

OCT 21 1994

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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of: )  
)  
Petition of the People of the )  
State of California and the )  
Public Utilities Commission of )  
the State of California to )  
Retain Regulatory Authority of )  
Intrastate Cellular Service Rates )

PR 94-105

PR File No. 94-SP3

To: The Commission

ERRATUM

Cellular Resellers Association, Inc., Cellular Service, Inc., and ComTech, Inc. hereby attach pages of the Reply filed on October 19, 1994 in the above-referenced matter to reflect the correction of minor inadvertent typographical errors. None of the changes affects the substance of the comments.

Respectfully submitted,

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No. of Copies rec'd 244  
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another eighteen (18) months when PCS and ESMR might be able to provide meaningful competition.

Despite their inflated rhetoric, the carriers cannot show that the CPUC's projected regulation for a relatively short interval is not necessary to preserve reasonable and non-discriminatory rates. The carriers confirm that (1) they have continued to make substantial investments in the expansion of capacity and in the improvement of service, (2) they are free to decrease rates on one day's notice (as long as they maintain the mandatory wholesale margin for resellers), (3) high prices are not needed to restrain consumer use of limited capacity, and (4) the carriers have nonetheless been able to earn extraordinarily high rates of return on their actual investments -- returns which would obviously be lower if there were ease of entry and if competition were as vigorous as the carriers proclaim.

The carriers have thus confirmed that, whatever complaints they may have about procedural matters or individual decisions, the CPUC's regulatory program is necessary to ensure that the carriers do not exercise their immense market power to eliminate the mandatory wholesale margin, eliminate cellular resellers (who constitute the only meaningful competition to the cellular carriers), and then raise rates at will.

At the mark-up session of June 15, 1993, Senator Bryan presented an amendment which now includes the final language of subparagraph (B). Senator Bryan explained that, under his amendment, the filing of a petition by a State previously engaged in regulation "would then trigger a review by the FCC to determine if competition exists within that State. . . ." Commerce Committee, U.S. Senate (June 15, 1993) (unpublished transcript) at 4. Senator Byron L. Dorgan (D-N.D.) then offered a statement (a copy of which is annexed hereto as Attachment 1) commenting on the standard of review to be applied by the FCC in reviewing any such petition:

. . . 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 of entry and rate regulation, as provided under the bill, wireless carriers will still have the complexities of different State rules and 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,

which there was no precedent, the CPUC's program necessarily involved a certain amount of experimentation and revision as more experience was gained. The CPUC's regulatory program, like any human endeavor, cannot claim to have achieved perfection in every sphere. But there can be no doubt about the regulations' success in helping to provide California consumers with reasonable and non-discriminatory rates.

A. General Regulatory Framework

The CPUC framework for cellular regulation was first established in 1984 in response to an application for a certificate of public convenience and necessity filed by the Los Angeles SMSA Limited Partnership, the wireline carrier for Los Angeles then controlled by PacTel Cellular (which has since become AirTouch Communications ["AirTouch"]). In granting the application, the CPUC explicitly required the carrier to establish both wholesale rates and retail rates on the basis of market research rather than costs.<sup>3/</sup> The CPUC identified three reasons to justify the carrier's establishment of wholesale and retail rates: (a) to ensure proper allocation of costs between wholesale and retail operations; (b) to prevent cross-subsidies and other anticompetitive practices; and (c) to provide a viable

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<sup>3/</sup>Thus, McCaw Cellular Communications, Inc. ("McCaw") is incorrect in asserting that wholesale rates were not market-based. McCaw Opposition at 20. Rather, as the CPUC stated, retail rates were based on market research and "wholesale rates were derived as a portion of retail rates and compared, element by element, to make sure the component costs were fully covered." Decision 84-04-014 at 60.

(c) establish or maintain any unreasonable difference as to rates, charges, services, facilities, or in any other respect either as between localities or as between classes of service.

B. Establishment of Wholesale/Retail Divisions

In its first generic cellular investigation in 1990, the CPUC made three salient determinations concerning cellular competition in California after six years of operation: (a) the reseller market was expansively defined to include the FCC-licensed carriers and independent resellers; (b) independent resellers perform and thereby relieve the FCC-licensed carriers of a variety of functions and attendant costs, including marketing, credit checks, billing, collections, customer service, and bad debt risk (excluding only the wholesale functions of call switching, routing and delivery); and (c) cellular carriers' wholesale revenues could not subsidize the carriers' retail operations. Decision 90-06-025. at Fdg. of Fact 23, Cncl. of Law 3. See also Decision 90-06-025 at Fdg. of Fact 116.

To implement its policies, the CPUC required the cellular carriers to operate their retail divisions on a compensatory (break-even or better) basis so that independent resellers could effectively purchase service through the same wholesale tariff available to the retail divisions and affiliates of the duopoly carriers. Decision 90-06-025, Mimeo at 73-75. To achieve this regulatory parity, the CPUC required that the duopoly carrier retail divisions and affiliates impute any wholesale rates to

these retail divisions or affiliates and account for wholesale and retail expenses.<sup>6/</sup>

The foregoing rulings, like the CPUC's earlier rulings, were designed to ensure that carriers' retail divisions and separate retail affiliates would not receive more favorable rates than the independent resellers.<sup>7/</sup> The carriers complied. As an example, annexed hereto as Attachment 4 is a copy of the LA/SMSA Limited Partnership 1992 Annual Report filed with the CPUC reflecting the wholesale and retail revenues and expenses.

C. Enforcement Against Unreasonable Discriminatory Carrier Actions

The CPUC's prohibitions against unreasonable discrimination and unjust and unreasonable rates have been the subject of various CPUC proceedings over the years. For example, in CPUC Investigation and Suspension 85-07-024 (Attachment 5), the CPUC found that GTE Mobilnet had proposed a promotional rate which would unreasonably discriminate against independent resellers and a reseller affiliate of facilities-based carrier Bay Area Cellular Telephone Company ("BACTC"). The CPUC found that GTE

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<sup>6/</sup>Attachment 3 hereto is Decision 88-08-063, which sets forth the accounting requirements applicable to all FCC-licensed carriers in the context of a merger of GTE Mobilnet's wholesale and retail affiliates.

<sup>7/</sup>The CPUC's action was issued in accordance with Section 532 of PU Code, which provides, in pertinent part, that no public utility may "charge, or receive a different compensation for any product or charge . . . than the rates . . . specified in its schedules . . . or extend to any corporation or person any form of contract or agreement or any rule or regulation or any facility or privilege except such as are regularly and uniformly extended to all corporations or persons."

Cellular Telephone Company ("LA Cellular") was misusing the bulk sales option to unreasonably discriminate against retail customers generally and certain high-volume users. Through the auspices of the CPUC, LA Cellular entered into a settlement agreement with CRA that extended volume user rates to all qualified volume users and guaranteed that volume discounts would not be given to parties who operated as "fronts" to allow individuals to receive discounts to which they were not entitled.

The CPUC has also provided a forum to thwart other forms of duopoly carrier discrimination against independent resellers. In Decision 93-01-014, LA Cellular attempted to institute a system of credits for its customers to induce the use of digital service when LA Cellular commenced the digital conversion of its network. CRA protested because LA Cellular's program would not be provided to the resellers' retail customers, and because the proposal would lead to anticompetitive price squeezes between wholesale and retail rates. As a result of a CPUC prehearing conference promoting settlement, LA Cellular agreed to a stipulation that all reseller customer would be afforded the same rate credits promoting the digital conversion and that all resellers and their customers could acquire dual-mode (analog and digital) equipment on a nondiscriminatory basis. This latter provision was consistent with Commission policy: "Any restrictions on resellers' ability to buy packages of CPE and service on the same basis as other customer[s] would be unlawful." Bundling of

obtain customer-specific network information of resellers reselling on McCaw systems.<sup>11/</sup>

D. Authorization of Rate Reductions

The CPUC's protections against discriminatory rates were coupled with its promotion of competitive reductions in service rates of as much as 10 percent effective upon the date of filing of a tariff revision. Decision 90-06-025 at 108, ordering paragraph 8. No limit was set on the number of decreases any carrier could adopt. In allowing such rate decreases, the CPUC did not set mandatory margins. Instead, the CPUC only required that the existing margins for each carrier (initially established on an MSA-by-MSA basis) remain in place pending adoption of a modification to the CPUC's existing cellular USOA, unless a duopoly carrier could "demonstrate through an advice letter filing" that its "retail operation will continue to operate on a break-even or better basis with proposed changes that impact the mandatory retail margin." Id. Conclusion of Law 15, Mimeo at 110. Significantly, no duopoly carrier has ever made the "break-

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<sup>11/</sup>Although AirTouch disparages the protest process at the CPUC, AirTouch Comments at 63-65, it was AirTouch that filed such protests against the AT&T/McCaw merger. Similarly, a review of Appendix N to AirTouch's Comments (which reflects 32 reseller protests of AirTouch advice letters from August 1990 through September 1994) fails to mention that its Los Angeles affiliate, LA/SMSA, has failed 441 Advice letters with the CPUC, its San Francisco/San Jose affiliate has filed 300 Advice Letters, its Sacramento affiliate has filed 190 Advice letters, and AirTouch of San Diego has filed 198 letters. Hence, of the combined 1,129 Advice letters filed by AirTouch affiliates, resellers have protested 32, or a total of 2.8% of these filings -- hardly an illustration of regulatory gridlock.

and that lower rates would be used to fill excess capacity. When rates were not decreased as rapidly as anticipated, the CPUC reminded the carriers of their promises in the 1993 Rate Band Guidelines Decision:

. . . The record generally indicates that limits on the spectrum are not a constraint on carriers at the present time. Given the rapid growth in consumer demand for cellular service, that circumstance may change for at least some systems. However, for under-utilized systems we will expect rates to fall substantially and quickly following our grant of pricing flexibility. . . . Further, technology is commercially available. Digital conversion will provide three to four times the present capacity. Carriers will need to cut prices sharply to fill that capacity. If they do not, then we will do it for them based on the results of our monitoring. We will also expect the geographical scope of service availability to continue to expand, with corresponding service quality improvements for the more rural or outlying areas in each service territory.

Decision 90-06-025 as quoted in Decision 93-04-058 at 3. The CPUC later concluded in Decision 94-08-022 (Appendix N to California's Petition) that capacity constraints do not exist in any California market, yet basic rates and, particularly wholesale rates have not decreased speedily enough to fill excess capacity.

The CPUC's concern was particularly acute because the CPUC had issued Decision 94-04-043 in April 1994 to eliminate limitations on rate reductions and on provisional and temporary rates, allowing such changes to take effect upon filing (as

identifies the advice letters.<sup>16/</sup> Moreover, LA Cellular claims as to "discounted" rates based on assumed subscriber usage fails to take into account the early termination penalties ranging from \$150 to \$200.<sup>17/</sup> GTE Mobilnet makes similar claims about its rate plans and certain temporary rate reductions which have expired. See, e.g., GTE Mobilnet Advice Letters 239, 251, 262 and 279. Thus, it is the duopoly carriers -- not the CPUC's regulations -- which have frustrated appropriate rate reductions.

E. Enhancement of Cellular Resale Service

CPUC regulations have had the desired result. Independent resellers number as many as 75 according to CPUC records, and they have provided some rate competition to the retail divisions of the facilities-based carriers.<sup>18/</sup>

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<sup>16/</sup>Attachment 12 also notes that LA Cellular has mischaracterized 47 of its advice letters as promotional or discount plans when in reality they were mere extensions of existing plans. In addition, eight other plans claimed by LA Cellular as temporary rate reductions or promotions actually involved such matters as cell site modifications, ceiling rate filings under rate band guidelines, and activation fee deferrals which not deleted but added to termination fees.

<sup>17/</sup>See LA Cellular Comments at page 20. LA Cellular's Service Plans have a termination fee of \$150, and its Corporate Association Plan has a \$200 penalty for early termination.

<sup>18/</sup>As noted in a recent CPUC hearing, there are at least four independent resellers in major California markets with lower retail plans than the duopoly carriers despite gross profit margins for resellers in 1992 averaging no more than 4%. See Testimony of Gary Mclaughlin in I. 88-11-040, Reporters' Transcript at 2493-94 and 2529; Declaration of David Nelson and Steve Muir, annexed hereto as Attachments 13 and 14.

In 1990 the CPUC decided to enhance the resellers' ability to compete:

While the duopoly is the centerpiece of the cellular market, many related activities or service components are not limited to the duopoly. Resellers offer competitive marketing and billing and collection services, and propose to go further by offering certain facilities-based enhancements to cellular service (by means of the reseller switch proposal, to be the subject of an upcoming hearing).

Decision 90-06-026 Mimeo at 16. In 1992, after a full evidentiary hearing, the CPUC stated that it concurred "with [the Division of Ratepayers Advocates] that the services being sold on a bundled basis by the facilities-based carriers can be unbundled."<sup>19/</sup> The CPUC therefore ordered the unbundling of rates for those functions controlled solely by the facilities-based carriers:

We therefore unbundle into wholesale rate elements only those functions that cannot be provided by competitors, that is, the portion of the network between the mobile unit and the switch, and certainly switching functions. We see no need to unbundle the wholesale rates into rate elements for services that competitors can provide because we want that portion of the network to be market priced (i.e. the existing wholesale and retail rates).

Id. at 39. The CPUC's rehearing decision (Decision 93-05-069) left those requirements unchanged. See Ordering paragraph 3,

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<sup>19/</sup>Decision 92-10-026, Mimeo at 56, also stated that "the wholesale service rates being sold by the facilities-based carriers can be unbundled."

service, and (2) to interconnect switches to perform functions that do not require an FCC license, including enhanced services as well as billing, collection and customer service.<sup>21/</sup> Thus, the CPUC affirmed its earlier rulings that resellers were authorized (1) to purchase direct connection to cellular carriers' MTSOs and LEC central offices, and (2) have access to peak and off-peak minutes of use and activation separately on an unbundled basis at the current tariffed wholesale rates. Decision 94-08-023, at 80-84.<sup>22/</sup>

F. Carrier Procedural Complaints

The carriers' oppositions to California's Petition in the instant matter advance a variety of criticisms concerning the CPUC's alleged errors in Decision 94-08-022 (Appendix N thereto) and the conclusions which the Petition draws from that Decision. None of these claims has any merit.

At the outset, CCAC claims that the CPUC arbitrarily and capriciously adopted a bandwidth threshold of 25% for definitional purposes of dominance, citing Decision 92-08-022 at 22. CCAC's statement is wrong. The CPUC merely suggested the 25% standard as a possible proposal for implementation after

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<sup>21/</sup>Enhanced services include limited calling areas, incoming call screening, distinctive call signaling, priority call waiting, cellular extension, cellular private branch exchange, cellular centrex, voice mail enhancements, dual system access, custom directory service, cellular secretary, multi-line hunting, and billing format design. Decision 92-10-026, Mimeo at 29.

<sup>22/</sup>Thus, AirTouch's claim that the CPUC's Decision is unclear as to what is unbundled is false.

affiliates providing such data requested confidentiality; neither CCAC or the individual carriers requested the opportunity to review the data. See July 19, 1994 ALJ Ruling.

In contrast, CRA requested and was granted access to the data. Thus, after the deciding not to seek such data and then intentionally avoiding further comment on it, CCAC and its constituent members make a mockery of this Commission's processes with their arguments that the data was not available for review in the CPUC proceeding, when in fact it was available to any party willing to enter into a nondisclosure agreement.<sup>24/</sup>

The CCAC and carriers' ploy should be juxtaposed with CCAC's current demand that this Commission rely on the same CCAC secret study utilized in the California proceeding, without providing public access to the underlying data in this proceeding. CCAC Comments at 65-68. That secret study purports to show that, since 1990, there has been a decrease in retail cellular rates for large markets for "optimal" plans for high, medium and low volume customers. In I.94-12-007 which resulted in Decision 94-07-022, CCAC insisted that the CPUC rely on the study and at least provided the underlying data of the study pursuant to nondisclosure agreements as required by the CPUC. Here, it has done no such thing, not even providing this Commission the

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<sup>24/</sup>The only data utilized in the CPUC's petition which was not utilized and available to all parties was that information furnished by the California Attorney General's Office to the CPUC.

the past licensed term." GTE Comment at vii, 29 (footnote omitted).<sup>26/</sup>

Despite the many benefits they have provided to California subscribers under CPUC's regulatory regime, the carriers claim that CPUC regulation over the last ten (10) years is not responsible in any way for the benefits cited by the carriers and that further regulation is not necessary to protect consumers. Review of the carriers' specific complaints, however, compels a completely different conclusion.

A. Wholesale/Retail Margins and Bundling Not at Issue

The carriers devote extensive argument in criticizing the CPUC's requirement that the facilities-based carriers make service available to resellers at wholesale rates and that any rate decreases maintain the margin between wholesale and retail rates. Thus, CCAC asserts that the "CPUC's maintenance of a mandatory margin requirement provides resellers with an easy justification for protesting carriers' rate proposals" and that the margin requirement, along with other CPUC regulations, "directly inhibit additional rate reductions for cellular subscribers. . . ." CCAC Response at 85. McCaw similarly complains that the CPUC's mandate for wholesale rates has "no

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<sup>26/</sup>The euphoria extolled by the carriers with respect to the scope of their respective investments and the decrease in their rates is clearly at odds with the "doom and gloom" assessment offered by their economic experts. The experts contend that the CPUC regulatory regime has inhibited and will continue to inhibit investment by cellular carriers. E.g. Declaration of Bruce Owen, attached to McCaw Opposition.

origin in marketplace forces" and that the CPUC's regulatory program has been flawed "with detailed attempts to assure that resellers obtain 'adequate' margins between wholesale and retail prices. . . ." McCaw Opposition at 20. GTE complains that the CPUC's mandatory wholesale margin requirement gives independent resellers a "protective shield" which resellers have "consistently failed to utilize . . . to offer customers either unique service packages or reduced rates of service." GTE Comment at 17-18. And some of the carriers -- supported by their economic experts -- contend that the carriers would have no incentive to exploit any market power to limit, if not destroy, the ability of resellers to compete. See Owen Declaration, supra, at 37-38.

The underlying -- and erroneous -- premise of the carriers' arguments is that the CPUC's mandatory wholesale/retail margin regulations are subject to review by the Commission. That premise is not supported by Section 332's language or its legislative history.

Section 332(c)(3)(A) expressly states that the preemption of a State's "authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service . . . shall not prohibit a State from regulating the other terms and conditions of commercial mobile services." 47 U.S.C. § 332(c)(3)(A). The CPUC's mandatory wholesale/retail margin concerns the terms under which service is offered by the cellular carriers and does not constitute the kind of rate regulation preempted by Section 332. Thus, the carriers' attempt

to bring the CPUC's wholesale/retail margin regulations before this Commission is contrary to the plain and unambiguous language of Section 332. Board of Governors of the Federal Reserve v. Dimension Financial Corp., 474 U.S. 361, 368 (1986) (agency must abide by the clear and unambiguous language of statute).

Moreover, to the extent there was any doubt about Congress' intent, it was certainly removed by the legislative history. Section 332 originated in the Licensing Improvement Act of 1993, which was offered by Representative Edward J. Markey, Chairman of the House Subcommittee on Telecommunications and Finance. In proposing a "regulatory parity" amendment at the Subcommittee's mark-up session of May 6, 1993, Mr. Markey explained that the proposed preemption of State entry and rate regulation would not apply to any State regulatory requirement concerning a mandatory wholesale/retail margin: "the intent here is not to disturb the principle that carriers can be obligated to offer services to resellers at wholesale prices. For the vast majority of States, their ability to regulate in this area would be preserved." Statement of Representative Edward J. Markey, Mark-Up of Budget Reconciliation, Subtitle C, Licensing Improvement Act of 1993, annexed hereto as Attachment 16.

Senator Daniel Inouye (D-HI), Chairman of the Senate Commerce Committee's Subcommittee on Communications and the principal sponsor of companion Senate legislation (S.335), echoed Mr. Markey's assessment that preemption of State entry and rate regulation would not affect a State's ability to mandate

wholesale/retail margin is nothing more than an effort to ensure that the FCC-licensed cellular carriers are not paid monies for costs they do not incur. As a general proposition, cellular rates need to enable the cellular carriers to earn a reasonable return on money spent for customer acquisition, capital investment, general and administrative ("G&A") costs, billing and collections, and bad debt. The cellular carrier does not incur all of those same expenses for the resellers' subscribers. Instead, as explained in the Nelson and Muir declarations, the reseller pays for those same customer acquisition, billing and collection, G&A, and bad debt expenses that might otherwise be absorbed by the cellular carrier.

As Nelson and Muir further explain, cellular resellers in California do not have any objection to rate decreases by the carriers as long as the wholesale margin is maintained. Otherwise, the cellular carrier could use its market position to undersell retail prices to subscribers which would then be cross-subsidized by wholesale rates charged to the independent resellers. The CPUC has recognized that prospect -- which, as explained above, as well as in the Muir and Nelson declarations -- can materialize. The CPUC's proscriptions against bundling are designed to make sure that such bundling packages do not provide the carriers with a vehicle to evade the wholesale margin requirements.

The resellers' and CPUC's concerns are reinforced by available data concerning the financial performance of the

carriers' respective wholesale and retail divisions. The data show that virtually all of the carriers' wholesale operations are incredibly profitable while many of their retail operations operate at a loss or with marginal profits. See King Declaration, Attachment 2. The vast differences in financial performance confirm that the carriers are using wholesale rates to recover virtually all of their costs, leaving them free to cut retail rates below those of any competitor. Despite that financial cushion, the resellers have -- contrary to the carriers' arguments -- offered a variety of innovative pricing plans which usually include prices below those of the FCC-licensed cellular carriers. See Nelson and Muir Declarations, Attachments 13 and 14. In short, the resellers are attempting to provide the very kind of competitive spur which the CPUC envisioned through its various regulations.

Similarly, the CPUC's authorization of interconnection of reseller switches is nothing more than an effort to enable resellers to spend millions of dollars for their own switches in an effort to improve service and lower prices to the end users. The issues surrounding reseller interconnection to the carriers' MTSOs are being pursued in other FCC proceedings and need not be explored at length in the instant matter. It is sufficient to note for present purposes that, regardless of how the Commission may ultimately decide any interconnection issues in the future,

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 explanation:

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 the decisions cited above (as well as 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

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 forbear 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 forbear 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

**ATTACHMENT 4**

Los Angeles SMSA Limited Partnership 1992 Annual Report  
(Excerpts)

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I, Merri Jo Outland, hereby certify that on this 21st day of October, 1994, copies of the foregoing Erratum were mailed postage prepaid to the following:

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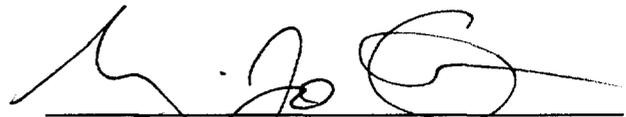
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