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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**

PUBLIC UTILITIES COMMISSION  
JANUARY 10, 1992  
SAN FRANCISCO OFFICE  
I.92-01-002

ORDER INSTITUTING INVESTIGATION

**BACKGROUND:**

General Order (G.O.) 159 was adopted on March 28, 1990, and is the cornerstone of requirements imposed on cellular mobile radiotelephone utilities in connection with the siting and construction of towers. The G.O. was adopted in order to provide a comprehensive rule to govern the siting of cellular towers and to formalize an orderly jurisdictional relationship between this Commission and the various other governmental entities which represent communities affected by cellular towers.

G.O. 159 provides a two-tiered scheme for regulating the siting of cellular towers. In its initial application for a certificate of public convenience and necessity a cellular company provides the Commission with a description of the facilities which will comprise the initial configuration of the system. The Commission then acts as lead agency under the California Environmental Quality Act (CEQA) for the environmental review of those initial facilities.

When a cellular utility decides to expand its facilities beyond those described in the initial configuration by adding cellular sites, G.O. 159 provides that environmental, siting, and safety review is largely subject to local regulation. The Standard Review Procedure outlined in section V. of the G.O. requires utilities to obtain all permits required by government agencies, and then to file an advice letter (A.L.) with the

Commission staff declaring that all necessary permits have been received. (See G.O. 159, Appendix A §§ 6 & 7.) Through the Commission's Standard Review Procedure the utility notifies its competitors and others requesting notice of the project. Interested parties have a 20-day period to protest the utility's filing, and the Commission staff has an opportunity to verify that all necessary permits have been received.

Under the A.L. process, utilities may construct their sites only after the A.L. has been approved by the Commission, or after the A.L. is filed and before it is approved if they provide the Commission with an undertaking assuring the Commission that the site is being constructed at the utility's own risk. (G.O. 159 § V.E.) Unless specifically exempted under the G.O., a utility may not construct cellular facilities before it files an A.L. with the Commission.

#### G.O. 159 COMPLIANCE:

Our Advisory and Compliance Division (CACD) informs us that it has evidence which it believes shows that at least three cellular utilities have not complied with G.O. 159. The allegations concerning these utilities are generally explained below, and, of course must be fully documented by our staff in the prepared testimony or report which it issues prior to a hearing. Our staff also believes there may be more extensive violations of G.O. 159 by cellular utilities. The prospect of a number of cellular utilities not following our rules and regulations governing the siting of towers concerns us. That concern, plus the fact that G.O. 159 is relatively new and establishes a comprehensive program for siting facilities which are sometimes problematic for residents in local communities, leads us to require information from all cellular utilities about their compliance with G.O. 159. Therefore, in addition to the three respondent cellular utilities which our staff believes have violated G.O. 159, we are naming all cellular utilities as respondents subject to this investigation.

All respondents to this inquiry who are found to have violated G.O. 159 are subject to several possible sanctions. Possible Commission sanctions include: requiring the utility to remove any facilities built in violation of the G.O.; pursuing monetary penalties under sections 2107, 2108, 2110, 2113 and 2114 of the Public Utilities Code; imposing contempt penalties pursuant to Public Utilities Code section 2113; and reporting statutory or local ordinance violations to the appropriate law enforcement agencies.

To date, CACD staff have identified three cellular utilities, Bay Area Cellular Telephone Company (BACTC), GTE Mobilnet (GTE), and Los Angeles Cellular Telephone Company (LACTC), which it believes have had a pattern of constructing their cellular towers prior to filing an A.L. with the Commission. Furthermore, in a number of cases, where sites were constructed prior to and during the A.L. process, the required undertakings were not provided. None of these companies informed the Commission that the sites had in fact been constructed prematurely until Commission staff began to directly question the companies. Therefore, the staff believes that some of the A.L. filings have misrepresented the status of the cellular sites.

In addition, CACD staff believes that at least one of these companies, LACTC, has constructed certain of these sites without having obtained other necessary government authorizations. Staff has discovered certain sites which have apparently been constructed without the required Office of State Architect approval, and other sites where required federal Bureau of Land Management approval was apparently not received. In addition, certain LACTC sites appear to lack required local permits.

Staff advises us that all three cellular utilities have admitted to it that certain of their sites were constructed prematurely. LACTC has apparently acknowledged that it failed to obtain some required permits. However, the extent of these

companies' violations, and the degree of misrepresentation, are still unclear.

**COURSE OF THIS PROCEEDING:**

To begin this investigation, within 60 days of the effective date of this order, all respondent utilities shall provide the Commission with detailed information concerning their cellular sites. The three utilities mentioned above, LACTC, BACTC, and GTE Mobilnet, shall provide their filings within 45 days. The form and content of these compliance filings are specified in Appendix A. These filings must be submitted under penalty of perjury, and through them the Commission can gain a more complete understanding of the status of the utilities' cellular sites.

The actual proceeding will be phased. The initial phase will concern LACTC, BACTC, and GTE Mobilnet, and their practices under G.O. 159. After the staff has evaluated the compliance filings, and other relevant information, it will issue a report detailing its allegations against the first three utilities. The schedule for the staff report, testimony, and hearings will be set at the prehearing conference. During the first phase we will examine these first three utilities' compliance with G.O. 159. This phase will also address the disposition of these three utilities' pending non-complying A.L.s which do not conform with the requirements outlined below, and possible sanctions.

The second phase of this proceeding will address whether other respondents have violated G.O. 159. Future phases of this proceeding may involve other types of violations, depending on what conclusions the staff reaches based on the compliance filings, and any other information obtained during the course of the proceeding. CACD staff should, as soon as practicable, advise the administrative law judge and respondents on whether it wishes to proceed with hearings on second phase

issues. At that time it should recommend a procedural course of action.

**PROCESS FOR PENDING A.L.s:**

One immediate problem presented by these companies' apparent failure to abide by the procedure outlined in G.O. 159 is processing the pending A.L.s in which the sites were constructed prematurely. We do not believe the normal G.O. 159 A.L. procedure suffices for these sites, because this basic violation goes to the spirit of the A.L. filing procedure, and G.O. 159 does not anticipate this type of violation. However, we also recognize that no public policy is served by requiring these companies to remove their facilities in cases where all necessary permits have been obtained and there is no protest to the site. Therefore, although we do not condone any possible violations of G.O. 159, we will process the pending A.L.s with additional filing requirements as specified in Appendix B.

After the cellular utilities have filed the information for the prematurely constructed sites, staff will review each site to determine whether all requirements, except for the A.L. filing timing, have been met. If all other necessary permits have been received, and there are no other procedural irregularities concerning the site, the A.L.s will be processed and approved.

This process may be used for any cellular site prematurely constructed and for which an advice letter has been filed prior to the effective date of this order. The A.L.s will be approved only if the requirements are met. The possible failure by certain cellular companies to file with the Commission in advance of constructing their sites will be addressed in the course of this investigation, rather than in the A.L. procedure.

Good cause appearing; therefore,

**IT IS ORDERED** that an investigation on the Commission's own motion is instituted into the operations, conduct and compliance of all facilities-based cellular radiotelephone

utilities in connection with the siting of cellular towers under General Order 159.

1. All facilities-based cellular carriers are respondents to this investigation.

2. This investigation shall be phased. The first phase will gather evidence concerning the following respondents with respect to their compliance with G.O. 159: Los Angeles Cellular Telephone Company, Bay Area Cellular Telephone Company, and GTE Mobilnet. The second phase will address whether other respondents may have violated G.O. 159. If necessary, future phases may address other violations of G.O. 159.

3. Respondents are placed on notice that violations of G.O. 159 are subject to significant sanctions, including removal of facilities which were erected without following the steps required in G.O. 159; fines under sections 2107, 2108, 2110, 2113 and 2114 of the Public Utilities Code; contempt penalties pursuant to Code section 2113; having ordinance and statute violations reported to appropriate law enforcement agencies.

4. Within 45 days of the effective date of this order Los Angeles Cellular Telephone Company, Bay Area Cellular Telephone Company, and GTE Mobilnet shall file as a compliance filing a pleading with the Commission's Docket Office which supplies the information listed in Appendix A. All other respondents shall provide this information within 60 days of this order. An original and 12 copies must be submitted to the Docket Office, and the filings shall comply with Rules 1 through 5 of the Commission's Rules of Practice and Procedure. The statement attesting to the correctness of the information supplied with the compliance filing shall be submitted with a signature under penalty of perjury. CACD shall answer respondents' questions in order to assist respondents in fulfilling the compliance filing requirements and CACD may send out additional instructions, if necessary, to ensure needed information is supplied.

5. Respondents which have A.L.s currently pending before the Commission, as of the effective date of this order, shall

provide the CACD with the supplemental information specified in Appendix B, for each of those sites, within 45 days. CACD will process the A.L.s within 30 days of receiving the supplemental information, assuming that all permit requirements are met and there is no other irregularity with the cellular site. CACD may request time extensions from the utilities on processing the A.L.s if necessary.

6. A prehearing conference will be held on March 30, 1992 before Administrative Law Judge Jacqueline Reed. The purpose of the PHC is to set hearing dates and prescribe the rules for exchanging prepared testimony.

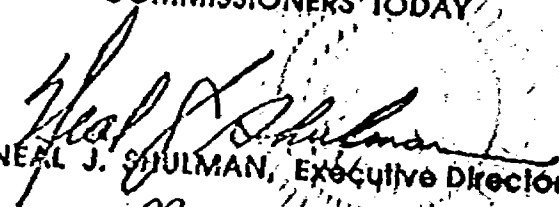
7. The Executive Director shall serve a copy of this order by certified mail on the cellular radiotelephone utilities which are listed on Appendix C.

This order is effective today.

Dated January 10, 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

## APPENDIX A

Provide the information per the example provided at the end of this document. For each company answer the following:

1. Full name of company and all other names under which the company does business;
2. The address of the company;
3. State the current form of ownership of the utility and the name, address, telephone number, and contact person for the parent company that has such ownership. If a partnership, state the names(s) of the individuals or corporations and their phone numbers. State the percentage ownership for each party;
4. Quantify the total number of sites that have been constructed and/or operated by the utility. If all sites are not currently operational, note the number of sites that are not currently operational;
5. A list of company officers, their titles and duties, from March 28, 1990 to present;
6. Name and phone number of the company officer or officers whose responsibility includes the permitting and construction of cellular sites;
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. For each question, print the company name and site number and/or site name at the top of each page. Print the question number and question directly under the company name and site name or number. Provide at least four blank lines between each question. If more than one page is required to answer the question provide the company name, site number or name, and the question at the top of each page. See the example provided at the end of this document. Use a page stating the document provided as the title page preceding the required documents. If the answer is "none", state the reason for that response. Submit the response with the answers in sequential order. Each site should be submitted in the order it was filed with the CPUC.
  - a. The address of the site, include the county, the assessor's parcel number and the longitude and latitude;



- b. The effective date of the CPUC resolution authorizing the construction of the cell site;
- c. The advice letter and resolution number, or the site's Pre-G.O. 159 status, or the site's temporary status, or its CPCN authorization in the original configuration;
- d. A detailed description of what has been constructed, including the equipment that was installed (include type and number of antennas); the tower that was built, appearance and height; the building size; and the actual location on the lot;
- e. A list of all governmental agencies which have jurisdiction over the construction and operation of the cell site;
- f. The date any site modification began. This includes but is not limited to: grading, excavation, placement or addition of antennas or equipment, or any modification of an interior;
- g. A list of all permits or approvals for which the company its contractors or its agents applied;
- h. A list of all permits or approvals received or denied and the date received or denied;
- i. Name and phone number of property owner, if it is a public agency or hospital, identify the agency or hospital;
- j. Names and phone numbers for all contractors who worked on the site;
- k. The date the site went into service;
- l. The date the FCC form 401 and/or 489 (application for new or modified common carrier radio station authorization under part 22) was mailed.

Provide the following documents:

1. A photocopy of the FCC form 401 and/or 489;
2. A clearly legible photocopy of all applications, permits, approvals, and finalized site inspection records;
3. If on Federal land, provide a photocopy of the Right of Way agreement;

4. A clearly legible copy of the FCC license granting the company authority to operate in the service territory where the site(s) is located;
5. Copies of all denials of permit applications and correspondence with the agency denying the permit;
6. Provide a declaration signed by the officers or managing or general partners of the company stating, that under penalty of perjury, they have investigated the information being supplied and that it is true and complete.

SAMPLE PAGE:

XXXXX CELLULAR TELEPHONE COMPANY HACKER STREET SITE

- c. The advice letter and resolution number, the site's Pre-G.O. 159 status, the site's temporary status, or its CPCN authorization in the original configuration.

Advice letter 48, Resolution #T-18899

- d. A detailed description of what has been constructed, including the equipment that was installed (include type and number of antennas); the tower that was built, appearance and height; the building size; and the actual location on the lot.

The site currently consists of a 30 foot wooden monopole, 6 cellular antennas, .....

## APPENDIX B

For sites in which a cellular company has filed an advice letter after the site had been disturbed and not received a resolution from the CPUC as of the date of this order, the following information must be submitted.

On a site by site basis, using the format given below, provide the following information. For each question, print the company name and site number and/or site name at the top of each page. Print the question number and question directly under the company name and site name or number. Provide at least four blank lines between each question. If more than one page is required to answer the question provide the company name, site number or name, and the question at the top of each page. See the example provided at the end of this document. Use a page stating the document provided as the title page preceding the required documents. If the answer is "none", state the reason for that response. Submit the response with the answers in sequential order. Each site should be submitted in the order it was filed with the CPUC.

1. A detailed description of what has been constructed, including the equipment that was installed (include type and number of antennas); the tower that was built, appearance and height; the building size; and the actual location on the lot;
2. A list of all governmental agencies (with the exception of the Commission) which have jurisdiction over the construction or would have jurisdiction over the construction absent Commission preemption;
3. The date any site modification began. This includes but is not limited to: grading, excavation, placement or addition of antennas or equipment, any modification of an interior space, or any addition or change to an electrical system;
4. A list of all permits or approvals for which the company its contractors or its agents applied;
5. The date on which each permit or approval was applied for;
6. A list of all permits or approvals received or denied and the date received or denied;
7. Name and phone number of property owner, if it is a public agency or hospital, identify the agency or hospital;
8. Phone number and name of contact persons and the names of all agencies permitting or approving the site;

9. Names of all personnel who conducted negotiation for this site contract or were responsible for obtaining required permits and the task that each individual accomplished;
10. Names and phone numbers for all contractors who worked on site and a description of the work each contractor completed;
11. The date the site went into service;
12. The date the FCC form 401 and/or 489 (application for new or modified common carrier radio station authorization was mailed;
13. A photocopy of the FCC form 401 and/or 489;
14. A clearly legible photocopy of all applications, permits, approvals, and finalized site inspection records;
15. A photocopy of all contracts and correspondence regarding the site;
16. If on Federal land, provide a photocopy of the Right of Way agreement;
17. If subleasing or renting provide a copy of the master lease or rental agreement;
18. A photocopy of any and all notice given and state the location the notice was posted or the means distributed;
19. A clearly legible copy of the FCC license granting the company authority to operate in the service territory where the site is located;
20. Copies of all denials of permit applications and correspondence with the agency denying the permit;
21. A declaration signed by all of the officers of the company stating, that under penalty of perjury, they have investigated the information being supplied and that it is true and complete.

SAMPLE PAGE:

XXXXX CELLULAR TELEPHONE COMPANY

HACKER STREET SITE

- c. The advice letter and resolution number, the site's Pre-G.O. 159 status, the site's temporary status, or its CPCN authorization in the original configuration.

Advice letter 48, Resolution #T-18899

- d. A detailed description of what has been constructed, including the equipment that was installed (include type and number of antennas); the tower that was built, appearance and height; the building size; and the actual location on the lot.

The site currently consists of a 30 foot wooden monopole, 6 cellular antennas,.....