission "should investigate whether AT&T's deal with Time Warner will impact or shed light on the impact of, the

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[80] Qwest, Protest, p. 9.

[81] *Ibid.*

[82] Qwest, Response to Joint Supplement, p. 4.

[83] *Ibid.*, p. 6.

[84] *Ibid.*, p. 8.

[85] *Ibid.*, p. 9.

proposed California transaction."[86] Further, Qwest cites a letter by Prime Communications to the Federal Communications Commission objecting to the proposed merger in which it alleges that AT&T "leverages its monopoly by providing millions of dollars of free advertising to promote Vehix [an AT&T service], thereby strengthening the competitive advantage of its bundling efforts."[87]

In addition, CFA in its Reply, states that the applicants have failed to address issues relating to the change in corporate structure, the relationship between AT&T Broadband and AT&T Comcast, and its plans to provide telephony. CFA concludes that further discovery is needed.

Although our procedures did not permit the applicants to reply to the parties comments on its Joint Supplement, they did have an opportunity to respond to Qwest's Motion for Leave. The applicants argue that the new matters that Qwest wishes to place before this Commission "are completely irrelevant to the changes of control of the ultimate parents of two California non-dominant telephony providers."[88]

Concerning the first point, the applicants argue that "AT&T has made a proposal to the FCC to insulate and divest AT&T's interest in Time Warner Entertainment (TWE) to comply with the ownership limitations in the FCC cable rules."[89] The applicants state that the efforts of AT&T to divest itself of interests in TWE have been publicly known for a long time. In addition, the applicants

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[86] Qwest, Motion for Leave, p. 3.

[87] *Ibid.*, p. 6.

[88] Joint Opposition, p. 2.

[89] *Ibid.*, p. 2.

state that concerning the contract with AOL, the terms of access “are not properly before the Commission in connection with the proposed change in ownership of these telephony service providers.”[90]

Concerning the comments of Prime Communications, the applicants argue "a complaint concerning cable television advertising in New England could not possibly form either a basis to reopen the record in a proceeding involving an application for a change of ownership of a California telephony company or as a basis to allow a discovery ‘fishing expedition’ by Qwest."[91]

B. Discussion: Hearings Not Necessary; Motion Denied for Lack of Nexus with Issues in this Proceeding

We find that hearings are not necessary. In addition, we deny the Qwest Motion for Leave because it lacks a nexus with the issues before this Commission.

Concerning the arguments of Qwest and CFA that hearings are necessary, we note that the evidence contained in the applicants filings have enabled us to reach findings on all the issues that California statutes require the Commission to address. The structure of this decision, which addresses each provision of the guiding and controlling statutes, demonstrate that there is no need for hearings or further discovery.

Concerning Qwests Motion for Leave, we agree with applicants that the material is unrelated to the issues before this Commission. First, the relationship with TWE is a relationship between cable companies, not the telecommunications companies that hold CPCN’s. Second, the proposed action

[90] *Ibid.*, p. 3.

[91] *Ibid.*, p. 4.

has been publicly known for a long time and before the FCC. Third, it involves the divesture of TWE, not the acquisition of a new company. Fourth, it involves compliance with FCC cable ownership rules, not telecommunications regulation.

Similarly, we agree that the terms of access to AT&T Comcast's cable systems are not properly before the Commission in connection with the proposed change in ownership of telephony service providers.

Finally, the issues concerning Prime Communications concern advertising rates and access to cable TV commercials, not telecommunications or data matters. In conclusion, because Qwest's Motion for Leave lacks a nexus with the issues before this Commission, we deny it.

8. The Commission Should Approve this Application for a Proposed Merger of the Parent Companies and Change in Control at this Time

In summary, we find that the proposed merger of the parent companies and resulting change of control of AT&T Broadband Phone and CBC do not violate any of the public interest criteria established in § 854 (c). In addition, this financial transaction raises no anti-trust or environmental issues. Moreover, the possible reorganization to LLC structure raises no public interest issues. Finally, by creating a financially stronger telephony company operating in California, the merger serves the public interest.

Since the information provided to us by the applicants enables us to reach theses conclusions, we find that no hearings or discovery are necessary. In addition, since Qwest's Motion for Leave lacks a nexus with the issues before this Commission, we deny it.

9. Comments

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.7 of the Rules of Practice and Procedure. Public Utilities Code, and our Rules, generally require that proposed decisions be circulated to the public for comment, and the Commission not issue its decision any sooner than 30 days following the filing and service of the draft decision.[92] However, the time period for circulating a proposed decision and issuance of a Commission decision may be reduced or waived by the Commission upon the stipulation of all parties to the proceeding.[93]

10. Oral Argument

Oral argument took place at ____________________

11. Assignment of Proceeding

Michael Peevey is the assigned Commissioner and Timothy J. Sullivan as the assigned Administrative Law Judge.

Findings of Fact

1. This application was filed pursuant to § 854.

2. Applicants seek approval of the change in control of CBC that will occur indirectly as a result of the placement of AT&T Broadband Phone and CBC under a new parent, AT&T Comcast.

3. In Resolution ALJ 176-3088 of May 16, 2002, the Commission preliminarily determined that this matter was a ratesetting proceeding and determined that no hearings were expected.

4. TURN and the Consumer Federation of America (CFA) filed a joint protest to these applications, stating that the proposed financial transaction constitutes a

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[92] *See* Pub. Util. Code § 311(g), and Rule 77.

[93] Pub. Util. Code § 311(d) and Rule 77.7(g).

major change in the status of the company and raises significant public policy issues.

5. Qwest filed a protest asking that the Commission either deny the application, or grant the application subject to conditions to protect the public interest, including, but not limited to, requiring applicants to provide equal access to competitors to provide cable telephone and cable modem services over applicants' cable network facilities.

6. On June 17, 2002, AT&T Broadband Phone and CBC, filing separately, responded to the protests of Qwest and TURN-CFA and argue that the protests raise issues not pertinent to the applications and that the public interest requires rejection of the protests.

7. Pursuant to Rule 44.4, a decision on whether an evidentiary hearing should be held is based on the content of the protest.

8. On August 8, 2002, the "Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge" ordered the applicants to make a supplemental filing that demonstrated how the proposed application met the public interest criteria enumerated in Section 854 and invited comments on the supplemental filing.

9. AT&T Broadband Phone and CBC filed and served a "Joint Supplement to Applications of Comcast Business Communications, Inc. and AT&T Broadband Phone of California, LLC." (Joint Supplement) on August 16, 2002.

10. On August 23, 2002, the Consumer Federation of America and Qwest each filed a response to the Joint Supplement.

11. On August 23, 2002, consistent with Rule 8(d) of the Commission's Rules of Practice and Procedure, Qwest requested final oral argument.

12. On August 29, 2002, Qwest filed a "Motion for Leave to File a Supplemental Response to the Joint Supplemental Filing of Comcast Business Communications, Inc. and AT&T Broadband Phone of California, LLC" (Motion for Leave). Attached to the motion as Exhibit C was the "Supplemental Response of Qwest Communications Corporation to the Joint Supplemental Filing of Comcast Business Communications, Inc. and AT&T Broadband Phone of California, LLC" (Supplemental Response).

13. On September 5, 2002, AT&T Broadband Phone and CBC jointly filed a "Joint Opposition of Comcast Business Communications, Inc. and AT&T Broadband Phone of California, LLC to the Motion of Qwest Communications Corporation to File a Supplemental Response" (Joint Opposition).

14. AT&T Broadband Phone, a California non-dominant interexchange carrier (NDIEC) and non-dominant competitive local exchange carrier (CLC), is the end result of the approved acquisition of TCI Telephony Services of California, Inc., dba People Link (TCI), and MediaOne Group, Inc. (MediaOne) by AT&T Corp and subsequent corporate name changes following each acquisition. AT&T Broadband Phone provides CLC service to approximately 145,000 customers in California.

15. Comcast Business Communications, Inc. (CBC) is a wholly-owned subsidiary of Comcast Business Communications Holdings, Inc. (Holdings), which, in turn, is a wholly-owned, indirect subsidiary of Comcast.

16. CBC also is authorized to provide intrastate interexchange services in California and throughout the continental United States. CBC does not actively market its services in California at this time and has fewer than 75 interexchange toll customers in California.

17. Section 854 precludes any person or corporation from transferring control of any public utility organized and doing business in the state without first securing authorization to do so from this Commission.

18. Sections 854(b) and (c) are explicitly applicable if the utilities that are parties to the proposed merger have gross annual California revenues of $500 million or more.

19. The parties to the proposed merger do not have gross annual California jurisdictional revenues exceeding $500 million.

20. The primary question to be determined in a transfer of control proceeding under § 854(a) is whether the proposed transfer will be adverse to the public interest.

21. Our decisions over the years have laid out a number of factors that should be considered in making the determination of whether a transaction will be adverse to the public interest.

22. The annual reports and 10-Ks attached to the applications show that both entities are healthy financially.

23. In 2001, Comcast had a ratio of debt to operating cash flow of less than 4 to 1.

24. In 2001, AT&T Broadband's ratio of debt to operating cash flow was over 8 to 1.

25. After the merger, the estimated first year combined debt to operating cash flow will be less than 5 to 1.

26. AT&T Broadband Phone, a significant provider of telephony services in California, will emerge from the merger with greater financial strength and a greater ability to meet the financial demands needed to expand its California operations.

27. The promised operating efficiencies and economies of scope and scale will make AT&T Comcast a fitter California operator than AT&T Corp.

28. The erosion of debt ratios in Comcast is less significant than the improvements realized in the parent of AT&T Broadband Phone.

29. CBC, despite its stronger financial ratios, has declined to operate in California's telephony market in a significant way.

30. A beneficial result of this merger is to strengthen the finances of a major California provider of telephony services.

31. Since all software systems providing services to AT&T Broadband Telephone's customers will remain in AT&T Broadband Telephone, the merger and change of control should have no impact on the systems that serve customers.

32. The additional financial resources arising from the merger make it possible for AT&T Broadband Telephone to improve telephony services.

33. There will be no adverse impacts on service quality arising from the proposed financial transaction.

34. The structure of the merger has incorporated safeguards to provide a stable environment for managers.

35. The proposed transfer of control will have no immediate impact on the management of the subsidiaries offering telecommunications services within California.

36. The new company will maintain the quality of its management.

37. The likely impacts on utility employees will be small since the changes resulting from the merger take place at the holding company level, not at the operating level of the telecommunications utilities.

38. Since there are almost no CBC employees in California, there will be almost no changes affecting the AT&T Broadband Telephone employees who provide services in California.

39. The Communications Workers of America has withdrawn its protests of advice letters related to the proposed merger and has not participated in this proceeding.

40. No party protesting this merger raised any charges that the merger would be unfair to employees.

41. The merger and change of control will be fair to utility employees.

42. The Securities and Exchange Commission supervises this transaction and the information disclosures by the applicants.

43. Financial managers and investment bankers for the principals have determined that the proposed transaction is fair and reasonable.

44. The shareholders of both companies have overwhelmingly supported this transaction.

45. No party has alleged that this transaction runs counter to the interests of shareholders.

46. The transaction is fair to shareholders.

47. AT&T Comcast will have an increased ability to finance network construction.

48. Executives of the new company have declared a continuing commitment to the rollout of cable telephony.

49. There is no indication that CBC, absent this merger, would become significantly involved in broadband telephony in California.

50. Since Comcast and AT&T have non-overlapping cable franchises, and since CBC does not offer local telephony services, this merger will not reduce telecommunications competition in California.

51. A financially strengthened AT&T Broadband Telephone can better compete to provide telephony services to California customers.

52. Each of the subsidiaries currently under the Commission's jurisdiction will continue to be under the Commission's jurisdiction.

53. The merger of the parent companies and change of control of CBC and AT&T Broadband Telephone have raised no anti-trust issues.

54. The proposed transaction will not diminish the jurisdiction of this Commission.

55. The proposed transaction will not diminish the capacity of this Commission to regulate and audit utility operations in California.

56. A Limited Liability Company form of organization is a lawful form of corporate organization.

57. The application involves only a proposed change in the underlying ownership of facilities themselves.

58. No party raised any environmental issues concerning this proposed financial transaction.

59. The material presented by the applicants has enabled us to reach findings on all issues discussed in § 854.

60. Qwests "Motion for Leave to File a Supplemental Response to the Joint Supplemental Filing of Comcast Business Communications, Inc. and AT&T Broadband Phone of California, LLC" raises issues that lack a nexus with the issues in this proceeding.

Conclusions of Law

1. This proceeding is a ratesetting proceeding.
2. The proposed transaction is subject to scrutiny under Pub. Util. Code § 854(a).
3. The application can be adequately addressed without the holding of an evidentiary hearing.
4. Section 854 provides us with the authority over the proposed merger as it relates to those subsidiaries offering certificated telecommunications services within California.
5. Should the shareholders so elect, it is reasonable for this Commission to approve a Limited Liability Company form of organization for AT&T Comcast.
6. The efficiencies and strengthened competitive position of the merged companies have the potential to foster better employment opportunities.
7. The proposed merger does not have any antitrust or anticompetitive issues needing our intervention.
8. Because the application involves only a proposed change in the underlying ownership of facilities, it can be seen with certainty that the merger in AT&T Comcast will not have a significant effect on the environment.
9. Since the proposed merger and change of control promotes the public interest as defined in § 854, it is reasonable to approve this transaction.
10. To permit prompt consummation of the proposed change of control, the approval of the application should become effective immediately.
11. The application should be granted to the extent provided in the following order.

O R D E R

IT IS ORDERED that:

1. Comcast Business Communications (CBC) and AT&T Broadband Phone Company of California (AT&T Broadband Phone) are authorized to undertake the changes in control of CBC and AT&T Broadband Phone in accordance with the terms of the merger agreement discussed in the body of this order.

2. AT&T Comcast Corporation may form a wholly-owned limited liability company to hold the stock of AT&T Broadband Corp. AT&T Comcast Corporation (AT&T Comcast) shall notify the Commission upon doing so.

3. Qwest Communications Corporation (Qwest)'s "Motion for Leave to File a Supplemental Response to the Joint Supplemental Filing of Comcast Business Communications, Inc. and AT&T Broadband Phone of California, LLC" shall be denied.

4. Within 30 days after the change of control authorized herein has taken place, AT&T Comcast shall file with the Commission's Docket Office, for inclusion in the formal file of Application (A.) 99-09-039, written notice that said change of control has taken place.

5. In the event that the books of the Applicants or any subsidiaries are required for inspection by the Commission or its staff, Applicants shall either produce such records at the Commission's offices, or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to any of Applicants' offices.

6. The application is granted as set forth above and the authority granted shall expire if not exercised within one year of the effective date of this order.

This order is effective today.

Dated ______________________, at San Francisco, California.

ATTACHMENT A

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