

carrier from decreasing its rates at any time -- effective immediately. The only constraint is the carrier's obligation to maintain the wholesale/retail margin to ensure that such rate decreases are not designed to recoup earnings for costs absorbed by resellers.

A final word should be added about the costs of regulation which the carriers repeatedly bemoan. Those costs of regulation -- which are also borne by independent resellers -- are a small price to pay to ensure competitive rates for consumers. Although some of the carriers cite specific examples of costs in particular instances, no carrier offers any detailed analysis to demonstrate that such costs amount to anything more than a nominal figure in relation to total operations.^{31/} And nowhere has any carrier claimed that such costs have prevented the carriers from earning very healthy returns -- whether accounting or economic -- on their investments and assets. Hence, the carriers' claims do not provide any basis for refuting the reasonable basis advanced by California to retain its regulatory authority for eighteen (18) months.

^{31/}BACTC's comments attempt to magnify such costs by showing a variety of concurrently filed advice letters for it and its affiliates. BACTC Comments at 37-38. What BACTC fails to note is that it could have consolidated all of its filings into one filing, such as GTE Mobilnet, its facilities-based competitor, does upon requesting such authority from the CPUC.

C. CPUC Not Confined to Regulations
in Place as of June 1, 1993

CCAC and the individual carriers contend that

(1) Section 332 only allows the State to retain those specific regulations that were in place on June 1, 1993, (2) that CPUC's proposed regulations were not in place on June 1, 1993, and (3) that CPUC has failed to describe its regulations in detail as required by Commission rules. None of the foregoing arguments has any merit.

1. Regulations Need not be in Place on June 1, 1993

Section 332(c)(3)(B) states, in pertinent part, as follows:

If a State has in effect on June 1, 1993, any regulation concerning the rates for any commercial mobile service offered in such State on such date, such State may, no later than 1 year after the date of enactment of the Omnibus Budget Reconciliation Act of 1993, petition the [Federal Communications] Commission requesting that the State be authorized to continue exercising authority over such rates. If a State files such a petition, the State's existing regulation shall, notwithstanding subparagraph (A), remain in effect until the Commission completes all action (including any reconsideration) on such petition. . . .

47 U.S.C. § 332(c)(3)(B) (emphasis added). Nothing in the foregoing statutory provision precludes a State from making any changes in particular regulations that were in place as of June 1, 1993. Quite the contrary. The language plainly refers to the State's regulatory "authority" and "regulation," rather than to particular regulations. Thus, the paragraph provides that a State should petition the FCC to request authorization "to

continue exercising authority over such [commercial mobile service] rates" -- not to retain the particular regulations. The next sentence of the provision similarly provides that such "regulation" shall remain in place if the State files such a petition; if Congress intended to allow the continued validity only of certain regulations, the paragraph would have referred to existing regulations.

The legislative history of Section 332(c)(3)(B) confirms that that provision was designed to preserve a State's authority to regulate commercial mobile service rates rather than to freeze particular regulations and preclude the State from making any changes that the State might determine to be in the public interest. The cut-off date of June 1, 1993 for existing State regulation was first discussed in the Senate Commerce Committee's mark-up session of S.335 on May 25, 1993. At that session, Senator Bryan (D-NV) expressed concern about the proposal to preempt all State regulation because "the GAO said there was very little competition in the marketplace." Senator Bryan then stated as follows: "I suggest rather than have an automatic preemption [of all State regulatory authority], permit those states that currently regulate to do so and then require affirmatively that the FCC would have to determine affirmatively that competition exists. . . ." Commerce Committee, U.S. Senate (May 25, 1993) (unpublished transcript) at 21. In other words, Senator Bryan wanted to at least preserve the regulatory

authority of those States that had already inaugurated cellular regulation.

At the Senate Commerce Committee's mark-up session of June 15, 1993, Senator Bryan offered an amendment which ultimately formed the basis for the June 1, 1993 cut-off date in Section 332(c)(3)(B). Senator Bryan's explanation makes it clear that the intention was to preserve the right of certain States to regulate rather than to freeze any particular rule or regulation then in place:

I had indicated at the time the spectrum bill [S.335] came before the Committee earlier than I wanted to offer to retain the ability of those states, nine in number, that currently regulate with respect to price, that they would have the ability to do so. Through Senator Inouye's leadership we have been able to work out a compromise on the amendment which I would like, at this time, to offer and to indicate that it does, indeed, do just that. It affects only those nine states: Alaska, California, Hawaii, Louisiana, Massachusetts, Nevada, New York, West Virginia and Puerto Rico. It has to do with cellular service and with respect to the pricing aspect only. And what this amendment would do is it would permit those states to continue to exercise their jurisdiction and regulation with respect to the price, but would require the states, prior to the effective date of this legislation if they chose to do so, to file a notice of intent to continue to exercise that authority.

Commerce Committee, U.S. Senate (June 15, 1993) (unpublished transcript) at 4.

Senator Dorgan (D-N.D.) issued a statement on June 15, 1993 at the mark-up session which echoed Senator Bryan's intention. The statement included the following:

In S.335, state regulatory efforts would be preempted from regulating mobile communication services. The measure does provide, however, an avenue for states to appeal to the Federal Communications Commission to have their regulatory authority reinstated. In addition, under the amendment offered by Senator Bryan, states which are currently regulating wireless services would be excluded from the preemption provisions in the bill. I support Senator Bryan's amendment because I do not believe that Congress should intrude itself into the regulatory debates of these nine states that have seen it necessary to regulate the industry.

Statement of the Honorable Bryon L. Dorgan on S.335, The Emerging Telecommunications Technologies Act (June 15, 1993) (emphasis added).

The clear intentions expressed by Senators Bryan and Dorgan were later reflected in the comments of Senator Inouye, Chairman of the Senate Commerce Committee's Communications Subcommittee and the principal draftsman of S.335, when he discussed the "regulatory parity" provision on the Senator floor on June 24, 1993. Mr. Inouye explained the June 1, 1993 cut-off date as follows:

At the executive session at which this committee ordered this budget reconciliation legislation to be reported, the Committee agreed to an amendment offered by Senator BYRAN to give added consideration to States that currently regulate cellular service. . . .

Under subparagraph (C) as added by the amendment, a State that has in effect, on June 1, 1993, regulation concerning the rates for any commercial mobile service may petition the FCC to continue exercising authority over such rates within 1 year after

the date of enactment of this
legislation. . . .

139 Congressional Record S7949 (Daily Ed. June 24, 1993)

(emphasis added).

The statements of Senators Bryan, Dorgan and Inouye confirm that the June 1, 1993 cut-off date in Section 332(c)(3)(B) was designed to prohibit all States (except the nine identified by Senator Bryan) from deciding to regulate wireless services after passage of the Budget Act in order to escape the preemption provisions of Sections 332(c)(3)(A). Nothing in the comments of Senator Bryan, Senator Dorgan, Senator Inouye or any other member of the Senate Commerce Committee indicated, let alone stated, that the nine identified states would be precluded from making any changes in particular regulations.

The Conference Committee basically accepted the amendment offered by Senator Bryan. The Conference Agreement merged subparagraph (C) of S.335 into the new subparagraph (B) and explained that "State authority to regulate is 'grandfathered' only to the extent that it regulates commercial mobile services 'offered in such State on such date.'" Conference Report, H.R. Rep. 103-213, 103rd Cong., 1st Sess. 493 (1993) (emphasis added). No reference was made to freezing particular regulations. Rather, the Conference Committee, like Senators Bryan, Dorgan, and Inouye, broadly preserved the authority of the nine identified states to continue to regulate cellular services while precluding other states from rushing in with new legislation in

an effort to escape the preemption mandate of Section 332(c)(3)(A).

2. CPUC Regulations in Place Prior to June 1, 1993

It would not matter even if Section 332 preserved only those regulations in place as of June 1, 1993. CPUC's regulatory program was well in place by that date.

CPUC's regulatory authority over cellular service is set forth in the PU Code, including Sections 216, 431, 432, 489, 490 and 532 which require the CPUC to (1) regulate cellular telephone service; (2) determine just and reasonable rates; (3) prevent unreasonable discrimination; (4) prevent preferences and privileges for differing classes of service; and (5) require the public filing of tariffs. Under those and other statutes and decisions relating to cellular service -- all issued prior to June 1, 1993 -- the CPUC determined that the duopoly cellular carriers have market power (e.g. Decision 84-11-013), that they can engage in predatory pricing (Id. & Decision 90-06-025, Resolution 92-08-008; Decision 93-02-019), and that Commission jurisdiction over both wholesale and retail rates under Sections 451 and 532 of the PU Code, as well as other statutes, is necessary to produce just, reasonable and nondiscriminatory rates. Decision 84-04-014; Decision 84-11-028.

In accordance with those general principles, the CPUC decided -- again prior to June 1, 1993 -- that the facilities-based cellular carriers should make service available to resellers through wholesale rates, that any decrease in rates by

the cellular carriers would have to maintain the wholesale/retail margin, that cellular carriers should not be allowed to bundle service with CPE, and that the cellular carriers should unbundle the rate elements of the service and allow the resellers to interconnect their own switches with the cellular carriers' MTSOs. See supra at 11-28. Although the CPUC has adopted some changes in its various regulations after June 1, 1993, those changes are little more than refinements of policies established prior to June 1, 1993.

3. Regulation Described in Sufficient Detail

CCAC and the carriers also complain because the Petition fails to describe CPUC's proposed regulations in sufficient detail. This argument cannot be taken seriously.

As CCAC and the cellular carriers well know, CPUC's regulatory program is amply set forth in the state statutory codes, CPUC rules and decisions cited above (throughout the carriers' own pleadings). Those statutory provisions, rules, and individual decisions are a matter of public record and available for review by the Commission and any interested party. It defies common sense to contend, as CCAC and the carriers seem to, that each regulatory policy and regulation must be described in detail in order to receive the FCC's sanction. To complete such a task would require a pleading many times larger than all the pleadings already filed in the instant matter.

Nor can there be any complaint that CPUC might make further adjustments in its policies during the 18 month period for which

regulatory authority is sought. Nothing in the statutory language or history of Section 332 prohibits a state from making any changes it deems appropriate to adequately serve the public interest. Indeed, it would be the antithesis of sound public policy-making to say, on the one hand, that a State retains regulatory authority over certain forms of commercial mobile service, but that, on the other hand, the State is precluded from making any changes which the State deems necessary to better serve the public interest. Such a proscription is especially unnecessary, since as the Commission's own rules provide, any interested party may petition the Commission to terminate the regulatory authority after eighteen (18) months, and, for its part, the CPUC is requesting such authority for only eighteen (18) months.

D. CPUC Regulation Consistent With
Congressional and FCC Goals

CCAC and the carriers vaguely argue that the CPUC's proposed regulation is inconsistent with the congressional goals underlying Section 332 and the FCC's promotion of marketplace forces. Thus, CCAC states that the CPUC "knowingly intends to violate the central tenet of federal policy, which favors uniform regulation of providers of similar service. Yet the CPUC has offered no logical explanation for a policy which will impose serious and potentially crippling burdens on cellular carriers (rate of return/adjusted price caps) while ESMR and PCS providers will be free of such constraints." CCAC Response at 87-88. McCaw

similarly states that "state regulation is presumptively incompatible with Congress' expressed desire for uniform national regulation of commercial mobile services" and that "states must be required to show that market conditions in their state are substantially less competitive than those which the Commission found not to justify regulation at the federal level." McCaw Opposition at 9, 14 (emphasis in original). AirTouch claims that there is "nothing unique about California's [cellular] markets" and that the CPUC's findings "cannot support a special variance for California from the clear federal policy to permit the development of mobile services markets unimpeded by state rate regulation." AirTouch Opposition at 2. And LACTC complains that "[t]he Petition does not explain why the Commission's reasoning as to the inadvisability of cellular tariff procedures on a national level is not equally applicable in the state arena." LACTC Response at 53.

None of the foregoing arguments has any validity whatsoever. Contrary to the suggestion of the carriers, California is not obligated to explain why other states have failed to adopt cellular regulations. As the Commission well knows, a State's failure to adopt cellular regulations can reflect a host of factors, many of which may have no bearing on the merits of any proposed regulation. See Second Report and Order, 9 FCC Rcd at 1472 (record is "silent" as to why some states have regulation while others do not).

For that reason, there is no obligation under Section 332, its legislative history, or anything in the Commission's new rules which requires California to establish that its situation is somehow unique. Such a burden would, as a practical matter, be impossible to bear (as the carriers no doubt recognize). Such a review would require California to compile data and opinion with respect to economic, social, technological, and political forces in forty-nine (49) other states and then make appropriate comparisons in areas where comparison is probably not possible at all. California's only obligation is to show that market conditions in its state -- which have operated for the past ten (10) years in a regulated environment -- would not assure consumers of reasonable and non-discriminatory rates in the absence of regulation.

In reviewing any such showing, the Commission can proceed with the knowledge that Section 332(c)(1)(A) was enacted with the recognition "that market conditions may justify differences in the regulatory treatment of some providers of commercial mobile services." Second Report and Order, 9 FCC Rcd at 1462 n.253, quoting Conference Report at 491. The Commission similarly accepted the Conference Report's conclusion that "[d]ifferential regulation of providers of commercial mobile services is permissible but is not required in order to fulfill the intent of this section.'" 9 FCC Rcd at 1463 (footnote omitted). The Commission further concluded that "the record does not support a

finding that all [CMRS] services should be treated as a single market." 9 FCC Rcd at 1467.

The CPUC's regulatory program reflects the unique position which cellular service has among CMRS providers. Like the Commission, the CPUC recognized from the beginning that the two FCC-licensed cellular carriers could constitute a "shared monopoly" of mobile communication services. Second Report and Order, 9 FCC Rcd at 1470. This was particularly so since, like the Commission, the CPUC could not conclude that there was any cross-elasticity between the services offered by cellular carriers and those currently offered by Nextel or to be offered by PCS. Indeed, it was the very absence of such cross-elasticity which prompted Congress to exempt Nextel and other ESMR providers from common carrier regulation until August 1996.

In this context, CPUC's proposed regulation is entirely consistent with the Commission's decision to forebear from imposing tariff requirements on cellular carriers. Review of the three factors cited by the Commission makes clear the consistency.

First the Commission explained that it had some reservations about its decision to forebear from imposing tariff obligations on cellular carriers because "the record does not support a finding that the cellular services marketplace is fully competitive. . . ." 9 FCC Rcd at 1478. At the same time, the Commission recognized that "cellular providers do face some

competition today" -- in California, almost entirely from independent resellers who are supported by CPUC regulation.

Second, the Commission found that Sections 201, 202 and 208 of the Act "will provide an important protection in the event there is a market failure." While those latter provisions certainly would provide relief for to any complaint or transgression involving interstate communications, they would be of little utility to California consumers who confront complaints about intrastate service -- which is the primary nature of virtually all cellular communications.

And, finally, the Commission believed that tariffing would impose "administrative costs" which could be "a barrier to competition in some circumstances." 9 FCC Rcd at 1479. The Commission did not elaborate on this last point. However, the CPUC's regulation is minimal and allows carriers to introduce rate decreases on one-day's notice.

In sum, then, the Commission's decisions to forbear from imposing interstate tariff regulations on cellular providers is entirely consistent with CPUC's decision to continue to maintain other minimal rate regulations for cellular providers until PCS, ESMR and other CMRS providers can offer meaningful competition. CPUC's approach is supported by substantial evidence and should be sustained.

Conclusion

WHEREFORE, in view of the foregoing and the entire record herein, it is respectfully requested that the Petition be granted.

Respectfully submitted,

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ATTACHMENTS

1. Statement of the Honorable Byron L. Dorgan on S. 335, The Emerging Telecommunications Technologies Act (June 15, 1993)
2. Affidavit of Charles L. King
3. CPUC Decision 88-08-063
4. Los Angeles SMSA Limited Partnership 1993 Annual Report (excerpts)
5. CPUC Investigation and Suspension, 85-07-024
6. CPUC Decision, 90-12-038
7. CPUC Decision, 91-12-002
8. AT&T/McCaw Merger Settlement Agreement (all parties except Pacific Tellesis)
9. AT&T/McCaw Merger Settlement Agreement (with Cellular Resellers Association, Inc.)
10. CPUC Decision, 93-04-058
11. CPUC Decision 94-04-042
12. Los Angeles Cellular Telephone Company Advice Letters
13. Declaration of David Nelson
14. Declaration of Steve Muir
15. Cellular Resellers Association, Inc., Response to Applications for Rehearing (September 21, 1994)
16. Statement of Representative Edward J. Markey at the Mark-up of Budget Reconciliation, Subtitle C, Licensing Improvement Act of 1993 (May 6, 1993)

ATTACHMENT 1

**Statement of the Honorable Byron L. Dorgan on S. 335, The
Emerging Telecommunications Technologies Act (June 15, 1993)**

**STATEMENT OF THE HONORABLE BYRON L. DORGAN
ON S. 335, THE EMERGING TELECOMMUNICATIONS TECHNOLOGIES ACT
JUNE 15, 1993**

Mr. Chairman, as the Senate Commerce, Science, and Transportation Committee considers S. 335, the Emerging Telecommunications Technologies Act of 1993, I wanted to state my reservations about certain provisions in this bill. From the outset, however, I want to indicate that I am very supportive of this legislation in general. It is critically important that the United States aggressively develop wireless telecommunications services. This legislation, which would reallocate 200 megahertz of radio spectrum for private use, is an essential step in the development of new telecommunication technologies. I strongly support the Committee's desire to release this spectrum and stimulate the development of a whole range of wireless services.

Notwithstanding my support of spectrum reallocation, I am concerned about the regulatory parity language in both the Senate and the House versions of the bill. Specifically, I am concerned about preempting state regulatory authority. While I understand that to date only about nine states have any regulation of wireless services to speak of, it seems to me that until there is a clear demonstration to us that states have imposed serious harm on the development of wireless services through their regulatory efforts, the Congress ought not to prohibit states from regulating. The state preemption provisions in this bill are seeking to counter phantom problems. It should be the burden of the industry to demonstrate to the Committee that states have created problems in the development and delivery of wireless services before any attempt is made to circumvent state authority.

In S. 335, state regulatory efforts would be preempted from regulating mobile communication services. The measure does provide, however, an avenue for states to appeal to the Federal Communications Commission (FCC) to have their regulatory authority reinstated. In addition, under the amendment offered by Senator Bryan, states which are currently regulating wireless services would be excluded from the preemption provisions in the bill. I support Senator Bryan's amendment because I do not believe that the Congress should intrude itself in the regulatory debates of these nine states that have seen it necessary to regulate the industry.

As you know Mr. Chairman, there is indeed a regulatory problem that needs to be addressed. Wireless services ought to be regulated on the same playing field, which is the objective of the language in section 9 of S. 335. However, S. 335 goes beyond establishing a level playing field, it effectively de-regulates the cellular industry. This may or may not be a good idea; we will see the impact of this in the coming years. But the question is who should regulate and what are the appropriate state and federal roles in the regulation of the rapidly expanding wireless communication industry. It seems to me that we should protect a regulatory role for the states in this process.

I understand the arguments that have been made to preempt state regulations. Advocates of preemption contend that an array of 50 different jurisdictions will impede the development and delivery of wireless services. However, even with the preemption of terms

[2]

of entry and rate regulation, as provided under the bill, wireless carriers will still have the complexities of different state rules in areas of conditions of service for example. This is the nature of interstate commerce. Indeed, there is a compelling federal interest in the rapid development and effective delivery of wireless services. However, that interest ought to include a presumption that the states are in a better position to understand consumer needs and the intricacies of industry development in the unique climates of each individual state.

Let me emphasize that I am not absolutely opposed to preempting states in the area of wireless services. If it becomes clear that, in the future, state regulations have become an obstacle for the development of wireless services, I would support preemption. But until that case is made -- and with only a handful of states showing an interest in regulating wireless services at this point, it appears that the verdict is still out on this matter -- I would prefer to defer to state regulators.

Again, Mr. Chairman, I want to express my strong support for the reallocation of spectrum to private use. It is my hope that this spectrum is reallocated as fast as possible and that the FCC can award licenses within the deadlines specified in the bill. The best regulation, from my perspective, is a competitive environment in the wireless industry where consumer choices and price competition control rates and services and the governmental role -- whether federal or state -- is minimized. It is my hope that new technologies like Personal Communications Systems (PCS) and others can be developed with minimal impediments to come on line and provide competition with existing technologies.

Thank you Mr. Chairman for your consideration of my views on this legislation.

ATTACHMENT 2

Affidavit of Charles L. King

AFFIDAVIT OF CHARLES W. KING

Qualifications

My name is Charles W. King. I am President of Snavely, King & Associates, with offices at 1220 L Street, N.W. Washington, DC 20005. Snavely King & Associates was founded in 1970 to conduct research on a consulting basis into economic issues relating to regulated industries, including telecommunications, electric, gas and water utilities; transportation; and postal services. Over the past 25 years, I have appeared as an expert witness on over 300 occasions before more than 30 state and nine U.S. and Canadian Federal regulatory agencies, presenting testimony on virtually all aspects of public utility regulation. I have also conducted independent studies of utility depreciation, economic costs and benefits, demand forecasts, cost allocations, marginal costs, and antitrust damages.

In the area of telecommunications, I directed a three-year series of studies on behalf of the Canadian Transport Commission to develop appropriate costing and ratemaking principles to govern the regulation of the telecommunications utilities under that Commission's jurisdiction. I have also submitted testimony in connection with general rate increase, rate restructure and alternative regulation applications by telecommunications carriers before the regulatory commissions of over two dozen states. I have submitted testimony in numerous Federal Communications Commission ("FCC") proceedings on behalf of user parties of various common carrier

telecommunications services. This testimony dealt extensively with issues of rate structure, competitive relationships, and the role of costs and demand in the ratemaking for individual services.

I have participated in the California Public Utilities Commission ("CPUC") inquiry into cellular radiotelephone service regulation, I.88-11-040, testifying twice on behalf of the reseller participants. I also assisted the reseller parties in the formal inquiries that led to the current petitions of the regulatory commissions of California and Connecticut to the FCC to retain regulation of the cellular carriers in those states.

Prior to the establishment of Snavely, King & Associates, I was with EBS Management Consultants, Inc., then a subsidiary of Ebasco Industries. For about a year I was Director of the Economic Development Department, and prior to that I held the title of Principal Consultant. I first entered the consulting field in 1962 with W.B.Saunders & Company, a transportation consulting firm. Prior to entering the consulting field, I was an Analytical Statistician for the Office of Statistical Standards in the U.S. Bureau of the Budget. In that position, I was responsible for the review of all Federal statistical programs dealing with transportation.

I hold a Bachelor of Arts degree in economics from Washington & Lee University and a Master of Arts degree in government economic policy from The George Washington University.

Objective

I have been requested by counsel for the Cellular Resellers Association, Inc., Cellular Service, Inc., and ComTech Mobile Telephone Company to review on evaluate the economic arguments presented by the FCC licensed cellular carriers of California and their association in opposition to the Petition by the State of California and the California Public Utilities Commission ("CPUC") to retain regulatory authority over cellular service. Specifically, I have reviewed:

- o Report of Charles River Associates on the Petition of the People of the State of California and the Public Utilities Commission of the State of California to Retain State Regulatory Authority over Intrastate Cellular Service Rates, by Stanley M Bensen, Robert J Larner, and Jane Murdoch, dated September 19, 1994 ("Charles River").
- o Affidavits of Professor Jerry A. Hausman, dated September 15, 1994 on behalf of Airtouch ("Hausman") and the Cellular Telephone Industry ("Hausman CTIA").
- o Declaration of Bruce M. Owen on the California Petition, dated September 19, 1994 ("Owen").
- o Response of the Cellular Carriers Association of California Opposing the Petition of the Public Utilities Commission of the State of California to Retain State Regulatory Authority over Intrastate Cellular Service Rates, September 19, 1994 ("CCAC")
- o Response by Los Angeles Cellular Telephone Company to Petition by the Public Utilities Commission of the State of California to Retain State Regulatory Authority over Intrastate Cellular Service Rates, September 17, 1994 ("LACTC").

I also reviewed portions of the Comments of GTE Service Corporation ("GTE") and McCaw Cellular Communications, Inc. ("McCaw").

Collectively, I will refer to the parties sponsoring the foregoing documents as the "cellular carriers" or simply as "the

carriers."

The purpose of my review of the foregoing documents is to determine whether and to what extent the cellular carriers have rebutted the claim by the CPUC that it has met the statutory standards for the continued exercise of regulation over intrastate cellular service rates. Those standards, set forth in the Omnibus Reconciliation Budget Act of 1993 and in the FCC's Second Report and Order in GN Docket 93-252, require petitioning state regulatory authorities to show that market conditions with respect to cellular service in their states fail to protect subscribers from unjust and unreasonable rates or unjustly or unreasonably discriminatory rates.

CPUC Findings

In its Petition of August 8, 1994, the CPUC found that cellular service in California is not currently competitive, and that market forces are not yet adequate to protect California customers from paying unjust and unreasonable rates for such service. In reaching this conclusion the CPUC evaluated the cumulative impact of various criteria, including: (1) structural barriers to competitive entry; (2) the market power of the duopoly cellular carriers, as measured by market share, degree of price competition, and level of earnings; and (3) the current availability of emerging competitive alternatives to cellular service.¹

The carriers challenge the CPUC's finding. While none contest that there are currently barriers to entry, all argue that these

¹CPUC Petition, Summary, page i.