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OFFICE OF SECRETARY

Building The Wireless Future™

CTIA

Cellular Telecommunications Industry Association
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036
202-785-0081 Telephone
202-785-0721 Fax

March 10, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RE: Ex Parte Contact - PR Docket Nos. 94-105
Preemption of State Regulation of CMRS

Dear Mr. Caton:

On Friday, March 10, 1995, Ms. Kathleen Abernathy, Vice President Federal Regulatory of AirTouch Communications, and Mr. Michael F. Altschul, Vice President and General Counsel, Cellular Telecommunications Industry Association (CTIA), met with Ms. Regina Keeney, Chief, Wireless Telecommunications Bureau; Daniel Pythyon, Senior Legal Advisor, Wireless Telecommunications Bureau; John Cimko, Chief, Policy Division; Michael Wack, Deputy Chief, Policy Division; and Doron Fertig, Competition Division, Office of General Counsel, to discuss the above-captioned proceeding regarding state regulation of CMRS. The discussions concerned cellular service rates and the CPUC petition, and expressed the views outlined in the attached document.

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter and the attachment are being filed with your office.

If there are any questions in this regard, please contact the undersigned.

Sincerely,

Robert F. Roche

Attachment

No. of Copies rec'd 0+1
List A B C D E

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AirTouch Communications

Cellular Service Rates and CPUC Petition
PR File No. 94-105

March 9, 1995

CELLULAR RATES HAVE DECLINED IN CALIFORNIA AS THE CPUC HAS GRANTED LIMITED PRICING FLEXIBILITY

- The majority of AirTouch's customers in the major markets subscribe to discount plans affording significant savings over the basic plans. 86% of the customers in the Los Angeles market subscribe to discount plans.

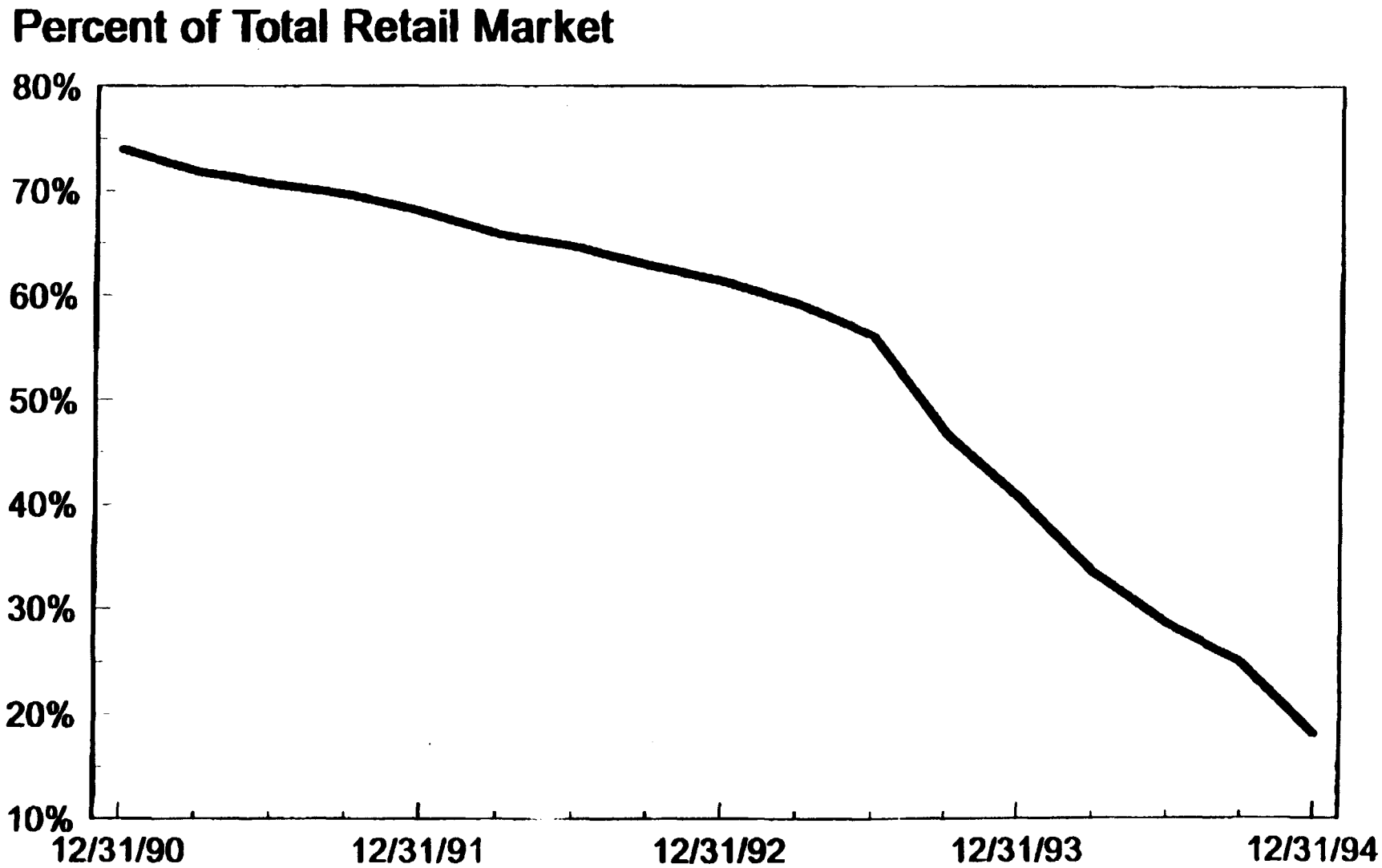
- Based on the most economic plan for the amount of usage, customers in Los Angeles benefitted from price declines ranging from 17% to 20% between 1990 and 1994. Those customers have experienced a 35% decline in rates since 1986.

- The discount plans, like those widely available in other states, provide savings based on usage levels so that customers can make the best choices available.

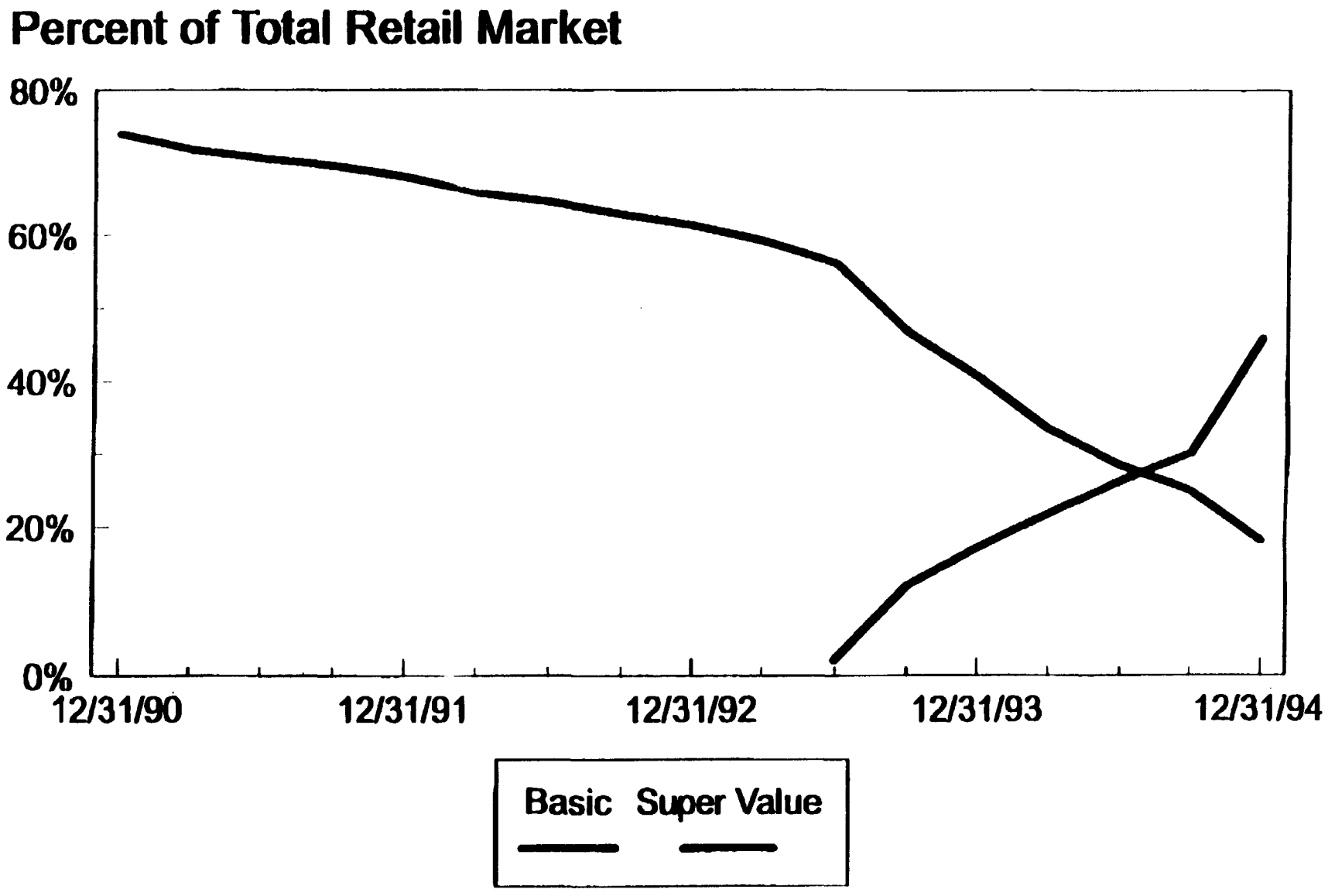
- The basic rates have not increased to offset the savings provided by the discount plans. Indeed, the CPUC concedes that the basic rate has declined 14% in real terms.

AirTouch Basic Plans

1990-1994



AirTouch Basic and Super Value Discount Plans
1990-1994

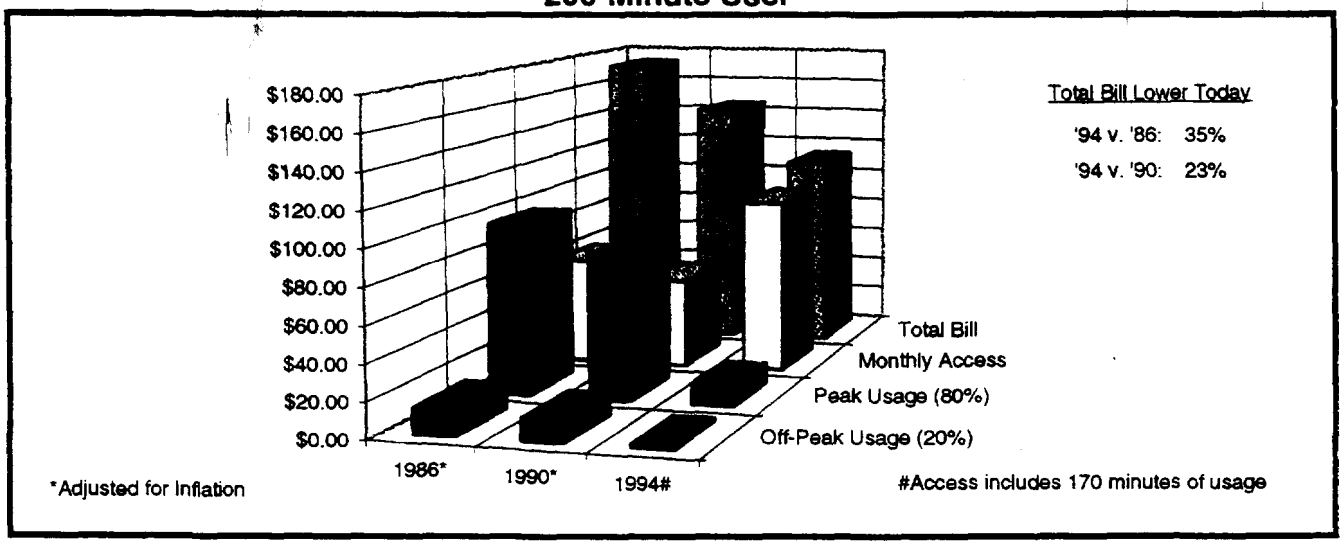


AIRTOUCH'S PRICE DECLINES AND CELLULAR SYSTEM EXPANSION IN LOS ANGELES SINCE THE INCEPTION OF SERVICE REFUTES THE CPUC'S CLAIMS

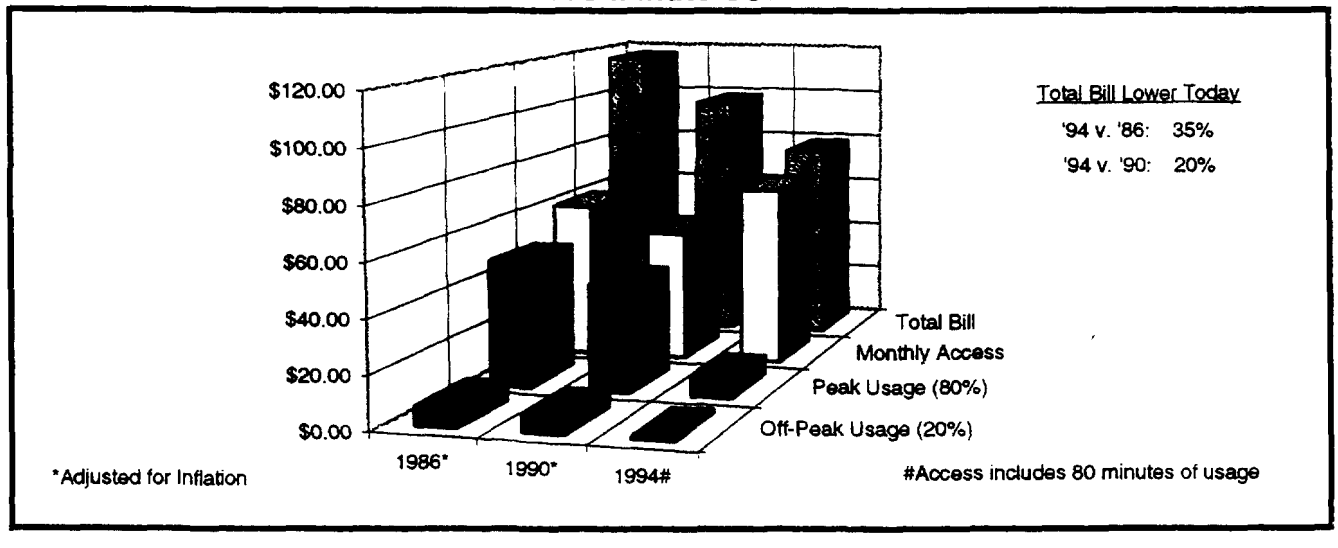
- Service prices have declined by 35% through discount plans.
- The number of total customers utilizing the basic plan has decreased from 90% to 14.4%.
- The number of pricing plans has increased from 2 to 23 to satisfy consumer demand.
- Subscribership has grown from 15,000 to over 600,000.
- Capital investment has increased from $10 million to $550 million. AirTouch does not pay a dividend so all profits are reinvested.
- The number of cell sites has increased from 13 to 415.
- Square miles covered has expanded from 6,235 to 9,074.
- Cell site capacity utilization exceeds 100% in congested areas.
- Operating expenses and plant expenses have declined by 3% and 6%, respectively, while average income per subscriber has declined by 47%.
- Changes in the market shares of the cellular carriers are consistent with a competitive market.

Cellular Retail Prices in California: AirTouch Cellular - Los Angeles

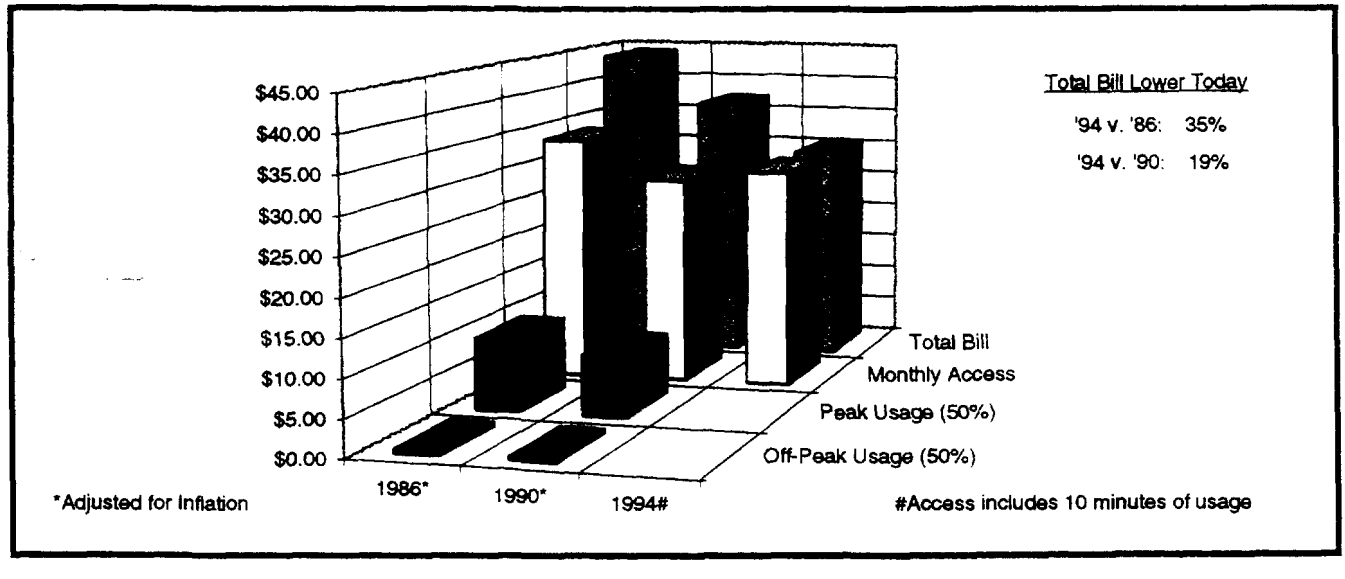
200-Minute User



100-Minute User



10-Minute User



Cellular Retail Prices in California: AirTouch Cellular: Los Angeles

Example: Los Angeles (AirTouch)	1986	1990	1994	Inflation* Adjusted 1986 Rate	Inflation* Adjusted 1990 Rate	% Reduction 86-94	% Reduction 90-94
200 Minute User							
Monthly Access	$45.00	$45.00	$99.99	$60.81	$51.14	-64.43%	-95.54%
Peak Usage (80%)	$72.00	$72.00	$10.80	$97.30	$81.82	88.90%	86.80%
Off-Peak Usage (20%)	$10.80	$10.80	$1.62	$14.59	$12.27	88.90%	86.80%
Total	$127.80	$127.80	$112.41	$172.70	$145.23	**34.91%**	**22.60%**
100 Minute User							
Monthly Access	$45.00	$45.00	$69.99	$60.81	$51.14	35.14%	-36.87%
Peak Usage (80%)	$36.00	$36.00	$7.20	$48.65	$40.91	35.14%	82.40%
Off-Peak Usage (20%)	$5.40	$5.40	$1.08	$7.30	$6.14	35.14%	82.40%
Total	$86.40	$86.40	$78.27	$116.76	$98.18	**35.14%**	**20.28%**
10 Minute User							
Monthly Access	$25.00	$25.00	$29.99	$33.78	$28.41	35.14%	-5.56%
Peak Usage (50%)	$7.20	$7.20	included	$9.73	$8.18	35.14%	
Off-Peak Usage (50%)	$0.40	$0.40	included	$0.54	$0.45	35.14%	
Total	$32.60	$32.60	$29.99	$44.05	$37.05	**35.14%**	**19.05%**

* U.S. CPI-U Index

REGULATION HAS INCREASED PRICES IN CALIFORNIA

- The CPUC claims that cellular rates are too high while ignoring that the CPUC was required by statute to ensure that rates were just and reasonable. The CPUC has never ordered cellular carriers to lower rates.

- All rate reductions have been initiated by the cellular carriers in response to market competition.

- State regulation of cellular service has led to higher prices than the free market. Consumers in regulated states are paying an average of 39% more per month than consumers in unregulated states.

- California consumers are paying an estimated $240 million more per year as a result of the CPUC's regulation.

- Since deregulation in Massachusetts, consumers have benefitted from price reductions up to 12%.

Average Cellular Prices in the Top 10 MSAs: 1994

160 minutes of use (80% peak)

MSA No.	MSA	Monthly Price	Regulated
1	New York	110.77	Yes
2	Los Angeles	99.99	Yes
3	Chicago	58.82	
4	Philadelphia	80.98	
5	Detroit	66.76	
6	Dallas	59.78	
7	Boston	82.16	Yes
8	Washington	76.89	
9	San Francisco	99.47	Yes
10	Houston	80.33	

Every regulated price is above every non-regulated price.

Table 4

Average Cellular Price in Non-Regulated MSAs: 1985-1994

MSA	1985	1994
CHICAGO	$70.10	$58.82
PHILADELPHIA	$97.60	$80.98
DETROIT	$57.22	$66.76
DALLAS	$90.68	$59.78
WASHINGTON DC	$78.94	$76.89
HOUSTON	$91.32	$80.33
MIAMI	$114.00	$94.76
ATLANTA	$110.80	$86.73
MINNEAPOLIS	$102.83	$75.98
ST. LOUIS	$80.74	$67.97
BALTIMORE	$77.74	$76.89
PHOENIX	$108.27	$79.52
SEATTLE	$108.27	$83.06
PITTSBURGH	$103.14	$69.87
TAMPA	$91.32	$87.95
DENVER	$108.27	$73.74
CLEVELAND	$88.74	$79.11
KANSAS CITY	$76.16	$75.37
CINCINNATI	$74.40	$65.67
PORTLAND	$89.49	$66.36
MILWAUKEE	$71.59	$57.04
SAN ANTONIO	$85.68	$59.97
Index Average	**1.00**	**0.82**
CPI-U Adjusted	**1.00**	**0.60**
Population Weighted Avg.	**1.00**	**0.83**
CPI-U Adjusted	**1.00**	**0.60**

Average Cellular Price in Regulated MSAs: 1985-1994

MSA	1985	1994
NEW YORK	$104.00	$110.77
LOS ANGELES	$111.24	$99.99
BOSTON	$84.02	$82.16
SAN FRANCISCO	$109.00	$99.47
SAN DIEGO	$93.88	$83.85
SAN JOSE	$109.00	$99.47
SACRAMENTO	$56.80	$61.36
Index Average	**1.00**	**0.95**
CPI-U Adjusted	**1.00**	**0.69**
Weighted Avg.	**1.00**	**0.97**
CPI-U Adjusted	**1.00**	**0.70**

1994 Price Regression for Top 30 Cellular Markets
Left hand Side Variable: Log of Price <1

Variable	Estimate	Standard Error
Intercept	0.539	2.052
Log of Income <2	0.203	0.236
Log of Population <3	-0.029	0.052
Log of Commute Time <4	0.624	0.266
Regulation	0.150	0.052

Number of Observations	58
Standard Error of Regression	0.148
R Squared	0.396

Notes:
1> Minimum monthly bill is based on 128 minutes of peak calling and 32 minutes of off-peak calling.
2> Log of per capita personal income. Source: Survey of Current Business, April 1992.
3> Log of population. Source: 1992 Statistical Abstract.
4> Mean commute time from home to work. Source: 1990 U.S. Census, Tape File 3c.

Table 2

1989-93 Price Regression for Top 30 Cellular Markets <1
Left hand Side Variable: Log of Price at 160 MOU <2

Variable	OLS	Instrumental Variables <3
Intercept	4.153 (0.105)	4.129 (0.107)
Log of Commute Time <4	0.207 (0.101)	0.193 (0.103)
Log of Construction Cost <5	1.461 (0.457)	1.255 (0.468)
Interaction between Commute Time and Construction Cost	1.669 (0.477)	1.533 (0.485)
Regulation	0.171 (0.029)	0.234 (0.036)
Year 89	0.167 (0.034)	0.163 (0.035)
Year 90	0.120 (0.034)	0.115 (0.034)
Year 91	0.067 (0.033)	0.064 (0.033)
Year 92	0.034 (0.032)	0.033 (0.033)
Number of Observations	198	198
Standard Error of Regression	0.148	0.150
R Squared	0.403	---

Notes:
1> Standard errors in parentheses.
2> Minimum monthly bill is based on 128 minutes of peak calling and 32 minutes of off-peak calling.
3> Instruments include an indicator variable for state regulation of paging, maximum marginal state income tax rates, and state taxes as a percentage of personal income.
4> Mean commute time from home to work. Source: 1990 U.S. Census, Tape File 3c.
5> Source: "Boeckh Building Cost Index Numbers".

Minimum Cellular Prices in Boston and Hartford

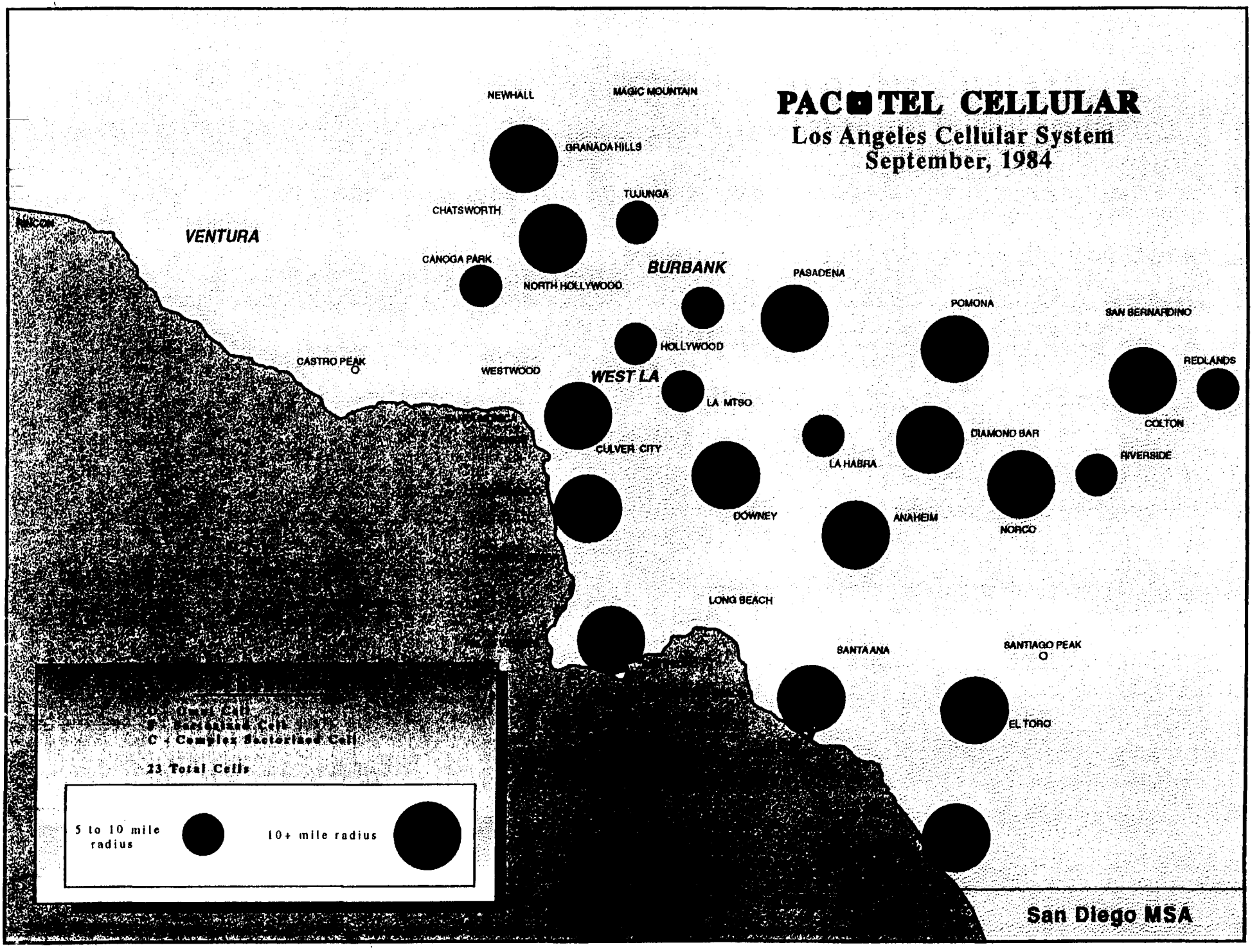
January and November 1994 <1

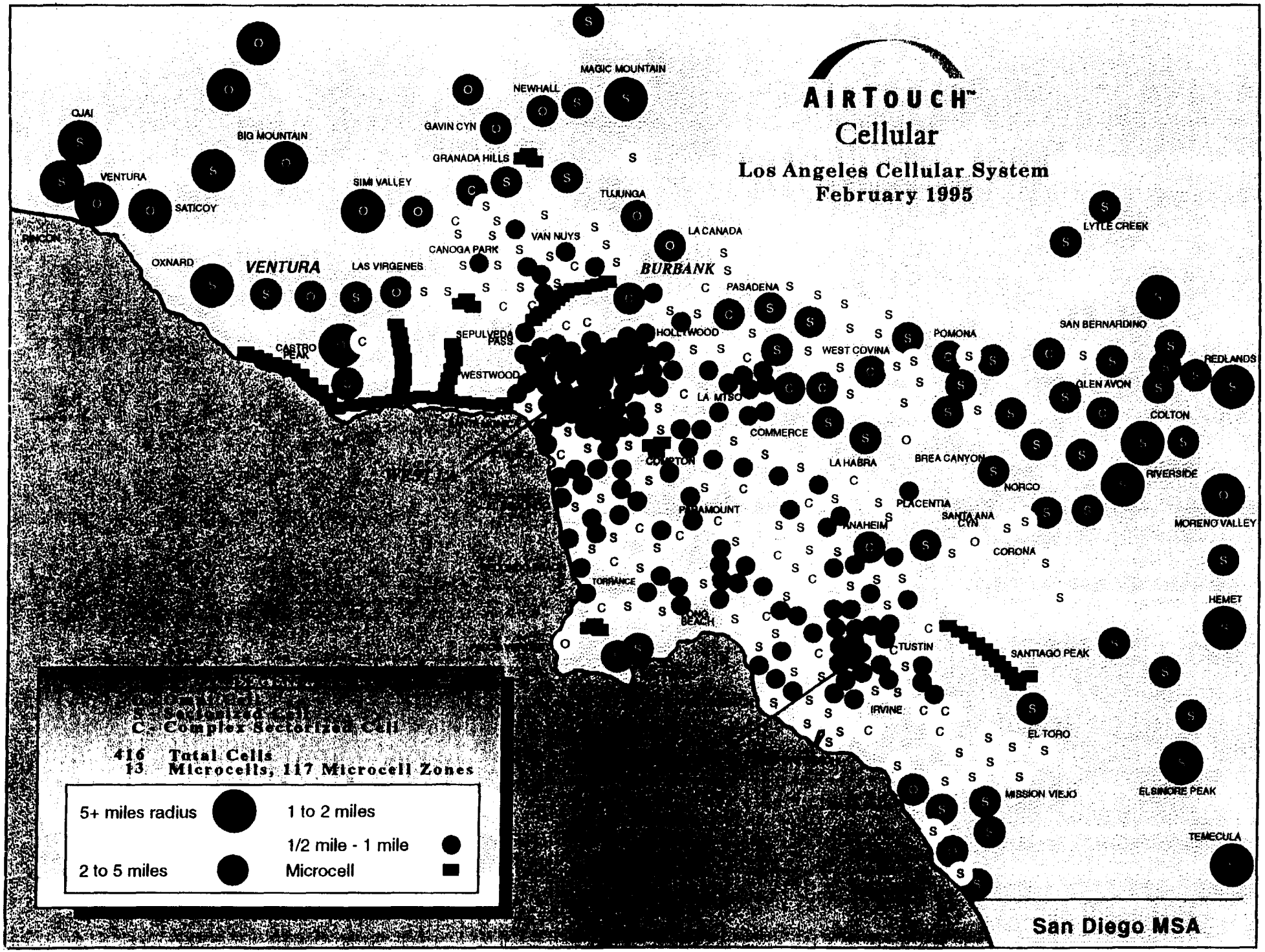
	January 1994	November 1994	Percent Change
	Regulated	Unregulated	
Boston	$79.91	$69.99	-12.41%
	Regulated	Regulated	
Hartford	$93.31	$90.75	-2.74%

1> Minimum monthly bill is based on 128 minutes of peak calling and 32 minutes of off-peak calling.

CELLULAR EARNINGS ARE NOT A RELEVANT INDICATOR OF COMPETITION

- The accounting rates of return relied upon by the CPUC fail to consider the depreciating network infrastructure, the value of spectrum and marketing costs.
- The CPUC's comparison of returns to less risky businesses is misplaced.
- The CPUC's simplistic capacity utilization analysis ignores the fact that cellular is a mobile service with unpredictable usage patterns. The data reflect sites operating in excess of 100% capacity.
- The CPUC improperly disregards the scarcity spectrum value of the FCC License.
- The CPUC erroneously assumes that high market valuations result from entry barriers, rather than investors' expectations of growth.
- The CPUC ignores the fact that cellular carriers reinvest earnings into technological innovation and system expansion; AirTouch does not pay dividends.
- The CPUC has failed to demonstrate that rates of return in California are different than in other states.


PACTEL CELLULAR
Los Angeles Cellular System
September, 1984
NEWHALL
MAGIC MOUNTAIN
GRANADA HILLS
TUJUNGA
CHATSWORTH
VENTURA
CANOGA PARK
NORTH HOLLYWOOD
BURBANK
PASADENA
POMONA
SAN BERNARDINO
HOLLYWOOD
CASTRO PEAK
WESTWOOD
WEST LA
REDLANDS
LA MTSO
COLTON
DIAMOND BAR
CULVER CITY
LA HABRA
RIVERSIDE
DOWNEY
ANAHEIM
NORCO
LONG BEACH
SANTA ANA
SANTIAGO PEAK
EL TORO
C = Complex Sectorized Cell
23 Total Cells
5 to 10 mile radius
10+ mile radius
San Diego MSA


AIRTOUCH™
Cellular
Los Angeles Cellular System
February 1995
MAGIC MOUNTAIN
NEWHALL
GAVIN CYN
GRANADA HILLS
OJAI
BIG MOUNTAIN
VENTURA
SATICOY
SIMI VALLEY
TUJUNGA
LA CANADA
VAN NUYS
CANOGA PARK
OXNARD
VENTURA
LAS VIRGENES
BURBANK
PASADENA
LYTLE CREEK
SAN BERNARDINO
CASTRO PEAK
SEPULVEDA PASS
HOLLYWOOD
POMONA
WEST COVINA
REDLANDS
WESTWOOD
GLEN AVON
LA MIRADA
COLTON
COMMERCE
COMPTON
LA HABRA
BREA CANYON
RIVERSIDE
NORCO
PLACENTIA
PARAMOUNT
ANAHEIM
SANTA ANA CYN
MORENO VALLEY
CORONA
TORRANCE
HEMET
LONG BEACH
TUSTIN
SANTIAGO PEAK
IRVINE
EL TORO
MISSION VIEJO
ELSINORE PEAK
TEMECULA
San Diego MSA
S - Sectorized Cell
C - Complex Sectorized Cell
416 Total Cells
13 Microcells, 117 Microcell Zones
5+ miles radius
1 to 2 miles
1/2 mile - 1 mile
2 to 5 miles
Microcell

THE CPUC'S MARKET SHARE ANALYSIS IS FLAWED

- The CPUC relies upon static duopoly market share data to predict competition in the wireless market.
- The CPUC's HHI calculation is predicated on projections of share, rather than whether the new competitors will have sufficient capacity to create competition.
- The CPUC's calculation fails to consider that it is competition at the margin which sets prices and that 95% of the customer base remains untapped.
- The CPUC ignores the fact that the California market is <u>less</u> concentrated than any other state. Nextel has entered the market; Cox PCS license has been issued, and Pacific Telesis has retained an engineering firm to construct its PCS system.
- The CPUC underestimates the competition by PCS providers. In the first year of PCS operation in the UK, cellular prices dropped 20-33% and 25% of all new activations were attributable to PCS.
- The CPUC has not established a connection between the resellers' market share and lower prices and chooses to ignore more efficient retail distribution channels.
- The CPUC's claim of "stable" market shares is not supported by the confidential data. The market shares are consistent with a competitive environment.

San Francisco Chronicle
NORTHERN CALIFORNIA'S LARGEST NEWSPAPER
WEDNESDAY, DECEMBER 7, 1994 415-777-1111 50 CENTS

How State Cellular Rule Has Failed

By Peter Sinton
Chronicle Senior Writer

California is the only state where consumers have the option of buying cellular phones separately from cellular service.

In other states, phones and services are typically bundled and in many cases, consumers can get phones for little or nothing if they sign up for a long-term service contract.

In California, consumers may choose to buy hardware and service at the same time, but the equipment vendor is prohibited from discounting the phone more than 10 percent or $20 below the wholesale price, whichever is higher.

The unique California regulation was supposed to spur competition and reduce rates for both phones and phone service. The state wanted to prevent service providers from using their near-monopoly powers and profits to subsidize phones and undercut smaller phone retailers.

But it hasn't worked out that way.

Ben Kahrnoff, general manager in California for GTE Mobilnet, one of the Bay Area's two cellular service providers, estimates that local rates are about 10 percent to 15 percent higher than in most of the 50 other markets served by his company.

"Except for an occasional promotional pricing plan for new customers, since 1984 basic monthly access and usage charges in California remain virtually unchanged and are among the highest in the nation," said Assemblywoman Gwen Moore, D-Los Angeles.

Equipment prices are higher, too. The most popular Motorola flip-phone model that sells for $199 in the Bay Area might cost nothing in Reno or Chicago so long as customers sign a one-year local service contract.

Doug Dade, a supervisor with the California Public Utilities Commission, said the idea behind the state's "anti-bundling" policy was to make cellular service companies compete for customers by offering lower rates, not cheaper phones.

The idea was to make cellular service companies compete for customers by offering lower rates

But the strategy hasn't worked in most markets for two main reasons.

First, cellular service companies pay hefty commissions — $100 or more per customer — to equipment dealers who sign up consumers for their service. The PUC chose not to regulate such commissions.

In addition, the government has done a poor job in policing its regulations, especially in Southern California. Dade said some stores have required consumers to buy service before they buy phones and a few even hand out used phones to those who sign up for new service. Both practices are against the law in California, but regulators have a tough time because their powers extend to service companies, but not retailers.

Some observers including Moore, chair of the Assembly Utilities and Commerce Committee, believe the problem is not state regulation but the fact that the Federal Communications Commission limits service competition by allowing no more than two cellular carriers in each market.

The California PUC is re-examining the way it oversees the multibillion-dollar cellular phone business. Some industry sources expect the PUC will alter its anti-bundling stance in the next few weeks, which could lead to lower equipment prices.

Bill Murphy, owner of the On Line cellular phone store in San Francisco, wouldn't be surprised to see the packaging of equipment and service contracts within a year. "It could make life difficult for any small dealer," he said.

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First, cellular service companies pay hefty commissions — $100 or more per customer — to equipment dealers who sign up consumers for their service. The PUC chose not to regulate such commissions.

In addition, the government has done a poor job in policing its regulations, especially in Southern California. Dade said some stores have required consumers to buy service before they buy phones and a few even hand out used phones to those who sign up for new service. Both practices are against the law in California, but regulators have a tough time because their powers extend to service companies, but not retailers.

Some observers including Moore, chair of the Assembly Utilities and Commerce Committee, believe the problem is not state regulation but the fact that the Federal Communications Commission limits service competition by allowing no more than two cellular carriers in each market.

The California PUC is re-examining the way it oversees the multibillion-dollar cellular phone business. Some industry sources expect the PUC will alter its anti-bundling stance in the next few weeks, which could lead to lower equipment prices.

Bill Murphy, owner of the On Line cellular phone store in San Francisco, wouldn't be surprised to see the packaging of equipment and service contracts within a year. "It could make life difficult for any small dealer," he said.