



# ***G.O. 69-C Workshop***

**Presentation of Verizon California Inc.**

**May 28, 2003**



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# Objective

To highlight the strengths and weaknesses of G.O. 69-C and Section 851 from a practical point of view, and suggest some possible solutions that will advance their intent while at the same time significantly reduce the undue burdens of their application.



# G.O. 69-C's Strengths

G.O. 69-C works best in situations where:

- Tenant seeks low impact, short-term license, *e.g.*, one to two days
- Tenant can vacate property immediately
- Tenant makes no capital investments in relocation or physical improvements to the property



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## G.O. 69-C's Strengths

For example, G.O. 69-C works for simple licenses for:

- Parking lot space
- Temporary access for construction on neighboring property
- Special community events, *e.g.*, movie filming, disaster training



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## G.O. 69-C's Weaknesses

G.O. 69-C usefulness breaks down in situations where:

- Tenant seeks longer-term license
- Tenant wishes to make improvements to the property
- Tenant faces high costs of relocation



## G.O. 69-C's Weaknesses

Some exemplar transactions falling into this category include:

- Tower attachment licenses (*e.g.*, wireless antennae)
- Licenses to occupy vacant administrative office space
- Licenses to erect structures on unimproved land (*e.g.*, antennae)
- Licenses for placement of hardware in excess building space (*e.g.*, generators)



## G.O. 69-C's Weaknesses

In short, current regulatory treatment of G.O. 69-C/Section 851 leads unnecessarily to decreased licensing activity because:

- There is great uncertainty whether CPUC intends to apply G.O. 69-C/Section 851 to encumbrances of surplus space in/on property partially used by the utility;
- There is a 4-6 month lag time in CPUC 851 approval; and
- Strict compliance with immediate revocation of license is often impractical.



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# G.O. 69-C's Weaknesses

## Application to Surplus Space

It is unclear whether CPUC approval is necessary to sublease vacant, unused portions of properties partially used by the utility. Commission precedent is conflicting and unclear with respect to G.O. 69-C/Section 851 applicability to such surplus space.

This uncertainty leads to decreased licensing activity and wasted space.



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# G.O. 69-C's Weaknesses

## Application to Surplus Space

Verizon has such surplus space in all types of its properties: office buildings, parking lots, towers, unimproved land and central offices.

For example, Verizon now has leased office buildings with over 10,000 square feet of vacant, surplus space.



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# G.O. 69-C's Weaknesses

## Application to Surplus Space

This surplus space is not necessary for Verizon's telephone operations and not needed in the foreseeable future. It will go to waste if not subleased or licensed.

Nevertheless, given the uncertainty, G.O. 69-C/Section 851 applicability is generally assumed, unduly hindering reasonable efforts to make productive use of the space, resulting in waste.



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# G.O. 69-C's Weaknesses

## Lag Time in CPUC 851 Approval

Realistically, most tenants enter the market when space is needed, and account only for time necessary to lease the space and make any necessary improvements. They cannot afford to delay plans 4-6 months pending CPUC approval.

Thus, many prospective tenants walk away, leaving the vacancy unfilled.



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# G.O. 69-C's Weaknesses

## Lag Time in CPUC 851 Approval

Prospective tenants also walk away from the alternative of licensing space on a completely revocable basis pending CPUC approval, because they are unwilling to assume the risks that:

- This use of G.O. 69-C is no longer favored by the CPUC
- They may lose capital investment in improvements
- They may incur significant costs and burdens for relocation on short notice



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# G.O. 69-C's Weaknesses

## Practical Realities of Timely Revocation

Practically speaking, actual revocation time varies with the nature of the space. For parking lot licenses, immediate revocation is likely not a problem.

But for office space, tower attachments and the like, immediate revocation is simply not practicable, and CPUC insistence on strict compliance with an arbitrary deadline would result in less licensing and more wasted space.



# Potential Solutions

- Clarify regulatory treatment vis à vis *portions* of property not necessary or useful for current operations and not needed in the foreseeable future
- For example, permit leasing of surplus office space without 851 approval or G.O. 69-C treatment
- Streamline 851 approval procedures to decrease lag time
- Permit flexibility in revocable licensing under G.O. 69-C to account for practical realities



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# Conclusion

Implementation of these solutions will advance the intent of G.O. 69-C/Section 851 while reducing undue burdens in its application:

- Space actually “necessary or useful” for operations will remain under the purview of G.O. 69-C/Section 851
- Streamlined 851 approval procedures will mitigate concerns re timing, and thus increase licensing activity
- Flexibility in revocable licensing under G.O. 69-C will reflect practical realities and increase compliance.



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June 6, 2003

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**P. 02-02-003**

**Re: Petition of Certain Public Utilities to Adopt, Amend or Repeal a Regulation Pursuant to Public Utilities Code Section 1708.5 and for an Order Instituting Rulemaking Regarding General Order 69-C**

**Additional Comments of Verizon California Inc. re Proposed Changes in Regulatory Treatment under G.O. 69-C/Pub. Util. Code § 851 for NRF Companies**

Dear Mr. Lewis:

Thank you for organizing the G.O. 69-C workshop held in this docket on Wednesday, May 28. This letter is in response to staff's request that any additional comments be submitted to your attention for inclusion in the forthcoming Staff Report. Verizon takes this opportunity to comment on an issue raised at the workshop; that is, how should the Commission enforce the provisions of G.O. 69-C and Section 851<sup>1</sup> vis à vis companies subject to relaxed regulatory scrutiny under the new regulatory framework ("NRF")?

As discussed below, Verizon proposes that existing Section 851 compliance requirements be substantially narrowed, or in the alternative, streamlined to be consistent with the regulatory goals and purposes of NRF.

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<sup>1</sup> All references to "Section" are to the Public Utilities Code, unless otherwise stated.

### **Statutory Authority Exists To Eliminate or Streamline Section 851 Enforcement**

Under Section 853(b), the Commission has the authority to exempt any public utility or class of public utility from the requirements of Article 6 of the Code, which includes Section 851, "if the application of [the article] with respect to the public utility or the class of public utility is not necessary in the public interest." Section 853(b) goes on to provide that the Commission "may establish rules or impose requirements deemed necessary to protect the interest of the customers or subscribers of the public utility or class of utility exempted under this subdivision."

### **Substantially Narrow the Scope of Section 851 Application for NRF Companies**

The principal rationale for Section 851, and the related G.O. 69-C, is to insure that property dedicated to public use is managed prudently and efficiently so as to preserve the utility's ability to provide service. NRF, however, already provides such insurance through establishment of a price-cap incentive structure that maximizes management discretion and shields ratepayers from any negative rate impacts from operational decisions:

Because rates [are] set in a manner independent of utility actions, the new framework creates a strong profit-driven incentive for the utility to manage its operations in the most efficient manner possible. (NRF Decision, D. 89-10-031 at p. 6.)

\* \* \*

Under the new framework, the primary incentive for productive efficiency is that the utility is at risk or stands to benefit from all investment and operating decisions . . . . [¶] Because it relies on market forces and the utilities' goal of maximizing shareholder wealth, the incentive-based regulatory framework . . . provides stronger incentives for local exchange carriers to operate efficiently than does traditional rate-of-return regulation, which relies instead on short term gains and regulatory detection of inefficient operations. (Id. at p. 362, Findings of Fact Nos. 103-4; see also pp. 211-12.)

Thus, NRF places the risks and rewards of operational decisions – including decisions whether to sell, lease or otherwise encumber its property – solely on utility management and shareholders, in order to provide them an incentive to manage the utility prudently and efficiently. Existing requirements for monitoring and compliance in the areas of affiliate transactions, collocation, service quality and the like provide ample Commission oversight to further insure that regulatory requirements are fully satisfied.

Some applications of Section 851 may remain appropriate for Commission review, e.g., transfer of telephone operating properties or customer base from one company to another, or sale of significant properties such as Verizon's recent sale of its headquarters property in Thousand Oaks. But even these transactions must be viewed in the context of the incentives established by NRF.

Extension of Section 851 to include all types of utility property transactions, of whatever nature or size, however, is completely at odds with NRF's incentive-based regulatory structure. By requiring management to obtain Commission approval prior to selling, leasing or otherwise encumbering all utility assets, the Commission superimposes upon NRF a layer of regulatory scrutiny reminiscent of old-style rate-of-return regulation. As Verizon elaborated at the workshop, such scrutiny diverts Commission and utility resources from more productive and important tasks, rather than streamlining regulation, as NRF directed.

Therefore, Verizon requests that further inquiry, whether through comments or additional workshops, be directed towards narrowing the reach of Section 851 for NRF companies. Examples of such narrowing may involve excluding certain types of property (e.g., leased office space) or setting a minimum dollar threshold for transactions subject to Section 851.

#### **Alternatively, Streamline 851 Enforcement for NRF Companies**

If the Commission is not amenable to exempting NRF companies from certain kinds of transactions under Section 851, Verizon respectfully requests that 851 compliance be streamlined by way of an advice letter process similar to that established for CLECs in D. 98-07-094.

As discussed at the workshop, the vast majority of transactions arguably<sup>2</sup> subject to Section 851 are routine and uncontroversial; 851 approval by way of a full-blown application process is unnecessary and inefficient, diverting Commission and utility resources from other more important tasks. At the workshop, Verizon cited as an example the tens of thousands of square feet of vacant office space that it wishes to lease or sublease to third parties. Such transactions involve no CEQA issues whatsoever. And although the Commission has in the past routinely approved such transactions, this would occur only after a full-blown 851 application is filed and considered by the Commission.

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<sup>2</sup> As Verizon pointed out at the workshop, it is unclear whether Section 851 even applies to these transactions given that they involve property that is not used for telephone operations and not needed in the foreseeable future; accordingly, Verizon does not consider these properties to be operationally "necessary or useful," which is a condition precedent for Section 851 applicability. On this note, Verizon restates its request that the staff include in its Staff Report a recommendation that the Commission open a docket (or address in this docket) the issue of the scope of "necessary or useful" under Section 851. Such clarification has the potential for substantial practical benefit in the day-to-day operations of all utilities subject to Section 851.

Mr. Ken Lewis  
June 6, 2003  
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But the time and resources required to prepare and submit 851 applications in all such instances often exceed the benefit sought; and tenants often cannot afford to wait the 4-6 months, or more, for the Commission to act. The result is that office space remains vacant and unused – a result of no benefit to Verizon or its potential tenants.

The same is true for leases for tower or building attachments, usually involving wireless antennas. These transactions are similarly routine and uncontroversial; any CEQA issues presented are minimal and often dealt with at the local permitting level.

An advice letter compliance process would advance the NRF goals of promoting efficiency and productivity while providing the Commission with adequate oversight over 851 transactions. Accordingly, in the event the Commission declines to narrow the scope of 851 for NRF companies, Verizon respectfully urges the Commission to adopt a streamlined advice letter approval process for 851 transactions.

Verizon is committed to continue working with the Commission to improve regulatory enforcement of Section 851 and its counterpart, G.O. 69-C. If you have any questions regarding these comments or the other issues Verizon presented at the workshop, please do not hesitate to contact me.

Very truly yours,



Rudolph M. Reyes

cc: All parties on service list for P. 02-02-003  
ALJ Jean Vieth  
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May 28, 2003

**WORKSHOP ON GO 69-C  
PG&E'S EXAMPLES OF ACTIVITIES  
REQUIRING COMMISSION CLARIFICATION**

- (1) Limited Use
  - a. Testing/monitoring wells, surveying, etc.
  - b. Employee housing
  - c. Campsites with fire-rings, piped in water, picnic tables
  - d. Special events for weekends or holidays, including staging
  - e. Beach clearing and stump removal
  - f. Trenching, grading, fencing
  - g. Firebreaks
  - h. Boat dock appurtenances such as stairs and buoys
  - i. Boat ramps and extensions
  - j. Driveways
  - k. Private road, paved or unpaved
  - l. Simple concrete slabs (6' x 6')
  - m. Commercial marina, resort
  - n. Bike, pedestrian, equine, Nordic ski trails, warming hut
  - o. Landscaping and attendant irrigation
  - p. Sewers
  - q. Drainage systems
  - r. Underground electrical conduit
  - s. Power lines and poles
  - t. Overhanging power lines
  - u. Equivalent Land Right (Private vs PUE/ Franchise)
  - v. Exclusive Easement
  - w. Parking
  
- (2) Agriculture
  - a. aquaculture, Christmas trees, forestry, gardening, grazing, nursery, orchards, row crops, vineyards, weed control
  - b. Fences, barns, silos and other facilities integral to agricultural operations
  - c. Buffer areas
  
- (3) Third party exemption
  - a. Encumbrance to a third party utility such as PG&E to SCE
  - b. Public agency infrastructure improvements
  
- (4) License to Lease agreements
  - a. Status
  - b. Construction / No Construction
  - c. CEQA conducted
  
- (5) Encroachments
  - a. If not inconsistent with intended use

Alternate approval vehicle

(1) Use of Advice Letter for Public Improvement Projects

-timing problem

-funding issues

**KEY POINTS MADE BY AT&T WIRELESS SERVICES OF CALIFORNIA, INC.  
AT THE GO 69-C WORKSHOP ON 5/28/03**

1. Support current use of GO 69-C – no changes to GO 69-C are necessary.
2. Afford wireless carriers with the flexibility of (a) entering just a license, (b) negotiating a license to lease, or (c) entering just a lease.
3. Support the use of a single agreement (Master License/Lease Agreement) between wireless carriers and electric utilities for the installation of wireless equipment on utility facilities or land.
  - a. **Benefits of Joint Use of Utility Facilities.**
    - i. Economic and environmental benefits.
    - ii. Utility property used for other productive purposes without interfering with service to electric customers.
    - iii. Accelerates development of wireless carrier network, with corresponding benefits to wireless customers.
  - b. **Environmental Review Is Not Required for Conversion of License to Lease.**
    - i. Under GO 159-A, CPUC has delegated its authority to regulate location and design of wireless facilities to local agencies, while retaining oversight jurisdiction in cases of conflicts with CPUC or statewide interests.
    - ii. Master License/Lease Agreements require wireless carrier to comply with GO 159-A and notify CPUC, for each installation of wireless equipment, when local permits or approvals are granted or if no such permits or approvals are needed.
    - iii. Such conditions and requirements provide that environmental review “will occur at the appropriate time under the Master Agreement” and no further environmental review is required. (D.02-03-059, p.8 and COL #4, p. 18)
  - c. **Precedent for Single Agreement for License/Lease between Wireless Carriers and Electric Utilities.**
    - i. D.02-03-059, issued 3/21/059 in A.00-12-017 – PG&E and AT&T Wireless – Joint Application for Section 851 approval of Master Agreement (License/Lease conversion).
    - ii. D.02-12-025, issued 12/5/03 in A.01-11-043 – Southern California Edison application for Section 851 approval of two master agreements and

associated standard agreements with AT&T Wireless, allowing AWS to expand its wireless network through the licensing/leasing of facility sites (site agreements) and the licensing/leasing of attachments of wireless equipment on utility towers and buildings (antenna attachment agreements).

- iii. Other decisions – D.00-07-010 – SCE/Pacific Mobile Services and D.02-12-024 – SCE and Sprint PCS.
- d. Section 851 Process Needs to be Expedited
  - i. The two AT&T Wireless applications with PG&E and Edison took over one year to decide.
  - ii. Uncontested applications should be processed in 3 months and contested applications with no public hearings in 6 months.

Dated: June 4, 2003

## SCE comments GO 69-C Workshop

### Background of 69C:

- GO 69-C authorizes utilities covered by the provisions of PU Code section 851 to grant easements, licenses or permits for use of utility operating property for rights of way, private roads, agricultural purposes, or other limited uses without prior authorization from the Commission whenever it shall appear that the exercise of such easement, license or permit will not interfere with utility operations and service, provided that each such grant is made conditional upon the right of the utility or the Commission to resume the use of the property whenever it shall appear necessary or desirable to do so.
- GO 69-C allows the utilities to issue easements, licenses and permits for use of utility property subject to two conditions: (1) exercise of the right to use utility property must not interfere with the utility's ability to provide utility service, and (2) the right to use utility property must be revocable by the utility or the Commission.

### Construction:

- The Commission, through its recent decisions, has now imposed another requirement: the use cannot involve construction on utility property (e.g., CalPeak and Delta). The Commission has held that any use which involves construction on utility property is not a "limited use" as such term is used in GO 69-C and requires prior Commission approval under 851. This third requirement is inconsistent with the express language of GO 69-C which permits rights of way, private roads and agricultural uses. Each of these permitted uses would most likely require some type of construction on utility property. In effect, this prohibition on construction without prior 851 approval negates any authority the utilities had under 69-C except to permit the most passive uses (e.g., hiking trail).

### CEQA:

- The Commission's stated reason for requiring Commission approval of uses involving construction on utility property is to insure CEQA compliance. CEQA compliance is achieved, however, through the local agency (acting as lead agency under CEQA) permitting process.

#### License to Lease Conversions:

- Again the Commission's stated reason for recently ruling against license to lease conversions under 851 is to ensure CEQA compliance. Whether a use is allowed on utility property through a license or a lease, the use must still be permitted by the local agency if CEQA is triggered. Moreover, if an arrangement does not involve construction, or involves construction consistent with the constructing party's negative declaration (in the case of a Telco) or a CEQA exemption, the Commission should support the use of a license to lease as a way to lessen the impacts of having to seek lengthy section 851 approvals.

#### Limited Use:

- By negative inference, the Commission seems to agree that licenses for wireless equipment sites on utility property and licenses for uses of available capacity on fiber optic cables (at least where no construction is involved) are consistent with the "limited uses" language of 69-C. However, the Commission has never fully explained what constitutes a "limited use."

#### Ramifications:

- 851 application preparation and approval delays result in lost business opportunities: economic impacts to property user, ratepayers and local economy
- Misallocation of resources for 851 application preparation and approval at utility and Commission
- In the telecom arena, CLECs are permitted to enter into fiber leases with each other subject to the minimal delays of an advice letter filing. the Commission should explore as whether certain types of utility leases (e.g. fiber leases) could be handled in this way.



**G.O. 69-C Workshop**

**May 28, 2003**

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**Clarify Exemption From Revocability Requirement**  
**for Governmental Entities**

**Issue: A number of recent Commission decisions, including D.02-10-057, state that permanent, irrevocable rights in utility property may not be granted under G.O. 69-C. These decisions fail to recognize the language in the General Order which specifically exempts governmental entities from the “revocable” requirement.**

**Solution: To avoid potential confusion, acknowledge the exemption for governmental entities.**



## G.O. 69-C Workshop

May 28, 2003

### Clarify "Limited Use"

**Issue:** SBC California has recently filed Section 851 applications seeking authorization to lease unused space. The proposed leases are revocable and will not interfere with utility operations. SBC California believes that licensing unused space is an appropriate limited use under G.O. 69-C. It has already been directed to withdraw two of its Section 851 applications and proceed under G.O. 69-C, and it has asked for similar direction on another two applications.

**Solution:** Clarify that the licensing of unused space qualifies as "limited use" under G.O. 69-C.