

**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)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER  
AND ADMINISTRATIVE LAW JUDGE**

**1. Summary**

This ruling sets forth the procedural schedule, assigns a principal hearing officer, specifies the time and manner for requesting oral argument, and addresses the scope of the proceeding. This ruling follows a prehearing conference (PHC) held on July 19, 2002 pursuant to Rules 6(a) and 6.3 of the Commission's Rules of Practice and Procedure (Rules).

The schedule we set below is consistent with Section 13 of Senate Bill (SB) 960 (Ch.96-0856), which urges the Commission to complete applications such as this within 18 months of their filing.

## **2. Background**

Application (A.) 02-05-010 of Comcast Business Communications (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 Company of California (AT&T Broadband Phone) and CBC under a new parent, AT&T Comcast Corporation (AT&T Comcast). CBC serves approximately 75 customers in California.

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.

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.”<sup>1</sup> The TURN-CFA 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

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<sup>1</sup> TURN-CFA Protest, June 7, 2002, p. 1.

Utilities Code], the Commission can (and should) still closely scrutinize the transaction using the elements from that public interest test.”<sup>2</sup>

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 asks 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.”<sup>3</sup>

On June 17, 2002, AT&T Broadband Phone and CBC (Applicants), filing separately, responded to the protests of Qwest and TURN-CFA. The responses ask that the Commission summarily dismiss the protests. The responses argue that the protests raise issues not pertinent to the applications and that “the public interest requires rejection of the protests.”<sup>4</sup>

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.

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<sup>2</sup> *Ibid.*, p. 9.

<sup>3</sup> Qwest Protest June 7, 2002, p. 2.

<sup>4</sup> AT&T Broadband Telephone, Response, June 17, 2002, p. 10; also CBC, Response, June 17, 2002, p. 10.

### 3. Scope of Proceeding

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.<sup>5</sup>

Over time, the Commission has used its discretion in different ways in reviewing mergers. In Decision (D.) 70829, the Commission approved a transfer of control once determining that the transaction “would not be adverse to the public interest.”<sup>6</sup> 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.”<sup>7</sup>

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<sup>5</sup> M. Lee (Radio Paging Company), 65 CPUC 635, 637 (1966).

<sup>6</sup> *Ibid.*, Finding of Fact 3, 645.

<sup>7</sup> Union Water Co. of California, 19 CRRC 199, 202 (1920) at 200.

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.<sup>8</sup> More recently, D.00-06-079 provides an overview of these factors:

“Antitrust considerations are also relevant to our consideration of the public interest.<sup>9</sup> In transfer applications we require an applicant to demonstrate that the proposed utility operation will be economically and financially feasible.<sup>10</sup> Part of this analysis is a consideration of the price to be paid considering the value to both the seller and buyer.<sup>11</sup> We have also considered efficiencies and operating costs savings that should result from the proposed merger.<sup>12</sup> Another factor is whether a merger will produce a broader base for financing with more resultant flexibility.<sup>13</sup>

“We have also ascertained whether the new owner is experienced, financially responsible, and adequately equipped to continue the business sought to be acquired.<sup>14</sup> 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.<sup>15”</sup><sup>16</sup>

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<sup>8</sup> 1997 Cal PUC LEXIS 557 \*22-25.

<sup>9</sup> 65 CPUC at 637, n.1.

<sup>10</sup> R. L. Mohr (Advanced Electronics), 69 CPUC 275, 277 (1969). See also, Santa Barbara Cellular, Inc. 32 CPUC2d 478 (1989).

<sup>11</sup> Union Water Co. of California, 19 CRRC 199, 202 (1920).

<sup>12</sup> Southern Counties Gas Co. of California, 70 CPUC 836, 837 (1970).

<sup>13</sup> Southern California Gas Co. of California, 74 CPUC 30, 50, modified on other grounds, 74 CPUC 259 (1972).

<sup>14</sup> City Transfer and Storage Co., 46 CRRC 5, 7 (1945).

<sup>15</sup> Communications Industries, Inc. 13 CPUC2d 595, 598 (1993).

<sup>16</sup> D.00-06-079 (2000 Cal PUC LEXIS 645, \*17-\*20), footnotes included.

Subsequently, D.00-06-079 assessed the proposed transaction against the seven criteria identified in § 854(c),<sup>17</sup> and included a broad discussion of antitrust and environmental considerations.<sup>18</sup> 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, but have not yet done so.<sup>19</sup>

We concur with the Protests in reviewing A.02-05-010 and A.02-05-011. We note the applicants have not presented their information in a matter that facilitates a consideration of these public interest criteria. We therefore require that the applicants supplement their applications with submissions that use the Commission accepted criteria to show that the proposed transaction serves the public interest. In addition, we will set a schedule that permits parties to this proceeding to reply to the new submissions.

Finally, we note that the issues raised in A.02-05-010 and A.02-05-011 are identical, and we therefore consolidate them into a single proceeding.

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<sup>17</sup> 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.”

<sup>18</sup> 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.

<sup>19</sup> TURN-CFA, Protest, pp. 9-10; Qwest, Protest, pp. 4-5.

#### **4. Discovery**

Qwest stated that it anticipates the need for extensive discovery. TURN-CFA did not make a specific request for discovery, but asks that the Commission carefully scrutinize the transaction. In response the Applicants request that the Commission dismiss the protests and grant the applications without further investigation.

At this time, we do not believe that the record permits a determination of whether discovery is warranted. We, reserve the right, however, to make this determination upon receipt of the supplemental filings of the applicants and the comments of protestors.

#### **5. Category of Proceeding, Need for Hearings, and *Ex Parte***

No party disputed the preliminary finding in Resolution ALJ 176-3088 of May 16, 2002 that preliminarily determined that these were ratemaking proceedings.

Qwest, however, disputes the preliminary finding that no hearings are necessary. TURN-CFA takes no position on the need for hearings. The Applicants argue that no hearings were necessary.

This ruling confirms the Commission's preliminary finding in Resolution ALJ 176-3088 that the category for this proceeding is ratesetting and that hearings are not necessary. We believe that the criteria for determining the public interest are straightforward and that the Applicants should be able to demonstrate how the transaction meets these public interest criteria with a showing that does not require an evidentiary hearing. We reserve the right, however, to determine that hearings are necessary should the subsequent filings of parties demonstrate that the public interest requires hearings.

This ruling, only as to category, is appealable under the procedures in Rule 6.4. The ex parte rules as set forth in Rule 7 of the Commission's Rules of Practice and Procedure apply to this proceeding.

## **6. Schedule**

At the PHC, AT&T and CBC renewed their requests for approval of the proposed transaction at the August 22, 2002 Commission meeting. The Applicants, however, admitted that they planned to complete the transaction in the October timeframe.<sup>20</sup>

Qwest presented a schedule for a proceeding that included evidentiary hearings and led to a decision in April of 2003. TURN-CFA did not present a timetable, nor did they request evidentiary hearings.

Based on the arguments presented by parties and our own experience with similar proceedings, we adopt the schedule below for submission of further information, comments, and a projected decision. We note, however, that the schedule may change should we later determine that hearings are necessary.

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<sup>20</sup> PHC, TR 5:18-21.



<b>Event</b>	<b>Date</b>
Applications Filed	May 2, 2002
Protests Filed	June 7, 2002
Reply to Protests	June 17, 2002
PHC Held	July 19, 2002
AT&T and Comcast File and Serve Supplement Applications to Demonstrate Consistency with Enumerated Public Interest Criteria	August 16, 2002
Notices of Intent to Claim Compensation Due	August 19, 2002
Parties Reply to Supplemental Filing	August 23, 2002
Requests for Oral Arguments, if any	August 23, 2002
Proposed Decision Issues	September 17, 2002
Final Commission Decision	October 17, 2002

Resolution of the issues within the scope of this proceeding will not exceed 18 months from the date of the filing of the application, pursuant to SB 960, Section 13.

## **7. Principal Hearing Officer and Final Oral Argument**

Pursuant to Public Utilities Code § 1701.3, Administrative Law Judge Sullivan is designated as the principal hearing officer in this application.

As stated in the schedule above, and pursuant to Rule 8(d), parties requesting final oral argument before the Commission should include that request in a separate filing, due August 23, 2002.

## **8. Service List and Electronic Distribution of Pleadings**

The current service list for this proceeding, as consolidated, is attached to this ruling as Appendix A. A current service list for this proceeding is also available on the Commission's web page, [www.cpuc.ca.gov](http://www.cpuc.ca.gov). Choose "Proceedings" and then "Service Lists" on the "Quick Links" bars. The service

list for this proceeding can be located in the “Index of Service Lists” by scrolling to the application number.

In addition to the required service (per Rule 2.3), all parties are encouraged to distribute all pleadings and testimony in electronic form to those parties that provided an electronic mail address to the Commission. The electronic addresses of all parties to the proceeding can be found in the comma-delimited service list file. Choose the application number and click on “Download Comma-delimited File.”

## **9. Intervenor Compensation**

The prehearing conference in this matter was held July 19, 2002. Pursuant to Public Utilities Code § 1804(a)(1), a customer who intends to seek an award of compensation shall file and serve a notice of intent to claim compensation not later than August 19, 2002.

### **IT IS RULED** that:

1. Application (A.) 02-05-010 and A.02-05-011 are consolidated.
2. The scope of this proceeding is set forth in Section 3 of this ruling.
3. The schedule of this proceeding is set forth in Section 6 of this ruling.
4. This ruling confirms the Commission’s preliminary findings in Resolution ALJ 176-3088, filed on May 16, 2002, that the category for this proceeding is ratesetting and that hearings are not necessary. This ruling, only as to category, is appealable under the procedures in Rule 6.4.
5. The *ex parte* rules as set forth in Rule 7 of the Commission’s Rules of Practice and Procedure apply to this application.
6. Administrative Law Judge Sullivan is the principal hearing officer in this application.

7. The official service list is attached to this ruling as Appendix A. Parties should be serve all filings on parties listed on the service list, including those identified as “State Service.” Parties are not required to serve those individuals listed under “Information Only.” In addition, parties are encouraged to distribute all pleadings and testimony in electronic form to those parties that provided an electronic mail address to the Commission consistent with the procedures discussed at the prehearing conference.

8. Pursuant to Pub. Util. Code § 1804(a)(1), a customer who intends to seek an award of compensation shall file and serve a notice of intent to claim compensation not later than August 19, 2002.

Dated August 8, 2002, at San Francisco, California.

/s/ Michael R. Peevey  
Michael R. Peevey  
Assigned Commissioner

/s/ Timothy J. Sullivan  
Timothy J. Sullivan  
Administrative Law Judge

## **APPENDIX A**

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**(END OF APPENDIX A)**

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge's Ruling on all parties of record in this proceeding or their attorneys of record.

Dated August 8, 2002, at San Francisco, California.

/s/ Antonina V. Swansen

Antonina V. Swansen

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.