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(revised)

ORIGINAL

L/DAH/lmz

FILED
PUBLIC UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JAN 9 1990

Order Instituting Rulemaking on the Commission's own motion to develop revisions to General Orders and Rules applicable to siting and environmental review of cellular mobile radio-telephone utility facilities.

SAN FRANCISCO OFFICE
P.O. R. 90 01 012

ORIGINAL

ORDER INSTITUTING RULEMAKING

This Order Instituting Rulemaking (OIR) is issued to address problems which have arisen with the Commission's procedures for reviewing cellular radiotelephone facility sites. The cellular radiotelephone industry is rapidly expanding, with almost every county in California currently receiving service and hundreds of expansion sites planned to meet growing demand. The Commission's objective in opening this proceeding is to develop a comprehensive set of rules and procedures to insure that: 1) all cellular sites are adequately reviewed environmentally; 2) interested parties are given an opportunity for input into the review process; 3) local jurisdictions are consulted regarding the sites; and, 4) cellular companies are not unnecessarily delayed by the site review. This order institutes a formal rulemaking proceeding, proposes a rule to control planning and construction activities related to cellular sites, and requests public comments and suggestions to assist the Commission in developing final rules to meet its regulatory mandate to consider community values and the influence on the environment of regulated utility projects.

CURRENT PROCEDURES AND AUTHORITY

1. Initial Service and CPC&Ns

Pursuant to Public Utilities Code Section 1001, telephone corporations and other utilities must obtain a certificate of public convenience and necessity (CPC&N) from the

Commission prior to the construction of, "... a line, plant, or system, or of any extension thereof...". Under Section 1001, a cellular radiotelephone company is required to file for a CPC&N from the Commission before it commences operation in a service area. The initial cellular sites required to begin operations are identified in this application and environmental information is provided. The Commission performs an environmental review of the initial sites as the lead agency under the California Environmental Quality Act (CEQA). Mitigated negative declarations have been prepared for the majority of cellular sites reviewed by the Commission to date. The negative declarations are sent to the appropriate local governments for comment, and public notice of the availability of the document is placed in local newspapers (pursuant to CEQA and the CEQA Guidelines).

The Commission's issuance of a CPC&N pre-empts local jurisdictions from imposing conditions or regulations on the cellular companies which render cellular projects infeasible. At the same time, the Commission has recognized the importance of incorporating local requirements for environmental mitigation, building code compliance and other conditions. The Commission has encouraged cellular companies to work with local agencies in the siting of facilities. This position has been stated in CPC&N decisions, and in a letter from Commission staff to city and county planning agencies (June 20, 1988).

Although a CPC&N largely pre-empts local regulation in the siting of facilities, no procedure has been developed for resolving conflicts with local governments. A number of cellular sites have been delayed for extended periods of time when the local government has refused to issue a building permit. This in turn prevented electric service being provided to the cellular site, which is necessary for operation.

2. Expansion Sites

Although Section 1001 of the Public Utilities Code provides that utilities are generally required to file for a

CPC&N for facilities extending service, it does not require a CPC&N for, "an extension within any city or city and county within which it has theretofore lawfully commenced operations, or for an extension into territory either within or without a city or city and county contiguous to its ... line, plant, or system, and not theretofore served by public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business." At present, the Commission does not require cellular companies to file for additional certification when they add expansion and in-fill sites within a previously approved service territory. Because the Commission does not issue a permit for these expansion in-fill sites, CEQA is not invoked and an environmental review is not performed. This also means that public notice of the planned facilities is not provided.

In some cases, cellular companies apply for local permits for expansion and in-fill sites. Occasionally local governments have prepared environmental documents for the sites when issuing local permits. In other cases, the cellular companies have simply built facilities without any governmental or public review.

The Commission has wide discretion to determine whether expansion projects warrant further certification (See Pub. Util. Code section 701). For example, General Order 131-C requires a CPC&N application for all new electric transmission lines over 200 kV. The Commission has also required a CPC&N for specific projects, such as the Stanpac gas pipeline replacement project and the PGT gas pipeline expansion project.

PROBLEMS IN CELLULAR SITING

A number of problems have arisen with the current procedures for siting of cellular facilities which have prompted the need for this rulemaking. There has been considerable confusion over the jurisdiction and role of local governments in siting facilities. In addition, the lack of environmental review and public noticing of expansion and in-fill sites has denied the opportunity for public comment and local government review in

some cases. The cellular radiotelephone industry is expanding much faster than predicted and hundreds of new cellular transmitting sites are either in place or planned in the next few years.

The following is a list of the major issues which must be resolved to ensure adequate review and timely approval for cellular sites. This also represents the topics that should be addressed by those submitting public comments as part of this OIR.

1. Problems of Local Permitting and Notice:

- o Individual communities have reversed their approval of cellular sites after signing-off during formal consultation on a negative declaration. This has occurred after strong community resistance has developed after the public comment period, and sometimes after certification of the sites. Local permits which were previously approved have been withheld.
- o Local governments and affected property owners do not receive notice of proposed expansion and in-fill sites. This lack of notice restricts opportunity for effective comment.
- o The Commission has pre-emptive permit authority over local governments, however, it does not always review expansion and in-fill sites. This pre-emption excludes some sites from receiving any review and leaves local authorities uncertain as to their ability to alter objectionable aspects of proposed site construction. Although parties can file a formal complaint with the Commission, this process can be long and cumbersome.
- o Buildings cannot be legally served with electric power without a completed building inspection. A local agency can refuse to issue a building permit, or "red tag" a facility, and keep a cellular site from operating. The utility could obtain independent inspection if approved by the Commission, but there is no routine formal procedure at the Commission to authorize this potential remedy.
- o The Commission has jurisdiction over cellular facilities owned by the utilities. There is often confusion regarding jurisdiction when companies lease tower or building space from non-utility property owners. In this situation, local governments have permitting authority over the leased facilities.

2. Problems of Industry Development and Competition:

- o Radiotelephone companies assert that they will experience service quality loss (and potentially customer loss) if they cannot increase the number of cells to match subscriber increases in a timely manner.
- o Unlike most regulated utility monopolies, cellular radiotelephone systems, by federal order, have two companies licensed to operate in each service area. Companies assert that if one company finds a buildable expansion site, while its competitor runs into trouble with local pressure, unequal competition can result.
- o The Federal Communications Commission (FCC) sets time goals for completing broadcast coverage of a proposed territory. If local disputes cause delay, the utility may fail to meet FCC deadlines that were otherwise achievable.

3. Problems of Inequity or Inconsistency of Existing Regulation:

- o With the rapid growth in the cellular industry, the previous reliance on mitigated negative declarations for specific sites may not be adequate. The large number of expansion and in-fill sites expected may require some type of program review to consider alternative sites and the cumulative effects of expanding cellular systems.
- o Cellular regulations have developed over time as the industry has expanded and problems have arisen. Thus, there is a great deal of inconsistency in the filing requirements for different cellular companies. Some companies are required to file additional environmental information on expansion sites with the Commission and others are not. Some companies choose to file with local agencies for local permits, while other sites have been built without review either by the Commission or local authorities.
- o A full CPC&N review may be wasteful and excessive for expansion and in-fill site construction, but some type of approval process is needed to invoke CEQA and ensure public notice and environmental review.
- o A local agency may block construction of a new site so effectively that the utility is forced to request assistance from the Commission. In such cases, the Commission can act only if the utility petitions for reconsideration of its CPC&N or some similar reopening of previously closed proceedings. This recourse is slow and unwieldy.

- o Similarly, if a private citizen or a local agency objects to an in-fill or expansion site, they must file a formal complaint with the Commission. It is difficult to file a valid timely complaint when there is no notice requirement for proposed construction.

PROPOSED GENERAL ORDER

Because of the similarities between the siting issues raised in this OIR and those related to siting of electrical facilities under 200 kv, the CACD staff has prepared a proposed General Order (Appendix A) which is consistent with its recommended revisions to G.O. 131-C (proposed G.O. 131-D in OII 83-04-003) to provide a focus for the workshops we order in this proceeding. In addition to commenting on the issues set forth above, comments are invited on the proposed General Order.

SCOPE OF PROCEEDING

1. This OIR and proposed General Order will be provided to the affected utilities, local agencies and the public with a 45 day comment period.
2. Commission staff will hold workshops to receive public comments on the proposed General Order and to discuss suggested additions or alternatives at the end of the 45 day comment period.
3. The assigned Administrative Law Judge will prepare a draft rule for circulation, additional comment, and adoption by the Commission.

IT IS ORDERED that:

1. A rulemaking on the Commission's own motion is hereby instituted to determine the need for revisions to the Commission's General Orders applicable to siting and environmental review of cellular radiotelephone facilities, and to define and implement such revisions as are found necessary.
2. Cellular facilities-based utilities, as listed in Appendix B, county planning bodies as listed in Appendix C, city planning agencies as listed in Appendix D, as provided by the Governor's Office of Planning and Research, and the League of California Cities, are named respondents.

R. _____ L/DAH/lmz *

3. Written comments on the issues and on the proposed General Order may be filed 45 days after issuance of this order in original and twelve copies with the Commission's Docket Office. Additional copies shall be mailed directly to the Telecommunications Branch and to the Environmental and Special Projects Section of the Commission Advisory and Compliance Division. Copies need not be served on other respondents, but shall be provided to them on request. Workshops will be scheduled and noticed at the end of the 45 day response period.

4. Based upon the content and sufficiency of the comments received and upon staff's report of the results of workshops, the assigned Administrative Law Judge will draft proposed changes to the Commission's General Orders. Changes that are found necessary will be effected by further order of the Commission.

5. A hearing to facilitate adoption of an interim rule to have in place during the proceeding may be scheduled after an Administrative Law Judge is assigned. The Executive Director is directed to mail a copy of this order to each utility listed in Appendix B, Each county planning body listed in Appendix C, each city planning agency listed in Appendix D, and to the League of California Cities.

This order is effective today.

Dated JAN 9 1990, at San Francisco, California

G. MITCHELL WILK
President
FREDERICK R. DUDA
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Stanley W. Hulett,
being necessarily absent, did
not participate.

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

Wesley Franklin

7
WESLEY FRANKLIN, Acting Executive Director

DB

GENERAL ORDER NO.

PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIARULES RELATING TO THE PLANNING AND CONSTRUCTION OF
CELLULAR RADIOTELEPHONE CELL SITES AND SWITCHES
LOCATED IN CALIFORNIA

(Adopted _____, _____, effective _____, _____.
(Resolution No. _____)

SECTION I. GENERAL

Pursuant to the provisions of Sections 451, 701, 702, 761, 768, 770, and 1001 of the Public Utilities Code:

IT IS HEREBY ORDERED that no cellular radiotelephone utility, now subject, or which hereafter may become subject, to the jurisdiction of this Commission, shall begin construction in this state of any new switch or cell site facility not reviewed as part of its original certificate of public convenience and necessity, or of the modification, alteration, or addition to an existing cell site or switch facility, (except for the replacement or minor relocation of existing facilities with equivalent facilities or the replacement of supporting structures already built) without this Commission's having first authorized the construction of said facilities by issuance of an authority to construct in accordance with the provisions of section III of this General Order. Said authority to construct shall not be required if the facility meets one or more of the following criteria:

A. is to be relocated at the request of one or more landowners on whose land the facilities are entirely located without other change in size or type of facilities installed;

B. is to be relocated in connection with a broader action by another agency which undertakes environmental review pursuant to CEQA covering the relocation project;

C. is to be located at a previously developed and properly permitted communications facility site, at which location the new installation shall not require any construction beyond the installation of small antenna structures on an existing antenna tower and a building compatible with existing buildings at the site and sized to provide shelter for the site transmitting and receiving equipment.

IT IS FURTHER ORDERED that construction of facilities for which an authority to construct is required pursuant to this General Order shall not commence without either a finding that it can be seen with certainty that there is no possibility that the construction of those facilities may have a significant effect on the environment or a final Environmental Impact Report (EIR) or a Negative Declaration. Where this Commission is the lead agency for a project under the California Environmental Quality Act (CEQA), applicants shall comply with Rule 17.1 of our Rules of Practice and Procedure: Special Procedure for Implementation of the CEQA of 1970 (Preparation of EIRs). For purposes of this General Order, construction does not include any installation of environmental monitoring equipment, or any soil or geological investigation, or work to determine feasibility of the use of the particular site for the proposed facilities.

SECTION II. UTILITY REPORT OF PLANNED CELL SITE AND SWITCH FACILITIES

Every cellular radiotelephone public utility shall annually, on or before March 1, furnish to the Commission for its review a two-year (2) forecast of planned cell site and switch facilities.

The report shall include:

- A. A list of facilities, arranged in chronological order by the planned service date, for which authorization to construct has been received, but which have not yet been placed in service.
- B. A list of planned facilities, arranged in chronological order by the planned service date, on which reviews are being undertaken with governmental agencies or for which applications have already been filed.
- C. A list of planned facilities, arranged in chronological order by the planned service date, on which reviews have not started, which will be needed during the forecast periods.

For each facility listed, the following information, if available, shall be included in the report:

1. Planned operating date.
2. Location - nearest cross street or other locating information, site map, and location map.
3. Description of new facilities.
4. Height of tower above ground (state if new or existing)
5. Cities, counties, and other jurisdictions involved.
6. Other comments.

SECTION III. FACILITIES PERMIT REQUIREMENTS

A cellular radiotelephone utility desiring to construct a new cell site or switch shall file for an authority to construct not less than nine (9) months before the date of a required decision by the Commission unless the Commission authorizes a shorter period because of exceptional circumstances. Competitive pressure does not constitute a special circumstance. Application for Authority to Construct shall comply with this Commission's Rules of Practice and Procedure Nos. 2 through 8, 15, and 16.

1. In the event the utility asserts that it can be seen with certainty that there is no possibility that the proposed facility may have a significant effect on the environment, the application for authority to construct should be limited to a statement of this conclusion and any additional explanation or information necessary to support an independent assessment of the applicant's assertion by the Commission.
2. If the Commission or the utility determines that it cannot be seen with certainty that there is no possibility that the proposed facility may have a significant effect on the environment, then the application for authority to construct shall include the following:
 - a. A description of the proposed facilities, including the proposed equipment, tower design and appearance, heights, building sizes and lot locations, and a proposed schedule for notice, authorization, construction, and commencement of operation of the facility.
 - b. A map of the proposed location showing relationship to the operating system and to residential or scenic areas.
 - c. Reasons for adoption of the selected site including comparisons with alternative sites.
 - d. A listing of the governmental agencies with which proposed reviews have been undertaken, including a written agency response to applicant's written request for a brief position statement by that agency. (Such listing shall include the Native American Heritage Commission, 1400 Tenth Street, Sacramento, CA 95814, which shall constitute notice on California Indian Reservation Tribal Governments.) If an agency does not provide a written position statement, the utility may submit a statement of its understanding of the position of that agency.
 - e. A PEA or equivalent information on the environmental impact of the project in accordance with the rules of the CEQA and this Commission's Rules Nos. 17.1 and 17.3. If a PEA is filed, it may include the data listed in items a through d above.

- f. The above information requirements notwithstanding, an application for authority to construct need not include a detailed analysis of purpose and necessity, a detailed estimate of cost and economic analysis, a detailed schedule, or a detailed description of construction methods beyond that information required for CEQA compliance.
3. No later than thirty (30) days after the filing of the application, Commission staff shall review it and notify the utility in writing of any deficiencies in the submitted information and data. The utility shall correct any deficiencies within 30 days thereafter or explain in writing to the Commission why it is unable to do so. Any such explanation shall include an estimate of when the utility will be able to correct the information deficiencies. Upon correction of any deficiencies in the application, any public hearings which are necessary may be held on the application. The Commission shall issue a decision no later than eight months after the acceptance of the application as complete, or at such later time as is mutually agreed upon by the applicant and the Commission.

SECTION IV. NOTICE

Notice of the filing of each application for an authority to construct for facilities subject to Section III of this General Order shall be given by the cellular radiotelephone public utility to the county and municipal planning commissions and the county and municipal legislative bodies for the county or city in which the proposed facility will be located, any applicable coastal authority, and to other interested parties having requested such notification.

Said notices shall be given by regular mail not more than ten days after the filing of the application and the utility shall file a Declaration of Mailing with the Commission. Notice shall also be given to the general public by advertisement, not less than once a week, two weeks successively in a newspaper or newspapers of general circulation in the county or counties in which the proposed facilities will be located, the first publication to be not later than ten days after filing the application. If applicable, three copies shall be served on the Executive Director of the Coastal Commission. If applicable, three copies shall be served on the Executive Director of the S.F. Bay Conservation and Development Commission. Upon request by any public agency, the applicant shall provide at least one copy of its application to said public agency. A copy of the application shall be kept available for public inspection at the utility's office(s) in the county or counties in which the proposed facility will be located.

Notice of the construction of a cellular radiotelephone facility for which an authority to construct is not required pursuant to Section I, subdivisions A through C of this General Order shall be given by direct mail, not less than ninety (90)

days before the date when construction is due to start, by the cellular radiotelephone utility to the Commission and to the county and municipal planning departments for the county or city in which the proposed facility will be located. Notice will be given at the same time to all owners of land on which the proposed facility will be located, to immediately adjacent property owners, and to other interested parties who have requested such notice. Notice to these property owners and interested parties shall be given by at least two of the following procedures:

- (1) By advertisement, not less than once a week for two weeks successively in a newspaper or newspapers of general circulation in the city or county where the proposed facility will be located;
- (2) Posting of notice by the utility in a reasonably conspicuous manner on and off the proposed site.
- (3) Direct mailing.

All notices shall contain an explanation of the procedure to contest the exemption from the filing requirement as specified in Section VI.

SECTION V. REQUEST FOR PUBLIC HEARINGS

Those to whom notice has been sent as specified in Section IV and any other person entitled under the Commission's Rules of Practice and Procedure to participate in a proceeding for an authority to construct may, within thirty days after the notice was mailed and published, request that the Commission hold hearings on the application. Any such request should include the reasons therefor. If the Commission, as a result of its preliminary investigation after such requests, determines that public hearings should be held, notice shall be sent to each person who is entitled to notice or who has requested a hearing.

SECTION VI. REQUEST TO REQUIRE A FILING FOR AN AUTHORITY TO CONSTRUCT

Those to whom notice has been given as specified in Section IV and any other person or entity entitled to participate in a proceeding for an authority to construct may, within thirty (30) days after the notice was mailed and published, contest any intended construction without first obtaining an authority to construct on the basis that the proposed cell site or switch facility may have a significant effect on the environment. The request shall be made by sending a written statement to that effect to both the utility and to the Commission. Any such request shall include the reasons therefor. If such a request is sent to the utility and the Commission, the Executive Director will review the proposed construction within 30 days and may require the utility to file for and obtain an authority to construct before beginning construction of those facilities.

SECTION VII COMPLAINTS, EXEMPTIONS, AND LOCAL PERMIT COMPLIANCE

A. Complaints may be filed with the Commission for resolution of any alleged violations of this General Order pursuant to the Commission's Rules of Practice and Procedure, Rules 9 through 13.1.

B. This General Order preempts local jurisdictions acting pursuant to local authority from imposing conditions on cellular radiotelephone public utilities which render cell site or switch facility projects infeasible. Public agencies, and other interested parties may contest the construction of cell sites and switch facilities exempt from this General Order, by filing a complaint with the Commission pursuant to the Commission's Rules of Practice and Procedure, Rules 9 through 13.1.

C. Notwithstanding this preemption, applicant utilities are directed to work with local planning and land use control agencies in the selection of facility sites, to comply with local zoning, land use and building code requirements, and to file for local permits where requested by the local agencies. If applicant utilities have complied with all reasonable local government conditions and requests, and they are unable to obtain local permits or approvals within nine (9) months from the date filed with the local agency, they may request authority from the Commission to proceed with construction of facilities without local permits. The Executive Director will review the request within thirty (30) days and may grant the utility the authority to construct facilities and to hire independent building inspectors, to certify to the Commission that the project meets applicable building and safety standards. Such override of local permit procedures cannot exempt the utility from the authority of other state agencies or from the responsibility for safe construction and operation of facilities.

**PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

By **NEAL J. SHULMAN**
Executive Director

End of APPENDIX A

R. _____ L/DAH/lmz

U-3001-C
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Richard Nelson
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Irvine, CA 92714

U-3002-C
GTE MOBILNET INC.
Philip L. Forbes
616 FM 1960 West, Ste. 400
Houston, TX 77090

U-3003-C
LOS ANGELES SMSA
Richard Wilson
P.O. Box 19707
Irvine, CA 92714

U-3004-C
SACRAMENTO VALLEY LTD, PTR.
Richard Nelson
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Irvine, CA 92713

U-3005-C
FRESNO MSA LTD. PARTNERSHIP
Mike Mott
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Atlanta, GA 30328

U-3007-C
BAY AREA CELLULAR TEL. CO.
Matt Ginn
577 Airport Blvd, Third Fl.
Burlingame, CA 94010

U-3008-C
US WEST CELLULAR OF CA, INC.
(NEWVECTOR)
3350 161st Avenue SE
Bellevue, WA 98008

U-3009-C
LOS ANGELES CELLULAR TEL. CO.
Robert Kerstein
6045 Slauson Avenue
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U-3010-C
VENTURA CELLULAR (OXNARD CELLULAR)
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751 Daily Drive, #116
Camarillo, CA 93010

U-3011-C
GTE MOBILNET OF SANTA BARBARA
Ken Potla
105 West Gutierrez
Santa Barbara, CA 92101

U-3012-C
STOCKTON CELLULAR
2321 W. March Lane, Rm. 210
Stockton, CA 95207-5239

U-3013-C
SACRAMENTO CELLULAR TEL. CO.
General Manager
1760 Howe Avenue, Suite 102
Sacramento, CA 95825

U-3014-C
FRESNO CELLULAR TEL. CO.
General Manager
5260 North Palm Ave., Ste. 120
Fresno, CA 93710

U-3015-C
SANTA BARBARA CELLULAR SYSTEMS LTD.
General Manager
6485 Calle Real, Ste. E
Goleta, CA 93117

U-3016-C
NAPA CELLULAR TEL. CO.
General Manager
818 Mendocino, Ste. E
Santa Rosa, CA 95401

U-3017-C
CELLULAR ONE OF BAKERSFIELD
P.O. Box 10311
Bakersfield, CA 93389

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U-3018-C
SALINAS CELLULAR TEL. CO.
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177 Webster St. Box A-426
Monterey, CA 93940

U-3019-C
SANTA CRUZ TELEPHONE COMPANY
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140 Dubbois St., Ste. A
Santa Cruz, CA 95060

U-3020-C
REDDING CELLULAR PARTNERSHIP
Bill Jarvis, c/o Sacramento Cellular
1750 Howe Ave., Ste. 102
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U-3021-C
CAGAL
Paul Rosenthal
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U-3022-C
BUTTE COUNTY CELLULAR LICENSE CORP
Regulatory Contact
50 California St.
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McCaw Cellular Communications, Inc.
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5400 Carillon Point
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STOCKTON CELLULAR TELEPHONE CO.
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