

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
 own motion into U.S. Cellular
 Corporation and its subsidiaries
 and/or affiliates compliance with
 requirements of General Order 159
 and other Commission Rules in
 connection with cellular facilities
 constructed in California.

F I L E D
PUBLIC UTILITIES COMMISSION
FEBRUARY 7, 1996
SAN FRANCISCO OFFICE
I.96-02-013

ORDER INSTITUTING INVESTIGATION

U.S. Cellular Corporation owns, operates, and maintains cellular transceiving sites ("cell sites") and/or MTSOs (Mobile Telephone Switching Office) in California through various entities: California Rural Service Areas ("CRSA") Nos. 1, 2, and 9. U.S. Cellular Corporation's principal place of business is: 8410 West Byrn Mawr, Suite 700, Chicago, Illinois 60631-3486.

It provides cellular telephone service in the aforementioned CRSAs through wholly owned subsidiaries. For purposes of this Order "U.S. Cellular" includes such parent corporation and any pertinent subsidiary or other California corporate entity, partnership, or any other business arrangement through which U.S. Cellular Corporation does business in these CRSAs and any other areas within California.

Prior Related Proceedings

In January 1992, the Commission issued Order Instituting Investigation (I.) 92-01-002 that required all cellular telephone providers operating in California to file data regarding compliance with General Order (G.O.) 159. Later that year, U.S. Cellular acquired and merged Randolph Cellular Co. with its operations, which the Commission approved, and U.S.

Cellular is the successor in interest for Randolph for purposes of G.O. 159 issues. Generally, the issue of all cellular utilities' compliance with G.O. 159 concerning all cellular site construction is the subject of the broad enforcement OII. However, as noted below, as a review of U.S. Cellular's operations is progressing in other dockets, it is desirable to procedurally structure proceedings so that we may assess these matters fully on a utility-wide basis. Unless we act, some of U.S. Cellular's activity will be addressed in one docket, and activity on other sites will ultimately be in addressed in another. That is inefficient.

It is efficient to institute this new OII and consolidate it with the other matters in order to join all U.S. Cellular sites in one place for review. This is efficient for our resources, staff's investigative personnel and probably the respondent, U.S. Cellular.

On October 17, 1994, Cal-One L.P. ("Cal-One") filed a complaint (Case 94-10-021) against CRSA No. 1, Inc, a wholly-owned subsidiary of U.S. Cellular. Cal-One alleged that in 1994, U. S. Cellular constructed and began operating a cell site near Eureka, California, without obtaining prior Commission approval pursuant to G.O. 159.

The complaint asked for a temporary restraining order, damages, and attorney fees. Subsequently U.S. Cellular filed Advice Letter no. 21 requesting Commission approval to construct its Eureka cell site. OII 94-12-011 was issued on December 21, 1994 and consolidated with the pending formal complaint case, C.94-10-021. The Commission directed the Safety and Enforcement Division to investigate whether U.S. Cellular's operations and practices in CRSA no. 1, had violated G.O. 159 or any other Commission rules and whether a penalty was warranted. That OII also consolidated Cal-One's Advice Letter No. 21 for review with those matters, and that also remains pending before the Commission.

Administrative Law Judge John Wong recently set hearing dates for the week of March 18, 1996, in Eureka, California.

Scope of Staff's Investigation

Staff says that it has reason to believe that U.S. Cellular has committed violations of Commission rules and regulations in connection with other adjacent or nearby CRSAs Nos. 2 & 9, similar or related to those found during its investigation of CRSA No. 1. This being the case, it would advance adjudicatory efficiency and conserve Commission resources, if CRSA Nos. 2 and 9 were separated from I.92-01-002, and instead were added to the subject matter of this new proceeding. Issues surrounding all U.S. Cellular's sites should be addressed in the hearings already set for next spring.

Discussion

Although I.94-12-011 expressly said that it covered all violations by the named respondent in that order, it was not clear whether the scope was conduct of the controlling parent company, U.S. Cellular Corporation, or, construed more narrowly, just some of its individual affiliates. Today's order solves that question and positions proceedings to move forward and coherently address all issues surrounding U.S. Cellular Corporation's operations in California.

ORDER

IT IS ORDERED that:

1. An investigation is instituted into the operations and practices of U.S. Cellular and its subsidiaries or affiliates in connection with that utility's compliance with provisions of General Order (G.O.) 159, and whether the respondent's operations in its CRSA Nos. 2 and 9 or any other localities in California

violated G.O. 159 or other rules, and whether penalties and/or fines should be imposed pursuant to P.U. Code sections 2107 and 2108, or any other provisions. This proceeding is consolidated with I.94-12-011 and C.94-10-021.

2. Staff shall adduce evidence on U.S. Cellular's compliance with G.O. 159 and other rules, with respect to any areas in CRSA Nos. 2 & 9 which U.S. Cellular serves under its tariffs, covering the time period in I.92-01-002 and up to the time of hearing. These consolidated proceedings will be the forum for assessing the respondent's compliance generally with G.O. 159, and U.S. Cellular will therefore no longer be an active respondent in I.92-01-002. Instead, the compliance submissions made in I.92-01-002 by U.S. Cellular or any of its affiliates or entities acquired by it, shall be considered in this new consolidated investigatory proceeding.

The Executive Director is directed to cause a copy of this order to be served by certified mail on the respondent U.S. Cellular Corporation and to counsel representing the respondent in I.94-12-011, as follows:

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This order is effective today.

Dated February 7, 1996, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners