

Decision 90 06 044 JUN 20 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
for Modification of Decision)
86-06-058 Granting Application of)
Los Angeles Cellular Telephone)
Company (U-3009-C) for a)
Certificate of Public Convenience)
and Necessity to Provide Cellular)
Radio Telephone Service in the)
Greater Los Angeles Metropolitan)
Areas.)

Application 83-04-21
(Petition to Modify
Decision 86-06-058
Filed September 9, 1987)

Dinkelspiel, Donovan and Reder, by David M. Wilson, Attorney at Law, for Los Angeles Cellular Telephone Company, applicant.
William Campbell, Director of Community Development, for the City of La Canada-Flintridge, interested party.
Scott L. Sanders, for the Commission Advisory and Compliance Division.

FINAL OPINION ON DISMISSAL OF PHASE 2 OF LACTC'S
SEPTEMBER 9, 1987 PETITION FOR MODIFICATION
OF DECISION 86-06-058

Statement of Facts

In April of 1983, Los Angeles Cellular Corporation's (LA Cellular) application for certification as the non-wireline, or Block A, cellular carrier in the Los Angeles Standard Metropolitan Statistical Area (SMSA) was filed with the Commission, and protested. Pursuant to federal policy favoring settlements among competing applicants, LA Cellular and one of the protestants, LIN Cellular Communications Corporation, in June of 1983, formed a partnership, Los Angeles Cellular Telephone Company (LACTC), to pursue before the Commission the LA Cellular application. And in October of 1983 LACTC filed its Proponents Environmental Assessment (PEA) for the project with the Commission.

On November 22, 1983, this Commission, as the lead agency for the project under provisions of the California Environmental Quality Act (CEQA), issued a "Mitigated Negative Declaration" by Resolution T-10775 to apply to the LACTC project as a whole. By the declaration the Commission concluded that there would be no significant adverse impacts; that the only potentially adverse impacts would be associated with individual cell site structures within the SMSA. Seen as essentially aesthetic in nature, these were left to be mitigated by conditions to be set by local permit agencies. Subsequent events at the federal level delayed issuance of a certificate, and in the interval LACTC found it necessary to revise the initial core system site locations described in its original application and PEA, expanding sites within the SMSA from 24 to 42.

In that CEQA encourages use of existing documentation to the greatest extent possible, and a new PEA and Study would not have changed the project's overall environmental impacts, the Commission staff determined on use of the original declaration as the environmental vehicle. Staff invited affected local jurisdictions to Los Angeles meeting on April 21, 1986 for comment. None attended, leaving staff to conclude there would be no significant local concerns with the expanded core sites in the same SMSA. On June 25, 1986 the Commission issued Decision (D.) 86-06-058 granting LACTC a certificate. The Commission also filed a Notice of Determination with the State Office of Planning and Research advising that the project would have no significant impacts and that a Negative Declaration had been adopted.

Problems then developed. As a consequence of delay in certification, it was found to be necessary that one of the initial sites had to be relocated. When a Conditional Use Permit was sought, the City of La Canada-Flintridge objected. Another site location was agreed upon between LACTC and the City's Planning Commission, but then a group of homeowners in the area appealed to

the City Council. Meanwhile, the council had adopted a Negative Declaration drafted by its Planning Commission to apply to the new site. After a limited hearing the City Council granted LACTC a Conditional Use Permit for this site.

The homeowners next filed a Superior Court suit (Case No. 638,081, Isenberg v La Canada-Flintridge, and obtained a preemptory writ of mandamus against the City and LACTC, setting aside the permit and remanding. Another homeowners group also brought a separate but related suit (Yeghiaian v City of La Canada-Flintridge (No. C-643793).

These two legal actions were finally resolved in a settlement which permitted LACTC to continue temporarily to use the disputed site (which was essential for continuous cellular coverage in the area) until a technically suitable substitute could be located. After LACTC located such a site in the area it filed a Supplemental PEA. The Commission staff prepared an amendment to the 1983 "Mitigated Negative Declaration", and after the public review period, at the request of La Canada-Flintridge, the Commission ordered a public hearing.

Because of the La Canada-Flintridge suits and delays incurred in other local jurisdictions in the permit process adopted by the Commission to apply to individual cell sites - delays which in some instances had held up construction on cell divisions within the SMSA for over a year, and which in some situations had forced LACTC to accept technically inferior sites, causing customer inconvenience - LACTC on September 9, 1987 filed this petition seeking: (1) modification of LACTC's certificate to assert exclusive Commission jurisdiction over siting locations and preemption of local agencies from imposing conditions or restrictions through local permit approval processes which would prejudice financial or technical viability, or make it technically or financially infeasible to construct cellular facilities; and (2) to amend LACTC's "Mitigated Negative Declaration" to establish

procedures for environmental review of all future sites, with provision for local comment but within the context of Commission preemption of approvals.

After widely distributed public notice to local homeowners near the cell site immediately at issue, and to all governmental entities within LACTC's Los Angeles SMSA, a public hearing was held before Administrative Law Judge (ALJ) Weiss in Los Angeles on November 13, 1987. Apart from a representative from La Canada-Flintridge, no members of the public or any of the affected governmental entities attended.

Because of the immediate pressing need to get construction of a permanent cell site underway to replace the temporary installation, and in view of the very broad scope of the problems rising in the cellular radiotelephone industry out of its much faster than projected expansion, problems reflective of the entire cellular industry rather than merely of LACTC, the ALJ bifurcated the proceedings into two phases. Phase 1 applied only to the immediate pressing cell site problem, and a Phase 2 was to be reserved.

On December 17, 1987 the Commission issued: D.87-12-053, a Phase 1 Supplemental Order to D.86-06-058, authorizing a cell site at the compromise location; filed an Amended Negative Declaration as an addendum to the earlier "Mitigated Negative Declaration"; and reserved the broader issues raised in LACTC's petition to modify D.86-06-058.

On January 9, 1990, the Commission issued Rulemaking (R.) 90-01-012 to determine the need for revisions to our General Orders applicable to siting and environmental review of cellular radiotelephone facilities, appending a proposed General Order (GO) prescribing rules. The proposed rules were mailed to the cellular industry, counties, and local planning agencies, and written comments were invited. Several parties responded. Workshops to

review the proposed rules were held in six cities in California during March 1990.

By D.90-03-080 issued March 28, 1990 in R.90-01-012, the Commission adopted GO 159 to become effective March 28, 1990 on an interim basis. These rules 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, reserving Commission intervention only for the minority of situations where irreconcilable differences or intolerable delays arise. It assures adjacent property owners in all cases advance notice and an opportunity to be heard.

Discussion

The adoption by the Commission of GO 159 obviates the necessity of Phase 2 proceedings on LACTC's Petition for Modification of D.86-06-058. Accordingly, the proceedings relating to Phase 2 should be closed; and the open aspect of the petition should be dismissed immediately.

Findings of Fact

1. By D.86-06-058 issued June 25, 1986 in Application 83-04-021, LACTC was granted a certificate of public convenience and necessity to construct, operate, and maintain a non-wireline cellular radiotelephone facilities system in the Los Angeles SMSA.

2. As lead agency for this LACTC project under CEQA, after providing opportunity for review and comment not acted upon by local jurisdictions in the SMSA, the Commission issued a "Mitigated Negative Declaration" which provided for mitigation of any essentially aesthetic impacts of the facilities through the local conditional use permit process.

3. LACTC cell site revisions and cell subdivisions within the SMSA scope of the project soon resulted in local conflicts, litigation, lengthy delays, technical deficiencies, and customer inconvenience, and the filing by LACTC of the present Petition for Modification of D.86-06-058.

4. The immediate cell site location problem in La Canada-Flintridge was resolved as a Phase 1 issue by D.87-12-053, leaving the balance of issues and broader problems raised by LACTC's petition for Phase 2 proceedings to come later.

5. The pace of cellular radiotelephone cell site antenna proliferation increased dramatically as a result of much faster expansion of the cellular industry than projected, in some cases denying opportunity for public comment and local government review.

6. Accordingly, in view of the industry-wide nature of the problems, on January 9, 1990, the Commission issued R.90-01-012 to determine the need for review of its GOs applicable to siting and environmental review of cellular radiotelephone facilities, appending thereto a proposed GO prescribing rules.

7. After notice, comment, and workshop review, the Commission by D.90-03-080 on March 28, 1990 adopted GO 159 to be effective as of that date.

Conclusions of Law

1. The adoption of GO 159 obviates the necessity for Phase 2 in the captioned proceeding.

2. The petition, to the extent open, should be dismissed, and the proceeding closed.

FINAL ORDER

IT IS ORDERED that: .

1. The Petition by Los Angeles Cellular Telephone Company for Modification of Decision (D.) 86-06-058, except as addressed in the Opinion and Supplemental Order contained in D.87-12-053 with reference to Phase 1 issues, is dismissed.

2. The proceeding with reference to Phase 2 is closed.

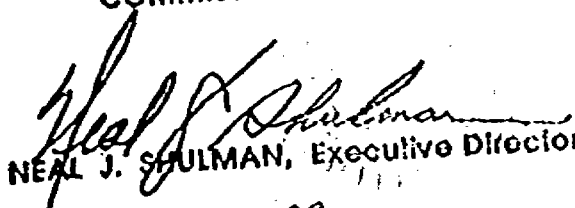
This order is effective today.

Dated JUN 20 1990, at San Francisco, California.

FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

President G. Mitchell Wilk,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director