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FEDERAL COMMUNICATIONS COMMISSION
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Building The Wireless Future™

CTIA

Cellular
Telecommunications
Industry Association
1250 Connecticut
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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 No. 94-105
Preemption of State Regulation of CMRS

Dear Mr. Caton:

On Friday, March 10, 1995, Mr. Randall S. Coleman, Vice President for Regulatory Policy and Law, representing the Cellular Telecommunications Industry Association (CTIA), provided copies of the attached letter, California Issues Paper No. 1, and related press release to the following Commission personnel.

Chairman Reed E. Hundt	Commissioner Andrew C. Barrett
Commissioner James H. Quello	Commissioner Susan Ness
Mr. Blair Levin	Mr. William Kennard
Ms. Regina Keeney	Mr. John Cimko
Mr. Lawrence Atlas	Mr. Rudy Baca
Ms. Ruth Milkman	Dr. Robert Pepper
Mr. David Siddall	Ms. Lisa Smith
Mr. Michael Wack	Mr. Daniel Pythyon
Mr. Michael Katz	Mr. Christopher Wright
Mr. Donald Gips	

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

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

Sincerely,

Robert F. Roche

Attachments

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

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Randall S. Coleman
Vice President for Regulatory Policy and Law

March 10, 1995

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: PR Docket No. 94-105 - California PUC
Petition For Exemption from Preemption

Dear Chairman Hundt:

In the days ahead, the FCC will be rendering its decision on the California and other state Public Utility Commissions' petitions to maintain or exercise regulatory jurisdiction over cellular and other wireless services.

A recent poll has found that consumers are aware of the superiority of competition over regulation of competitive markets. Indeed, consumers in California clearly recognize that the state regulatory commission has harmed their interests by maintaining higher prices and restricting their competitive options. In this awareness, consumers are clearly in touch with Congressional intent in the 1993 Omnibus Budget Reconciliation Act, which based preemption of state regulation of the competitive wireless industry on the superiority of competitive forces. The exception which was created was a narrow one, permitting state PUCs to appeal to the FCC to continue regulation, based upon the submission of proof that competitive markets were not serving consumers' interests, that there was in fact market failure.

The California PUC has failed to meet its burden of proof. Rather, as economic analysis indicates, competitive markets do serve consumer interests by producing lower rates, higher output, and more innovation. The one unique factor in California which hampers competition is the California PUC itself. This is demonstrated by the evidence before the FCC in the California proceeding, including the affidavit by Dr. Hausman submitted by AirTouch. Consumers, legislators and expert economists recognize that competition is superior to regulation. Regulation is a mechanism to be applied in the last resort, in the event of market failure. Such market failure does not exist in the competitive wireless industry, either nationally or in individual states such as California.

Indeed, competitive forces are at work in the state of California, albeit hampered by the California PUC's restrictive rules.

Attached are an issues paper and press release summarizing the findings of the recent poll of registered voters in California and the economic analysis before the FCC in the California proceeding. As that paper concludes, the California PUC has failed in four critical respects.

- The California PUC has failed consumers by maintaining higher prices and retarding their decline.
- The California PUC has failed consumers by restricting output.
- The California PUC has failed consumers by impeding competition and restricting choice.
- Most importantly from the FCC's standpoint, the California PUC has failed to meet the statutory and regulatory test established for granting exemption from preemption of state regulation.

Given these critical failures, the California PUC's rules must be preempted in accord with the Congressional intent and consumer interest.

If you have any questions in this regard, please contact the undersigned.

Very truly yours,

Randy Coleman

Randall S. Coleman

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Randall S. Coleman
Vice President for
Regulatory Policy and Law

March 10, 1995

Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: PR Docket No. 94-105 - California PUC
Petition For Exemption from Preemption

Dear Commissioner Barrett:

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Randall S. Coleman
Vice President for
Regulatory Policy and Law

March 10, 1995

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: PR Docket No. 94-105 - California PUC
Petition For Exemption from Preemption

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Randall S. Coleman
Vice President for
Regulatory Policy and Law

March 10, 1995

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: PR Docket No. 94-105 - California PUC
Petition For Exemption from Preemption

Dear Commissioner Ness:

In the days ahead, the FCC will be rendering its decision on the California and other state Public Utility Commissions' petitions to maintain or exercise regulatory jurisdiction over cellular and other wireless services.

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Randall S. Coleman
Vice President for
Regulatory Policy and Law

March 10, 1995

Ms. Regina Keeney
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: PR Docket No. 94-105 - California PUC
Petition For Exemption from Preemption

Dear Ms. ~~Keeney~~ Gina:

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Very truly yours,

Randy

Randall S. Coleman

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California Issues Paper No. 1

Building The Wireless Future™

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Californians Give a Wake-Up Call to State Regulators

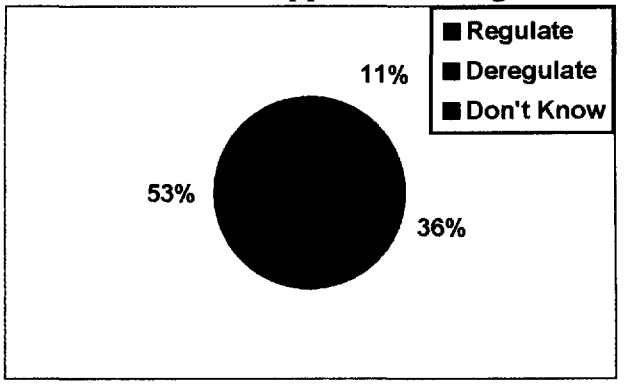
--Cellular Users Say "No" to State Cellular Regulation

March 9, 1994

Californians Give a Wake-Up Call to State Regulators -- Cellular Users Say "No" to State Cellular Regulation

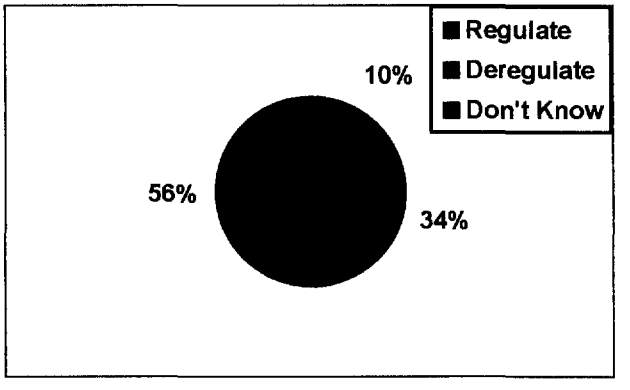
A clear majority of Californians oppose the California PUC's request to the FCC to be permitted to continue regulating cellular phone companies, according to a new statewide poll by Public Opinion Strategies.[1] **An even larger margin of California's cellular subscribers -- who know how they benefit from wireless communications -- oppose the state regulators' efforts to regulate their service.**

Most Californians Oppose State Regulation



Just as revealing, **62 percent of Californians say the state should not regulate such new high technology industries as mobile communications**, preferring to rely on competition instead of regulation to ensure customer benefits. **Nearly two-thirds of Californians trust competition to do more for them than regulation** in delivering products and services.

More Cellular Users Oppose State Regulation



Users of cellular phone service feel more strongly that regulation is not necessary to their getting affordable and desirable service. Cellular phone users have more reason to know that regulation hurts them by limiting their choices and raising their rates.

What is at Stake in California

In 1993, Congress recognized that state regulation of the competitive wireless industry harms consumers by substituting competition among lawyers before regulatory agencies for marketplace competition. As a result, Congress amended the Communications Act to preempt rate regulation by states. Because at that time 21 states had some cellular regulatory authority in place,[2] Congress created a mechanism under which states could apply to the FCC for permission to continue to regulate rates <u>if</u> they could provide evidence demonstrating customers really needed regulatory protection.

---

[1] Public Opinion Strategies completed a survey of 500 registered voters in the state of California on February 26-27, 1995. The survey has a margin of error of 4.38 percent in 95 out of 100 cases.

[2] *NARUC Report on the Status of Competition in Intrastate Telecommunications*, September 1, 1994, at Table 14 - Regulation of Cellular Communications Service.

California has applied to continue its regulations, even though it has the strictest regulations of all 50 states, and even though those regulations harm -- not help -- consumers. **As a result of its regulations, California has the highest cellular prices and the lowest cellular penetration of any state.**

State Regulation Forces Customers to Pay Higher Prices

Professor Jerry A. Hausman, MacDonald Professor of Economics, MIT, has found that **cellular prices are 15 percent higher in states which regulate** cellular than in states which do not regulate cellular service.[3] Economic analysis indicates that **in California, consumers pay as much as $240.5 million more per year because of regulation.**

Table 1: Average Cellular Prices in the Top 10 MSAs: January 1994
160 Minutes of Use (80% Peak)
(Ranked from Highest to Lowest)

MSA Name	Monthly Price	Regulated
New York	$110.77	YES
Los Angeles	$99.99	YES
San Francisco	$99.47	YES
Boston	$82.16	YES
Philadelphia	$80.98	NO
Houston	$80.33	NO
Washington, DC	$76.89	NO
Detroit	$66.76	NO
Dallas	$59.78	NO
Chicago	$58.82	NO

The fact that higher monthly service prices is the result of regulation is evident from Table 1. Every regulated price in Table 1 is greater than every unregulated price in Table 1. **Taking account of all other factors, economic analysis indicates that regulation is responsible for 15 percent higher rates across all user levels, from high to medium and low usage customers.** Even when rates do decline in regulated states, rates decline further and faster in states which do not regulate.

Decline in Rates in Unregulated State v. Regulated State

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

[3] Affidavit of Jerry A. Hausman, September 19, 1994.

State Regulation Lowers Subscribership and Discourages Growth

Professor Hausman has also found that **subscribership to cellular is higher in unregulated states than in regulated states**. By analyzing changes between 1989 and 1993, Professor Hausman has also found that **subscribership grew more in unregulated states than in regulated states**. Subscribership grew by an average of 32.6 percent in unregulated states, compared with subscriber growth of 28.2 percent in regulated states. Both higher subscribership and higher growth rates in unregulated states are consistent with the lower prices and the greater decrease in prices since 1989 in unregulated states. Indeed, economic analysis indicates the main reason for lower penetration in regulated states is simple consumer response to the higher prices produced by regulation. Thus, regulation leads to both higher prices and lower penetration.

The California Regulators Don't Meet Their Burden

In 1993, Congress elected competition over regulation, but created an exception which permits states to apply for permission to continue to regulate. The state must demonstrate that such regulation is necessary to protect the public interest -- and that the marketplace fails to protect consumers from unjust and unreasonable rates or practices. **California's regulators failed to meet the statutory and regulatory test**.

Instead, California's regulators offered a mishmash of unsupported assertions and a superficial analysis which ignored the fact that the only conditions unique to California are the PUC's own misguided regulations. The PUC itself is responsible for raising rates, impeding competition, and denying consumers the benefits of competition available in deregulated states.

So far, California's regulators are zero for four. The California PUC's rules raise rates, suppress demand, don't deliver what Californians want, and the California PUC doesn't meet the burden of proof established by law. The bottom line is: the California PUC's regulations must be preempted to fulfill the law, and meet consumers' needs.

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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For Immediate Release
March 10, 1995

Poll: Majority Of Californians Oppose State Regulation Of Cellular Phones

Washington D.C. -- A majority of Californians questioned in a new statewide poll say they disapprove of their state government's effort to continue regulating cellular phone companies in the face of federal legislation striking down such regulation. Fifty-three percent of those questioned opposed California's effort, 36 percent approved, and the rest did not reply or had no opinion.

"Californians generally oppose regulating competitive industries such as cellular telephones and wireless communications," said Glen Bolger, partner in Public Opinion Strategies, an Alexandria, Virginia, polling firm, which conducted the survey.

Cellular subscribers were even stronger in their disapproval of regulation. By a 56 to 34 percent margin, California cellular users disapprove of their state's effort to retain regulation.

In 1993, Congress passed a law preempting state regulation of wireless services. The law created an exception process that allows states which had previously regulated cellular -- including California -- to apply for permission from the Federal Communications Commission to continue to regulate, if they can demonstrate that such regulation is necessary to protect the public interest. The FCC will reportedly decide in the next few weeks whether to grant California that permission.

"This poll demonstrates that a majority of Californians have a clear, commonsense view of the value of wireless communications," said Robert Roche, Research Director of the Cellular Telecommunications Industry Association, which sponsored the survey. "The public chooses competition over regulation every time."

"California has the most intrusive regulation of cellular of all 50 states," noted CTIA President Thomas E. Wheeler. "As a result of that regulation, California has the highest cellular prices and the lowest cellular penetration of any state."

Information filed at the FCC demonstrates that the bills of cellular subscribers in California are inflated by $250 million annually as a result of the failure of the state to permit cellular rate *decreases*," Wheeler said.

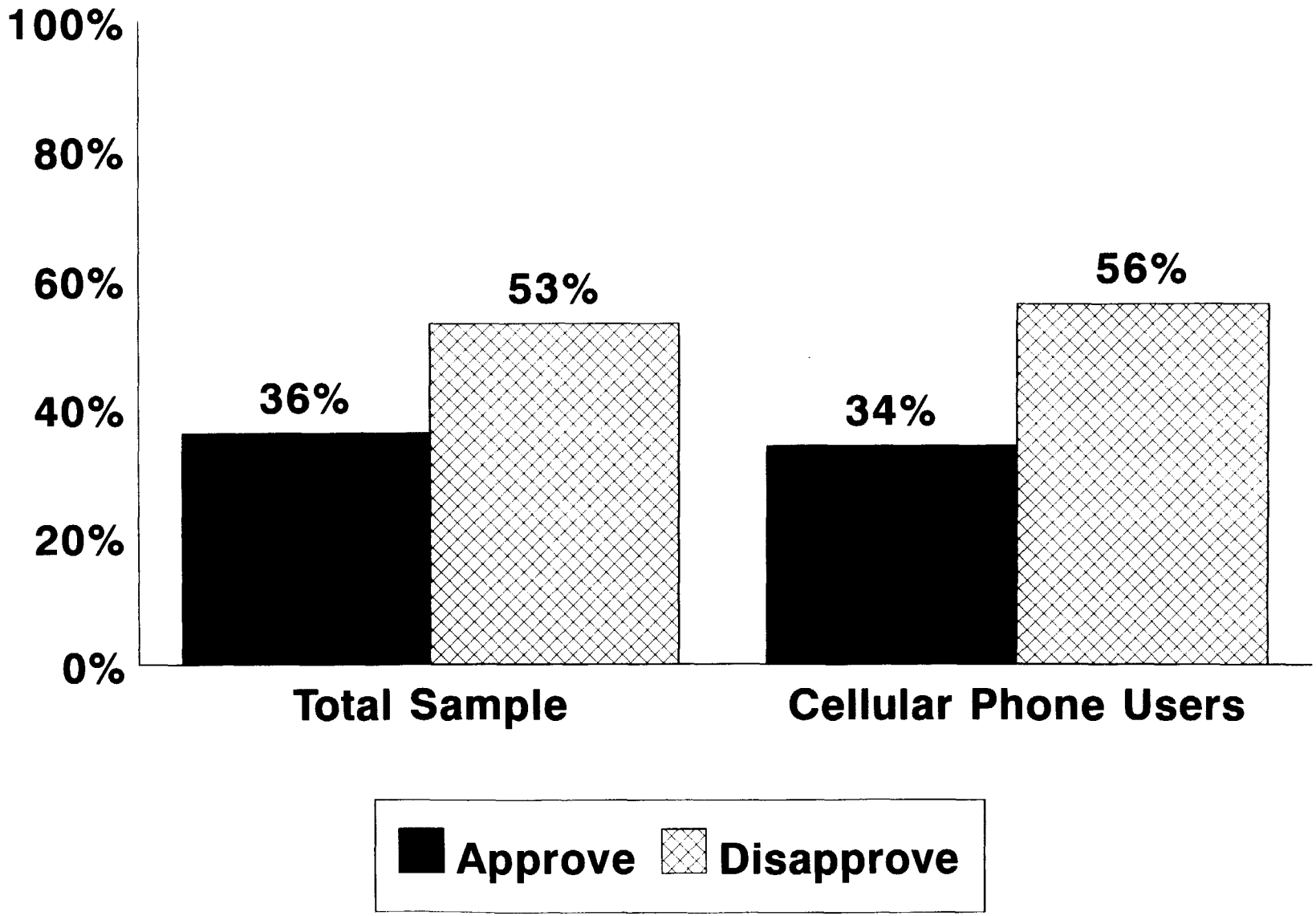
When those in favor of regulation were asked whether they would change their minds "if they knew that cellular telephone service is more expensive in states where it is regulated and less expensive in states where it is not regulated," 37 percent said yes. That left just 18 percent of the people polled who still favored regulation.

The poll of 500 California registered voters selected at random was conducted by Public Opinion Strategies on Feb. 26-27. Fifty-two percent were women, 48 percent men. Thirty-one percent own or use a cellular phone. The margin of error was plus or minus 4.38 percent. Public Opinion Strategies is a polling firm based in Alexandria, Virginia. It conducts public opinion surveys for political and private clients.

FOR ADDITIONAL INFORMATION, CONTACT:
Glen Bolger
Public Opinion Strategies
703-836-7655

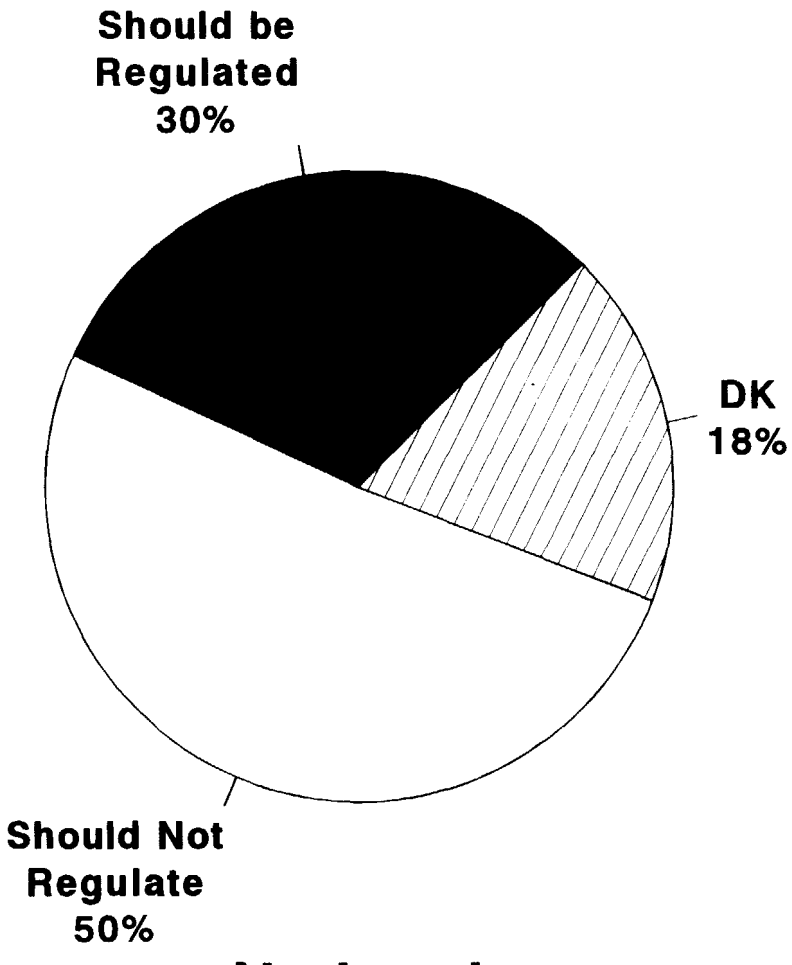
###

Do you approve or disapprove of California's State government applying to regulate cellular companies

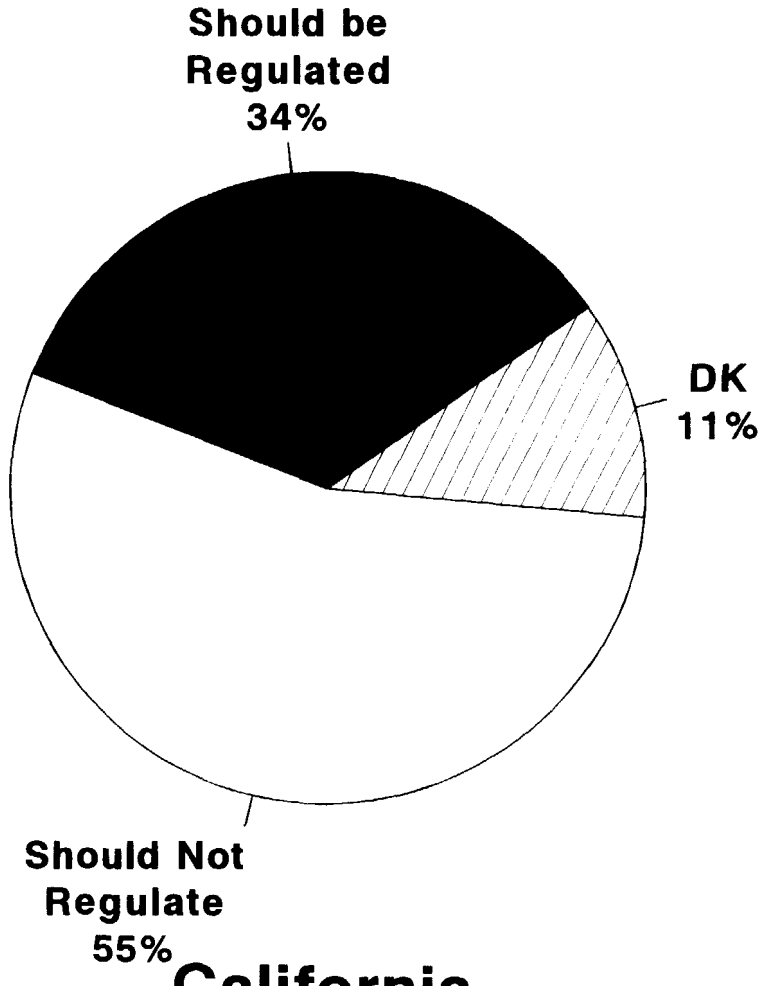


PUBLIC OPINION STRATEGIES
California Statewide Survey
February 26-27, 1995

Federal and State Governments should not regulate the cellular telephone industry



National



California

PUBLIC OPINION STRATEGIES
CTIA National and California Data Comparison

INTERVIEW SCHEDULE

Public Opinion Strategies survey for the
Cellular Telecommunications Industry Association
February 26-27, 1995
Margin of Error ±4.38%
N = 500 registered voters

---

1. As you may know, federal and most state governments have not regulated the services, prices, and growth of the cellular telephone industry.

   (ROTATE)

   Some people say that the cellular phone industry should be regulated by the government so prices are controlled and new competitors can use existing facilities.

   Other people say that the cellular phone industry does not need to be regulated because new wireless competitors will keep prices down and government intervention would only slow down new products and services

   What do you think? Should the cellular telephone industry be regulated or not?

   34% REGULATED
   55% NOT REGULATED

   11% DON'T KNOW **(DO NOT READ)**

---

2. While the federal government has decided that cellular companies should not be regulated, the state of California has applied for federal approval to regulate cellular phone companies.

   Do you approve or disapprove of California's state government applying to regulate cellular companies?

   36% APPROVE
   53% DISAPPROVE

   10% DON'T KNOW **(DO NOT READ)**
   1% REFUSED **(DO NOT READ)**