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Decision 91-06-013 June 5, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 CELLULAR 2000, a Michigan general)
 partnership, for a certificate of)
 public convenience and necessity)
 under Section 1001 of the Public)
 Utilities Code granting authority)
 to conduct and operate a domestic)
 public land cellular radiotelecommu-)
 nications system in Merced, Madera,)
 and San Benito Counties; and for)
 authority under Sections 816-30 and)
 851 to issue secured evidences of)
 indebtedness.)

ORIGINAL

Application 90-08-070
(Filed August 30, 1990)

FINAL OPINION

We granted interim operating authority to Cellular 2000 for the initiation of cellular radiotelecommunications services in California Rural Services Area 4 on February 6, 1991. (Decision (D.) 91-02-005.) The interim authority allowed Cellular 2000 to operate a single temporary cell site pending completion of our environmental review of the applicant's proposed four-tower initial cellular system. (D.91-02-005, mimeo. pp. 4-5.)

On February 11, 1991, we circulated a Draft Mitigated Negative Declaration for review and comment pursuant to Public Resources Code Section 21000 et seq. The comment period closed on March 13, 1991. Comments were received from the applicant, recommending several minor corrections to the text of the Negative Declaration. (See Errata to Mitigated Negative Declaration.) In addition the applicant commented on references in the Negative Declaration at pages 23 and 32-34 to local agency approvals and reiterated its argument that there are no feasible sites for collocating a cellular antenna with an existing communications structure.

The Mitigated Negative Declaration

The Negative Declaration contains findings that there would be no significant effects on plants or wildlife, archeological resources or human health (Neg. Dec. pp. 77-78). The study does find, however, that the proposed cell site in Madera would "adversely affect views from adjacent residences and a proposed junior high school located across the street from the site."¹ The Madera cell site would also have cumulative visual effects along with six existing towers within a one mile radius of the site. The Negative Declaration specifically recommends as a condition of project approval that the applicant consider collocating or relocating the Madera site to reduce visual impacts and land use conflicts. The Negative Declaration goes on to attach 13 conditions of approval applicable to each of the remaining proposed sites to assure that no significant adverse effects will occur as the result of the project. (See Appendix A attached.)

Discussion

Applicant's substantive comment that collocation is not possible for the Madera cell site at any of the six existing tower locations in the area is not accompanied by engineering data or a sufficient showing of site unavailability. Applicant did not object to that portion of the condition directing applicant to consider relocating the site. Because of the number of residences within 300 feet of the proposed 220 foot tower and the proximity of the new junior high school site, we will require that Cellular 2000 identify and propose another location in or around Madera. Applicant may file an advice letter on application under General Order 159 when it is ready to propose an alternative site at Madera.

¹ Applicant identified 36 residences within 300 feet of the cell site. (Amended application filed October 30, 1990; p. 10.)

Applicant requested that the Negative Declaration clarify that no additional local government permits be required for any of the proposed cell sites. This is in direct conflict with conditions of approval IA 2 and 3. Applicant bases this request on General Order 159, Section III.B.² While it is true that we have the authority to preempt local government regulation of public utilities which are subject to our jurisdiction, we also have the power to ~~require~~ a public utility to comply with reasonable design and location measures proposed by a local government. Since the proposed sites involve the construction of new towers ranging from 170 to 320 feet in height, and since the Negative Declaration recommends that applicant be required to obtain local permits in order "To assure that significant adverse effects do not occur...", we believe that the applicant should be required to obtain local approval as a condition of our approval. The remaining conditions recommended in the Negative Declaration are also reasonable and will be adopted.

Conclusion

Having considered the mitigated Negative Declaration prepared for the cellular project proposed in Application (A.) 90-08-070 and the comments received, we conclude that the document and its findings and conditions of approval should be adopted. We grant a final certificate of public convenience and necessity (CPCN) for the system including the proposed MTSO, Merced-Atwater, Los Banos, and Chowchilla sites. We will not approve the proposed cell site at N36° 57' 43" in the city of Madera. Applicant is directed to determine and propose an alternative to that location. Applicant may proceed with the

² This section provides in pertinent part: "...Once the Commission issues a decision granting the cellular utility authority to construct, the cellular utility may commence construction of the facilities."

construction and operation of the remaining three sites (Merced-Atwater, Chowchilla, and Los Banos) on and after the effective date of this order.

In compliance with Public Resources Code Section 21081.6, applicant is required to submit to the Director of the Commission Advisory and Compliance Division a verified report containing photographic and other evidence showing that it has complied with conditions IA 1-3, 5, and 6 and II C B-14. The compliance report shall be submitted not more than 45 days after the date the last of the three towers is completed and placed into service.

Findings of Fact

1. A Mitigated Negative Declaration was prepared and circulated pursuant to Public Resources Code Section 21000 et seq.
2. The Mitigated Negative Declaration recommends imposing 13 conditions on three of the proposed cell sites and recommends that Cellular 2000 consider relocating the proposed Madera site or collocating the cellular facility with an existing tower.
3. Based on the discussion, findings, and recommended conditions contained in the Mitigated Negative Declaration, the proposed project will not have a significant effect on the environment.

Conclusions of Law

1. The Mitigated Negative Declaration should be adopted.
2. The applicant should be granted a final CPCN for authority to provide cellular radiotelecommunications service in California RSA-4.
3. Applicant should be required to comply with the conditions for approval as recommended in the Mitigated Negative Declaration.

FINAL ORDER

IT IS ORDERED that:

1. Applicant, Cellular 2000 is granted a final certificate of public convenience and necessity to provide cellular radiotelecommunications service as a facilities-based cellular carrier in California Rural Service Area 4.

2. The Mitigated Negative Declaration for A.90-08-070 is adopted as the Commission's findings made in compliance with Public Resources Code Section 2100 et seq.; applicant shall comply with the conditions of approval therein.

3. Applicant is authorized to construct and operate the following cellular facilities as fully described in A.90-08-070 and the Mitigated Negative Declaration.

- a. Cell 1 Atwater/Merced; a 320-foot cellular tower, Mobile Telephone Switching Office, and associated equipment shelters enclosures and access located in the City of Atwater at Latitude N 37° 16' 44' and Longitude W 120° 37' 35".
- b. Cell 3 Los Banos; a cellular equipment building, 170-foot antenna tower, enclosures and access including utility line extension trench located near the intersection of Interstate 5 and S.R. 152 at Latitude N 37° 01' 10" and Longitude W 120° 59' 08".
- c. Cell 4 Chowchilla; a 230-foot tower and equipment shelter together with enclosures and access located near the City of Chowchilla at Latitude N° 37° 11' 43 and Longitude W 120° 14' 28."

4. Applicant should determine and propose by advice letter or by application an alternative site in the vicinity of Madera pursuant to Section IV of General Order 159.

5. Applicant shall not construct the proposed cell site in the City of Madera at Latitude N 36° 57' 43" and Longitude W 120° 02' 43".

6. Ordering Paragraphs 2, 3, 4, 6, 9, 10, and 11 of D.91-02-005 are incorporated by reference as if set forth herein.

7. Within 30 days after this order is effective applicant shall file a written acceptance of the final certificate granted in this proceeding.

8. Applicant shall file as part of its tariff, an engineered service area map drawn in conformity with Federal Communications Commission Rule 22.504(b)(2) and consistent with the authority granted herein.

9. Applicant shall file a report of compliance as described in this order and pursuant to Public Resources Code Section 21081.6

10. Applicant shall provide a copy of this decision and the Mitigated Negative Declaration to all local permitting agencies not later than 30 days from today.

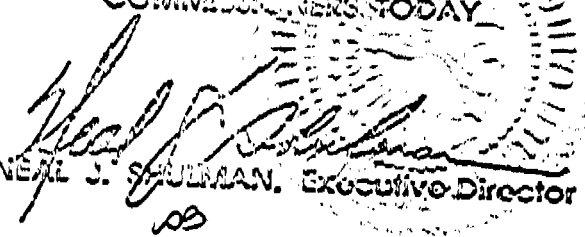
11. This order concludes this proceeding.

This order is effective today.

Dated June 5, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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

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NEAL J. SHULMAN, Executive Director

APPENDIX A
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Conditions of Approval: To assure that significant adverse effects do not occur as a result of this project, the following conditions are incorporated into this Negative Declaration. Upon meeting these conditions, potentially significant impacts would be reduced to a level of insignificance.

I. Prior to Construction

A. All Cell Sites

1. The applicant shall meet the requirements of: the Federal Aviation Administration (FAA), Advisory Circular 70/7460-1G, Obstruction Marking and Lighting; local airport authority; or, other appropriate aviation agencies concerning the need for tower marking and lighting, antenna height, and siting of the antennas within the service cell. Height variance permits shall be obtained from local governments when necessary.
2. The applicant shall submit grading, building, and landscape plans for approval and compliance with local jurisdictions.
3. The applicant shall obtain all necessary conditional use and building permits from local city and county governments, and comply with all local, state, and federal building and safety codes.
4. The applicant shall follow the procedures outlined in the CPUC's General Order 159 for the expansion of the cellular system beyond that which is described in its CPC&N, should it be granted by the CPUC.
5. The applicant shall install freestanding antenna towers as opposed to towers supported by guy wires.
6. The applicant shall coordinate with local traffic authorities to determine routing of construction traffic. Construction crews shall be instructed by the project sponsor to use appropriate roads. Truck traffic shall be restricted to workday hours only (Monday through Friday, 8 a.m. to 6 p.m.).

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B. Madera Site

7. The applicant shall determine and propose relocation or collocation of the antenna tower at the Madera site to reduce visual impacts and cumulative visual and land use impacts.

II. During Construction

C. All Cell Sites

8. The applicant shall restore disbursed areas immediately following construction, including revegetation of denuded areas.
9. The applicant shall implement dust control measures, and ozone precursor emission controls as recommended by the San Joaquin County Air Pollution Control District and identified in the Initial Study (Section 8.2, Air Quality).
10. The applicant shall utilize muffling systems on generators to diminish noise impacts. On-site construction activities shall be restricted to the hours of 8 a.m. to 6 p.m. on weekdays and 10 a.m. to 5 p.m. on Saturdays. Construction shall be prohibited on Sunday. Truck traffic shall be restricted to workday hours Monday through Friday, 8 a.m. to 6 p.m.; no delivery of construction materials would be allowed on Saturdays or Sundays.
11. The applicant shall agree to cease earthmoving activities and contact a qualified archaeologist, in the event that unanticipated cultural resources are encountered during construction. The applicant shall be required to follow procedures recommended by the archaeologist following assessment of the cultural resource.
12. The applicant shall paint equipment buildings and cabinets with colors that are typical of those found in the area's landscape.
13. The applicant shall install trees and shrubs typically found in the area for site landscaping.

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III. During Operation

D. All Cell Sites

14. The applicant shall agree to offer commensurate measures to affected businesses or residences in the event that the proposed cellular system results in radio frequency signal interference. For example, cable television or radio service could be provided by the project sponsor to affected parties.

(END OF APPENDIX A)