

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



June 10, 1992

RECEIVED

JUN 11 1992

Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: In the Matter of Amendment of Part 90 of the Commission's  
Rules to Eliminate Separate Licensing of End Users  
of Specialized Mobile Radio Systems,  
PR Docket No. 92-79

Dear Ms. Searcy:

Please find enclosed for filing an original plus eleven copies of the COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA in the above-referenced docket.

Also enclosed is an additional copy of this document. Please file-stamp this copy and return it to me in the enclosed, self-addressed, postage pre-paid envelope.

Very truly yours,

Ellen S. Levine  
Attorney for California

ESL:pds

Enclosures

No. of Copies rec'd  
List A B C D E

0+1

ORIGINAL  
RECEIVED

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

JUN 11 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of Amendment of )  
Part 90 of the Commission's Rules )  
to Eliminate Separate Licensing )  
of End Users of Specialized Mobile )  
Radio Systems. )

---

PR Docket No. 92-79

COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA  
AND THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

The People of the State of California and the Public Utilities Commission of the State of California ("California") hereby submit these comments in the above-referenced proceeding. By Notice of Proposed Rulemaking, released May 5, 1992, the Federal Communications Commission ("FCC") seeks comment on its proposal to reduce certain regulatory requirements imposed on Specialized Mobile Radio Systems ("SMRS"). Among other things, the FCC proposes to eliminate the need for individual end users of SMRS to obtain operating licenses.

The FCC's proposal is simply another in a continuing line of cases which seek to chip away at or otherwise blur the functional distinction between common carrier cellular systems and private mobile radio systems, such as SMRS. See, e.g., In re Request of Fleet Call, Inc., Memorandum Opinion and Order, 6 FCC Rcd 1533 (1991); In re Mobile Radio New England, File No. LMK-91269, petition pending.

While California is fully supportive of encouraging competition in the provision of radio services, at the same time California is concerned with the jurisdictional conclusions which the FCC draws from classifying certain of these services as "private" carriage. Specifically, the FCC has claimed exclusive jurisdiction over all private radio services. The FCC, by this proposal and the above-cited cases, then attempts to classify certain radio services, such as those SMR systems which are the functional equivalent of cellular systems, as "private" carriage. By this classification, the FCC then claims preemptive authority over all "private radio services," including those offered intrastate.

There is no support in the Communications Act for the FCC's broad preemptive claims over private radio services. Section 332(c) and its legislative history make clear that the FCC's preemptive authority is narrow and applies strictly to private dispatch-type systems. See H.R. Rep. No. 76, 97th Cong., 2d Sess. 56, reprinted in 1981 U.S. Code Cong. and Admin. News 2237, 2261. Where as here, regulatory requirements defining SMRS are greatly relaxed such that SMRS is the functional equivalent of cellular services, that service no longer falls within the scope of Section 332(c). Instead, it is a radio service subject to the

///

///

///

authority of both the FCC and the states.<sup>1</sup>

In general, California does not oppose relaxing regulatory requirements for any type of service which no longer serve any useful purpose. However, where such relaxation continues to blur or erode the functional distinction between common carrier and private radio services, California cannot support changes which serve to negate state authority over intrastate radio services classified as "private."

Respectfully submitted,

PETER ARTH, JR.  
EDWARD W. O'NEILL  
ELLEN S. LEVINE

By:



Ellen S. Levine

505 Van Ness Avenue  
San Francisco, CA 94102  
(415) 703-2047

Attorneys for the People of the  
State of California and the  
Public Utilities Commission of  
the State of California

June 10, 1992

---

1. In California v. FCC, 905 F.2d 1217 (9th Cir. 1990), the FCC attempted to make a similar preemption argument with respect to wireline (as opposed to wireless) services. In that case, the FCC argued that it could classify enhanced services as "private" and non-common carriage, and thereby preempt state authority over such services when offered intrastate. The Ninth Circuit rejected this argument. Just as in that case, the basis for distinguishing state and federal jurisdiction over wireless services is whether a service is intrastate or interstate, not whether it is private or common carriage.

CERTIFICATE OF SERVICE

I, Ellen S. LeVine, hereby certify that on this 10th day of June, 1992, a true and correct copy of the document entitled COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA was mailed first class, postage prepaid to all known interested parties.



---

Ellen S. LeVine