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October 28, 1994

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

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RE: PR Docket No. 94-105; Petition of the People of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority Over Intrastate Cellular Service Rates

Dear Mr. Caton:

On Friday, October 28, 1994, Megan Pierson, David Gross and I, on behalf of AirTouch Communications, met with William Kennard, General Counsel, and Susan Steiman and Lawrence Schaffner of the Administrative Law Division of the Office of the General Counsel. We discussed the information in the attached material. Please associate this material with the above-referenced proceeding.

Two copies of this notice were submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me at 202-293-4960 should you have any questions or require additional information concerning this matter.

Sincerely,

Kathleen Q. Abernathy

Attachment

cc: William Kennard
Lawrence Schaffner
Susan Steiman

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List A B C D E

Historical Cellular Regulation

- In 1983, the CPUC decided that cellular carriers required a CPCN to operate in California.
- As required under California Code all utility rates must be approved by the Commission, which must ensure that they are just and reasonable.
- The first cellular rates were established for AirTouch's Los Angeles system (LASMSALP), based on initial projections of capital requirements and other expenses, along with subscribership and usage.
  - Explicit cost-based-pricing was not contemplated.
  - The CPUC required LASMSALP to offer wholesale rates to resellers with a prescribed margin discount from its retail rates.
  - Other system CPCN's copied the formula established for LASMSALP.
- Based on carrier competition and discretionary service , new rate plans and current rate changes were permitted to use a streamlined Advice Letter process.
  - There is no reliable criteria for rate changes, nor for the introduction of new plans: what is approved for one carrier may not be "just and reasonable" for the competitor in the same market.
- In 1993, the CPUC created "rate bands" by permitting carriers to reduce rates, and subsequently raise them back up to the previous level on one day's notice. However, reseller margins must tr retail price movement, and 60 days' notice provided when rates are raised.

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The CPUC Petition

- The CPUC's petition for continued regulatory authority does not satisfy its required burden of proof
  - The CPUC failed to distinguish circumstances in California from those elsewhere in the nation, which both the Congress and this Commission have declared to not require cellular rate regulation
  - The CPUC did not describe in detail its plans for regulation, as required
  - The CPUC outlined many problems with cellular during their active ten year regulatory tenure, but offers no specific plans to rectify their past mistakes
  - The CPUC does plan to implement discriminatory dominant/non-dominant regulation contrary to the "regulatory parity" precept of the 1993 Budget Reconciliation Act
  - The CPUC has changed its regulation after June 1993, which is not permitted by statute
  - The CPUC has authorized "unbundling" which is preempted

Confidential Information Filed by the CPUC

- Confidential information submitted by each carrier in CPUC Investigation 93-12-007.
  - Market share data
  - Capacity utilization figures
  - Financial data per subscriber unit (revenues, expenses and plant operating income)
  - Subscriber growth percentages
  - Number of customers per rate plan
- Commercially sensitive information the CPUC obtained from the California Attorney General.

Potential Harm Resulting from Disclosure of Information

The CPUC has acknowledged the commercially sensitive nature of the information:

- The CPUC recognized that its Petition:

  - "contain[s] proprietary data and materials concerning commercially sensitive information not customarily released to the public which, if disclosed, could compromise the position of a cellular carrier relative to other carriers in offering service in various markets in California." CPUC's Request for Proprietary Treatment dated 8/8/94

- The Administrative Law Judge in the CPUC proceeding found that competitive harm would result from public dissemination of the information:

  - "Disclosure of subscriber data could enable a competitor to possibly structure an advertising sales message claiming superiority over competing carrier based on total subscribers or number of subscribers by a specific customer segment."

  - "Disclosure of the carriers' capacity utilization data could likewise allow competitors to glean sensitive data as to the configuration and use of the carriers' system as a basis to make planning decisions rather than basing decisions on each competitor's independent analysis of the marketplace." ALJ Ruling dated 7/19/94

A Protective Order Cannot Adequately Protect the Parties While Allowing Public Comment

- The cellular carriers cannot completely assess whether any protective order could adequately protect their interests because they do not know the exact contents of the competitively sensitive data to be released to competitors.

- The Draft Protective Order would establish two records in this proceeding, a confidential and complete record for some parties and an incomplete record for all others.

- Release of the information to competitors even subject to a protective order, is contrary to the FCC's policy that disclosure of this kind of confidential information is generally anticompetitive.

- No protective order can protect against inadvertent use of the information in other commercial contexts.

- The FCC risks broad dissemination of sensitive data since any member of the public can request access.

- Reliance on the confidential data would require the FCC to weigh the competitive significance of each document as to each carrier. The inevitable disputes arising from this undertaking will preclude resolution in a reasonable time frame.