

Decision 90 03 080 MAR 28 1990

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the )  
Commission's own motion to develop )  
revisions to General Orders and )  
Rules applicable to siting and )  
environmental review of cellular )  
mobile radiotelephone utility )  
facilities. )  
\_\_\_\_\_ )

R.90-01-012  
(filed January 9, 1990)

INTERIM OPINION

On January 9, 1990, we instituted this rulemaking to determine the need for revisions to the Commission's General Orders applicable to siting and environmental review of cellular radiotelephone facilities. A proposed General Order (GO) prescribing Rules Relating to the Planning and Construction of Cellular Radiotelephone Cell Sites and Switches Located in California was appended to the rulemaking. The proposed rules were mailed to the cellular utilities, counties, and local planning agencies shown on Appendix B. Written comments on the proposed rules and other issues identified in the rulemaking were invited by March 2, 1990. Comments were received from several parties. Workshops to review the proposed rules were held in six cities in California during March 1990.

In the order instituting this rulemaking, we discussed the problems with the current procedures which prompted the need for this rulemaking. In particular, we observed that the cellular radiotelephone industry was expanding much faster than projected and the lack of environmental review and public noticing of expansion and in-fill sites had denied the opportunity for public comment and local government review in some cases.

We are aware of at least 20 new cellular radiotelephone sites proposed for construction in the near future. There are probably many more of which we are not aware since many cellular radiotelephone utilities are not required to notify the Commission of expansions of their systems. McCaw Cellular Communications, Inc. (McCaw) is required to file additional environmental information on new sites. Consequently, McCaw recently filed supplemental environmental information on approximately 19 additional antenna sites which would increase capacity and improve transmission quality on its systems. McCaw claims that these additional sites will not expand its service territory and argues that it consequently is not required to submit environmental information to the Commission prior to construction of these additional antenna sites. McCaw goes on to state that it filed this additional environmental information with the Commission for informational purposes only.

In addition, two formal complaints have been filed recently with the Commission. In Case (C.) 90-02-019, County of Monterey vs. Salinas Cellular Telephone Company, et al., Complainant alleges violations of the California Coastal Act and local ordinances and requests the Commission order the removal of certain cellular radiotelephone related facilities. In C.90-02-020, Boron et al. vs Cellular One, Complainants allege that CEQA requirements were not followed and request that towers improperly located in their residential neighborhood be moved to more appropriate locations.

It is clear that the pace of cellular radiotelephone expansion has quickened even beyond our expectations when we issued the rulemaking. Indeed, the issuance of the rulemaking may have contributed to this increased activity. In our opinion, the need for immediate action to bring order and proper environmental scrutiny to this activity outweighs the immediate need for additional cellular radiotelephone facilities which may be

constructed without such review. We believe that there is an immediate need for some rules to be prescribed on an interim basis until we devise permanent rules.

Following review of the written comments submitted on the proposed general order that was mailed to the parties, we concluded that major changes were necessary. Our concern was that the proposed rules superimposed two separate regulatory processes for approving cell sites, one before local authorities and a second repetitive one before the Commission. We concluded that this was wasteful and such duplicative procedures should be avoided.

Therefore, we are now adopting revised rules which have the effect of relying on local review processes in those cases where disputes over siting and design are resolved amicably at the local level. The Commission would then be required to intervene only in a minority of situations where irreconcilable differences or intolerable delays arise. Adjacent property owners in all cases would be assured of advance notice and an opportunity to be heard.

Where technically possible, we would like to encourage cellular carriers to share common sites. While the revised rules do not provide an explicit treatment for such cases, we believe there are incentives to promote site-sharing. First, an expedited procedure is provided for approving construction that is minor in nature, including the addition of new antennas to existing procedures. Some site-sharing may qualify under this procedure. Second, the revised rules' focus on local permitting authorities will allow them to encourage site-sharing through their approval processes. We hope that these incentives will focus the attention of the cellular utilities on site-sharing, and we will be considering this question carefully when we promulgate our final rules in a subsequent decision.

Accordingly, we will adopt on an interim basis the rules attached herein as Appendix A and require immediate compliance with these rules prior to the construction of additional cellular

radiotelephone facilities. Upon written request by any of the respondents to this proceeding, the Commission will consider reopening its Investigation R.90-01-012 to examine whether this GO has served its stated purposes and to consider whether this GO must be revised to reflect technological changes in cellular facilities.

Findings of Fact

1. On January 9, 1990, the Commission instituted a rulemaking to determine the need for rules for the siting and environmental review of cellular radiotelephone facilities.
2. A problem cited in the rulemaking was the lack of environmental review and public noticing of cellular radiotelephone expansion and fill-in sites.
3. The pace of cellular radiotelephone antenna proliferation has increased dramatically recently with at least 20 additional radiotelephone cellular sites proposed for construction in the near future.
4. It is likely that few, if any, of these proposed sites will be subject to the normal environmental review process.
5. Two formal complaints have been filed recently with the Commission alleging inadequate environmental review and requesting the removal of certain inappropriately sited cellular radiotelephone facilities.
6. Immediate action is needed to require proper environmental review prior to the construction of additional cellular radiotelephone facilities.
7. The need for environmental review outweighs the need for immediate construction of additional cellular radiotelephone facilities that may be constructed without such review.

Conclusions of Law

1. The rules proposed in this proceeding should be adopted on an interim basis.

2. Immediate action is needed to provide proper environmental review prior to the construction of additional cellular radiotelephone facilities.

3. The adopted rules defer to local authorities wherever possible, assure notice to the public in all cases, and avoid unnecessarily duplicative approval procedures before both the Commission and local agencies.

4. This order should be made effective on the date hereof.

INTERIM ORDER

IT IS ORDERED that:

1. The General Order prescribing Rules Relating to the Planning and Construction of Cellular Radiotelephone Cell Sites and Switches Located in California attached to this order as Appendix A shall become effective on an interim basis as of the effective date of this order.

2. As of the effective date of this order, no cellular radiotelephone utility shall begin construction of any cell site or switch without first complying with the provisions of the General Order adopted in Paragraph 1.

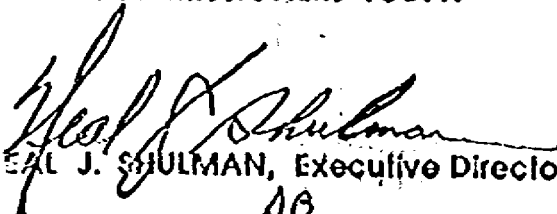
3. Upon written request by any of the respondents to this proceeding, the Commission will consider reopening its Investigation R.90-01-012 to examine whether this GO has served its stated purposes and to consider whether this GO must be revised to reflect technological changes in cellular facilities.

This order is effective today.

Dated March 28, 1990, at San Francisco, California.

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY

  
NEAL J. SHULMAN, Executive Director  
JB

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GENERAL ORDER 159  
PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA

RULES RELATING TO THE CONSTRUCTION  
OF CELLULAR RADIOTELEPHONE  
FACILITIES IN CALIFORNIA

(Adopted March 28 , 1990. Effective March 28 , 1990.

Decision 90-03-080 , R.90-01-012.

SECTION I - GENERAL

Pursuant to the provisions of Sections 451, 701, 702, 761, 762, 762.5, and 1001 of the Public Utilities Code:

IT IS HEREBY ORDERED that except as specifically provided herein, no cellular radiotelephone utility, now subject, or which hereafter may become subject, to the jurisdiction of this Commission, shall begin construction in this state of any cellular facilities without this Commission's having first authorized the construction of said facilities in accordance with the provisions of this General Order. The Table of Contents and rules are set forth below.

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SECTION II - PURPOSE OF THIS GENERAL ORDER

The Commission is adopting this General Order to ensure that:

- the potential environmental impacts of all cellular sites are reviewed and considered in a manner consistent with the California Environmental Quality Act
- affected local citizens, organizations, and jurisdictions are given reasonable notice and opportunities for input into the review process,
- the public health and welfare, and zoning concerns of local jurisdictions are addressed
- cellular companies are not unnecessarily delayed by site review.

The Commission has found in numerous decisions authorizing specific cellular systems that construction of cellular systems generally serves the public convenience and necessity. This General Order is intended to balance this statewide interest with local concerns regarding the siting, design and construction of cellular facilities. The procedure described herein is intended to be applied uniformly on a statewide basis.

The Commission recognizes that due to local concerns local agencies occasionally may seek to balance local and statewide interests in a manner that significantly impedes statewide goals of having reliable and widespread cellular telephone service. The Commission will not lightly preempt local jurisdictions in their permitting processes. The Commission recognizes that the impacts of cellular facilities are highly localized and that local citizens and governmental agencies are often in a better position than the Commission to measure local impact and to identify alternate sites.

Accordingly, the Commission delegates its authority to regulate the location and design of cellular facilities to local agencies, except in those instances when there is a clear conflict with statewide interests. In those instances, the Commission will review the need to preempt local jurisdiction, allowing local agencies and citizens an opportunity to present their positions. The cellular utility will have the burden of proof to demonstrate that accommodating to local agency requirements for any specific site would frustrate the Commission's objectives. If the cellular utility is able to prove this point, the Commission will preempt local jurisdiction pursuant to its authority under Article XII, Section 8 of the California Constitution.

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SECTION III - NEED FOR COMMISSION AUTHORIZATION

A. Generally

Except as provided herein, a cellular utility must obtain authorization from the Commission prior to the construction of cellular facilities. For the purposes of this General Order, "construction" includes the construction of any new cellular facilities or the modification of, alteration of, or addition to an existing cellular facility.

B. Initial System Facilities

For the construction of cellular facilities which are part of a cellular utility's initial system configuration, the cellular utility shall file for authority to construct in conjunction with its application for a certificate of public convenience and necessity in accordance with section 1001 of the Public Utilities Code, Rule 17.1 of the Commission's Rules of Practice and Procedure, and existing Commission procedures. Once the Commission issues a decision granting the cellular utility authority to construct, the cellular utility may commence construction of the facilities.

C. Facilities Not Included in the Utility's Certificate of Public Convenience and Necessity

A cellular utility seeking to construct a cellular facility not described in its application for a certificate of public convenience and necessity must obtain additional authorization from the Commission in accordance with Section IV of this General Order unless such proposed facilities is exempted under subsection D. below.

D. Exemptions

(1) Minor Maintenance and Repair Work

For purposes of this General Order, "construction" does not include any maintenance, repair or replacement of existing facilities; any alteration of or addition to equipment within an existing structure, any installation of environmental monitoring equipment, any soil, geological or site survey investigation, any work to determine feasibility of the use of the particular site for the proposed facility; or any other like work where it can be seen with certainty that there is no possibility that the work in question may have a significant effect on the environment. The types of work described in the preceding sentence may be performed

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without further Commission authorization. The utility must still comply with local permitting requirements, if any.

(2) Emergency Construction

This General Order does not require that cellular utilities obtain Commission authority prior to maintaining, repairing, restoring, demolishing, or replacing cellular facilities damaged or destroyed as a result of a disaster. This exemption shall be of the same scope as the exception for emergency projects in the CEQA Guidelines, 14 Cal. Code Regulations §15269. This exemption does not extend to the construction of new cellular facilities to expand the service area or the volume of traffic that can be handled in an existing cell site absent a finding by the local permitting jurisdiction that such construction is needed to provide emergency services associated with the disaster.

Whenever possible the cellular utility shall orally notify the Director of the Commission Advisory and Compliance Division ("CACD") of the proposed emergency construction prior to the construction thereof. In all cases of emergency construction, the utility shall, as soon as practicable, provide the CACD with a letter outlining the construction it performed and how such construction was necessitated by the emergency condition.

(3) Temporary Facilities

(a) For the purposes of this General Order, "temporary facilities" are defined as a cellular telephone facility which:

- (i) is no larger than a trailer twenty-eight (28) feet in length, twelve (12) feet in width and twelve (12) feet in height with no appurtenant structures other than a roll-up standby power generator;
- (ii) contains no more than the following equipment: cell site electronics, two (2) air conditioning units, a fire suppression system, a DC power plant, and a gasoline powered generator that has critical silencing of the exhaust system and the generator itself;
- (iii) includes no more than six (6) antennae and one (1) microwave dish not exceeding four (4) feet in diameter. Such antennae may be placed on the temporary facilities itself, on an adjacent existing structure, or a portable, extendable, nonpermanent support structure, not exceeding 25

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feet in height, provided that the antennae shall not extend more than twelve (12) above the topmost portion of the temporary facilities or structure;

(iv) is not placed on a parcel zoned for residential uses; and

(v) is deployed for the purpose of replacing existing damaged or malfunctioning facilities; meeting unanticipated, rapid increases in customer demand; or providing initial service pending the Commission's consideration of an advice letter or application filed pursuant to this General Order. However, the cellular utility must still comply with local permitting requirements, if any.

(b) A cellular utility which has a CPC&N to serve the area surrounding the proposed temporary facility may deploy such a facility on a temporary basis without additional authorization from this Commission. However, the cellular utility must still comply with local permitting requirements, if any.

(c) Except when deployed pending the processing of an advice letter or an application for preemptive authority to construct, temporary facilities deployed pursuant to this section may be in place for 120 days in a single location. Within 100 days from the date the temporary facilities were originally deployed, the cellular utility shall send the CACD a letter either confirming that it will remove the temporary facilities and restore the site within the next twenty (20) days or requesting that it be allowed to maintain the temporary facilities in their current location for an additional 120 days. The utility shall provide a copy of this letter any affected local agencies. The CACD has discretion to grant or deny the utility's request for an extension. If the utility does not receive a letter from the CACD within twenty (20) days from the date of its request granting the extension, the utility's request for extension shall be deemed denied and the utility shall immediately remove the temporary facilities. For the purposes of a temporary facilities, "a single location" is defined as the parcel of property on which it is initially deployed or any other parcel within 200 yards of that parcel. Temporary facilities deployed pending the processing of an

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advice letter or application pursuant to this General Order may be in place for up to 120 days after the effective date of the Commission's ruling with regard to such advice letter or application or as otherwise provided in such decision.

**SECTION IV - AUTHORIZATION PROCEDURES FOR POST-CPC&N FACILITIES**

A cellular utility needing authorization to construct or modify cellular facilities shall file for authority to construct under this section. Depending upon which criteria are applicable, a cellular utility will either file an advice letter as described in the subsection (A), or an application for preemptive authority to construct as described in the subsection (B).

**A. Standard Review (Advice Letter)**

A cellular utility may file an advice letter requesting authorization to construct in cases in which:

(1) the cellular utility has received all of the permits and approvals for the proposed construction, if any, required by any local governmental agency which has jurisdiction over the proposed construction or would have jurisdiction over the proposed construction absent the Commission's preemption; or

(2) no local permits are required, and the proposed construction is minor in nature. For the purposes of this General Order, construction which is "minor in nature" is defined as:

(a) the addition of antennas (other than a microwave antennas) or cell enhancers to existing structures, such as towers or buildings, provided that such additions do not rise more than twelve (12) feet above the topmost portion of the existing structures or any appurtenances thereto, and that the existing structure is located on a parcel currently zoned for nonresidential uses; or

(b) the placement of cellular facilities (other than standby power sources containing a combustion engine) in existing structures, provided that such facilities are placed wholly within existing structures and are located on a parcel currently zoned for nonresidential uses.

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**B. Application for Preemptive Authority to Construct**

A cellular utility shall file an application for preemptive authority to construct a cellular facility notwithstanding the lack of one or more local permits by application when the cellular utility can demonstrate that it has provided the local agency with two or more acceptable sites, but the cellular utility is unlikely to obtain a permit for either site which will provide adequate coverage of the cell. To demonstrate that it is unlikely to obtain the needed permit, the cellular utility must show that:

- (1) one or more local agencies have denied the utility's application for a permit, or
- (2) one or more local agencies have granted the utility a permit but with conditions as to location or configuration which the utility believes makes it infeasible to provide adequate coverage of the cell, or
- (3) one or more local agencies has de facto denied the utility's application (by zoning ordinances, resolution, unreasonable delays, etc.)

**SECTION V - STANDARD REVIEW PROCEDURE (ADVICE LETTER)**

**A. Filing Requirements**

All requests for Commission authority to construct under the Standard Review Procedure shall be filed by advice letter with the CACD in accordance with Section V of General Order No. 96-A. Advice letters shall contain the information described in Appendix A to this General Order.

**B. Notice Requirements**

- (1) On the date the advice letter is filed, the utility shall serve a copy of the advice letter and accompanying tariff pages, if any, by mail on those parties required to be served with advice letters by Section III.G of General Order No. 96-A and on other parties having requested such notification.
- (2) In the case of "minor construction" in an area where no local permits are required, the utility shall post the notice in at least three (3) public places in the area surrounding the proposed construction site, including one public place on or near the proposed construction site.

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Said notice shall be posted no later than five (5) days after the date the advice letter was filed. Said notice shall include the following information:

- (a) a general description of the proposed construction and its location;
- (b) instructions on obtaining a copy of the advice letter;
- (c) the applicable grounds and procedure for protesting the advice letter; and
- (d) the date the protest period expires.

C. Protest Procedure

- (1) Any person may file a protest to the advice letter in accordance with Section III.H of General Order No. 96-A. The protest shall be filed with the CACD not later than twenty (20) days after the date on which the advice letter was filed. The protestant shall serve a copy of the protest on the subject utility on the same day the protest is filed with the CACD.
- (2) A protest may be made by letter, telegram or telefax and shall comply with Rules 8.1-8.8 of the Commission's Rules of Practice and Procedure.
- (3) The utility shall respond in writing to a protest within ten (10) business days after its receipt and shall serve copies of its response by mail on each protestant and the Commission.

D. Consideration of Advice Letters Seeking Authority to Construct

- (1) If no protest has been filed, the Executive Director shall issue an order approving the advice letter no later than thirty (30) days from the date the advice letter was filed.
- (2) If a protest has been filed, the Commission shall issue a resolution approving the advice letter or shall reject the advice letter no later than sixty (60) days from the date the advice letter was filed. The Commission shall determine whether to approve or reject the advice letter in accordance with the following standards:
  - (a) if the protest does not present a prima facie showing, the advice letter shall be approved;

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- (b) if the protest presents a prima facie showing, the advice letter shall be approved only if the cellular utility demonstrates conclusively that it has all of the requisite permits and approvals or that the construction is minor in nature; otherwise the advice letter must be rejected.
- (3) Commission or Executive Director approval of advice letters under the Standard Review Procedure is an exercise of ministerial authority that is exempt from application of CEQA pursuant to section 21080 of the California Public Resources Code. If an order or resolution approving the advice letter is issued, the Commission staff shall also file a Notice of Exemption from CEQA with the Office of Planning and Research.
- (4) If the advice letter is rejected, the utility may file an application for preemptive authority to construct.

E. Commencement of Construction

- (1) If the utility has received all requisite permits or approvals in accordance with this section, the utility may commence construction upon receipt of an order of the Executive Director or a Commission resolution approving the advice letter;
- (2) If the utility has asserted in its advice letter that its construction is minor in nature and no local permits are required, the utility may commence construction upon receipt of an order of the Executive Director or a Commission resolution approving the advice letters.
- (3) A cellular utility may construct cellular facilities, at its own risk, upon filing an advice letter with the Commission under the Standard Review Procedure. If, however, the Commission or Executive Director rejects the advice letter, the utility will be required to cease operation of the facilities immediately, to remove the facilities and to restore the construction site to its original status. To guarantee removal of the facilities and restoration of the construction site, the utility shall provide the CACD with an undertaking in a form specified by the Commission signed by an officer of the utility.



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**SECTION VI - APPLICATIONS FOR PREEMPTIVE AUTHORITY TO CONSTRUCT**

This section describes procedures a utility may use to seek authority from the Commission to construct a cellular facility when the conditions of Section IV.B. of this General Order apply. If the Commission agrees to approve such an application, that Commission decision preempts local regulation of the facility to the extent described in the Commission's decision.

**A. Filing Requirements**

A cellular utility must file for authority to construct by application. All applications for preemptive authority to construct shall comply with this Commission's Rules of Practice and Procedure Nos. 2 through 8, 15, and 16 and shall contain the information described in Appendix B.

**B. Notice Requirements**

- (1) On the day the application is filed, Applicant shall mail notice of the filing of its application for preemptive authority to construct to the agencies with jurisdiction over the construction but for the Commission's preemption; to all owners of the real property on which the proposed facilities will be constructed; to all owners of real property, as shown on equalized assessment roll, within 300 feet of the real property on which the proposed facility will be constructed (if the number of owners of real property within 300 feet is greater than 1000, in lieu of mailing the notice may be posted in three public places in the area surrounding the proposed construction site, including one public place on or near the proposed construction site); to adjacent and competing utilities; and to other parties having requested such notification. A declaration of mailing shall be filed with the Commission no later than the (10) days after the day on which notice of the application is mailed.
- (2) The applicant shall also post the notice in at least three (3) public places in the area surrounding the proposed construction site, including one public place on or near the proposed construction site. Such notice shall be posted no later than five (5) days after the date the application was filed.
- (3) The notice required by subsections (1) and (2) above shall contain, at a minimum, the following information:

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- (a) a general description of the proposed construction and its location;
  - (b) instructions on obtaining or reviewing a copy of the application;
  - (c) the applicable procedure for protesting the application; and
  - (d) the date the protest period expires.
- (4) The applicant shall provide a copy of its application for authority to construct to any person upon request.

C. Review of Application for Completeness

No later than thirty (30) days after the filing of the application, Commission staff shall review it and notify the utility in writing of any deficiencies in the submitted information and data. The utility shall correct any deficiencies within 30 days thereafter or explain in writing to the Commission why it is unable to do so. Any such explanation shall include an estimate of when the utility will be able to correct the information deficiencies. Upon correction of any deficiencies in the application, any public hearings which are necessary may be held on the application. The Commission shall issue a decision no later than eight months after the acceptance of the application as complete, or at such later time as is mutually agreed upon by the applicant and the Commission.

D. Request for Public Hearings

Those to whom notice has been sent as specified in Section IV and any other person entitled under the Commission's Rules of Practice and Procedure to participate in a proceeding for an authority to construct may, within thirty days after the notice was mailed and published, request that the Commission hold hearings on the application. Any such request should include the reasons therefor. If the Commission, as a result of its preliminary investigation after such requests, determines that public hearings should be held, notice shall be sent to each person who is entitled to notice or who has requested a hearing.

E. Time Limits

- (1) If the proposed facility does not require the preparation of an Environmental Impact Report ("EIR") and a hearing is not held, the Commission shall issue a final decision regarding the proposed facility within the time periods

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specified in Government Code §§65951-52 (180 days from the date on which the application was accepted as complete).

- (2) If an EIR is prepared by the Commission, then the Commission shall issue a final decision regarding the proposed facility within the time periods specified in Government Code §§65951-52 (one year from the date on which the application was accepted as complete).
- (3) If the Commission uses a Negative Declaration or EIR prepared by a local agency or another state agency, then the Commission shall issue a final decision regarding the proposed facility within the time periods specified in Government Code §65952.
- (4) In addition, if the proposed construction will result in the addition or relocation of the utility's transmission facilities or an alteration of the utility's service area, the Commission's decision shall include authority for the utility to file an advice letter on five days' notice revising its tariffs in accordance with the decision.

F. Commencement of Construction

- (1) No local permits are required as a prerequisite to construction, except as specified in the Commission order. Once the Commission issues a decision authorizing the proposed construction, the utility may commence construction; provided, however, that prior to the commencement of construction, the utility shall present its building plans for the proposed construction to the local agency which would have had jurisdiction over the proposed construction absent the Commission's preemption, for the local agency's review of compliance with local building and electrical codes ("Building Plan Check"). If the local agency refuses to perform a Building Plan Check or fails to complete the plan check within four (4) weeks of the date of the decision was issued, then the utility may commence construction of its facilities in accordance with building plans stamped by a state-licensed engineer certifying that said plans comply with local building and electrical codes. The utility shall file a copy of these plans with the CACD prior to construction.
- (2) During the proposed construction, the utility shall either comply with applicable local inspection procedures or, if the local agency refuses to provide inspection services, shall hire an independent building inspector who shall inspect the facilities as they are being constructed and shall certify, upon completion of construction, that such

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facilities were constructed in accordance with the building plans stamped by the state-licensed engineer of record. The cellular utility shall file a copy of the independent building inspector's certificate with the CACD within fifteen (15) days of receipt of such certificate.

- (3) Telephone and electric utilities subject to the jurisdiction of the Commission are hereby ordered to turn on utility service to cellular facilities constructed pursuant to this General Order upon presentation by the utility of a copy of a Commission decision authorizing the proposed construction and a certificate from an independent building inspector certifying that the electrical system as installed complies with the building plans stamped by the state-licensed engineer of record.

SECTION VII - CEQA COMPLIANCE

- A. For all issues relating to the siting, design, and construction of cellular facilities which are part of the initial configuration described in an application for a certificate of public convenience and necessity, the Commission will be the Lead Agency under the California Environmental Quality Act ("CEQA").
- B. For advice letter filings under the Standard Review Procedure, the Lead Agency will be the most appropriate local or other state agency unless a different designation has been negotiated between the local agency and the Commission consistent with CEQA Guidelines §§15051(b)-(d).
- C. For applications for preemptive authority to construct, the Lead Agency will be:
  - (1) the local or other state agency in those cases where one of them has issued a Negative Declaration, Mitigated Negative Declaration, or EIR, even if this document identifies an alternate site or configuration as environmentally preferable, unless a different designation has been negotiated between the local agency and the Commission consistent with CEQA Guidelines §§15051(b)-(d). The Commission will function as a Responsible Agency.
  - (2) the Commission when:
    - (a) a local or other state agency has not begun the CEQA process.

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- (b) a local agency has denied the applicant's permit applications without issuing a Negative Declaration or EIR.
- (3) negotiated between the local agency and the Commission consistent with CEQA Guidelines §§15051(b)-(d), when the local agency has started but not completed the CEQA review process, and the applicant alleges that the local agency has de facto denied its permit application.

SECTION VIII - PROCEDURE ON COMPLAINTS

Complaints may be filed with the Commission for resolution of any alleged violations of this General Order pursuant to the Commission's Rules of Practice and Procedure, Rules 9 through 13.1.

SECTION IX - REVIEW OF THIS GENERAL ORDER

Upon written request by any of the respondents to this proceeding, the Commission will consider reopening its Investigation No. R.90-01-012 to examine whether this General Order has served its stated purposes and to consider whether this General Order must be revised to reflect technological changes in cellular facilities.

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INFORMATION TO BE INCLUDED IN AN ADVICE LETTER FILING FOR  
AUTHORITY TO CONSTRUCT

1. A description of the proposed construction, including the equipment to be installed; the tower design, appearance and height; the building sizes; and the lot location;
2. A street map showing the proposed location of the construction and the relationship of the proposed location to residential or scenic areas within 1,000 feet of the proposed location;
3. Tariff sheets reflecting the addition or relocation, if any, of transmitting facilities and the changes, if any, to a utility's service area map;
4. A copy of the notice of the advice letter to be provided in accordance with this General Order;
5. An explanation of the Standard Review Procedure, including the grounds for protesting an advice letter filed under this procedure and the date of protest period expires;
6. A list of all governmental agencies (with the exception of the Commission) which have jurisdiction over the proposed construction or would have jurisdiction over the proposed construction absent Commission preemption;
7. A declaration, signed by an officer of the utility, attesting either that:
  - (1) with respect to each agency listed in subsection 6 above, all necessary permits or approvals have been obtained; or
  - (2) none are required from that agency and the proposed construction is minor in nature. All such declarations must state the bases for the utility's conclusion with particularity and be signed under penalty of perjury.

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APPENDIX B

INFORMATION TO BE INCLUDED IN AN APPLICATION FOR  
PREEMPTIVE AUTHORITY TO CONSTRUCT

1. A description of the proposed construction, including the equipment to be installed; the tower design, appearance and height; the building sizes; and the lot location;
2. A street map showing the proposed location of the construction and the relationship of the location to residential or scenic areas within 1,000 feet of the proposed location;
3. An explanation of why it is necessary for the Commission to preempt local jurisdictions in this case;
4. Copies of all denials of permit applications and correspondence with the agency denying the permit;
5. Copies of any notices or other documents issued by the applicant or any local or state agency in compliance with CEQA regarding this proposed facility;
6. A list of the owners of real property, as shown on the latest equalized assessment roll, within 300 feet of the property on which the facilities will be constructed;
7. A list of all the permits which the utility understands would be required by any local agency for the proposed construction, absent the Commission's preemption of the agency's permitting authority;
8. A list of the permits which the utility understands are required by any federal, state or other non-local agency for the proposed construction;
9. The proposed schedule for the provision of notice pursuant to this General Order and for the construction, and commencement of operation of the facility;
10. a copy of the notice of the application to be provided in General Order;
11. a statement of compliance with this General Order and applicable Commission Rules; and
12. draft tariff sheets reflecting the addition or relocation, if any, of transmitting facilities and the changes, if any, to the utility's service area map.

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13. The application must state whether:

- (a) it can be seen with certainty that there is no possibility that the proposed facility may have a significant effect on the environment, or
- (b) the proposed facility is statutorily or categorically exempt from CEQA,

If so, the application shall state this conclusion or cite to the exemption(s), if any, which apply to the proposed facility and shall include any additional explanation or information necessary to support an independent assessment by the Commission of the utility's assertion.

14. If neither of the statements in section 10 above apply, then the application shall contain the following:

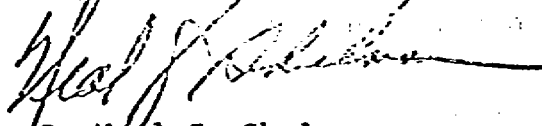
- (a) reasons for the adoption of the selected site, including comparisons with alternative sites; and
- (b) a Proponent's Environmental Assessment ("PEA") or equivalent information on the environmental impact of the project in accordance with CEQA and this Commission's Rules 17.1 and 17.3. If a PEA is filed, it may include the data listed in sections 1-10 above.

15. An application for authority to construct need not include a detailed analysis of purpose and necessity, a detailed estimate of cost and economic analysis, or a detailed description of construction methods beyond that information required for CEQA compliance.

16. A certificate of service stating that the application with attachments had been sent to all local agencies whose authority the applicant requests the Commission preempt.

Approved and dated March 28, 1990, at San Francisco, California.

PUBLIC UTILITIES COMMISSION  
STATE OF CALIFORNIA



By Neal J. Shulman  
Executive Director

(END OF APPENDIX A)