

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY AND COMPLIANCE DIVISION
Telecommunications Branch

RESOLUTION T-14803
Date: June 3, 1992

R E S O L U T I O N

RESOLUTION T-14803. BAY AREA CELLULAR TELEPHONE COMPANY. REQUEST TO ADD A CELL SITE IN THE SAN FRANCISCO/SAN JOSE CELLULAR GEOGRAPHIC SERVICE AREAS.

BY ADVICE LETTER NO. 131, FILED ON DECEMBER 17, 1991.

SUMMARY

BAY AREA CELLULAR TELEPHONE COMPANY (BACTC), by Advice Letter No. 131, filed on December 17, 1991, requests authority under the provisions of General Order 159 (G.O. 159) and Decision No. 90-03-080 (March 28, 1990) to add a cellular radiotelephone cell site to its existing cellular system serving the San Francisco/San Jose Cellular Geographic Service Areas. This Resolution authorizes the construction of the cell site, known as the Almaden site, located at 6922-6934 Almaden Expressway, Building C, San Jose, CA 95120. One protest to this Advice Letter was received. It did not provide valid grounds for sustaining a protest.

BACKGROUND

Under G.O. 159 (D.90-03-080), a cellular utility must obtain authorization from the Commission before construction of cellular facilities not described in the decision granting the certificate of public convenience and necessity. A cellular utility must file an advice letter requesting authorization to construct after it has received all approvals for the proposed construction required by any governmental agencies with jurisdiction over the proposed construction, or which would have jurisdiction absent the Commission's preemption.

NOTICE

Public notice that BACTC filed Advice Letter No. 131 requesting authority to construct the Almaden site appeared in the California Public Utilities Commission's December 21, 1991 Daily Calendar. In addition, copies of BACTC's Advice Letter No. 131 were mailed in accordance with the Commission's General Order No. 96-A, Section III. G, to competing utilities either privately or publicly owned, adjacent utilities either privately or publicly owned, utilities having requested such notification, and other interested parties having requested such notification.

PROTESTS

One protest was received to BACTC's Advice Letter No. 131., on January 6, 1992. Protestors are James Seymour, Debra A. Bailey, and Donald A. Rockwell, homeowners who live between 85 and 300 feet from the project site. BACTC filed a response to this protest on January 21, 1992. BACTC's response properly and completely replied to each of the grounds for protest raised.

Protestants expressed concern about the proposed BACTC site and a previously approved GTE Mobilnet site constructed near the BACTC site. Protestants alleged that the City of San Jose improperly issued conditional use permits for the sites without CEQA compliance and that the CPUC was responsible for CEQA review in the absence of required action by the City of San Jose.

Protestants requested that the CPUC preempt the permit process of the City of San Jose and conduct a CEQA initial study of both projects.

Protestants alleged that false location information was furnished for the GTE site, constituting improper notice and that construction on this site began a month in advance of filing of the advice letter for this site.

The time for filing a complaint about the GTE site was long past when protestants filed their statement. Protestants did not offer any compelling reasons to reopen CEQA examination of either the GTE or BACTC sites.

Protestants allege that BACTC's advice letter does not accurately describe the location of their proposed construction. BACTC shows that their filing, as supplemented with a corrected map, does indeed accurately describe the proposed construction.

Protestants argue that the cell sites may produce adverse health effects and thus must receive CEQA review. At this time, although the CPUC is investigating possible responses in the event a future determination shows that adverse health effects can be produced by cell site transmitters, no Commission decision has determined that such a hazard may exist.

Hence, protestants raised no valid issues affecting the Commission's responsibilities.

Review of the protest and BACTC's reply shows that none of the grounds for protest raised provide substantive reasons to reject BACTC's advice letter. Accordingly, there are no outstanding reasons to depart from the procedure established by G.O. 159.

DISCUSSION

Advice Letter No. 131, as supplemented, contains all the information required under G.O. 159 to be included in an Advice

Letter filing for authority to construct additional cellular facilities.

The Almaden site represents an additional cellular radiotelephone facility not described in Decision 86-05-010, granting BACTC a certificate of public convenience and necessity.

BACTC has obtained permits or approvals from the following governmental entities and asserts that these entities comprise all governmental entities that have jurisdiction over the proposed construction (with the exception of the California Public Utilities Commission): City of San Jose, Federal Communications Commission, Federal Aviation Administration.

The proposed construction will be located at 6922-6934 Almaden Expressway, Building C, San Jose, CA 95120 and is known as the Almaden site. It will consist of a 207 sq. ft. equipment shelter and three 13' whip antennas mounted on the southwest corner of an existing shopping center building about 90' east of the equipment shelter.

The Almaden site will become part of BACTC's cellular system serving the San Francisco/San Jose Cellular Geographic Service Areas.

FINDINGS

1. On December 17, 1991, BAY AREA CELLULAR TELEPHONE COMPANY filed Advice Letter No. 131 requesting Executive authorization to construct Almaden site located at 6922-6934 Almaden Expressway, Building C, San Jose, CA 95120.
2. The Almaden site represents an additional cellular radiotelephone facility not described in Decision 86-05-010, granting BACTC a certificate of public convenience and necessity.
3. Decision 90-03-080 adopts G.O. 159 which sets forth certain requirements for the filing of advice letters requesting authorization to construct cellular radiotelephone facilities not described in a utility's certificate of public convenience and necessity.
4. Advice Letter No. 131, as supplemented, conforms to the requirements of Decision 90-03-080 and G.O. 159.
5. A BACTC officer signed a declaration which states that BACTC has received all necessary permits or approvals from the governmental entities listed in Advice Letter No. 131.
6. Advice Letter No. 131 lists the following entities which have jurisdiction over the proposed construction of the Almaden site: City of San Jose, Federal Communications Commission, Federal Aviation Administration.

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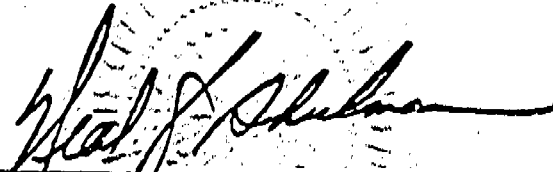
7. One protest to Advice Letter No. 131 was received. Upon review of this protest and BACTC's reply it was apparent that no substantive ground for sustaining a protest had been presented.

THEREFORE, IT IS ORDERED that:

1. BAY AREA CELLULAR TELEPHONE COMPANY's Advice Letter No. 131 is hereby approved.

The effective date of this resolution is today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on June 3, 1992. The following Commissioners approved it:



NEAL J. SHULMAN
Executive Director

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