

Date of Issuance: December 21, 2010

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight and Programs Branch**

**RESOLUTION T- 17301
December 16, 2010**

R E S O L U T I O N

**Resolution T-17301 Approval of Exemption from P.U. Code § 851
for AT&T Corp, d/b/a AT&T Advanced Solutions', AT&T Communications of
California, TCG San Diego, TCG San Francisco, TCG Los Angeles, and
SBC Long Distance, LLC.**

S U M M A R Y

This resolution approves the requests for exemption from California Public Utilities Code (P.U. Code) § 851 made by in AT&T Corp, d/b/a AT&T Advanced Solutions' Advice Letter 51, AT&T Communications of California, Inc.'s Advice Letter 4249, TCG San Diego's Advice Letter 166, TCG San Francisco's Advice Letter 165, TCG Los Angeles' Advice Letter 802, and SBC Long Distance, LLC's Advice Letter 467.

This resolution involves only Phase I assets of AT&T's CLECs. Specifically, this resolution only involves the transfer and/or encumbrance of property and/or assets which do *not* provide unbundled network elements, wholesale services or collocation, and therefore are considered non-controversial.

B A C K G R O U N D

Section 851 of the P.U. Code governs the transfer and/or encumbrance of property owned by public utilities. Proceeding R.09-05-006 was opened on May 7, 2009 to consider if exemptions from P.U. Code § 851 were appropriate uniform regulated framework carriers (URF), and if so should any conditions be placed on these exemptions¹.

¹ See R.09-05-006, *mimeo* at 2 and General Order 96-B Telecommunications Industry Rules – Industry Rule 1.14.
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On November 9, 2009, *Assigned Commissioner's Ruling and Scoping Memo on Phase I of Proceeding* was issued which bifurcated the proceeding into two phases.² Phase I of the proceeding addressed support assets which do not provide unbundled network elements, wholesale services or collocation, and therefore are considered non-controversial. Phase II of the proceeding will address § 851 exemption for assets which provide telecommunications service directly³.

On May 6, 2010, decision D.10-05-019 provided exemption for Phase I assets to all eligible URF carriers except for capital leases or leasehold improvements. These assets are held by carriers in FCC accounts (2681) and (2682) respectively.

Verizon California, Verizon California's affiliates, and Pacific Bell Telephone Company d/b/a AT&T California were given exemption in this decision, based upon their demonstrating the ability to distinguish whether capital leases or leasehold improvements were for property considered as Phase I or Phase II.

D.10-05-019 Ordering Paragraph 4 states that any other carrier subject to URF which wishes a § 851 exemption for assets held in accounts 2681 or 2682, must file a Tier III advice letter demonstrating that they possess sufficient records to allow the carrier to determine if the leased asset is the type considered in Phase I or Phase II of proceeding R.09-05-006.

The exemption allows authorized URF Carriers to transfer Phase I type properties without prior approval by the commission. There is only an annual reporting requirement, whereby the carrier identifies each type of asset disposed of, the price, and whether the party to the transaction is an affiliate.⁴

SUBJECT OF ADVICE LETTER

On September 20, 2010, AT&T California's regulatory department filed six advice letters requesting exemptions from P. U. Code § 851 on behalf of six of its affiliates: TCG San Francisco (U-5454 C); TCG Los Angeles (U-5462 C); SBC Long Distance (U-5800 C); AT&T Corp d/b/a Advanced Solutions (U-6346 C); AT& T Communications of California, Inc. (U-5002 C); TCG San Diego (U-5389 C). AT&T made this request pursuant to D.10-05-019. In the advice letters, AT&T explained that through the use of its Fixed Asset system, along with their Field Reporting Codes, and Material Item Codes, AT&T's affiliates can

² See Scoping Memo R.09-05-006, *mimeo* at 1

³ See Scoping Memo R.09-05-006, *mimeo* at 8

⁴ D.10-05-019 OP 5

determine if a leasehold improvement or capital lease can be categorized as a Phase I or Phase II type of property⁵.

NOTICE/PROTESTS

Notice of the advice letters for the six AT&T affiliates that are the subject of this resolution was published in the Commission's Daily Calendar on September 24, 2010.

On October 11, 2010 the Division of Ratepayer Advocates (DRA) filed a protest to all six of the AT&T affiliate advice letters. The protest argued that the accounting explanation provided in the advice letters did not demonstrate that the AT&T affiliates have the ability to make distinctions regarding property usage for their capital leases.

On October 18, 2010 AT&T responded to the DRA's protest by providing additional information regarding its affiliates accounting systems. AT&T stated that their affiliates' capital lease (indefeasible rights to usage) disposition decisions are made by either their Construction Engineering group or Corporate Real Estate group, and in all cases these disposition decisions include a determination of whether the property is a Phase I or Phase II type of asset.

On October 25, 2010 DRA withdrew its protest to AT&T's six affiliate advice letters, based upon the supplemental information provided by AT&T.

DISCUSSION

Based on its review of the advice letters, the protest, and the protest response, CD believes that the AT&T affiliates described in this resolution have sufficient controls to distinguish whether capital leases should be categorized as a Phase I or Phase II property type and recommends that the six AT&T affiliates be granted the relief requested in their respective advice letters and be exempted from P.U. Code § 851 for Phase I property types.

We agree with CD's recommendation and shall grant the six AT&T affiliates an exemption from P.U. Code § 851 for Phase I property types.

⁵ See AT&T Corp, d/b/a AT&T Advanced Solutions Advice Letter 51, at 2

FINDINGS

1. AT&T has demonstrated that its affiliates can determine if a leasehold improvement or capital lease should be categorized as a Phase I or Phase II type of property⁶.
2. Because DRA withdrew its protest, this is an uncontested matter and the 30-day comment period will be waived.⁷

THEREFORE, IT IS ORDERED that:

AT&T Corp, d/b/a AT&T Advanced Solutions', AT&T Communications of California, Inc., TCG San Diego, TCG San Francisco, TCG Los Angeles, and SBC Long Distance, LLC shall be exempted from P.U. Code § 851 and be allowed to transfer and/or dispose of property and/or assets that are governed by Phase I of proceeding R.09-05-006.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on December 16, 2010. The following Commissioners approved it:

/s/ Paul Clanon

PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

⁶ See AT&T Corp, d/b/a AT&T Advanced Solutions Advice Letter 51, at 2

⁷ The authority to waive the section 311 30-day comment period on the DRAFT Resolution exists in The Rule of Practice and Procedure 14.6(c)(2), http://docs.cpuc.ca.gov/published/RULES_PRAC_PROC/105138.htm