

State of California

Public Utilities Commission
San Francisco

MEMORANDUM

Date : May 24, 2011

To : The Commission
(Meeting of May 26, 2011)

From : John M. Leutza, Director, Communications Division

Subject : AT&T's Information-Only Letter to the Director of
Communications Division regarding AT&T and
T-Mobile Merger

INTRODUCTION: Staff is requesting direction from the Commission regarding possible action(s) to take pursuant to Decision 95-10-032, Ordering Paragraph 3, in response to AT&T's May 3, 2011 information-only letter to the Director of the Communications Divisions regarding the proposed merger of AT&T and T-Mobile. (May 3, 2011 information-only filing to the Director of the Communications Division regarding Revised Notice by AT&T of Proposed Commercial Radio Service Transfer, designated for tracking purposes only as Advice Letter 160.)

BACKGROUND: In D.95-10-032, the Commission determined that it would generally forbear from requiring wireless providers to obtain pre-approval of transactions under Articles 5 and 6 of the Public Utilities Code. However, in certain circumstances, carriers were required to give 30 days advance notice for transactions. D.95-10-032 further states that a wireless provider shall not require any preapproval to consummate the transaction "unless the CMRS provider is notified within the . . . 30 day period by the Commission or its staff that further information is needed or that a formal application is required." (D.95-10-032 at p. 31, Ordering Paragraph 3.)

AT&T LETTER: Here, AT&T sent the requisite 30 days notice on May 3, 2011. This notice is designated as an informational filing under Rule 6.1 of General Order 96-B. After receiving this notice, the staff of the Communications Division has sent a number of data requests to AT&T regarding the merger.

It should be noted, that while AT&T's letter is not considered an advice letter, Sprint submitted a protest to AT&T's filing, dated May 19, 2011, asking the Commission to conduct a review of the proposed merger. Pursuant to Rule 6.2 of General Order 96-B,

since information-only filings do not seek relief, they are not subject to protest, as provided for applications and advice letters.

OPTIONS: The Commission has at least three possible options to consider.

- (1) Direct the staff to notify AT&T that it must file an application on the ground that it is in the public interest for the Commission to review this merger by application.
- (2) Direct the staff to notify AT&T that no application is needed.
- (3) Direct the staff to notify AT&T that the Commission considers its recent data requests for information on the merger as tolling (stopping) the 30-day time period until further notice. This means that the transaction would not be deemed pre-approved after the 30-day time period has ended.