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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

94-105

In the Matter of)
Implementation of Sections 3(n) and)
332 of the Communications Act)
Regulatory Treatment of Mobile Services)
_____)

~~GN Docket No. 93-252~~

**C.A.T.A. STATEMENT SUPPORTING THE PETITION OF THE
CALIFORNIA PUBLIC UTILITIES COMMISSION TO RETAIN STATE
REGULATORY AUTHORITY OVER INTRASTATE CELLULAR SERVICE RATES**

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**C.A.T.A. STATEMENT SUPPORTING THE PETITION OF THE
CALIFORNIA PUBLIC UTILITIES COMMISSION TO RETAIN STATE
REGULATORY AUTHORITY OVER INTRASTATE CELLULAR SERVICE RATES**

This statement is submitted by the Cellular Agents Trade Association ("C.A.T.A."), headquartered in Los Angeles, California, in support of the petition to the Federal Communications Commission by California Public Utilities Commission ("P.U.C.") dated August 8, 1994 to retain state regulatory authority over intrastate cellular rates. C.A.T.A. is strongly of the opinion that terminating P.U.C. regulatory authority would not be in the best interests of either the independent agents who sell both cellular service and cellular equipment or California consumers generally.

Composition and Activities of C.A.T.A.

C.A.T.A. is made up of independent businesses who act as agents of the cellular carriers in selling both cellular service and cellular equipment to the public. They sell the service exclusively for a single carrier. There are 20 agents of varying sizes in the Los Angeles chapter, each under contract with Los Angeles Cellular Telephone Company ("LACTC"). A new chapter has recently been formed in San Diego; it comprises 15 agents who under contract with either U.S. West Cellular or Air Touch Cellular (formerly PacTel Cellular). C.A.T.A. is in the process of organizing another chapter in the San Francisco metropolitan area market.

The chairman and other officers of C.A.T.A. have made numerous appearances before the P.U.C. in connection with cellular industry issues that affect their business. Recently, the focus has been on

the practices of bundling cellular equipment and cellular service, selling the former at heavily discounted (often below-cost) prices on the condition that the customer purchase service from a designated carriers. C.A.T.A. has also met with legislators and staffs of legislative committees of the California General Assembly on issues relating to their cellular businesses.

Currently, a group of C.A.T.A. agents in Los Angeles and San Diego are pursuing litigation against their carriers -- LACTC in Los Angeles and U.S. West in San Diego. It is also expected that similar litigation will be filed on behalf of San Francisco agents against Air Touch Cellular and Bay Area Cellular in that market. These actions are all individual cases. In addition, one has been filed in San Diego Superior Court as a class case on behalf of all Air Touch (PacTel) agents in all markets in California (11) where Air Touch (PacTel) acts as a carrier.

This litigation is based primarily on a series of predatory acts and practices by the carriers in violation of the California Cartwright Act, including both below-cost selling of cellular equipment and price fixing of the rates for CRS. Other causes of action include interference with economic advantage and fraud.

Representing the agents and consumers in all of this litigation is the law firm of Kolodny & Pressman, 11975 El Camino Real, #201, San Diego, CA 92130. That firm has also instituted consumer class actions alleging price fixing in violation of the Sherman Act and the California Cartwright Act by the carriers in both the Los Angeles and San Diego markets.

The agent-members of C.A.T.A. bring to the F.C.C. a viewpoint which is based on years of dialogue with the public. The positions set forth in this statement are based on that dialogue -- the facts that they have learned while being in the front-line of the cellular phone industry, fighting on what the P.U.C. has realistically termed a very unlevel playing field.

Summary of Issues

Generally, our years of experience as agents in this industry convinces us that the P.U.C. is correct in concluding that there is a lack of competition between the carriers, certainly in the markets with which we are familiar -- Los Angeles, San Diego and San Francisco, by far the largest markets in California (and among the top ten markets in the nation). This, combined with the predatory acts and practices in which the carriers have been engaged in those markets leads us to raise with you the following allied issues which reinforce the need for the P.U.C. to continue to exercise regulatory authority over these carriers:

1. The independent agents have themselves been harmed by the lack of cellular service rate competition. If that competition had existed and drove rates downward, there would have been many more subscribers and the agents would have shared in that business. It is our considered view that active, healthy agents promoting the usage and improving the quality of service in the cellular service marketplace is of a definite benefit to the public.

2. The carriers are using predatory acts and practices to achieve and increase their power over the sale and distribution of

cellular equipment. This threatens not only the business viability of a group of independent businessmen-agents; it will sooner or later give the carriers control over prices of that equipment.

3. The elimination of the bottleneck caused by current switch procedures will definitely help produce more competition in the sale of cellular service. Since this action is being fought by the carriers, keeping P.U.C. regulatory authority will help ensure that this result comes about.

Agents' Desire for Active Rate Competition

C.A.T.A. is in complete agreement with the P.U.C. that there has not been active competition in the sale of cellular service in California. If there had been, rates would surely have been driven down. Instead, for 10 years there has been lower costs and expenses for providing that service but no reductions of consequence in the basic rates, either the monthly service charge or the per-minute of usage rate in all three major California markets. Surely, there have been special promotions and programs which offer some rate benefits, but it has been our experience that in many instances they have been offered on a take-a-turn basis. In other wards in Los Angeles, LACTC will offer a particular program, say for 30 days. Then, PacTel will step up with their special program for a period of time. This is not competition. The term heard frequently is that "they send smoke signals to each other".

It is our experience that particularly the elderly and the handicapped are hurt by the carriers' preoccupation with high rates

and high profits, as pointed out at length by the P.U.C. in its petition and opinion. The elderly and the handicapped want cellular service as a security device or as a need when they get into a difficult situation. They are not heavy users and the carriers have done little to make low-cost plans available to them. When they are offered, they carry such small commissions that the agents simply cannot afford to spend time and money promoting them.

Obviously, if there had been rate reductions brought about by competition and programs designed to bring in the low-range users, the cellular agents (including our members) would have much higher sales and, hopefully, profits. A growing and healthy network of agents in each cellular market would certainly make better service available to the general public -- service on initial purchases, replacement purchases, and repair of equipment.

The Potential Cellular Equipment Market Problem

Cellular carriers in California -- and other states -- have made much out of the declining prices for cellular equipment. Those declines have indeed been spectacular. But there is no guarantee that this situation will continue. Indeed, C.A.T.A. is convinced that the carriers are positioning themselves to gain strangle-hold power over the distribution of cellular equipment and when that power is obtained, economic and marketplace history teaches that in the long run it will be used to the disadvantage of the consuming public.

After placing primary reliance on a network of independent agents to penetrate the cellular markets in California, the

carriers have shifted to a different distribution system. Increasing reliance is being placed on direct retail sales through carrier stores or carrier employees and sales through major mass merchandisers such as Circuit City, Dow Stereo, Adray's, Sears, The Good Guys, etc. These multi-outlet retailers are very product diversified. The carriers are willing to pay them activation commissions considerably higher than those paid to the independent agents, residual commissions based on after-purchase usage by the customer, very heavy market development funds. In addition, these preferred retailers are given preferential treatment on the purchase of equipment. For example, when a new phone is heavily promoted by a carrier, the preferred retailers can get unlimited amounts at favored prices. The agents pay more and are allocated phones with many receiving only a handful.

The higher commissions received by the preferred retailers enable them to recoup the losses they suffer from heavy discounting and, in many instances, below-cost selling with the equipment tied to the purchase of service (bundling, it is called in California, where the existence of anti-bundling legislation and P.U.C. orders has not eliminated the practice). The agents cannot meet these prices.

These practices -- and others -- create a very uneven playing field, with the agents placed at a tremendous competitive disadvantage. Many of these small businesses are being driven under -- which, in the pending litigation, is alleged to be part of the carriers' game plan. Why? Because the carriers will then have

more control over the distribution and pricing of equipment. They can stop paying the high commissions to the preferred retailers. They can subsidize their own costs by the artificially high level at which they are maintaining the rates for service. They will ultimately be free, have total discretion, to raise the prices of cellular equipment. The two carriers in each market would then have real power over both the sale of equipment and the sale of service.

It is realistically idle to argue, as the carriers do, that a customer can buy his phone wherever he or she wishes and then take it to a carrier to sign up for service. The cold market facts are that this just does not happen. Customers want one-stop service, and this propensity will play right into the hands of the carriers who wish to increase their market control.

The Transmission Bottleneck Issue

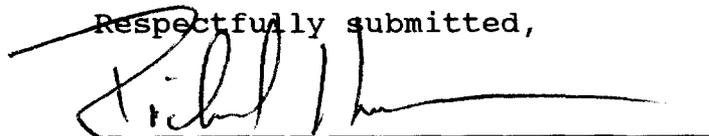
The P.U.C. has found that the federal sanctioning through licensing of a duopoly in each cellular service market "places control of the radio 'transmission bottleneck' into the hands of just those two carriers". The P.U.C. considered at length the desirability of changing this situation by requiring that each dominant carrier "unbundle" the cell site radio segment of its operations from all other functions for tariffing purposes. This would permit a reseller of cellular service to establish its own switch and, to use the words of the P.U.C., "implement switched-based interconnection with cellular carriers and compete on a level playing field."

C.A.T.A. wholeheartedly supports this position. While the agent-members of C.A.T.A. compete with the resellers, it is our view that the increased competition that this change will bring about is certain to benefit everyone -- except, perhaps (as they complain vociferously) for the carriers themselves. It is a firm tenet of the American free enterprise system, amply proved over time in the marketplace, that the benefits of increased competition go not just to the public but also to those entrepreneurs who are willing to take up the gauntlet and accept the challenge of competing on that "level playing field" that the P.U.C. is endeavoring to create in California. C.A.T.A. accepts that challenge and urges the F.C.C. to take the same position as the P.U.C.

Conclusion

C.A.T.A. joins with the P.U.C. in the view that the best interests of the public and the small businesses owned and operated by both men and women entrepreneurs which largely penetrated the market for cellular service and helped materially in bringing about the success which the cellular carriers have achieved would be best served by keeping the P.U.C. as a regulatory force in California. It has dared to challenge the monopolistic practices of the carriers and it deserves the support of the F.C.C. in its efforts to bring about real, American-style competition to the cellular service industry in California.

Respectfully submitted,



Dated: September 16, 1994

RICHARD HANSEN, Chairman of
Cellular Agents Trade Association

CERTIFICATE OF SERVICE

I, Peggy Bozym, hereby certify that on this 16th day of September 1994, a true and correct copy of the foregoing C.A.T.A. STATEMENT SUPPORTING THE PETITION OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION TO RETAIN STATE REGULATORY AUTHORITY OVER INTRASTATE CELLULAR SERVICE RATES was mailed first class, postage prepaid to all known parties of record.


Peggy Bozym