

Decision 98-09-024 September 3, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion into Exempting Commercial Mobile Radio Service Providers from the Filing Requirements of General Order No. 77-K and General Order No. 104-A.

Rulemaking 98-03-014
(Filed March 12, 1998)

O P I N I O N

I. Summary

This decision exempts commercial mobile radio service (CMRS) providers¹ from General Orders (GOs) 77-K and 104-A. This decision also requires CMRS providers to submit information regarding their mailing address, telephone number, and other information the Commission needs to discharge its ongoing, albeit limited, regulatory responsibilities pertaining to the CMRS industry.

II. Background

CMRS providers are required by GOs 77-K and 104-A to submit the following information to the Commission on an annual basis:

GO 77-K: (1) The identity of employees paid \$75,000 or more during the preceding calendar year and the amount of compensation received by such persons, including any expense reimbursements; (2) payments to attorneys employed by the CMRS provider or an affiliate; and (3) dues, donations, subscriptions, and contributions paid by CMRS provider.

¹ CMRS includes cellular services, personal communications services, wide-area specialized mobile radio services, and two-way radiotelephone services.

GO 104-A: (1) income statement; (2) balance sheet ; (3) separate schedules for income, expenses, assets, long-term debt, retained earnings and partnership capital; (4) a list of directors, owners, principal officers, and business partners; and (5) a list of significant changes during the preceding year, including the issuance of capital stock or long-term debt, changes in franchise rights, significant changes in plant, and rate changes.

The primary purpose of GOs 77-K and 104-A is to provide the Commission with information useful in setting utilities' rates.² However, the Commission's authority to regulate CMRS rates was preempted by the enactment of the Omnibus Budget Reconciliation Act (Budget Act) passed by Congress in 1993.

On February 27, 1997, AirTouch Cellular (AirTouch) filed Application (A.) 97-02-035 requesting an exemption from GOs 77-K and 104-A. AirTouch's application was granted by the Commission in Decision (D.) 98-02-014 on the basis that the information provided by AirTouch pursuant to GO 77-K and GO 104-A was no longer relevant in light of federal preemption of the Commission's authority to regulate CMRS rates. The Commission also recognized in D.98-02-014 that exempting AirTouch from GOs 77-K and 104-A would likely cause other CMRS providers to request the same exemption. Therefore, to avoid having to consider these requests on a piecemeal basis, D.98-02-014 instructed Commission staff to prepare an order instituting rulemaking for the purpose of considering if all other CMRS providers should be exempt from GOs 77-K and 104-A.

On March 12, 1998, the Commission issued Rulemaking (R.) 98-03-014 which initiated the instant proceeding. Rulemaking 98-03-014 states that the purpose of this proceeding is consider the following three matters: (1) Whether

² GO 77-K was adopted by the Commission in Resolution F-615 issued in 1986. GO 104-A was adopted by the Commission in D.72330 issued in 1967.

CMRS providers should be exempt from GO 77-K; (2) Whether CMRS providers should be exempt from GO 104-A; and (3) Whether, and to what extent, residual administrative reporting requirements should remain in effect if CMRS providers are exempted from GO 104-A. As required by Rule 6(c)(2) of the Commission's Rules of Practice and Procedure (Rules), R.98-03-014 included the following preliminary determinations: (i) that the category for this proceeding is "quasi-legislative";³ (ii) that there is no need to convene a prehearing conference or to hold adjudicative or legislative hearings;⁴ (iii) that the scope of this proceeding consists of the three matters identified previously; and (iv) that the schedule for this proceeding consists of the milestones set forth in Attachment C of R.98-03-014, including the issuance of a final Commission decision by September 1998.⁵

Parties filed comments and reply comments on April 10 and April 24, 1998, respectively. Pursuant to Rule 6(c)(2), parties were given an opportunity to include in their comments their objections to the preliminary determinations contained in R.98-03-014. Except for requests to expand the scope of the proceeding, discussed below, no party objected to the preliminary

³ Rule 5(d) defines a "quasi-legislative" proceeding as one in which the Commission establishes policy or rules affecting a class of regulated entities.

⁴ Rule 8(f)(1) defines "adjudicative facts" as answers to questions such as who did what, where, when, how, and why. Rule 8(f)(3) defines "legislative facts" as general facts that help the tribunal decide questions of law, policy, and discretion.

⁵ R.98-03-014 provided notice that Commissioner Duque and Administrative Law Judge Kenney are assigned to this proceeding. R.98-03-014 also specified a procedure for establishing and revising the service list for this proceeding.

determinations in R.98-03-014 regarding the category, need for hearing, scope, and schedule of this proceeding.

On May 19, 1998, the assigned Commissioner issued a "scoping" ruling pursuant to Rule 6.3 that affirmed all of the preliminary determinations in R.98-03-004. The assigned Commissioner's ruling (ACR) also ruled that the scope for this proceeding would not be expanded to address new subjects raised by several parties in their comments.⁶ No party exercised its right under Rule 6.4 to appeal the determination of category contained in the ACR.

Today's decision, which concludes this proceeding, is being issued within the deadline set forth in the ACR, and within the 18-month deadline specified in Senate Bill 960 (Leonard; Stats. 1996, ch. 856) for completion of this proceeding.

III. Position of the Parties

Opening comments were submitted by AT&T Wireless Services, Inc., Cellular Carriers Association of California, CMT Partners,⁷ Cox Communications PSC L.P., Sprint Spectrum L.P. (Sprint),⁸ GTE Mobilnet of California L.P.

⁶ Several parties suggested that the scope of this proceeding be expanded to include: (1) Whether CMRS providers should be exempt from the affiliate transaction reporting requirements in R.92-08-008; (2) Whether CMRS providers should comply with GO 156 in light of Proposition 209; and (3) Whether GO 104-A reporting requirements for CMRS providers should be expanded (instead of eliminated) to enhance the Commission's ability to protect CMRS consumers and monitor the CMRS market.

⁷ CMT Partners includes: Bay Area Cellular Telephone Company (U-3007-C), Napa Cellular Telephone Company (U-3016-C), Cagal Cellular Communications Corporation (U-3021-C), and Salinas Cellular Telephone Company (U-3018-C).

⁸ Cox Communications PSC, L.P. and Sprint submitted joint opening and reply comments.

(GTEM),⁹ Pacific Bell Mobil Services (PBMS), and the Utility Consumers Action Network (UCAN). Reply comments were submitted by Los Angeles Cellular Telephone Company, PBMS, and Sprint.

The CMRS providers submitting comments stated they should be exempt from GOs 77-K and 104-A because the information required by these General Orders is no longer needed due to federal preemption of the Commission's authority to regulate CMRS rates. They also claimed that compliance with GOs 77-K and 104-A is burdensome since the General Orders require CMRS providers to gather information they do not otherwise track or use. Finally, the CMRS providers asserted that compliance with GOs 77-K and 104-A may harm competition since the General Orders require disclosure of proprietary financial information.

UCAN does not oppose the exemption of CMRS providers from GO 77-K, but UCAN believes that CMRS providers should continue to comply with GO 104-A. According to UCAN, GO 104-A provides the Commission with information that is crucial for protecting CMRS customers and monitoring telecommunications markets.

UCAN claimed that federal preemption of the Commission's authority to regulate CMRS rates has not eliminated the need for GO 104-A. UCAN noted that the Commission still has authority to regulate "non-rate terms and conditions" of CMRS, including customer billing information and practices, billing disputes, and other consumer protection matters.¹⁰ In UCAN's view,

⁹ Filing with GTEM (U-3002-C) were: GTEM of Santa Barbara Limited Partnership (U-3011-C), GTEM of San Diego, Inc. (U-3048-C), Contel Cellular of California, Inc. (U-3030-C), California RSA No. 4 Limited Partnership (U-3038-C), and Fresno MSA Limited Partnership (U-3005-C).

¹⁰ Non-rate terms and conditions of CMRS are still subject to Commission jurisdiction. (D.96-12-071, Findings of Fact 1 and 13; and Conclusions of Law 8 and 10)

GO 104-A provides the Commission with information essential to its oversight of non-rate terms and conditions of CMRS. UCAN also stated that the Budget Act allows states to petition the Federal Communications Commission (FCC) for authority to regulate CMRS rates if CMRS becomes a replacement for a substantial portion of landline telephone services within the state. UCAN is concerned that if the Commission ever does petition the FCC for authority to regulate CMRS rates, the Commission will lack the information for a successful petition without the information provided by GO 104-A.

No party opposed the proposal in R.98-03-014 that CMRS providers submit to the Commission information regarding the address, telephone number, and contact person of each CMRS provider. GTEM and PBMS noted that D.94-10-031 already requires CMRS providers who did not hold a CPCN prior to August 10, 1994, to file Wireless Registration Statements (WRS) which includes information regarding the address, phone number, contact person, and the identity of any affiliates. In the interest of administrative efficiency, GTEM and PBMS recommended that the Commission require all CMRS providers to file a WRS instead of creating a separate filing requirement. They also recommended that the WRS should be updated within 30 days of a change in any of the items in the WRS with the exception that information about affiliates should be updated on an annual basis.

IV. Discussion

A. Exempting CMRS Providers from GOs 77-K and 104-A

General Orders 77-K and 104-A were originally adopted by the Commission for the purpose of requiring utilities to provide the Commission with information useful in setting utilities' rates. In D.96-12-071, we recognized that our authority to regulate the rates of CMRS providers had been preempted

by the Budget Act.¹¹ Since we no longer have authority to regulate CMRS rates, the original purpose for requiring CMRS providers to comply with GOs 77-K and 104-A has vanished. Therefore, unless there is some other justification for requiring CMRS providers to comply with GOs 77-K and GO 104-A, we should exempt CMRS providers from having to comply with these General Orders.

In the case of GO 77-K, all the parties agreed there is no longer sufficient justification for CMRS providers to incur the time, effort, and costs required to comply with this General Order. We concur with the parties, and we shall exempt all CMRS providers from GO 77-K.

Only UCAN believes that CMRS providers should continue to comply with GO 104-A. However, we are not persuaded by UCAN's argument that GO 104-A is needed to protect CMRS consumers. UCAN presented no evidence that GO 104-A has ever been used to protect CMRS consumers from abuses related to our remaining authority to regulate non-rate terms and conditions of CMRS.¹² Nor can we foresee circumstances in which GO 104-A would be used to

¹¹ D.96-12-071, Findings of Fact 1, 3, 4, 5, 6, and 8; Conclusions of Law 1, 5, and 6. Section 332(c)(3)(A) of the Communications Act, as amended by the 1993 Budget Act, states that "no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile [radio] service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms of commercial mobile [radio] service."

¹² UCAN implies that it used GO 104-A to detect marketing abuses by US West Cellular of California, Inc. (US West), and that GO 104-A was crucial in its subsequent complaint Case (C.) 93-04-033 against US West. However, UCAN presented no evidence in this proceeding that GO 104-A reports filed by US West led to UCAN filing C.93-04-033, or that GO 104-A provided information crucial to the resolution of C.93-04-033. On the other hand, D.95-03-015 - the Commission's decision in C.93-04-033 - states that UCAN reviewed thousands of documents provided by US West, but makes no mention GO 104-A. (59 CPUC 2d at 13, 15, and 25.) But even if GO 104-A was crucial to C.93-04-033, that case centered around unlawful rates charged by US West, a matter which the Commission no longer has jurisdiction.

protect CMRS customers.¹³ For example, we fail to see how the information obtained through GO 104-A, such as income statements and balance sheets, would help us protect consumers from abuses related to our remaining authority over non-rate terms and conditions of CMRS.¹⁴

We are not persuaded by UCAN's argument that CMRS providers should comply with GO 104-A so that we may monitor the CMRS market. We believe there are more efficient ways to monitor the CMRS market than burdening CMRS providers with the reporting requirements of GO 104-A. For example, numerous trade journals report on CMRS issues and developments;¹⁵ and the FCC regularly analyzes and evaluates the CMRS market and discusses its findings in reports and decisions.¹⁶ In addition, we can always require CMRS providers to submit some or all of the information required by GO 104-A for "market monitoring" purposes should the need for this information arise.

We disagree with UCAN that CMRS providers should comply with GO 104-A because the Budget Act allows us to petition for authority to regulate CMRS rates "where such services are a substitute for landline telephone services

¹³ To find instances of GO 104-A being used to protect consumers, the LEXIS database of Commission decisions was searched for the following: "complaint or consumer protection and GO 104-A or General Order 104-A." This search failed to find a single instance of information obtained pursuant to GO 104-A actually being used to protect consumers.

¹⁴ We are currently considering in Investigation (I.) 93-12-007 the adoption of consumer protection rules applicable to CMRS providers. (D.96-12-071, Ordering Paragraph 11) UCAN may raise in that proceeding whether GO 104-A is needed to protect CMRS consumers. If UCAN does raise this issue in I.93-12-007, we expect UCAN to present examples of when GO 104-A has actually served to protect consumers.

¹⁵ See, for example, Newaves in Personal Communications and Telephony Magazine.

¹⁶ See, for example, the FCC's *Third Annual Commercial Mobile Radio Service (CMRS) Competition Report* issued on May 14, 1998.

for a substantial portion of the communications within such state." (47 USC § 332(c)(3).) While UCAN produced information that indicates that CMRS may someday become a substitute for a substantial portion of landline service, there is no indication that we are, or soon will be, in a position to regulate CMRS rates under the provisions of the Budget Act. If CMRS ever does become a substitute for a substantial portion of landline telephone service in California, we may reconsider at that time whether CMRS providers should comply with GO 104-A.

For the foregoing reasons, we find there is no longer sufficient justification to require CMRS providers to comply with GO 104-A. Accordingly, we shall exempt CMRS providers from this General Order. We emphasize that our decision today to exempt CMRS providers from GOs 77-K and 104-A does not mean that CMRS providers shall never have to submit the information required by these General Orders. We may still require CMRS providers to report some or all of the information required by these General Orders if the need arises in a complaint case, an investigation, or other circumstances. We may also re-examine our decision to exempt CMRS providers from GO 77-K and/or GO 104-A should there be a change in the scope of federal preemption or other circumstances that warrant such an action on our part.

B. Administrative Reporting by CMRS Providers

In R.98-03-014, we stated that because the Commission regularly communicates with CMRS providers for various reasons, the Commission needs up-to-date "contact information" for each CMRS provider. Therefore, in order to facilitate effective communications with CMRS providers, we proposed in R.98-03-014 that each CMRS provider annually file a report containing its address, telephone number, and contact persons.

There was general agreement among the parties that the Commission needs "contact information" for all CMRS providers. No party opposed GTEM's

and PBMS's proposal that the Commission's need for "contact information" be met by requiring CMRS providers to file a Wireless Registration Statement (WRS) containing the information specified in D.94-10-031."

We agree with GTEM and PBMS that the most efficient way to obtain "contact information" is to require all CMRS providers to submit a WRS. Accordingly, we shall require CMRS providers that do not currently have a WRS on file with the Commission to submit this document to the Director of the Telecommunications Division (TD) within 60 days from the effective date of this decision. CMRS providers that already have a WRS on file should review their WRS and update it, as necessary. On an ongoing basis, CMRS providers shall provide to the Director of TD an updated WRS within 30 days of a change in status of any of the information in the WRS. The only exception shall be changes to the information reported in the WRS regarding the names of affiliated companies¹⁸ and their relationship with the CMRS provider filing the WRS. CMRS providers shall update any changes to this information occurring within a calendar year by filing a revised WRS by January 31st of the following year.

¹⁸ D.94-10-031 requires CMRS providers to disclose the following information in their WRS: (1) the legal name of the entity offering CMRS service; (2) any fictitious or other names under which service will be offered; (3) the local business address for the utility, if any; (4) the home office address if different than the local business address; (5) the name and address of the designated agent for service of process; (6) name, title, address, and telephone number of the person to be contacted concerning reported information; (7) the identity of the directors and principal officers of the business; (8) names of all affiliated companies and their relationship, indicating if the affiliate is a regulated public utility; and (9) telephone numbers to which service or other customer complaints should be directed. (56 CPUC 26 at 578, 588-89.)

¹⁹ The definition of "affiliate" for purposes of filling out the WRS shall be the same as set forth in R.92-03-008.

V. Conclusion

Today's decision affects all CMRS providers. So that CMRS providers are informed of our decision to exempt them from GOs 77-K and 104-A, and to submit Wireless Registration Statements containing the information specified in D.94-10-031, we shall instruct our Executive Director to (1) serve a copy of this decision on all certificated CMRS providers and (2) post this decision on the Commission's web site (www.cpuc.ca.gov). In order for CMRS providers to be notified of this decision as soon as possible, this decision shall be effective immediately.

Findings of Fact

1. GOs 77-K and 104-A were adopted by the Commission for the purpose of providing information useful in setting the rates of public utilities.
2. The Commission's authority to regulate the rates of CMRS providers was preempted by the enactment of the Omnibus Budget Reconciliation Act of 1993.
3. In D.98-02-014, the Commission granted an application by AirTouch for an exemption from GOs 77-K and 104-A on the basis that the information provided by these General Orders was no longer relevant in light of federal preemption of the Commission's authority to regulate CMRS rates.
4. Given the Commission's lack of authority to regulate CMRS rates, there is no reason to require CMRS providers to comply with GO 77-K, a general order whose purpose is to help the Commission regulate utilities' rates.
5. Given the Commission's lack of authority to regulate CMRS rates, there is no reason to require CMRS providers to comply with GO 104-A, a general order whose purpose is to help the Commission regulate utilities' rates.
6. The Commission does not need the information obtained from CMRS providers' GO 104-A reports in order for the Commission to fulfill its responsibilities regarding consumer protection and market monitoring.

7. The Commission has an ongoing need to communicate with all CMRS providers in order to notify them about changes in regulations, Commission-mandated surcharges, and other matters.

8. Pursuant to D.94-10-031, CMRS providers that began offering service after October 10, 1994, are required to file a WRS containing the following information: (i) the legal name of the business offering CMRS service; (ii) any fictitious or other names under which service will be offered; (iii) the local business address for the utility, if any; (iv) the home office business address, if different than the local business address; (v) the name and address of the designated agent for service of process; (vi) the name, title, address, and telephone number of the person to be contacted concerning reported information; (vii) the identity of the directors and principal officers of the business; (viii) names of all affiliated companies and their relationship, indicating if the affiliate is a regulated public utility; and (ix) telephone numbers to which service or other customer complaints should be directed.

9. Requiring all CMRS providers to file a WRS would meet the Commission's need to have "contact information" regarding every CMRS provider.

10. This proceeding was completed within (a) the deadline set forth in the assigned Commissioner's scoping ruling issued on May 19, 1998, and (b) within the 18-month deadline specified in Senate Bill 960.

11. This decision affects all CMRS providers.

Conclusions of Law

1. The Commission currently has no authority to regulate CMRS rates.
2. CMRS providers should be exempt from GOs 77-K and GO 104-A.
3. Upon request, CMRS providers should provide to the Commission some or all of the information required by GO 77-K and/or GO 104-A if this

information is needed in a complaint case, an investigation, or for other purposes.

4. All CMRS providers that do not currently have a WRS on file with the Commission should be required to file a WRS containing the information specified in D.94-10-031. On an ongoing basis, CMRS providers should update their WRS within 30 days of a change in the status of any of the information in the WRS. The only exception should be the information reported in the WRS regarding the names of affiliated companies and their relationship with the entity filing the WRS which should be annually updated, if necessary, by January 31st of each year.

5. This decision should be served on all CMRS providers and posted to the Commission's web site.

6. The following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. All commercial mobile radio service (CMRS) providers shall be exempt from General Orders (GOs) 77-K and 104-A.

2. CMRS providers shall provide to the Commission upon request some or all of the information required by GO 77-K and/or GO 104-A.

3. All CMRS providers that do not have on file with the Commission a Wireless Registration Statement (WRS) containing the information specified in Decision 94-10-031 shall submit this document to the Director of the Telecommunications Division (TD) within 60 days from the effective date of this order.

4. Each CMRS provider shall provide to the Director of TD an amended WRS within 30 days of a change in any of the information in the WRS with the

exception that changes to information in the WRS regarding the names of affiliated companies and their relationship with the entity filing the WRS shall be updated annually, if necessary, by January 31st of each year.

5. The Executive Director shall cause a copy of this order to be served on all certificated CMRS providers.

6. The Executive Director shall cause a copy of this order to be posted on the Commission's web site.

7. This proceeding is closed.

This order is effective today.

Dated September 3, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners