



93-252 942184

November 28, 1994

RECEIVED

DEC 2 1994

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

Mr. Reed Hundt
Chairman
Federal Communications Commission **EX PARTE OR LATE FILED**
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

HAND DELIVERED

Dear Mr. Chairman:

We noted with concern certain remarks made by you on November 15, 1994 before the National Association of Regulatory Utility Commissioners regarding the level of competition in the commercial mobile radio services industry. In discussing petitions filed by states seeking authority to continue regulating CMRS rates, you stated:

"Even though the FCC, after an extensive investigation, found the CMRS market to be competitive, and even though available data indicate that the price of cellular service is continuing to fall from Florida to California to Hawaii, as the idea of PCS competition draws closer to reality, still a handful of states are seeking the right to continue to regulate rates for CMRS operating within their jurisdiction. I am concerned about this development because I believe continued rate regulation in a demonstrably competitive market disserves the interests of consumers."

We do not disagree with your assessment of the impact of rate regulation where such regulation may be unnecessary; however, we do wish to take issue with your statement that "the FCC, after an extensive investigation, found the CMRS market to be competitive." While it is true that the Commission, in the Second Report and Order (Docket No. 93-252), determined that almost all CMRS industries are competitive, the Commission made one notable exception to this finding: cellular service. Frankly, it is the lack of competition in cellular service, not in other elements of CMRS, which prompted states representing nearly 30 percent of the Nation's population to file their petitions and, it is hoped, continue to offer a measure of consumer protection against the market power wielded by cellular carriers.

With all due respect, we also wish to caution you against placing too much emphasis on price movements as an indicator of competition in cellular service. Evidence suggests that, because of the multitude of rate plans and conditions, ostensible rate reductions easily can be offset by such means as increasing the number of "peak hours" or imposing rate hikes on ancillary services and certain user groups. In short, specific price reductions may give the impression that rates generally are falling while, in reality, overall rate levels are remaining constant or may even be

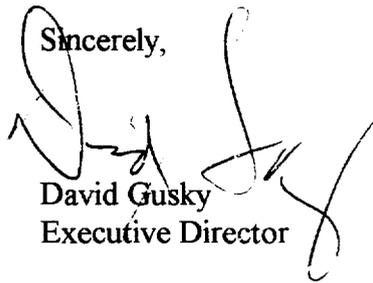
No. of Copies rec'd _____ /
List A B C D E

increasing. (See Memorandum of the United States in Response to the Bell Companies' Motions for Generic Wireless Waivers, U.S. Department of Justice, July 25, 1994, Exhibit 5.)

More importantly, *price* is only half of the equation in determining whether markets are competitive. The other half of the equation is *cost*, and until there is an organized effort to assemble and review actual cost data supplied by the carriers, and to determine the relationship between cellular service prices and costs, the Commission can make little more than an informed guess as to the degree of competition in the cellular marketplace both today and in the future. With this in mind, we strongly encourage the Commission to initiate as soon as possible the proceeding to establish monitoring provisions applicable to cellular licensees (Second Report and Order, Docket No. 93-252, para. 285[5]). We also strongly recommend, as part of this proceeding, that the Commission collect and review carrier cost data in sufficient detail to assess the extent to which service prices bear a relationship to the cost of providing the service -- again, the most meaningful measure of the level of competition in any particular industry.

We appreciate your attention to this letter.

Sincerely,



David Gusky
Executive Director

cc: Commissioner Quello
Commissioner Barrett
Commissioner Ness
Commissioner Chong
Regina Keeney
Ralph Haller
Gerald Vaughan
John Cimko
Michael Wack
Regina Harrison
Judy Argentieri
Nancy Boocker
Michael Katz
Jim Olsen
William Caton