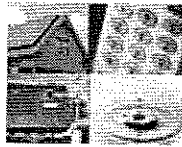


# **EXHIBIT 3-Q**

**Docket No. DCA-08-MR009**

**NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C. 20594**

**California Public Utilities Commission, Consumer  
Protection & Safety Division Resolution SX-88**



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

**CONSUMER PROTECTION & SAFETY DIVISION RESOLUTION SX-88**

**September 18, 2008**

**RESOLUTION**

This resolution adopts on an interim basis pending a further rulemaking proceeding a prohibition of the personal use of commercial mobile radio services and devices while operating passenger or freight trains and light rail transit vehicles. It directs the Commission's Consumer Protection and Safety Division to prepare an Order Instituting Rulemaking to determine whether this or other measures should be adopted on a permanent basis. This is added to the agenda pursuant to Gov. Code Section 11125.3(a)(2). Comments were waived pursuant to Rule 14.6(c)(9).

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**Summary**

Neither the Federal Railroad Administration nor the Federal Transit Administration presently have a rule or regulation specifically prohibiting the personal use of commercial mobile radio services **on-duty railroad engineers, brakemen, conductors, or rail transit vehicle operators** while performing their duties in operating trains or rail transit vehicles. This resolution remedies this omission by prohibiting the use of commercial mobile radio services by **on-duty railroad engineers, brakemen, conductors, or rail transit vehicle operators** while operating passenger trains, freight trains, or rail transit vehicles within the State of California for any reason other than communications **which take place when the train or transit vehicle is stopped and with the approval of the appropriate management personnel.**

**Background**

The National Highway Traffic Safety Administration (NHTSA) has found that the inattention and distraction created by the use of a wireless device while operating a vehicle is similar to that associated with other distractions in increasing crash risk.<sup>1</sup> The Commission is very concerned that such inattention and distraction caused by the use of an electronic device by a railroad engineer, conductor, or rail transit vehicle operator may have contributed to recent

collisions and injury accidents.<sup>2</sup>

Commercial mobile radio services are defined in Public Utilities Code § 216.8 as "commercial mobile services" as defined in subsection (d) of Section 332 of Title 47 of the United States Code and as further specified by the Federal Communications Commission in Parts 20, 22, 24, and 25 of Title 47 of the Code of Federal Regulations, and includes "mobile data service," "mobile paging service," "mobile satellite telephone service," and "mobile telephony service," as those terms are defined in Section 224.4" of the Public Utilities Code, as well as any other service included by the Federal Communication Commission in their annual CMRS Reports.<sup>3</sup>

### Notice

This matter was added to the Commission's September 18, 2008 agenda pursuant to Government Code Section 11125.3(a)(2) and notice was provided pursuant to that section.

### Discussion

The operation of the train or rail transit vehicle should receive the full attention of the railroad engineer, conductor, or rail transit vehicle operator. The Railroad General Code of Operating Rules include numerous examples of activities that are prohibited while on duty so that the railroad engineer, conductor, or rail transit vehicle operator do not become distracted from the operation of the vehicle. However, the General Code of Operating Rules is a voluntary agreement by the railroads, and an enforceable rule is necessary to further the state's interest in protecting the general health and safety of its citizens. We establish this interim rule while we consider more comprehensive regulations that will control the use of electronic devices by railroad operating employees while on duty to ensure such use does not affect operational safety.

Because of the significant danger to passengers, railroad and transit patrons, and the general public, from the inappropriate use of commercial mobile radio services by railroad engineers, conductors, or transit vehicle operators while performing their duties in operating the railroad train or rail transit vehicle, it is necessary and reasonable to immediately prohibit the **personal use of commercial mobile radio services and devices by on-duty railroad engineers, brakemen, conductors, or rail transit vehicle operators** during the operation of a railroad train or rail transit vehicle, pending the development of permanent rules governing the use of commercial mobile radio services during railroad operations.

### Waiver of Comments

Public Utilities Code section 311(g)(1) generally requires that draft resolutions be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(3) provides that this 30-day period may be reduced or waived pursuant to Commission adopted rule.

The 30-day comment period for this resolution has been waived in accordance with the provisions of Rule 14.6(c)(9). Rule 14.6(c)(9) provides that the Commission may waive or reduce the comment period for a decision when the Commission determines that public necessity requires reduction or waiver of the 30-day period for public review and comment. For purposes of Rule 14.6(c)(9), "public necessity" refers to circumstances in which the public

interest in the Commission's adopting a decision before expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day period for review and comment, and includes circumstances where failure to adopt a decision before expiration of the 30-day review and comment period would cause significant harm to public health or welfare. The public necessity in this case is that the Commission needs to take immediate action to temporarily prohibit the use of commercial mobile radio services in most circumstances. In this case, the public interest in preventing significant harm to railroad and transit passengers and the general public outweighs the public interest in being able to comment on a resolution that simply prohibits unsafe and unauthorized use of commercial mobile radio services by railroad engineers, conductors, and rail transit operators. Therefore, pursuant to Rule 14.6(c)(9), we waive the review and comment period on this resolution.

### Findings

1. On June 14, 2008, the inappropriate use of commercial mobile radio services during the course of operations of a rail transit train, may have contributed to a train collision.
2. On September 12, 2008, the inappropriate use of commercial mobile radio services may have contributed, to a fatal train collision between a Metrolink passenger commuter train and a Union Pacific Railroad freight train.
3. No existing federal or state laws, rules, or regulations prohibit such inappropriate use of commercial mobile radio services.<sup>4</sup>
4. **Personal use of commercial mobile radio services and devices by on-duty railroad engineers, brakemen, conductors, or rail transit vehicle operators is prohibited** poses a significant danger to passengers, railroad and transit patrons, and the general public.
5. **Personal use of commercial mobile radio services may take place when the train or transit vehicle is stopped and with the approval of the appropriate management personnel.**
6. The Consumer Protection and Safety Division should prepare an Order Instituting Rulemaking to determine whether this, or other measures, should be adopted and whether such measure(s) should be adopted on a permanent basis.
7. The National Transportation Safety Board exempts the actions directed here during the course of an accident investigation and before a final determination when necessary to prevent future accidents.<sup>5</sup>

### Therefore IT IS ORDERED that:

1. **Personal use of commercial mobile radio services and devices by on-duty railroad engineers, brakemen, conductors, or rail transit vehicle operators is prohibited except for personal communications which take place when the train or transit vehicle is stopped and with the approval of the appropriate management personnel.**
2. This prohibition is adopted until such time as the Commission shall terminate or modify it in the Order Instituting Rulemaking referenced below.

3. The Consumer Protection and Safety Division is directed to prepare for an October agenda an Order Instituting Rulemaking to determine whether this, or other measures, should be adopted on a permanent basis.

This Resolution is effective today.

I certify that this resolution was adopted by the Public Utilities Commission at its regular meeting on \_\_\_\_\_, the following Commissioners approving it.

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PAUL CLANON

Executive Director

<sup>1</sup> An Investigation of the Safety Implications of Wireless Communications in Vehicles, National Highway Traffic Safety Administration (1997), available at <http://www.nhtsa.dot.gov/people/injury/research/wireless/>. See also, Strayer, D.L., Drews, F.A., and Johnston, W.A., Cell Phone-Induced Failures of Visual Attention during Simulated Driving, *Journal of Experimental Psychology: Applied*. Vol. 9, No. 1, 2003: pp. 23-32, see also Mack, A. and Rock, I., *Inattentive Blindness*. Cambridge, MA: The MIT Press, 1998, pp. 13-15, 227-250.

<sup>2</sup> For example, allegations of wireless use are involved in the investigation of the June 14, 2008, San Francisco Municipal Railway collision and injury accident, and the September 12, 2008, Metrolink collision and fatal accident.

<sup>3</sup> See e.g., Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Twelfth Report*, WT Docket No. 07-71, *Twelfth Report*, FCC 08-28 (rel. Feb. 4, 2008). The reports can be found on the FCC's web site at < <http://wireless.fcc.gov/cmrsreports.html> >.

<sup>4</sup> See National Transportation Safety Board's Railroad Accident Report 03/01, concerning the collision of two BNSF trains at Clarendon, Texas, adopted June 3, 2003, at page 16, "Federal regulations do not prohibit a locomotive engineer from using a cell phone while at the controls of a moving train."

<sup>5</sup> 49 C.F.R. Pt. 831.13 (b), "Parties to the investigation may relay to their respective organizations information necessary for purposes of prevention or remedial action."

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