

APR 1 1992

Decision 92-03-088 March 31, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
 own motion into all facilities-based
 cellular carriers and their practices,
 operations and conduct in connection
 with their siting of towers, and
 compliance with the Commission's
 General Order No. 159.

ORIGINAL

I.92-01-002
(Filed January 20, 1992)

**ORDER GRANTING IN PART CERTAIN CELLULAR CARRIERS'
 PETITION FOR CLARIFICATION OR MODIFICATION
 OF ORDER INSTITUTING INVESTIGATION 92-01-002**

Pursuant to Rule 43 of the Commission's Rules of Practice and Procedure (Rules), certain cellular carriers¹ (Petitioners) have petitioned the Commission, to clarify or modify its Order Instituting Investigation (I.) 92-01-002, issued January 10, 1992. The Carriers request that the Commission specifically limit the applicability of the reporting requirements set forth in the Order's Appendix A to cellular facilities constructed after March 28, 1990, the effective date of General Order No. (GO) 159.

The Petitioners contend that the Commission's Order is ambiguous as to whether Appendix A filings are required for cellular facilities constructed prior to GO 159. They submit that the filings for the pre-GO 159 sites are not relevant or helpful to the investigation, can serve no public interest and would greatly

¹ Bay Area Cellular Telephone Company, Contel Cellular Inc. and its California cellular affiliates, GTE Mobilnet of California Ltd. Partnership and GTE Mobilnet of Santa Barbara Ltd. Partnership, Los Angeles Cellular Telephone Company, McCaw Cellular Communications, Inc. and its California cellular affiliates, PacTel Cellular and its California affiliates, and US West Cellular of California Inc.

burden both carriers and the Commission's staff without serving any clear purpose.

We find that clarification of the filing requirement is useful. We initiated I.92-01-002 to ascertain whether cellular companies are in compliance with GO 159, which went into effect on March 28, 1990. The order makes no reference to any permitting or site construction violations which may have occurred prior to March of 1990. We required cellular company respondents to I.92-01-002 to furnish certain information specified in Appendix A to the OII to provide the data necessary for the investigation. However, Appendix A appears at odds with the order by requiring information on every site in service, not limited to any one time period.

- "7. As of the date of filing this information and on a site by site basis, using the format given below, provide the following information for any site that has ever gone into service or for which any site modification has taken place or for which an advice letter is currently pending.
(...)"

Petitioners' requested clarification or modification to Appendix A to remove or clarify this seeming inconsistency. The question before us is to determine the merit of requiring such comprehensive information, given the narrower scope of the proceeding.

Discussion:

Staff provides a series of reasons to gather information on the entire universe of cellular sites located in California, consistent with the nature of this investigation.

First, staff states that a complete listing of the cell sites is essential to understanding the Petitioners' cellular configurations. Presumably, some understanding of the technical requirements of the system as a whole would lend insight into why sites were placed as they were. However, descriptions of the whole system could be rendered by each company short of filing all of the

permitting and construction documentation which accompanies each site.

Staff is also interested in any behavioral patterns of non-compliance which appear to be repeated in pre- and post-GO 159 site activity. This is a valid concern, but would be a more productive line of inquiry once non-compliance by petitioners for post-GO 159 cell siting requirements is established.

Additionally, staff is concerned that additional construction or modifications of pre-GO 159 sites which occur or were processed after March 20, 1990 may escape detection by the Commission, and may create a loophole in which to avoid the current investigation.

This concern appears to be misplaced. If modifications to cell sites occur or are processed after March 28, 1990, then these modifications are part of Appendix A's reporting requirement. If the site changes and appropriate processing occurred prior to that date, they are not subject to GO 159 and are not the subject of this inquiry.

Staff raises another concern: site modifications which occurred after March 28, 1990, but which the companies decided were minor in nature and required no permitting, may in fact have required permitting. Recognizing that this difference in opinion may surface, the appropriate remedy is to require all cell site modifications which occurred after GO 159 was in force as subject to this OII, whether or not the respondent needed or obtained permits for these modifications.

Staff is also concerned that sites built near to the March 28, 1990 date will be overlooked as outside the reach of GO 159. Petitioners' solution to this concern is to fix the date two months in advance of March 28, 1990, in order to remove any uncertainty as to overlooked cell sites completed near to the March 28, 1990 date. This solution addresses this concern without

requiring the Commission to collect data on every site completed and processed years prior to the March 28, 1990 deadline.

Staff states that post-GO 159 standards will not be applied to pre-GO 159 sites, but correctly expects that all pre-GO 159 cell sites were built in strict compliance with the rules which governed site permitting and site construction at the time. The Commission fully expects cellular companies to have complied faithfully with every rule governing siting procedures prior to GO 159, but the question remains whether that site information is germane to this inquiry. It strikes us as appropriate to explore compliance with earlier siting rules in a later phase if a pattern of non-compliance emerges as a result of this investigation. The Commission certainly has the authority to broaden this investigation to pursue pre-GO 159 infractions if a pattern of abuse of our rules is established. Further, if the specific characteristics of certain siting activity raise the need for additional pre-GO 159 site information either on a location specific or company specific basis, the Commission clearly has the authority to order this site data collection. However, at this early date requests for this comprehensive site data are premature.

Finally, staff is concerned that if the companies require six months to collect the pre-GO 159 site data, this investigation will be delayed if the data collection is postponed. The fact that collection of data takes time does not dictate that we should collect it sooner than we need it. Requiring the companies to collect site data that we may never use does not save time. Whether or not a cellular company has violated GO 159 is the scope of this investigation; violations of pre-GO 159 rules are outside the current scope. If the Commission wishes to expand this OII to include an investigation of both pre- and post-GO 159 infractions, then it will be timely to order data collected on all sites in California. However, we will not ask for that information in

advance of that investigation, or in advance of any requirement to further the investigation at hand.

In conclusion, we find merit in part to petitioners' request for modification of Appendix A of the Commission's I.92-01-002. We conclude that complete information as specified in Appendix A for any site constructed, prepared, or modified in any way, even if minor in nature after January 28, 1990, be filed by respondents. We will await the course of this investigation to determine if further data regarding sites or modifications completed prior to January 28, 1990 will be required.

Findings of Fact

1. The Commission opened I.92-01-002 to investigate the operations, conduct, and compliance of all facilities based cellular telephone utilities in connection with the siting of cellular towers under General Order 159 (GO 159).

2. Appendix A of I.92-01-002 required respondents to file information on any site that has ever gone into service or for which any modification has taken place.

3. The scope of I.92-01-002 does not include an investigation of siting conduct violations which occurred prior to GO 159.

4. Cell sites which were built shortly after and close to the date GO 159 went into effect are included in the scope of this OII.

5. It is reasonable to require respondent cellular companies to file all site information on any site completed since January 28, 1990 in order to assure that any sites completed near to March 28, 1990 are not overlooked.

6. Any modifications which took place after January 28, 1990 to any cell sites constructed prior to GO 159 are included in this OII, whether or not the cellular company believed a permit for such modifications was necessary.

7. It is reasonable to clarify that the Commission does not require at this early stage of the investigation information on cell sites constructed prior to January 28, 1990.

8. The Commission has the authority to order respondents to provide additional information on cell sites completed prior to January 28, 1990 at any time during this investigation, if the Commission sees fit to so require.

Conclusion of Law

The Commission should modify Appendix A of I.92-01-002 to require cell site information on any cell site constructed after January 28, 1990, and on any cell modification performed on any cell site after January 28, 1990, whether or not that modification required a permit.

ORDER

IT IS ORDERED that:

Certain cellular carriers' petition for clarification or modification of order instituting investigation 92-01-002 should be granted in part. Cellular respondents are required to furnish cell site information, as specified in Appendix A of I.92-01-002, for all cell sites which were not complete in either paperwork or construction by January 28, 1990. Cellular respondents must also file complete information as specified in Appendix A on any cell

site modified to any degree after January 28, 1990. Cellular respondents are not required to furnish information on cell sites whose applications, permits, construction and modifications were complete by January 28, 1990.

This order is effective today.

Dated March 31, 1992, at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director
pc

