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Decision 94-10-031 October 12, 1994

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
 Own Motion into Mobile Telephone ) I.93-12-007  
 Service and Wireless Communications. ) (Filed December 17, 1993)

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INTERIM OPINION

On August 10, 1993, the Omnibus Budget Reconciliation Act of 1993 (Budget Act) was signed into law. Section 6002 of the Budget Act amended §§ 3(n) and 332 of the Communications Act of 1934. Among its provisions were two affecting the regulatory treatment of both the commercial and private mobile radio telecommunications industry nationwide.<sup>1</sup>

One provision of Section 6002 generally removed rate regulation for all commercial and private mobile radio service telecommunications entities, including all such telecommunications carriers operating as public utilities in the State of California. It left in place, however, the state's authority to continue to regulate "terms and conditions" for commercial mobile radio service (CMRS) providers. Based on provisions in the law, on August 8, 1994, we made a filing which sought to retain rate regulation for cellular telecommunications companies by demonstrating that "market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates". Based on this filing and the terms of the law, preemption of intrastate cellular rate regulation within California is currently stayed

<sup>1</sup> "Commercial and private mobile radio services" include cellular service, radio telephone utility service, paging, and specialized mobile radio service, as well as personal communications service and other services for which initial spectrum authority is now being resolved.

pending final action on our petition by the Federal Communications Commission (FCC).

The second provision affecting regulatory treatment preempts states from regulating entry of all commercial and private mobile radio service telecommunications companies, including those providing intrastate service within the State of California. This provision went into effect on August 10, 1994. There is no self effectuating provision for exemption from this provision and none is being sought.

On December 17, 1993, we opened an investigation of the mobile radio telecommunications industry (I.93-12-007) to develop a comprehensive regulatory framework consistent with the Federal Budget Act and our own statutory responsibilities. On August 3, 1994, we issued D.94-08-022 in Phase I of that investigation in which we adopted interim measures intended to promote competition within the dominant cellular sector of the industry. We authorized the filing of a petition with the FCC to retain ratemaking authority over cellular carriers for this purpose. We deferred to a subsequent phase of the investigation further action on implementation of a revised regulatory framework. It is the purpose of this order to establish interim procedures by which we will fully respect the removal of regulatory restrictions on entry, and non-cellular rates, while at the same time ensuring this Commission retains the basic ability to undertake all other responsibilities which are retained. This includes the ability to provide a forum for the resolution of consumer problems when they may arise and continued regulation of other terms and conditions for all CMRS carriers. Pending final action by the FCC on our petition, we retain responsibility for oversight of cellular rates through tariff filings.

The Budget Act eliminated the requirement for a certificate of public convenience and necessity (CPCN) as a prerequisite to providing wireless telecommunications services,

and, absent a petition to retain rate regulation for cellular, removed rate regulation for all CMRS. In all other respects, however, the jurisdiction of this Commission remains unchanged as do the obligations of CMRS firms that meet the definition of public utilities and, absent this law, would be required to obtain a CPCN.

We will continue to exercise authority over intrastate cellular rates, including the filing of tariffs, and continue to provide a forum for the resolution of, all CMRS consumer complaints. We will also continue to assess applicable fees pursuant to Public Utilities (PU) Code §§ 401-410 and §§ 431-435, the reimbursement fee for the regulation of public utilities, and PU Code § 2881 to fund telecommunications services for the California Relay Service and communications devices fund. However, the Commission will limit the purposes to which these reimbursement fees are put consistent with the revised regulatory authority. To accomplish this, the Commission will provide that reimbursement fees collected from cellular utilities continue to be deposited in the Utilities Reimbursement Account, but may be used only for regulation of telephone corporations, excluding entry regulation. The Commission likewise will provide that reimbursement fees collected from CMRS providers other than cellular utilities continue to be deposited in the Utilities Reimbursement Account, but may be used only for regulation of telephone corporations, excluding rate and entry regulation.

Absent the requirement for a CPCN, it is still essential that the Commission have certain basic information about the entities providing intrastate commercial mobile radio service in California. This information is necessary to identify the utilities providing such services and to allow us to locate responsible officers and employees of these utilities, monitor consumer protection issues, and monitor cellular rates among other matters.

In I.93-12-007, our Investigation into Mobile Telephone Service and Wireless Telecommunications, we proposed in Appendix B, Part C, a regulatory oversight scheme for nondominant providers that would set up a registration process in place of filing a CPCN. As a result of our review of respondent's comments filed in the OII regarding our regulatory oversight proposals, we stated in D.94-08-022:

"Respondents expressed little or no disagreement over the limited registration and complaint resolution procedures for non-dominant carriers as described in Appendix B - Section C of the OII. We find those procedures appropriate for non-dominant carriers."  
(Mimeo., at 69.)

Therefore, effective immediately all CMRS carriers who intend to offer intrastate wireless telecommunications services within California but did not hold a CPCN for such services prior to August 10, 1994, shall file a Wireless Identification Registration containing the following information concurrent with undertaking such service:

1. The legal name of the business offering such service.
2. Any fictitious or other names under which such service will be offered.
3. The local business address for the utility, if any.
4. The home office business address if different than the local business address.
5. The name and address of the designated agent for service of process.
6. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
7. The identity of the directors and principal officers of the business.

8. Names of all affiliated companies and their relationship, indicating if the affiliate is a regulated public utility.
9. Telephone numbers to which service or other customer complaints should be directed.

This information shall be filed with the Chief of the Telecommunications Branch of the Commission Advisory and Compliance Division (CACD). Service of process will not be required on cities or counties within whose territory service is intended to be provided nor on competitors. Any CMRS carrier who has applied to the Commission for a CPCN between August 10, 1994 and the date of today's decision who has already filed this information need not provide it again. Such carriers are deemed to have complied with the Wireless Identification Registration requirement. Service can be commenced upon providing this registration information and, for cellular carriers, filing tariffs. Within 30 days of the change in the status of any of the information items listed above, the carrier shall notify CACD of such change.

The Omnibus Budget Reconciliation Act generally preempts this Commission from regulating the rates of non-cellular CMRS providers. Therefore, we will not require non-cellular CMRS providers to make or update rate filings with the Commission. They are free to change their rates without filing tariff changes with the Commission. However, we are concerned that without information on the rates of these carriers that we may be unable to resolve consumer complaints as authorized by the Act. Therefore we reserve for future consideration whether to require non-cellular CMRS providers to make informational tariff rate filings. Because this Commission retains jurisdiction over the other terms and conditions of CMRS providers, they must continue to make and update tariff filings for all terms and conditions other than rates.

We will be further examining the various regulatory requirements which are retained and providing notice and an opportunity to comment on proposals as to how those requirements should be modified, if at all, in recognition of these changes in federal law. For example, we will consider how California Environmental Quality Act requirements will be administered in our redefined regulatory role.

**Findings of Fact**

1. The Budget Act was signed into law on August 10, 1993.
2. This Commission took the requisite steps to stay the Budget Act's preemption of intrastate cellular rate regulation within California pending final action on the petition filed by the Commission with the FCC.
3. The Budget Act generally preempted states from regulating entry of and rates for commercial and private mobile radio service telecommunications companies as of August 10, 1994, including those providing intrastate service within California.
4. Except as specifically preempted, the jurisdiction of this Commission is unchanged.
5. Among other matters, the Commission retains jurisdiction to provide a forum for the resolution of consumer problems when they arise, continued regulation of terms and conditions for CMRS carriers, and, pending action by the FCC, oversight of intrastate cellular rates through tariff filings.
6. Absent the need for a CPCN, it is still essential that the Commission have certain current basic information about the entities providing intrastate commercial mobile radio service within California.

**Conclusions of Law**

1. The Budget Act generally preempts the states from regulating the entry of and rates for CMRS providers.
2. The authority of the Commission to regulate the terms and conditions for CMRS providers offering intrastate service in

California, including but not limited to the resolution of customer complaints, is otherwise unaffected by the Budget Act.

3. It is reasonable to require CMRS providers to file essential identifying information with the Commission in order to effectively undertake activities pursuant to retained jurisdiction.

INTERIM ORDER

IT IS ORDERED that:

1. All commercial mobile radio service (CMRS) providers initiating service subsequent to August 10, 1994, who, absent the Omnibus Budget Reconciliation Act (Budget Act) of 1993, would be required to obtain a certificate of public convenience and necessity (CPCN) to operate as a telephone utility, shall file a Wireless Identification Registration with the Chief, Telecommunication Branch, CACD, 505 Van Ness, San Francisco, CA 94102. Such Wireless Identification filing shall include, at a minimum, the following information:

- a. The legal name of the business offering such service.
- b. Any fictitious or other names under which such service will be offered.
- c. The local business address for the utility, if any.
- d. The home office business address if different than the local business address.
- e. The name and address of the designated agent for service of process.
- f. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
- g. The identity of the directors and principal officers of the business.

- h. Names of all affiliated companies and their relationship, indicating if the affiliate is a regulated public utility.
- i. Telephone numbers to which service or other customer complaints should be directed.

2. Any CMRS carrier who has applied for a CPCN between August 10, 1994 and the date of this order who has already provided the requested information through their prior filing shall be considered to have complied with Ordering Paragraph 1.

3. The Commission shall limit the purposes to which reimbursement fees collected pursuant to Public Utilities Code §§ 401-410 and §§ 431-435 are put, consistent with the revised regulatory authority. The Commission provides that reimbursement fees collected from CMRS providers other than cellular utilities shall continue to be deposited in the Utilities Reimbursement Account, but may be used only for regulation of telephone corporations, excluding entry regulation. The Commission further provides that reimbursement fees collected from CMRS providers other than cellular utilities, shall continue to be deposited in the Utilities Reimbursement Account, but may be used only for regulation of telephone corporations, excluding rate and entry regulation.

4. In all respects except authorization for market entry and non-cellular rates, the authority of the Commission to regulate the terms and conditions of CMRS providers shall apply to those filing a Wireless Identification Registration to the same extent as it did to those holding certificates of CPCN prior to August 10, 1994. Specifically this includes, but is not limited to the requirement to file tariffs and to be subject to the jurisdiction of the Commission for the resolution of customer complaints, except that non-cellular CMRS providers will not have to file or update rate tariffs.



5. This interim order is procedural in nature, establishing the interim procedures to be followed in light of the implementation of the Budget Act. The Commission will consider modifications, if any, to the regulation of commercial mobile radio service providers by further order with notice and an opportunity for interested parties to comment.

This order is effective today.

Dated October 12, 1994, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
PATRICIA M. ECKERT  
NORMAN D. SHUMWAY  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
Commissioners