

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the  
Commission's Own Motion Into the  
Planned Purchase and Acquisition by  
AT&T Inc. of T-Mobile USA, Inc., and  
its Effect on California Ratepayers and  
the California Economy.

I.11-06-009  
(Filed June 9, 2011)

**OPENING COMMENTS OF  
THE DIVISION OF RATEPAYER ADVOCATES**

DALE PIIRU, Senior Analyst  
JOANNE LEUNG, Utilities Engineer  
Division of Ratepayer Advocates  
California Public Utilities Commission  
505 Van Ness Ave.  
San Francisco, CA 94102  
Piru Email: [dgp@cpuc.ca.gov](mailto:dgp@cpuc.ca.gov)  
Phone: 415-703-1726  
Leung Email: [leu@cpuc.co.gov](mailto:leu@cpuc.co.gov)  
Phone: 415-703- 1149

**TRAVIS T. FOSS**  
Staff Counsel  
The Division of Ratepayer Advocates  
California Public Utilities Commission  
505 Van Ness Ave.  
San Francisco, CA 94102  
Phone: (415) 703-1998  
Email: [tff@cpuc.ca.gov](mailto:tff@cpuc.ca.gov)

July 6, 2011

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the Commission's Own Motion Into the Planned Purchase and Acquisition by AT&T Inc. of T-Mobile USA, Inc., and its Effect on California Ratepayers and the California Economy.

I.11-06-009  
(Filed June 9, 2011)

**OPENING COMMENTS OF  
THE DIVISION OF RATEPAYER ADVOCATES**

The Division of Ratepayer Advocates (DRA) welcomes the opportunity to submit these comments in response to the CPUC's Order Instituting Investigation into the proposed merger of AT&T Mobility and T-Mobile, both wireless service providers with a significant customer base in California.

**I. INTRODUCTION AND SUMMARY**

The proposed merger is a national transaction that would have serious and deleterious effects for all consumers in California. The primary result would be that AT&T's dominant market share (combined with Verizon) over wireline and wireless service would be greatly enhanced and intensified. Although *rates* for wireless service currently fall under federal jurisdiction, California has the opportunity and obligation to address *the terms and conditions* of service provided to wireless customers, and could apply requirements and restrictions to the affiliated Incumbent Local Exchange Carriers (ILECs) to mitigate the harms caused by their market dominance.

DRA is concerned about the potential effects of anticompetitive behavior on California's consumers, and is particularly concerned about the increase in market power this transaction would create. Today's economic climate is worsened significantly by the

excessive prices residential and business customers must pay for a range of wireless services, prices which provide extraordinary profit levels to the carriers, and that serve to shift hundreds of millions of dollars out of California month after month and year after year. DRA contends that these monies would be put to better use if retained as income at the disposal of each consumer.

This Commission can mitigate damages and pursue its obligation to protect Californians in three ways: first, to adopt and enforce regulations for the terms and conditions of all wireless-service offerings, including handset unlocking, limits to contract terms, standards for service quality and complaint reporting; second, to require commitments by ATT as a condition of the merger transaction, concessions which may include requirements to build and offer modestly-priced, wireless broadband-capable services in unserved and underserved areas; and third, to address competitive barriers by requiring the wireline ILECs to reduce special access and backhaul rates, and contract terms for wireless competitors, and to reduce or remove other barriers to entry and market operations.

## **II. RESPONSE TO QUESTIONS: THE ISSUES IDENTIFIED BY THIS OII HAVE THE GREATEST IMPACT ON CALIFORNIA, AND HIGHLIGHT THE MONOPOLY POWER OF THE INDUSTRY**

### **1. Is this proposed merger in the public interest?**

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

DRA's relatively straightforward evaluation of the potential merger finds that if effected, the transaction would effectively remove one competitor from the wireless market and would strengthen AT&T's monopoly over spectrum allocation. Concentration in the wireless market would increase significantly as a result of this proposed merger both nationally and in California, and the merger's effects in California would be similar in nature to the effects nationally. However, specific data with regards

to the magnitude of concentration show that the increase in wireless market concentration would be greater in California than nationally if the merger is approved.<sup>1</sup>

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

The analysis most relevant from the consumers' perspective would be approximately the same as any analysis of localized monopoly power: for **wireless services**, the definition of service should include all transmissions using the network, without making distinctions between voice, data, and video; for **geographic markets**, a disaggregated analysis should be made contiguously with each ILEC's wireline service territory, as service provision is dependent on the availability and cost (or pricing) of the network interconnection (i.e. wireless backhaul).

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

Applying a traditional antitrust analysis, the ability of the wireless carriers to lock handsets would have been considered "tying" – an unacceptable mandatory linking of the handset and the service. The tying issue has been largely ignored in the past decade-plus development of the wireless industry as a result of the contemporary deregulatory models widely employed in the oversight of many industries. The carrier's ability to retain customers through tying of handsets and service hurts both consumers and manufacturers. Contrary to the claims of the applicants, less competition in the market would serve only to stifle, not promote, innovation in the development of handsets. With fewer providers to serve, handset manufacturers would cater primarily, if not only, to the big players,

---

<sup>1</sup> I.11-06-009 Merger OII, footnote 9, p. 10. "Whereas a post-merger AT&T would have a combined wireless market share of approximately 42% nationally, it would have over 47% in California. The differential would be larger in mobile broadband, where AT&T's post-merger market share in California would be over 55%, whereas nationally it would be in the 42% range."

creating a Walmart effect in the handset market. The ability of AT&T and the remaining wireless carriers to control the introduction or exclusion of handsets and related equipment would increase with this merger.

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

According to AT&T, all T-Mobile customers will have the choice of keeping their current plans or switching to an AT&T plan after the merger. However, AT&T did not specify for how long after the merger would the T-Mobile plans continue to be available.<sup>2</sup> Nor has AT&T explained how it would treat customers whose contracts have expired or will expire prior to the effective date of the merger, if approved, and who receive service as “month-to-month” customers. The Commission must explore these issues in detail, and at a minimum, condition the merger on some means of ensuring that customers currently in contract with, or on month-to-month service with, T-Mobile are offered a lengthy period to transition to other carriers in the event that AT&T raises rates for or restricts plan offerings to those customers.<sup>3</sup>

- 2. What merger-specific and verifiable efficiencies would likely be realized by the merger?**
- 3. Would innovation be promoted or constrained by the merger? For example, would the merger increase, maintain or diminish facilities and competition for wireless transmission services such as distributed antenna systems (DAS) and open distributed antenna systems (O-DAS)?**
- 4. What impact would the merger have on the market for special access or backhaul services?**

---

<sup>2</sup> AT&T’s FCC Merger Application, p. 44. “Consumers who are happy with their T-Mobile USA rate plans will be able to keep them...T-Mobile USA customers who wish to consider other options will have access to AT&T’s broad selection of rate plans...”

<sup>3</sup> DRA would recommend something more substantial, but is mindful that the Commission cannot regulate rates and thus, cannot protect customers of the merged company from rate increases.

- a. What alternatives to incumbents' special access backhaul facilities currently exist, and what alternatives would exist after the merger, for independent, competitive wireless carriers?
- b. Would the smaller post-merger pool of independent, competitive wireless carriers purchasing special access backhaul from local exchange carriers affect the market power of those special access backhaul customers? Would the merger increase the market power of the local exchange carriers and/or their wireless affiliates with respect to special access backhaul services?
- c. Would the merger increase the ability of the merging parties to impose exclusive or requirements contracts on purchasers of backhaul services? Would the merger increase the ability of the merging parties or their wireline affiliates to require that the entity seeking backhaul services buy a certain percentage of their backhaul services from the wireline affiliates of the merging parties?

The current configuration of California's network is such that each ILEC controls "chokepoints" with respect to wireless backhaul facilities at every Mobile Telephone Switching Offices (MTSO) in their respective *wireline* territories. At current rates, "other" wireless carriers pay connection fees far above cost to connect to the network, effectively subsidizing the ILEC or the wireless carrier. The substantial overcharge for backhaul connections poses a significant and ongoing barrier to competitors, a barrier not faced by the wireless carrier when connecting to and paying its own wireline affiliate, for example, when AT&T Mobility pays AT&T the wireline company for backhaul, which amounts to a transaction between affiliates with the same bottom line.

5. The Commission does not review, and has not done so for many years, AT&T's costs to provide services, including backhaul service. As a consequence, the Commission has no benchmark for evaluating what T-Mobile pays AT&T for wireless backhaul in terms of any relationship to actual cost. Whether or not the CPUC approves this merger, it should undertake a review of the wireline carriers' provision of backhaul as a component of the competitive marketplace, for wireless and wireline service providers. **Would the merger maintain or improve the quality of service to California consumers?**
  - a. Is acquisition of T-Mobile's spectrum necessary to extend AT&T's service area or improve AT&T's existing service? Is AT&T using the

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

Previous investments in older and largely incompatible technologies, a bewildering failure to invest in pro-active build-out of current, unused spectrum, and a failure to pursue other solutions, all prevent AT&T from using its existing wireless capacity and spectrum allocations fully or efficiently. But, these factors are, in essence, self-inflicted. Until AT&T builds out facilities on unused spectrum holdings and enables customers to migrate from less-efficient legacy standards, bands, and technologies, its claim that it has no viable solution to its capacity problems is nothing more than "crying wolf". Further, purchasing T-Mobile's facilities would not solve AT&T's problems, as it appears that T-Mobile currently faces its own capacity and congestion challenges.

Public Utilities Code Section 854§ (c) (3) mandates that the Commission consider, in its evaluation of a merger proposal, whether the merger maintains or improves service to public utility ratepayers in the state. In its application, AT&T assures that service quality would improve as a result of this merger, and further, that the merger would reduce the number of blocked and dropped calls (Application at 9). As a condition of this merger, the Commission should require AT&T to provide to the Communications Division service quality data that is readily available from the merging entities, to determine if service quality is being maintained. The data should include at minimum annual reports on blocked and/or dropped calls and signal strength. The merged entity should also report the number of number of customer complaints on a quarterly basis, separated by complaint cause.

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

6. **What California utilities would operate the merged properties in California? Would the merger preserve the jurisdiction of the Commission and the capacity of the Commission to effectively regulate those utility operations in the state?**
7. **How does this merger affect the merging companies' employees, shareholders, subscribers, communities in which they operate, and the State as a whole?**

DRA is concerned that the merger would decrease employment in California, at a time when the state's economy can least afford more unemployment. The *Wall Street Journal* estimates that thousands of jobs would be lost nationwide.<sup>4</sup> California would likely suffer a large proportion of those cuts because of its size. The CPUC should pay special attention to AT&T's claims regarding consolidation of the merged company's operations, as consolidation is just another word for job loss.

8. **Would the benefits of the merger likely exceed any detrimental effects of the merger?**

In the current regulatory climate, the merger as proposed would seem to accrue benefits only to AT&T's shareholders. With fewer competitors in the market, and fewer options among which consumers could choose, the remaining service providers, including AT&T, would be well-positioned to raise rates, provided reduced-quality service, and outsource jobs to save money for the corporation. All of this would add up to financial gain for the shareholders but diminished offerings for customers.

9. **Should the Commission consider conditions or mitigation measures to prevent significant adverse consequences which may result from the merger? What, if any, should those conditions or measures be?**

The Commission should consider measures to mitigate current and anticipated adverse consequences from diminishing wireless competition as the number of providers is reduced. The CPUC also should consider measures to reduce or offset other potential adverse consequences, such as the loss of a major provider of wireless services at the lower end of the wireless service price range. And, the CPUC should examine its ability

---

<sup>4</sup> WSJ, March 21, 2011, "AT&T to Buy Rival in \$39 Billion Deal."



to stem any possible effects to the California economy from job loss that could follow consolidation of merged operations.

### **III. DRA BELIEVES THAT ONLY THE CPUC'S EXERCISE OF ITS STATUTORY OBLIGATIONS WILL PROTECT CALIFORNIA'S WIRELESS CONSUMERS**

DRA believes that the Commission needs to extend protections to wireless customers, scrutinizing the terms and conditions consumers are subjected to on a daily basis in California. Regardless of the merger outcome, DRA believes that, at minimum, the Commission should do the following:

- Monitor service quality performance of the merged entity on an ongoing basis to assure that service quality is maintained or improved.
- Require and review company records and reporting of customer complaints and inquiries on service, billing, contract terms, and other issues.
- Reduce or eliminate locked phones and early termination fees for contract terms as the primary option available to customers at every level.
- Evaluate and set special access fees at reasonable levels and remove barriers to wireless competition.

### **IV. CONCLUSION**

DRA submits these comments to help inform the Commission as it evaluates the potential effects of the propose merger. DRA expects to be an active participant in this docket, and may well identify other issues of concern in future filings.

Respectfully submitted,

/s/ TRAVIS T. FOSS

---

Travis T. Foss

Attorney for the Division of Ratepayer  
Advocates California Public Utilities  
Commission

505 Van Ness Ave.

San Francisco, CA 94102

Phone: (415) 703-1998

Fax: (415) 703-4432

July 6, 2011