

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's own motion into the programs, practices and policies related to implementation of the California Environmental Quality Act (CEQA) as it applies to jurisdictional telecommunications utilities.

FILED
PUBLIC UTILITIES COMMISSION
FEBRUARY 3, 2000
SAN FRANCISCO OFFICE
RULEMAKING 00-02-003

ORDER INSTITUTING RULEMAKING**Summary**

This decision initiates a rulemaking to address the Commission's enforcement of the California Environmental Quality Act (CEQA) as it applies to telecommunications companies in California. We initiate this proceeding following a series of incidents that have caused us to reassess our existing policy.

Discussion

The Commission has endeavored to promote competition in telecommunications markets over the past fifteen years. The Commission has opened long distance markets for both resellers and facilities-based carriers. More recently, it has opened local exchange markets to competition. The reasons for promoting competition in these markets are, among other things, to promote technological innovation, reduce prices and provide customer choice.

In pursuing its policy objectives, the Commission devised ways of easing barriers to entry brought about by regulatory procedures. Also, the addition of dozens of carriers into the marketplace has made regulatory oversight more challenging where regulation is still required. These circumstances have motivated the Commission to reevaluate its application of CEQA. The

Commission has recently begun taking a more active role in environmental oversight. For example, Commission staff has in recent months ordered several carriers to stop construction of telecommunications facilities following communications from other government agencies and members of the public who raised concerns about the carriers' compliance with CEQA. In December 1999, we issued Decisions 99-12-048 and 99-12-050, modifying the previous practice of issuing authority to new competitive local exchange carriers (CLEC) in "batches." In the future, we will conduct a review of each application for authority to provide local exchange services with more emphasis on the possible environmental impacts of individual construction proposals.

Recent improvements in our CEQA program may have inadvertently created inequities among carriers and highlight existing inequities. Although D.99-12-048 and D.99-12-050 require new CLECs to be subject to more stringent CEQA review, local exchange carriers with pre-existing authority have not been required to submit to that oversight. Incumbents, such as Pacific Bell, AT&T and cellular carriers need no CEQA review for new facilities construction because we currently have no "discretionary decision" (see, e.g. Public Resources Code Section 21080) that would trigger CEQA review. Disparate regulatory treatment of new and existing carriers raises issues regarding fairness and whether carriers have an equal opportunity to compete. Differing degrees of oversight may also result in other unintended market distortions. Finally, and most critically, these loopholes in regulation may undermine our efforts to protect California's environment. Similar issues arise for long distance carriers, some of which currently have authority to construct new facilities only with additional authority from the Commission and some of which need no additional authority.

The Commission will review these and related issues in this rulemaking. To that end, we solicit responses to the following questions:

1. *Is the Commission's existing practice for authorizing new CLECs adequate to comply with CEQA and to protect California's environmental resources?*
2. *Is the Commission's existing policy of allowing incumbent local exchange carriers and cellular carriers to construct new facilities without environmental review in compliance with CEQA? Does it promote adequate protection of California's environmental resources?*
3. *Do local authorities and other government agencies have adequate opportunities to protect local environmental resources under the current set of Commission practices and policies regarding incumbent local exchange carriers and CLECs? If not, how should this circumstance be remedied?*
4. *Does the Commission's existing practice for authorizing new CLECs create a competitive advantage or disadvantage for certain carriers? If so, how might those disparities be eliminated or reduced?*
5. *Is the Commission's existing practice for authorizing new long distance carriers adequate to comply with CEQA and to protect California's environmental resources?*
6. *Is the Commission's existing policy of allowing incumbent long distance carriers to construct new facilities without environmental review in compliance with CEQA? Does it promote adequate protection of California's environmental resources?*
7. *Do local authorities and other government agencies have adequate opportunities to protect local environmental resources under the current set of Commission practices and policies regarding long distance carriers? If not, how should this circumstance be remedied?*
8. *Does the Commission's existing practice for authorizing new long distance carriers create a competitive advantage or disadvantage for certain carriers? If so, how might those disparities be eliminated or reduced?*

Parties should file their responses to these questions no later than March 15, 2000. In the interim, we intend to conduct a legislative-style hearing that will provide insights on our policies. The Commission intends to proceed expeditiously to address these matters in order to assure that its policies and practices promote environmental quality, adequate opportunities for other government agencies to participate and oversee environmental resource protection consistent with the law and good policy, and fair and rigorous competition in telecommunications markets.

Scoping Memo

Rule 6(c)(2) of our Rules of Practice and Procedure provides that a rulemaking order “shall preliminarily determine the category and need for hearing, and shall attach a preliminary scoping memo.” This rulemaking is preliminarily determined to be quasi-legislative, as that term is defined in Rule 5(d). We herein solicit comments and proposals on the existing policies and practices for enforcing CEQA, the impacts of existing policies and proposals, and ways to change them if necessary. We anticipate that we will hold a hearing to address legislative facts as defined by Rule 8(f)(3).

The assigned Commissioner and Administrative Law Judge (ALJ) will determine the schedule for this proceeding in a subsequent ruling, following receipt of responses to the questions posed herein. Comments in response to the questions set forth herein are due no later than March 15, 2000. We anticipate having a final order issued in this proceeding within 18 months consistent with Rule 6(e).

Any person who objects to the preliminary categorization of this rulemaking, the need for hearing, or to the schedule may file a motion so stipulating within 30 days of the issuance of this order.

The Commission will issue an official service list following receipt of responses to the questions posed herein or following a prehearing conference, as determined by the Assigned Commissioner and ALJ. In the interim, parties must serve all filings on the service list attached to this order.

Pursuant to Rules 7(a) and 7(d), ex parte communications are permitted in this proceeding without any restrictions or reporting requirements.

Commissioner Loretta Lynch is designated as the assigned Commissioner in this proceeding and Thomas R. Pulsifer is the assigned ALJ.

Finding of Fact

Existing practices and policies implementing CEQA may require reevaluation in light of changing markets and may impose inequitable treatment between carriers.

Conclusion of Law

The Commission should review existing practices and policies implementing CEQA, as set forth herein.

IT IS ORDERED that:

1. A rulemaking is instituted on the Commission's motion to conduct a study as to whether and how to revise the Commission's practices and policies for implementing the California Environmental Quality Act as it pertains to telecommunications carriers, as set forth herein. The Executive Director shall serve this order on the service list attached to this order.

2. Comments in response to the questions posed in this rulemaking shall be filed with the Commission's Docket Office no later than March 15, 2000, and served on the attached service list.

This order is effective today.

Dated February 3, 2000, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
CARL W. WOOD
LORETTA M. LYNCH
Commissioners