

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.

FILED
PUBLIC UTILITIES COMMISSION
NOVEMBER 10, 2011
SAN FRANCISCO, CALIFORNIA
RULEMAKING 11-11-006

**ORDER INSTITUTING RULEMAKING TO REVISE THE PROCESSES FOR
TELEPHONE CORPORATIONS SEEKING OR HOLDING CERTIFICATES OF
PUBLIC CONVENIENCE AND NECESSITY, AND WIRELESS CARRIERS
SEEKING OR HOLDING REGISTRATION**

TABLE OF CONTENTS

Title	Page
ORDER INSTITUTING RULEMAKING TO REVISE THE PROCESSES FOR TELEPHONE CORPORATIONS SEEKING OR HOLDING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, AND WIRELESS CARRIERS SEEKING OR HOLDING REGISTRATION	1
1. Summary.....	2
2. Background.....	4
3. Need for Reform	6
4. Differences Among Commission Granted Authority	9
5. Issues to be Addressed in OIR.....	15
5.1. Should Performance Bonds or other Forms of Financial Security be Required for CPCN and WIR Carriers?.....	15
5.2. Should a Standardized Applicant Fitness Checklist be Required for CPCN Applicants and a More Extensive Information Form for Wireless Carriers?	19
5.3. Should the Application Fee be Increased for Applicants Seeking CPCN Certification, and WIR Registration?.....	20
5.4. Should the Terms of Payment of the CPUC User Fee as Required for CPCN Holders, and for Wireless Registrants, be Adjusted so that Telephone Corporations pay a Minimum Assessment Amount or a Percentage of Gross Intrastate Revenues, whichever is Greater?	23
5.5. Should Other Changes Be Made in the Requirements for Processing CPCN Applications and Wireless Registration?	24
6. Scope of this Rulemaking	24
7. Preliminary Scoping Memo	25
8. Parties and Service List	27
9. Ex Parte Communications	29
 ATTACHMENT A – California Public Utilities Commission Communications Division Proposed Requirements for Certificate of Public Convenience and Necessity Application and Wireless Registration Application	

ORDER INSTITUTING RULEMAKING TO REVISE THE PROCESSES FOR TELEPHONE CORPORATIONS SEEKING OR HOLDING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, AND WIRELESS CARRIERS SEEKING OR HOLDING REGISTRATION

1. Summary

In Decision 10-09-017 the California Public Utilities Commission (Commission or CPUC) modified the requirements for telecommunications corporations¹ seeking registration authority pursuant to Section 1013 of the Public Utilities (Pub. Util.) Code. This was done in part in response to concerns raised by the State Controller's 2007 Audit Report concerning carrier fitness and financial responsibility. 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. Therefore, it is appropriate to initiate this proceeding to review and revise the operating authority requirements for (1) telephone corporations to qualify for a CPCN pursuant to Pub. Util. Code § 1001, and (2) telecommunications corporations which are also Commercial Mobile Radio Service (CMRS)² providers to qualify for a Wireless Identification registration pursuant to Commission Decisions (D) 94-10-031, D.94-12-042, and D.95-10-032.

¹ "Telephone Corporation" is defined in Pub. Util. Code §234 as any corporation or person owning, controlling, operating, or managing any telephone line for compensation within California.

² CMRS refers to Commercial Mobile Radio Service, and includes Cellular Services, Personal Communications Services (PCS), Wide-Area Specialized Mobile Radio Services (SMR), Radio Telephone Utilities (RTU or paging) services, and many other wireless services. (D.96-12-071, *supra*, 70 CPUC2d 61, 65.) The terms "CMRS" and "wireless" are commonly used interchangeably with "cellular."

The following five issues are to be resolved for telephone corporations holding, transferring or seeking CPCNs, and for Wireless Carriers seeking of holding Wireless Identification Registrations (WIR):

1. Should a performance bond requirement be established for CPCN certificate holders and/or for WIR registration holders and, if so, what size of bond should be required and what should be the terms and conditions? Are there alternatives to a performance bond that provide the same level of protection?
2. Should a standardized applicant fitness checklist be devised for new CPCN applicants seeking certification and Wireless Carriers seeking registration? If so, what should the requirements be for each?
3. Should the application fee for CPCN authority be increased from the current fee of \$75? If so, by how much should the fee be increased? Should the same fee be charged to Wireless Carriers seeking WIR registration authority? Should a filing fee be required for the sale, assignment or transfer of an existing certificate/registration to another company? Should a separate filing fee be required for requests for expansions of authority or just for the initial filing? If so, what should the amounts be?
4. Should the terms of payment of the Public Utilities Commission (PUC) Reimbursement Fee (User Fee) as required for CPCN holders, pursuant to Pub. Util. Code § 431, and for Wireless Registrants, be modified so that certificated and registered providers pay a minimum annual assessment, or a percentage of gross intrastate revenues, whichever is greater?
5. Should other changes be made in the requirements for processing CPCN applications or wireless registrations? Should we require CPCN holders or wireless registrants, including prepaid wireless providers, to pay an annual

licensing fee? If so, what should the requirements and the amount be? Should there be a fee to withdraw operating authority? Should we add terms and conditions to the existing wireless registration process, such as providing proof of registration with the California Secretary of State and a copy of the resale agreement with an underlying facilities based wireless carrier as shown at the end of Attachment A to this Order Instituting Rulemaking?

For each of these questions this order instituting rulemaking proposes a resolution and seeks comments. The Commission also seeks recommendations on other changes that are appropriate to make.

2. Background

In Rulemaking (R) 09-07-009, the California Public Utilities Commission (Commission or CPUC) responded to concerns identified in the State Controller's 2007 Audit Report³ (Audit Report) by opening a proceeding to consider registration license reforms for Non-Dominant Interexchange Carriers (NDIECs).

The Audit Report found that the Commission's collection efforts were ineffective against companies that had ceased to operate or filed for bankruptcy before or after fines were imposed. The Audit Report recommended, among other things, that the Commission conduct more stringent background and financial viability reviews of individuals or companies registering with the Commission, and that the Commission require the posting of a performance bond for NDIEC registration pursuant to the provisions of Pub. Util. Code §1013. At the conclusion of the rulemaking, the Commission issued D.10-09-017, which

³ John Chiang, California State Controller, "California Public Utilities Commission - Report of Review, Fines and Restitution Accounting and Collection," August 2007.

adopted revised compliance requirements for new applicants and existing NDIEC registration holders, as follows:

- Performance Bonds⁴ – All NDIEC registration licensees are required to post a bond in order to obtain or retain authority to provide telecommunications services as an NDIEC, and to secure the payment of any monetary sanction (i.e. fines, penalties, restitution) imposed in any enforcement proceeding brought under § 1013(f) of the Pub. Util. Code against any NDIEC.⁵ The bond amount must equal 10% of gross intrastate revenues reported to the Commission during the preceding calendar year or \$25,000, whichever is greater. For new registrants who have not previously reported intrastate earnings, the bond requirement is \$25,000;
- Background Review of Applicants – All new NDIEC registration licensees must submit as part of the application process, resumes of all key officers and owners of 10% or more of outstanding shares that indicate sufficient managerial and technical experiences; disclose prior or current known investigations by any governmental agency, and any settlements with any regulatory agency over its business conduct or practices, disclose voluntary payments made by an applicant or its principals to resolve action by regulatory agencies, attorneys general, or courts, or any other type of monetary forfeitures;
- Application Fee – All NDIEC registration licensees (including new and transferred registration licensees) must pay an application fee set at \$250 (an increase from the previous \$75 fee); and

⁴ Performance bond is defined in this rulemaking as a commercial surety or financial guarantee bond, which is issued by an insurance company or a bank, for the purpose of facilitating collection of any monetary sanction (i.e. tax, surcharge, fee, fine, penalty and restitution).

⁵ By Decision (D.) 11-09-026 the Commission modified D.10-09-017 to require that the performance bond also secure the payment of taxes or fees or both pursuant to Pub. Util. Code § 1013(e). The overall dollar amount of the required bond was not changed.

- Annual User Fee – All NDIEC registration licensees must pay a minimum annual user fee of \$100 or 0.18% of gross intrastate revenue,⁶ whichever is greater, for registration licensees, including those licensees reporting no intrastate revenues.

Although the above licensing reforms only apply to NDIEC registration applicants and registration holders that have obtained authority under Pub. Util. Code § 1013, we made all telecommunications corporations respondents in R.09-07-009, noting that the proposed changes might be extended in the future to other competitive telecommunication providers. We have substantially concluded R.09-07-009⁷ and, based on both its results and subsequent Commission experience with the registration and CPCN processes, now turn our attention to which of these or other licensing reforms are needed for carriers seeking, holding or transferring CPCN certification, and for wireless resellers seeking or holding Wireless Identification Registration (WIR) registration.

3. Need for Reform

The State Controller's 2007 Audit Report recommended among other things that the Commission conduct more stringent background and financial viability reviews of applicants registering with the Commission. The Audit Report further stated: "in many cases, unscrupulous individuals or companies began billing consumers for millions of dollars in unauthorized charges shortly after being registered by the CPUC."

These unauthorized charges are commonly referred to as "cramming." Commission Decision, D.10-10-034: Final Decision Adopting California Billing

⁶ The current fee is 0.18% but is adjusted periodically by the Commission pursuant to Pub. Util. Code § 431.

Rules, defines unauthorized charges as “[a]ny charge placed upon a Subscriber’s telephone bill for a service or goods that the Subscriber did not agree to purchase, including any charges that resulted from false, misleading, or deceptive representations.” California Public Utilities Code Section 2890(a) also states that “a telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized.”

Cramming complaints are on the rise in California and there is evidence that California telephone corporation subscribers continue to experience unauthorized charges on their telephone bills. In 2010, the Consumer Affairs Branch of the CPUC reported 2,784 complaints regarding cramming. This figure is more than double the 1075 complaints lodged in 2005. In response to increasing concerns, the Commission issued new cramming rules applicable to all telecommunications carriers, including resellers and wireless service providers, in D.10-10-034. Wireless service providers are now required to report refunds made to subscribers for charges appearing on the bills of wireless service providers. In addition, the Commission requires all billing telephone corporations, including wireless, to report suspensions and terminations of third-party service providers to the Commission’s Consumer Protection and Safety Division (CPSD). These reports are assisting CPSD in protecting consumers against unauthorized charges.

The Commission recently opened two Orders Instituting Investigation (OII) related to cramming. One Investigation delves into the practices of Telseven, LLC (Telseven), its affiliate Calling 10, LLC (Calling 10), and Patrick

⁷ Two petitions for modification are pending.

Hines (collectively "Respondents").⁸ This investigation was prompted because of a large number of consumer complaints lodged against Respondents.

Respondents' billing agents reported receiving between 89,000 and 125,000 (or more) calls from Californians expressing dissatisfaction with the placement of Respondents' charges on their telephone bills. The second investigation against OSP Communications, LLC (OSP), also was prompted by a large number of consumer complaints lodged against OSP. OSP's billing agents reported to the Commission receiving 12,750 complaints from Californians concerning OSP's charges on their telephone bills. Further, the suspicious nature of OSP's billing transactions caused OSP's billing agent, TBR, to terminate billing and collection services for OSP and to withhold approximately \$1.2 million in funds collected on behalf of OSP.⁹

Today, cramming complaints are not limited to wireline customers and they are certainly not limited to wireline interexchange service providers that obtained their operating authority by registration. Examples cited in the State

⁸ OII filed December 16, 2010, (Investigation (I.) 10-12-010) on the Commission's own motion into the operations, practices, and conduct of Telseven, LLC, Calling 10 LLC dba California Calling 10, (U7015C), and Patrick Hines, an individual, to determine whether Telseven, Calling 10, and Patrick Hines have violated the laws, rules and regulations of this State in the provision of directory assistance services to California consumers.

⁹ OII filed May 26, 2011 (I.11-05-028) on the Commission's Own Motion Into the Operations, Practices, and Conduct of OSP Communications LLC, and John Vogel, an Individual, to Determine Whether OSP Communications LLC and John Vogel Have Violated the Laws, Rules and Regulations of this State in the Provision of Operator and Calling Card Services to California Consumers; and Whether The Billing Resource LLC, a Delaware Corporation, and The Billing Resource LLC d/b/a/ Integretel, a California Corporation, Should Refund and Disgorge All Monies Billed and Collected on Behalf of OSP Communications LLC.

Controller's Audit Report identified problem providers that are CPCN holders. Customers are also lodging cramming complaints against other types of telecommunications service providers including wireless and Voice over Internet Protocol (VoIP) providers.

Because cramming is a persistent and ever-growing problem for customers, we propose to adopt measures for the CPCN and wireless application process to reduce the potential for fraud or other inappropriate practices and to enhance the adequacy of remedies if problems occur. Measures to be considered include requiring applicants to provide additional information, to undergo expanded financial and background checks and to maintain resources to resolve valid claims when they arise.

4. Differences Among Commission Granted Authority

It is important to distinguish the authority being granted by NDIEC registration, by CPCN and by wireless registration as the respective authority relates to the Commission's ability to recover fines and penalties and to impose restitution.

Given the competitive state of the telecommunications industry, the Legislature intended the registration process to serve as a less onerous option for telephone corporations to be authorized to provide service. As the Commission has implemented the registration process, it is limited to NDIECs and is intended to be ministerial in nature. The application form requires that carriers answer a set of questions and excludes carriers from using the registration process if their responses vary from a prescribed template. This can be either an inability to respond appropriately to certain fitness questions or an indication that the authority sought is more complex, e.g., an applicant for registration cannot

construct facilities other than those that would be exempt from requiring review pursuant to the California Environmental Quality Act (CEQA).

Telephone corporations with CPCN authority include the following types of telecommunications service providers:

- Incumbent local exchange carriers (ILECs);
 - URF LECs¹⁰
 - Small GRC LECs¹¹
 - Other ILECs
- Competitive local exchange carriers (CLECs);
- NDIECs (non registrants). This would include those that are proposing to construct facilities that would not be totally exempt from CEQA review where authority broader than just NDIEC is desired or where the specific request referred a review and consideration beyond the registration template checklist.

URF LECs and Small GRC LECs are Carriers of Last Resort (COLR) with regular and ongoing interaction with the Commission. Although regulation of URF ILECs has lessened significantly, Small LECs (also known as GRC LECs) remain subject to cost of service/rate of return regulation. Both URF and GRC LECs have significant physical facilities and personnel directly providing service to large portions of residents in their respective service territories.

Due to the regular, ongoing interactions that the Commission has with the URF ILECs and GRC LECs, the Commission has the ability to able to collect any

¹⁰ Uniform Regulatory Framework (URF) local exchange carriers (LECs) as defined in Rulemaking (R.) 05-04-005.

¹¹ Small General Rate Case Local Exchange Carriers.

finest owed, surcharges and fees due, and ensure that customers are compensated when appropriate.

CLECs and NDIECs, however, have been exempted¹² from ratemaking action pursuant to D.95-07-054 (R.95-04-043) and have significantly less regulatory interactions with the Commission than do URF ILECs and GRC LECs. CLECs and NDIECs have been subject to the various qualification requirements set out in D.95-07-054, which are mainly financial in nature,¹³ and do not focus extensively on fitness of the applicants in terms of prior business criminal or corrective problems, such as bankruptcy and/or criminal or regulatory violations.

CPCN authority is obtained through a formal application process pursuant to Pub. Util. Code § 1001,¹⁴ while registration authority is a streamlined process pursuant to Pub. Util. Code § 1013. However, the more formal application process does not enhance the Commission's ability to collect fines or effect restitution. The fundamental information required of applicants in the two tracks is very similar, with the CPCN track providing a review that is better able to identify potential problems in the application and offers more flexibility in addressing applicants with special circumstances that don't fit within the scope of the registration template. For example, if an entity or individual has a

¹² With the exception of Cox California Telcom, Inc., which is both a CLEC and a COLR.

¹³ Applicants for CPCNs must demonstrate, in their application, sufficient cash flow requirements to meet start up expenses for the first year of local operations and cover any deposits required by IECs and LECs.

problem history and can't use the registration template, but believes it can adequately justify why it should still be granted authority, the CPCN route would be required.

In addition, the current application process does not require applicants to comprehensively disclose prior or pending problems of either a business or criminal nature. While background checks are conducted, this lack of initial information makes complete and successful background checks more challenging.

Finally, recent experience has shown that prospective non-dominant interexchange carriers are choosing the CPCN route over the registration route because of the perception that the CPCN application process has less onerous requirements than the registration process adopted in D.10-09-017, which was supposed to be a simplified, streamline process for entities to request NDIEC operating authority. The registration process currently has both a higher application fee and includes a requirement that the carrier obtain an on-going performance bond. The CPCN process does not currently require a performance bond. Existing registration holders are also seeking to migrate to CPCNs for the same reasons.

When problems arise, the Commission should not encounter difficulty in recovering fines, surcharges, taxes, and fees, and should have a reasonable expectation that customers will be reimbursed or compensated in cases of bankruptcy or fraud.

¹⁴ CPCN application certification requirements are contained in D.95-07-045, Appendix A at 4. (R.95-04-043 and I.95-04-044 Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service).

Wireless telecommunications carriers in California are not subject to the requirement for a CPCN, but are subject to the registration requirements established in D.94-10-031, as modified by D.94-12-042, and D.95-10-032. These wireless registration requirements were adopted to provide the Commission with basic information about wireless carriers operating in the state that is necessary to allow the Commission to locate responsible officers and employees of these utilities, monitor consumer protection issues, and monitor cellular rates.

The Federal Communications Commission (FCC) regulates facilities-based wireless providers, and to a lesser degree resellers of wireless service. Facilities-based wireless providers are subject to rigid FCC licensing examination. Although wireless resellers doing business with the FCC are required to register for an FCC registration number (FRN), the FCC does not require any character qualifications or background check.

For registration of wireless carriers the Commission does not perform any fitness examination at this time. Furthermore, no fees or other requirements are currently required for wireless registrations.

Wireless carriers are "telephone corporations" and therefore public utilities under Pub. Util. Code §§ 216, 233, and 234.¹⁵ (*See, e.g.,* D.01-07-030, Appendix A, Interim Rules Governing Non-Communications-Related Charges on Telephone

¹⁵ Pub. Util. Code §216 defines "public utility" to include "telephone corporation"; § 234 defines "telephone corporation" to include any corporation controlling, operating, or managing a "telephone line" for compensation; and § 233 defines "telephone line" to include any "fixtures" or "personal property" operated or managed "in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires."

Bills at 1, 6.) We have exercised our jurisdiction to protect consumers of wireless/cellular telephone services.¹⁶

Before 1993, the Commission had plenary jurisdiction over wireless or CMRS carriers. In 1993, Congress passed the Omnibus Budget Reconciliation Act of 1993 (Budget Act), which amended § 332(c)(3)(A) of the Communication Act as follows:

... 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.¹⁷

¹⁶ See also D.01-07-030; D.96-12-071, *Investigation on the Commission's Own Motion into Mobile Telephone Service and Wireless Communications* (1996) 70 CPUC2d 61, 72-73 [stating that "we still remain concerned that the terms and conditions of service offered by each CMRS provider continue to provide adequate protection to consumers"].

CMRS refers to Commercial Mobile Radio Service, and includes Cellular Services, Personal Communications Services (PCS), Wide-Area Specialized Mobile Radio Services (SMR), Radio Telephone Utilities (RTU or paging) services, and many other wireless services. (D.96-12-071, *supra*, 70 CPUC2d 61, 65.) The terms "CMRS" and "wireless" are commonly used interchangeably with "cellular."

¹⁷ Codified at 47 USC § 332(c)(3)(A) (emphasis added). The legislative history of this provision of the Communications Act indicates what Congress meant by the language "other terms and conditions":

It is the intent of the Committee that the State still will be able to regulate the terms and conditions of these services [CMRS]. By "terms and conditions" the Committee intends to include such matters as customer billing information and packaging and billing disputes and other such consumer protection matters; facility siting issues (e.g., zoning); transfers of control; bundling of services and equipment; and the requirement that carriers make capacity available on a wholesale basis and such other matters as fall within the State's lawful authority. This list is intended to be

Footnote continued on next page

Shortly after passage of the 1993 Budget Act, we instituted an investigation of the cellular industry in order "to develop a comprehensive regulatory framework consistent with the Federal Budget Act and our own statutory responsibilities." (OII 93-12-007, Investigation on the Commission's Own Motion into Mobile Telephone Service and Wireless Communications, 1993 Cal. PUC LEXIS 836.) The Commission's jurisdiction over wireless terms and conditions was subsequently confirmed by the California Court of Appeal. (*Pacific Bell Wireless (Cingular) v. CPUC*, (2005) 140 Cal.App.4th 718, 738; cf. *MetroPCS v. FCC* (DC Cir. 2011) 2011 U.S. App. LEXIS 9922 (affirming state jurisdiction to resolve CMRS-wireline interconnection disputes).)

Because this Commission has the authority to regulate terms and conditions of wireless carriers and has an interest in protecting California consumers, the Commission has the need for, and the ability to require additional information and a demonstration of financial responsibility.

5. Issues to be Addressed in the Order Instituting Rulemaking (OIR)

5.1. Should Performance Bonds or other Forms of Financial Security be Required for CPCN and WIR Carriers?

Performance bonds are surety bonds issued by an insurance company or a bank to protect the owner from financial loss should a contractor fail to fulfill the

illustrative only and not meant to preclude other matters generally understood to fall under "terms and conditions."

(House Report No. 103-111 at 251. Emphasis added.) The FCC also confirmed the CPUC's jurisdiction over "other terms and conditions" when it stated that it anticipated that the CPUC would continue to conduct appropriate complaint proceedings and to monitor the structure, conduct, and performance of CMRS providers. (*See* May 19, 1995 FCC Order Denying the CPUC's petition to continue to regulate CMRS rates.)

terms of the contract in accordance with its terms and conditions. Pub. Util. Code § 1013(e) uses the term “performance bond” as a mechanism to recover taxes or fees, or both, as well as advances or deposits. Pub. Util. Code § 1013(f) uses the same term as a mechanism to facilitate collection of fines, penalties and restitution. We clarify here that the term “performance bond,” for purposes of this rulemaking, is defined as a “commercial surety bond” whose purpose is to guarantee performance by the principal of the obligation or undertaking described in the bond.¹⁸

Performance bonds can significantly improve the Commission’s ability to collect fines and penalties owed, surcharges and reimbursement fees due, and restitution for customers for advances or deposits. It can provide for this whatever the cause of the financial failing, whether bankruptcy or other business failing or fraud or other nefarious practices. Other State Commissions with bond requirements for telephone service providers include Connecticut, Delaware, Georgia, North Dakota, Oklahoma, and Tennessee.

If performance bonds or other forms of financial security are required for CPCN and wireless carriers, we seek comments on the following:

- a. What size of bond should be required?
- b. What should the terms and conditions of the bond be?
- c. Should the bond requirement be applied to existing carriers or only to transferees and new applicants seeking operating authority
- d. Should the bond amount differ for each utility type and service?

¹⁸ <http://www.sio.org/faq.html>.

- e. Should the bond requirement be continuous or should the obligation cease after a number of years without problems or corrective actions?
- f. Should the Commission allow for alternatives to the posting of a bond such as an irrevocable standby letter of credit, site draft letter of credit, or escrow agreements? If so, what criteria will provide comparable levels of protection?

We seek comments on what size of bond should be required. Should performance bonds for CPCN holders and wireless registrants be of the same magnitude as those adopted for NDIEC registrants in D.10- 09-017 as modified by D.11-09-026, i.e., 10% of annual revenues or \$25,000, whichever is greater. The scope of use of such bonds would be to cover, in priority order, customer restitution, fines, and penalties, surcharges and fees.

This is recommended for two reasons. First, the risk of default is at least as great in the case of many CPCN holders and wireless registrations as those holding NDIEC registrations. In fact, of the telecommunications corporations identified in the Controller's Audit Report, not all were registrations holders. As many CPCN holders were implicated in the problems of financial failure and recovery problems identified in the Audit Report. Second, it defies logic to have an entry route intended to be the less rigorous/less applicant burdensome (registration) that in fact, has more comprehensive financial fitness requirements than the CPCN approach. As noted, experience since approval of D.10-09-017 has resulted in virtually all those seeking authority to provide service, even limited to non-facilities based NDIEC approval, to seek CPCNs for their lesser financial and other requirements, such as the performance bond.

In order to obtain a performance bond, the surety company requires the applicant to 1) complete a bond application to determine the applicant's risk to the surety; and 2) a bond form. Applicants with a shorter business history, with

bad credit, or with a prior net loss in their income statement often cannot secure or have difficulties securing a financial guarantee bond. For these high risk or other applicants, alternatives to a performance bond may provide the same degree of financial protection.

Such alternatives can include an irrevocable standby letter of credit,¹⁹ site draft letter of credit, or escrow agreements.^{20 21} Should the Commission allow for alternatives to posting of a performance bond? If so, what types of alternative should be allowed? What criteria would be required to ensure these alternatives provide the same degree of protection to customers and the people of the State of California?

We appreciate that some CPCN holders 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. For these telephone corporations, should the bond obligation cease after a number of years without problems or corrective actions? We seek comment on this

¹⁹ A guarantee of payment issued by a bank on behalf of a client that is used as "payment of last resort" should the client fail to fulfill a contractual commitment with a third party. Standby letters of credit (SLOC) are created as a sign of good faith in business transactions, and are proof of a buyer's credit quality and repayment abilities. The bank issuing the SLOC will perform brief underwriting duties to ensure the credit quality of the party seeking the letter of credit, then send notification to the bank of the party requesting the letter of credit.

Read more: <http://www.investopedia.com/terms/s/standbyletterofcredit.asp#ixzz1V9HNvxOc>

²⁰ A certificate provided by an approved bank that guarantees the indicated securities are deposited at that particular bank.

²¹ See D.95-07-054, Appendix A, Rule 4B, for alternatives currently available for CPCN applicants. (R.95-04-043 and I.95-04-044 Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service.)

performance bond proposal and also solicit comment as to whether these alternatives provide the same degree of protection to customers and the people of the State of California.

5.2. Should a Standardized Applicant Fitness Checklist be Required for CPCN Applicants and a More Extensive Information Form for Wireless Carriers?

We initially established CLEC and NDIEC certification requirements in D.95-07-054 (R.95-04-043/I.95-04-044). This decision, in the Local Competition docket, authorized the grant of a CPCN to any applicant that possesses the requisite managerial qualifications, financial resources, and technical competence to provide local exchange telecommunications service. Most of the requirements in Part 4, Appendix A, to that decision focus on financial standards for applicants, and not on the ethical or legal fitness of the applicants.

We established wireless registration requirements in D.94-10-031, as modified by D.94-12-042, and in D.95-10-032 for all CMRS wireless providers. All wireless providers in California, including resellers of wireless service are only required to file a WIR containing contact information in lieu of a formal application. Requiring registrants to provide additional information will reduce the potential for fraud or other inappropriate practices.

Therefore, we seek comments here on whether it is reasonable to extend, to CLEC and NDIEC applicants seeking CPCN certification and to wireless carriers seeking WIR registration, standardized informational checklists and, for CPCN certifications, background review requirements similar to those we have devised for NDIEC registrants. We ask parties to also address in their comments what these requirements should be. Suggested checklist topics are provided in Attachment A to this order.

5.3. Should the Application Fee be Increased for Applicants Seeking CPCN Certification, and WIR Registration?

We currently issue three types of operating authority for telephone service providers – CPCN certification, NDIEC registration, and WIR registration. The current application fees are listed in the table below - \$75 for CPCN certification and \$250 for NDIEC registration authority. There is no filing or processing fee for wireless resellers seeking WIR registration authority or transfers of wireless resale registration authority.

Type of Operating Authority	Application Fee
CPCN	\$75
NDIEC Registration	\$250
WIR	None

The CPCN application fee was established in the 1970s by Pub. Util. Code § 1904(a) and has not been adjusted for inflation for over 30 years. If adjusted for inflation using the Consumer Price Index inflation calculator, we estimate the application fee now would be \$432. We surveyed other states and found application fees for CPCN authority can range from \$400-\$3000. The application fee for NDIEC registration was recently revised in D.10-09-017 to \$250. We also note here that the current application fee for Passenger Stage Applications seeking CPCN authority is \$500 as established in Pub. Util. Code §1036(a).

The workload associated with a CPCN application is significantly greater than that for processing an NDIEC registration.

As noted previously, an NDIEC registration application includes a template set of questions which the registration applicant completes. It is processed on the understanding, absent other information or protests, that the

information is correct. If the information is complete and satisfies the response pattern necessary to qualify for registration, the decision granting the registration is prepared by the Communications Division staff and signed by the Executive Director. The entire process is required to take no more than 30 days from a filing being deemed complete.

A CPCN application is processed in a similar fashion to other Commission applications. The application must be assigned to an administrative law judge for review. It is subject to a 30-day protest period. It is also assigned to the Communications Division to review tariffs and other technical aspects of the application. Additionally, the CPSD generally does a review of CPCN applications to identify fitness issues, e.g. prior regulatory problems in another jurisdiction which the applicant didn't disclose. The Administrative Law Judge (ALJ) review (which may involve other staff as well) includes at least some level of background check.

Depending on the nature of the CPCN application and the initial review, additional information requests may be made of the applicant, which may or may not ultimately require a supplemental formal filing. If the applicant already has an existing utility ID number, there is an additional review to see whether the applicant is up to date with assessed fees and surcharges. When all of the necessary information is provided, a decision is prepared.

While there is a general common structure to CPCN decisions, each is customized to reflect the applicant and the results of the review. If there is a protest, whether by CPSD or another party, a hearing may be required. If there are facilities involved, CEQA review may be required. While there are separate requirements for funding the preparation of a negative declaration or environmental impact report, significant staff time may be involved in

determining whether either or neither of these is required. The applicant does not otherwise compensate for such time.

Finally, while utility reimbursement fees by those holding CPCNs constitute revenue for and support the activities of the Commission, those fees are only paid by telecommunications corporations that have received a CPCN. Applicants have not paid such fees. Not all applicants are granted their requested CPCN.

When all of this is done, the decision – whether approving or denying the CPCN application – is sent out for comment (if any protest or if it grants authority at some variance from the request) or placed directly on the Commission’s meeting agenda. If sent out for comments, the comments are addressed before the Commission acts. The Commission then votes on the matter.

Therefore, it is clear that the Commission incurs substantial expense in processing a CPCN. Based on an examination of employee time reports, the efforts to process a CPCN range upwards from \$500 to several thousand. Therefore, we recommend that an application fee be established for CPCN applicants of at least \$500, indexed annually to reflect changes in the consumer price index. We understand that the current fee is set by statute and would require legislative action. We will seek such legislative change for any application fee change determined to be appropriate.

We also propose that a fee be charged for the processing or transfer of a wireless registration. Currently we do not charge a fee for wireless registration. We propose that the fee be \$250 based on similar issues regarding compensation for the staff efforts in reviewing, and processing, and maintaining the registration.

We seek comment on whether it is reasonable to increase the application fee for applicants seeking CPCN certification, and for FCC licensed wireless carriers seeking WIR registration authority as indicated above. We seek comment on whether a filing fee should be required for the sale, assignment or transfer of an existing certificate/registration to another company. Finally we seek comment on whether a separate filing fee should be required for requests for expansions of authority or just for the carriers first authority application.

5.4. Should the Terms of Payment of the CPUC User Fee as Required for CPCN Holders, and for Wireless Registrants, be Adjusted so that Telephone Corporations pay a Minimum Assessment Amount or a Percentage of Gross Intrastate Revenues, whichever is Greater?

The CPUC User Fee (also known as the PUC Reimbursement fee) is required of all telecommunications corporations and is based on intrastate revenues. (Pub. Util. Code § 431.) Some telephone corporations holding CPCNs or wireless registrations pay no CPUC user fees because they file reports claiming zero annual intrastate revenues. As a result of D.10-09-017, NDIEC registration holders are subject to a minimum \$100 user fee, even if they report no intrastate revenues, and are subject to license revocation if they fail to pay the minimum user fee. As noted in D.10-09-017, the Commission incurs costs in maintaining registration information, utility records and databases.

We seek comment as to whether the same requirement for NDIEC registration holders should be imposed on telephone corporations with CPCN authority, and on wireless registrants. We seek comment also on what should be the minimum assessment amount for both CPCN holders and wireless registration holders. If telecommunications corporations really have no

intrastate revenues, the way to avoid this fee would be to cancel the CPCN or registration.

5.5. Should Other Changes Be Made in the Requirements for Processing CPCN Applications and Wireless Registration?

For example, should we require CPCN holders or wireless carrier registrants, including prepaid wireless providers, to pay an annual licensing fee? If so, what should the requirements and the amount be? Should there be an application fee to withdraw the operating authority? Should we add terms and conditions to the existing wireless registration process, such as providing proof of registration with the California Secretary of State and a copy of the resale agreement with an underlying facilities-based wireless carrier as shown at the end of Attachment A to this OIR?

The issues identified above are intended to address concerns similar to those addressed in D.10-09-017 for NDIEC registrations, given the different scope and role of the CPCN and wireless registration process. To the extent that commenters believe that modifications to the CPCN or wireless registration requirements or process should be made beyond those identified above, they should provide their recommendations and reasons for their proposals.

6. Scope of this Rulemaking

The issues identified above are best resolved by formal rulemaking. The results of this rulemaking proceeding may have important effects on some or all of California's telecommunications users. Accordingly, we desire that this order be distributed to a wide range of potentially interested parties. In addition, it will be sent to parties on the service list for R.00-02-004, our proceeding on Consumer Protection Rules. We make all telecommunications corporations

respondents to this rulemaking. We seek comments from all parties on the five issues in the above Summary. After initial service of this order, interested parties shall advise the Commission's Process Office of their interest in participating so a new service list can be developed for the proceeding. The assigned Commissioner, and the assigned ALJ acting with the assigned Commissioner's concurrence, will have ongoing oversight of the service list and may institute changes to the list or the procedures governing it as necessary.

7. Preliminary Scoping Memo

This rulemaking will be conducted in accordance with Article 6 of the Commission's Rules of Practice and Procedure. As required by Rule 7.3, this order includes a preliminary scoping memo as set forth below.

The issues to be considered in this proceeding for Certification applicants and Wireless reseller registrants are, as more fully described earlier in this order:

1. Should a performance bond requirement be established for CPCN certificate holders and/or for WIR registration holders and, if so, what size of bond should be required and what should be the terms and conditions? Are there alternatives to a performance bond that provide the same level of protection?
2. Should a standardized applicant fitness checklist be devised for new CPCN applicants seeking certification and Wireless Carriers seeking registration? If so, what should the requirements be for each?
3. Should the application fee for CPCN authority be increased from the current fee of \$75? If so, by how much should the fee be increased? Should the same fee be charged to Wireless Carriers seeking WIR registration authority? Should a filing fee be required for the sale, assignment or transfer of an existing certificate/registration to another company? Should a separate filing fee be required for requests for expansions

of authority or just for the initial filing? If so, what should the amounts be?

4. Should the terms of payment of the Public Utilities Commission (PUC) Reimbursement Fee (User Fee) as required for CPCN holders, pursuant to Pub. Util. Code §431, and for Wireless Registrants, be modified so that certificated and registered providers pay a minimum annual assessment, or a percentage of gross intrastate revenues, whichever is greater?
5. Should other changes be made in the requirements for processing CPCN applications or wireless registrations as proposed in Attachment A to this OIR? Should we require CPCN holders or wireless registrants, including prepaid wireless providers, to pay an annual licensing fee? If so, what should the requirements and the amount be? Should there be a fee to withdraw operating authority? Should we add terms and conditions to the existing wireless registration process, such as providing proof of registration with the California Secretary of State and a copy of the resale agreement with an underlying facilities based wireless carrier?

Pursuant to Rule 7.1(d), we preliminarily determine the category of this rulemaking proceeding to be quasi-legislative as the term is defined in Rule 1.3(d).

We do not anticipate that evidentiary hearings will be required. We do not intend to hold public participation hearings to gather input from the general public. If a party believes either is necessary, it should so indicate in its comments, describing specifically the reasons evidentiary and/or public participation hearings would be necessary and, in the case of evidentiary hearings, describing the facts the party would present.

For purposes of meeting the scoping memo requirements and to expedite the proceeding, we establish the following schedule:

Day 1	Order Instituting Rulemaking issued
Day 16	Deadline for requests to be on service list
Day 35	Initial Comments filed and served
Day 49	Reply Comments filed and served
Day 180	Proposed interim decision
Day 200	Comments on proposed decision filed and served
Day 205	Reply comments on proposed decision filed and served
Day 265	Proposed decision on Commission agenda

The assigned Commissioner through their ruling on the scoping memo and subsequent rulings, and the assigned ALJ by ruling with the assigned Commissioner's concurrence, may modify the schedule as necessary during the course of the proceeding. In no event do we anticipate this proceeding to require longer than 18 months from the issuance of the scoping memo to complete.

The assigned Commissioner will issue a ruling which determines the category, need for hearing, and schedule for this rulemaking, and designates the principal hearing officer (Rule 13.2). The ruling, only as to category, may be appealed under the procedures in Rule 7.6.

Any person filing comments on an order instituting rulemaking shall state any objections to the preliminary scoping memo regarding the category, need for hearing, issues to be considered or schedule. (Rule 6.2.)

8. Parties and Service List

Within 15 days of the date of issuance of this order, any person or representative of an entity seeking to become a party to this rulemaking

should send a request to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, California, 94012 (or Process_Office@cpuc.ca.gov) to be placed on the official service list for this proceeding. Individuals seeking only to monitor the proceeding, but not participate as an active party may request to be added to the service list as "Information Only." The service list will be posted on the Commission's website: www.cpuc.ca.gov prior to the time comments are filed.

Any party interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in Los Angeles at (213) 649-4782 or in San Francisco at (415) 703-7074, (866) 836-7875 (TTY - toll free) or (415) 703-5282 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

The Commission has adopted rules for the electronic service of documents related to its proceedings, Commission Rule 1.10, available on our website at http://www.cpuc.ca.gov/PUBLISHED/RULES_PRAC_PROC/44887.htm. We will follow the electronic service protocols adopted by the Commission in Rule 1.10 for all documents, whether formally filed or just served.

This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by United States mail. In this proceeding, concurrent e-mail service to all persons on the service list for whom an e-mail address is available will be required, including those listed under "Information Only." Parties are expected to provide paper copies of served documents upon request.

E-mail communication about this case should include, at a minimum, the following information on the subject line of the e-mail: *R.[10-11-xxx] - OIR to Revise Certification and Wireless Registration Requirements*. In addition, the party

sending the e-mail should briefly describe the attached communication; for example, “*Comments.*” Paper format copies, in addition to electronic copies, shall be served on the assigned Commissioner and the ALJ.

9. Ex Parte Communications

Pursuant to Rule 8.2 of the Commission’s Rules of Practice and Procedure, *ex parte* communications are allowed without restriction or reporting in any quasi-legislative proceeding. Therefore, there are no restrictions or reporting requirements applied to this proceeding.

Therefore, **IT IS ORDERED** that:

1. A rulemaking is instituted on the California Public Utilities Commission’s own motion to revise requirements for Certification of applicants for provision of local and long distance telecommunications services and Registration of providers of Federal Communications Commission licensed wireless services.
2. The issues to be considered are those set forth in the body of this order.
3. All California Public Utilities Commission regulated telecommunications corporations, including those which are Commercial Mobile Radio Service providers, are made respondents in this proceeding.
4. This rulemaking is preliminarily determined to be a quasi-legislative proceeding as that term is defined in the California Public Utilities Commission’s Rules of Practice and Procedure, Rule 1.3(d).
5. This proceeding is preliminarily determined not to require evidentiary hearings.
6. The schedule for this proceeding is as set forth in the body of this order. The assigned Commissioner through his/her scoping memo and subsequent rulings, and the assigned Administrative Law Judge by ruling with the assigned Commissioner’s concurrence, may modify the schedule as necessary during the

course of the proceeding, provided that we do not anticipate this proceeding to require longer than 18 months to complete.

7. The Executive Director shall cause copies of this order to be served on respondents to the proceeding, and on those on the service lists for the following dockets: Rulemaking 00-02-004. The official service list for this proceeding will be established by following the procedure in Section 8 of the Order.

8. After initial service of this order, a new service list for the proceeding shall be established following procedures set forth in this order. The assigned Commissioner, and the assigned Administrative Law Judge acting with the assigned Commissioner's concurrence, shall have ongoing oversight of the service list and may institute changes to the list or the procedures governing it as necessary.

This order is effective today.

Dated November 10, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

ATTACHMENT A

California Public Utilities Commission Communications Division Proposed Requirements for CPCN Application

Administrative Requirements
Managerial Requirements
Technical Requirements

To address these three requirements, the CPUC website advises using another carrier's application as a template.²²

California Specific Operational Issues

Please provide answers to the following questions concerning California specific operational issues:

1. Does your company have any employees at its business address? If yes, how many? If no, please explain.
2. Please provide the name and telephone number of an employee of your company that will be responsible to work with CPUC on resolving customer complaints.
3. Does your company use a virtual address as its principal place of business?
4. If you are a reseller, please provide the name, company, address, telephone number, email address for the company you are reselling services from, and the underlying facilities based carrier if different. Please explain the relationship of each company and how all traffic is routed.

²² Applicant's application will include a request for certification in one of several different areas. You may order a **sample application** for the type of service authority the application is interested in providing. You can search the Daily Calendar under "New Filings" to find an application from another carrier with service type similar to yours.

CHECKLIST			
1	Identification of Applicant	Rule 2.1(a)	
2	Correspondence or Communications	Rule 2.1(b)	
3	Description of Authority Requested	Rule 2.1(c)	
4	Scoping Memo Information	Rule 2.1(c)	
	1. Category		
	2. Need for Hearings		
	3. Issue to be considered		
	4. Schedule		
5	Statement of Corporation	Rule 2.2	
6	Financial Statements	Rule 2.3	
7	CEQA Compliance	Rule 2.4	
8	Description of Construction & Operation & Technical Expertise		
9	Map of Proposed Service Area	Rule 3.1(c)	
10	Franchises and Permits	Rule 3.1(d)	
11	Benefits to Public	Rule 3.1(e)	
12	Economic Feasibility & Financial Statement & Qualifications	Rule 3.1(f-g)	
13	Proposed Rates	Rule 3.1(h)	
14	General Order 104-A Statement	Rule 3.1(i)	
15	Estimated Number of Customers	Rule 3.1(j)	
16	Regulatory Contact Information for Applicant		
	a. Agent		
	b. Employee at the company		
17	Ex Parte Authorization Authority		
18	Miscellaneous		
19	Verification		
List of Exhibits			
	Exhibit 1 - Certified copy of Certificate of Formation -State of		
	Exhibit 2 - Certificate of Good Standing - State of California		
	Exhibit 3 - Management Background Information		
	Exhibit 4 - CEQA Compliance Documentation		
	Exhibit 5 - Financial Information		
	Exhibit 6 - Service Area Maps		
	Exhibit 7 - Compliance with Rules		

Proposed Wireless Registration Application

The Commission now requires Commercial Mobile Radio Service providers who did not hold a Certificate of Public Convenience and Necessity prior to August 10, 1994, and who intend to offer intrastate wireless telecommunications services within California, to file a Wireless Identification Registration containing the following information concurrent with undertaking such service. This information must describe type of service to be offered (e.g. facilities based or resale), and be signed by at least one officer of the company.

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 applicant's Federal Communications Commission (FCC) Federal Registration Number (FRN) and Universal Licensing System (ULS) wireless license call sign if facilities based registration is sought.
4. The local business address for the utility, if any.
5. The home office business address if different than the local business address.
6. The name and address of the designated agent for service of process.
7. Name, title, mailing address, e-mail address, and telephone number of the person to be contacted regarding the reported information.
8. The identity of the directors and principal officers of the business.
9. Names of all affiliated companies and their relationship, indicating if the affiliate is a regulated public utility.
10. Telephone numbers to which service or other customer complaints should be directed.
11. Contact name, telephone number, email address of the underlying facilities based carrier providing resold service.

PLEASE SEND THIS INFORMATION ALONG WITH A COPY OF THE WIRELESS RESALE AGREEMENT TO:

California Public Utilities Commission
Communications Division
Wireless ID Registration (WIR)
505 Van Ness Avenue
San Francisco, CA 94102

The information should be filed with the Communications Division. Service can be commenced upon receiving the WIR number from the CPUC. You should receive a WIR number within a few days after the Commission has reviewed and approved the registration information and the information provided is satisfactory.

Within 30 days of a change in the status of any of the information items listed above, the carrier shall notify the Communications Division of such change in writing at:

http://delaps1.cpuc.ca.gov/pls/public_cpuc/f?p=102:1:1246267722139297

(END OF ATTACHMENT A)