

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

Order Instituting Rulemaking to Revise the Certification
Process for Telephone Corporations and the Registration
Process for Wireless Carriers

Rulemaking 11-11-006
(November 10, 2011)

**OPENING COMMENTS OF
CTIA-THE WIRELESS ASSOCIATION®**

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Dated: January 13, 2011

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Pursuant to the Order Instituting Rulemaking to Revise the Process for telephone corporations Seeking or Holding Certificated of Public convenience and necessity, and Wireless Carriers Seeking or holding Registration issued on November 10, 2011 (OIR), CTIA-The Wireless Association® (CTIA) provides these initial comments on issues raised by the OIR.

I. INTRODUCTION

The OIR is grounded in actions taken by the Commission two years ago with respect to its enhancement of the registration process for non-dominant interexchange carriers (NDIEC). These actions themselves were taken in response to concerns raised in a State Controller's Audit report released five years ago.¹ Thus, the OIR provides that "many of those same concerns are applicable to telecommunications corporations that seek to operate pursuant to a certificate of public convenience and necessity (CPCN) or registration as a wireless reseller" and therefore it is "appropriate to initiate this proceeding to review and revise the operating authority requirements" for telephone corporations to qualify for a certificate of public convenience and necessity (CPCN) and commercial mobile radio service (CMRS) providers to qualify for a

¹ See http://www.sco.ca.gov/Files-AUD/specreport_cpuc_fines_rpt.pdf

Wireless Identification registration.² The OIR fails, however, to demonstrate or document how the concerns expressed in the five year old Audit Report are applicable to wireless carriers. Indeed, the Audit Report itself does not reference, much less directly discuss, any concerns pertaining to the Commission's registration process for wireless carriers.

Thus, the OIR is premised on taking requirements that were devised for NDIEC registration holders and applying them to the wireless industry in the absence of any underlying record that such requirements are needed, or even what additional benefit would be garnered by their imposition. While the OIR attempts to create a need upon which to base the stricter registration requirements -- i.e., a purported proliferation of unauthorized charges being placed on customer bills (thus indicating the existence of unscrupulous carriers) -- the OIR does not provide any nexus between the proposed registration requirements and a reduction in the alleged increase in cramming. In other words, the OIR provides no support that imposing stricter registration requirements will result in a lower number of unauthorized charges being placed on customer's bills. The OIR does not substantiate a need for reform of the wireless registration process.

The attempt to impose on wireless carriers the same additional registration requirements as the Commission imposed on NDIECs is an act of "one-size-fits-all regulation the Commission has previously recognized is outdated and simply does not work in today's modern telecommunications marketplace.³ A form of regulation found necessary for NDIECs does not automatically transfer to the wireless industry. The Commission should not engage in such practice. As the Commission has determined, "rules can cause their own problems, which may

² See OIR at p. 1.

³ See Decision 06-03-013, at p. 3.

overshadow any benefits bestowed upon consumers.”⁴ In other words, regulations can readily result in unintended consequences which can have negative impacts on consumers. In the absence of clear demonstration that additional regulation would effectively respond to real problems, the Commission has refrained from the imposition of additional rules. The Commission should follow the same course in its consideration of the proposals set forth in the OIR to impose additional registration regulations on the wireless industry.

II. COMMISSION MUST CONSIDER VARYING JURISDICTIONAL CONFINES

As presented in the OIR, one of its stated purpose is to “review and revise the operating authority requirements” for CMRS providers to qualify for a wireless identification registration. Stated another way, the OIR is assessing the necessary qualifications for wireless carriers to provide service in the state. As acknowledged in the OIR, the Commission must be guided in this effort by the confines of its varying jurisdiction over different types of telecommunications carriers.⁵ Accordingly, the OIR appropriately refers to Omnibus Reconciliation Act of 1993 which amended § 332(c)(3)(A) of the Communication Act to provide that:

*... no state or local government shall have any authority to regulate the entry of or the rates charged by any Commercial Mobile Service or any Private Mobile Service, except this paragraph shall not prohibit a state from regulating the other terms and conditions of Commercial Mobile Service.*⁶

Thus Congress acted to exempt wireless carriers from the certification and other market entry requirements that states had historically applied to wire line providers.⁷ As the FCC has explained:

⁴ *Id.* at p. 33.

⁵ *See* OIR at pp.9-15.

⁶ Codified at 47 USC § 332(c)(3)(A)

⁷ *See, e.g.,* Connecticut Department of Pub. Util. Control vs. FCC, 78 F.3d. 842, 845 (2nd Cir. 1996).

[I]n completely eliminating interstate market entry requirements, the Commission reasoned that retaining entry requirements could stifle new and innovative services whereas blanket entry authority, i.e., unconditional entry, would promote competition. State entry and certification requirements ... require the filing of an application which must contain detailed information regarding all aspects of the qualifications of the would-be service provider, including public disclosure of detailed financial information, operational and business plans, and proposed service offerings. The application process can take months and result in denial of a certificate, thus preventing entry altogether.⁸

Overly restrictive “operating authority” requirements considered as part of this OIR could function as a direct regulation of entry, and thus would be prohibited by the Federal Communications Act.

II. NEEDS FOR ADDITIONAL REGISTRATION REQUIREMENTS HAS NOT BEEN ESTABLISHED

A. Posting of Performance Bonds

The OIR raises the possibility of requiring all telecommunications companies, including wireless carriers, to post a performance bond, the purpose of which would be too “significantly improve the Commission’s ability to collect fines and penalties owed, surcharges and reimbursement fees.”⁹ The OIR notes that the Commission has required NDIEC registrants to post bonds that are up to 10% of annual intrastate revenues or \$25,000, whichever is greater, and suggests that the bond requirements for CPCN holders and wireless registrants should be the same. Such rationale is an example of one-size fits all regulation, without any examination of the underlying need or justification for such requirement.

Indeed, the OIR provides no documentation of instances of established wireless carriers failing to pay fines, fees or other legal obligations to the Commission. Rather the OIR cites back to the 2007 Auditor Report which identified certain carriers, other than NDIECs, which were

⁸ Vonage Holding Corp., 19 FCC Rcd. 22404, 22415-16 (¶ 20) (2004).

⁹ OIR at p. 16.

going into default. While that may be true, none of the carriers cited were wireless carriers. Thus, if the recommendation in the OIR was adopted, the Commission would be requiring wireless carriers to take on a substantial financial burden with no foreseeable benefit.¹⁰ In the absence of a clearly identified problem, the Commission should refrain from such additional regulation. Indeed, such regulation would not only be lacking in foreseeable benefit but it could have unintended negative consequences for consumers. Monies which could be used to enhance products and services for customers would be tied up in maintaining unnecessary performance bonds.

If, as the OIR states, the purpose underlying a performance bond is to improve the Commission's ability to collect on monies which it is owed, then the OIR has cast too broad a net; the Commission should more narrowly focus its aim to companies which might pose a risk. Indeed, the Commission acknowledges that "some CPCN holder and wireless registrants have sufficient longevity of operation and financial stability that alternatives to a performance bond may provide the same degree of financial protection."¹¹ CTIA agrees with this statement, but believes that, as a starting point, the Commission should not require any existing wireless carrier to post a performance bond or comparable alternative. As stated above, there has been no showing that wireless carriers currently operating in California pose a financial risk which would merit such actions. Rather, if the Commission identifies a concern with respect to a particular carrier, then it should address that concern on a case-by-case basis, appropriately matching any documented risk with a tailored remedy.

¹⁰ The cost of a performance bond generally runs 1-2 percent of the amount of the bond. Such could be sizeable amount for carriers with substantial intrastate revenues. Even or carriers whose intrastate revenues are more modest, monies spent on maintaining a performance bond could constitute a significant portion of available funds.

¹¹ OIR at p. 18.

Moreover, with respect to wireless carriers which are new to the market, the Commission has the opportunity to conduct due diligence as part of the registration process to ferret out whether any particular carrier might pose a risk for failure to pay assessed fines or required fees. Thus the Commission can make part of its initial inquiry whether the carrier has failed to pay any fines or regulatory fees in other jurisdictions where it does business, and follow up on an individual basis as the facts dictate.

B. Changes in Wireless Registration

1. Additional Information

The OIR (at p. 19) “whether it is reasonable to extend” to wireless carriers seeking WIR registration “standardized information checklists” Similarly, the OIR ask parties to comment on whether “terms and conditions to the existing wireless registration process, such a providing proof of registration with the California secretary of state and / or a copy of the resale agreement with an underlying facilities based wireless carrier.”¹² In both instances, parties are directed to Attachment A to the order which contains a ”Proposed Wireless Registration Application” for comment.

Review of the Proposed Wireless Registration Application in Attachment A does not reveal any substantive concerns at this time. CTIA, however, reserves its right to comment upon any additional suggestions for wireless registration requirements offered by other parties. CTIA’s reservation stems from the fact that, as discussed above, Section 332(c)(3)A of the Communications Act precludes states from regulating the entry of CMRS providers into the market. Any additional registration requirements must be tailored within those jurisdictional parameters.

¹² OIR at p.24.

2. Additional Fees

The OIR (at p. 24) queries whether certain other changes should be made in the requirements for processing wireless registration, including whether an annual licensing fee should be assessed. The OIR, however, provides no basis for the necessity of such a fee, and to what purpose the monies collected by the fee would be used.

All carriers, including wireless carriers, are assessed a User Fee pursuant to Public Utilities Code Section 431. The Commission determines this user based fee on a carrier's gross intrastate revenue. The monies collected through this assessment are utilized to fund a significant portion of the Commission's budget. If the concern underlying the licensing fee proposal set forth in the OIR is that certain carriers, reporting no intrastate revenues pay no fee, even though the Commission incurs ongoing costs to maintain records and databases, and to perform other regulatory activities that benefit those carriers, then this concern is appropriately addressed through establishing a minimum user fee which would be applicable to such carriers, rather than having all carriers pay an additional annual licensing fee.

III. CONCLUSION

CTIA appreciates the opportunity to comment on this OIR and would request that as the Commission moves forward in this proceeding it carefully consider whether any need exists for the proposed regulation and, if so, narrowly tailor the regulation to fit the identified problem, within its jurisdictional boundaries.

Respectfully submitted this 13th day of January, 2012, at San Francisco, California

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