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MAR 14 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY



Building The  
Wireless Future™

March 14, 1995

**CTIA**

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

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

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

Dear Mr. Caton:

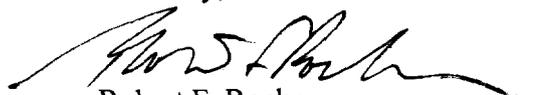
On Monday, March 13, 1995, and Tuesday, March 14, 1995, Mr. Randall S. Coleman, Vice President for Regulatory Policy and Law, the Cellular Telecommunications Industry Association (CTIA), sent the accompanying letter and its attachments to the following Commission personnel:

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

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 021  
List A B C D E

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**Randall S. Coleman**  
Vice President for  
Regulatory Policy and Law

March 13, 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:

The FCC will soon resolve petitions to maintain or exercise regulatory jurisdiction over cellular and other wireless services filed by the California Public Utility Commission (CPUC) and seven other state regulatory authorities. Last week, results of a recent public opinion poll were provided to the the FCC showing that California consumers are aware of the superiority of competition over regulation of competitive markets.<sup>1</sup>

Today, we draw your attention to a letter signed by a bipartisan group of 45 members of the California Assembly and Senate which agrees that competition "provides a far better mechanism for delivering quality services and lower prices than the cumbersome regulatory process." These legislators urge the FCC to reject the CPUC's petition, concluding that "[C]PUC regulation has resulted in higher rates for cellular services and contributed to greater government expenditures. Continued rate authority by the [C]PUC over this dynamic industry will result in less investment, less jobs and a less robust market." This conclusion, like the results of the recent public opinion poll, is clearly in touch with the intent of Congress in the 1993 Omnibus Budget Reconciliation Act, which preempted state regulation of the competitive wireless industry based on its belief in the superiority of competitive forces. The Budget Act created a narrow exception permitting states to continue rate regulation, provided they could convince the FCC that competitive markets were not serving consumers' interests, in essence, that there was in fact market failure. The CPUC has failed to meet its burden of proof.

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<sup>1</sup> See, CTIA's California Issues Paper No. 1, "Californians Give a wake up call to State Regulators-- Cellular Users Say "No" to State Cellular Regulation. Filed March 10, 1995, in PR Docket No. 94-105.



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.<sup>2</sup>

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.

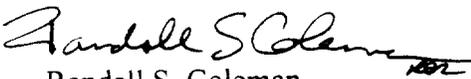
Attached is an issues paper summarizing the letter from the California legislators, the findings of the recent public opinion poll of registered voters in California and the economic analysis before the FCC in the California proceeding. As that paper concludes, the California PUC has failed in four critical respects.

- The California PUC has failed consumers by maintaining higher prices and slowing 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,

  
Randall S. Coleman

Attachments

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<sup>2</sup> This fact is demonstrated by the evidence before the FCC in the California proceeding, including the affidavit by Dr. Hausman submitted by AirTouch. See Affidavit of Jerry A. Hausman, filed September 19, 1994, in PR Docket No. 94-105, by AirTouch Communications.



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**Randall S. Coleman**  
Vice President for  
Regulatory Policy and Law

March 13, 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:

The FCC will soon resolve petitions to maintain or exercise regulatory jurisdiction over cellular and other wireless services filed by the California Public Utility Commission (CPUC) and seven other state regulatory authorities. Last week, results of a recent public opinion poll were provided to the the FCC showing that California consumers are aware of the superiority of competition over regulation of competitive markets.<sup>1</sup>

Today, we draw your attention to a letter signed by a bipartisan group of 45 members of the California Assembly and Senate which agrees that competition "provides a far better mechanism for delivering quality services and lower prices than the cumbersome regulatory process." These legislators urge the FCC to reject the CPUC's petition, concluding that "[C]PUC regulation has resulted in higher rates for cellular services and contributed to greater government expenditures. Continued rate authority by the [C]PUC over this dynamic industry will result in less investment, less jobs and a less robust market." This conclusion, like the results of the recent public opinion poll, is clearly in touch with the intent of Congress in the 1993 Omnibus Budget Reconciliation Act, which preempted state regulation of the competitive wireless industry based on its belief in the superiority of competitive forces. The Budget Act created a narrow exception permitting states to continue rate regulation, provided they could convince the FCC that competitive markets were not serving consumers' interests, in essence, that there was in fact market failure. The CPUC has failed to meet its burden of proof.

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Attached is an issues paper summarizing the letter from the California legislators, the findings of the recent public opinion 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.

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Very truly yours,

  
Randall S. Coleman

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**Randall S. Coleman**  
Vice President for  
Regulatory Policy and Law

March 13, 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:

The FCC will soon resolve petitions to maintain or exercise regulatory jurisdiction over cellular and other wireless services filed by the California Public Utility Commission (CPUC) and seven other state regulatory authorities. Last week, results of a recent public opinion poll were provided to the the FCC showing that California consumers are aware of the superiority of competition over regulation of competitive markets.<sup>1</sup>

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**Randall S. Coleman**  
Vice President for  
Regulatory Policy and Law

March 13, 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

Dear Commissioner Quello:

The FCC will soon resolve petitions to maintain or exercise regulatory jurisdiction over cellular and other wireless services filed by the California Public Utility Commission (CPUC) and seven other state regulatory authorities. Last week, results of a recent public opinion poll were provided to the the FCC showing that California consumers are aware of the superiority of competition over regulation of competitive markets.<sup>1</sup>

Today, we draw your attention to a letter signed by a bipartisan group of 45 members of the California Assembly and Senate which agrees that competition "provides a far better mechanism for delivering quality services and lower prices than the cumbersome regulatory process." These legislators urge the FCC to reject the CPUC's petition, concluding that "[C]PUC regulation has resulted in higher rates for cellular services and contributed to greater government expenditures. Continued rate authority by the [C]PUC over this dynamic industry will result in less investment, less jobs and a less robust market." This conclusion, like the results of the recent public opinion poll, is clearly in touch with the intent of Congress in the 1993 Omnibus Budget Reconciliation Act, which preempted state regulation of the competitive wireless industry based on its belief in the superiority of competitive forces. The Budget Act created a narrow exception permitting states to continue rate regulation, provided they could convince the FCC that competitive markets were not serving consumers' interests, in essence, that there was in fact market failure. The CPUC has failed to meet its burden of proof.

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**Randall S. Coleman**  
Vice President for  
Regulatory Policy and Law

March 13, 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:

The FCC will soon resolve petitions to maintain or exercise regulatory jurisdiction over cellular and other wireless services filed by the California Public Utility Commission (CPUC) and seven other state regulatory authorities. Last week, results of a recent public opinion poll were provided to the the FCC showing that California consumers are aware of the superiority of competition over regulation of competitive markets.<sup>1</sup>

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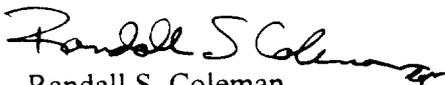
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# California Legislature

March 7, 1995

Federal Communications Commission  
The Honorable Reed Hundt, Chairman  
1919 M St, N.W.  
Washington, D.C. 20554

Dear Chairman Hundt:

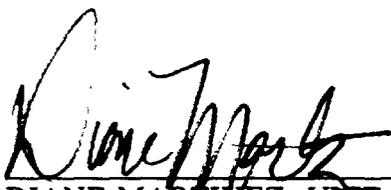
We, the undersigned members of the California State Legislature, believe that continued rate and entry regulation of cellular telephone services in this state is not in the public interest. The competitive wireless marketplace, marked by the entry of multiple new licensees, provides a far better mechanism for delivering quality services and lower prices than the cumbersome regulatory process.

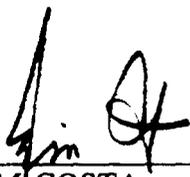
As representatives of the California electorate, we urge you to reject the California PUC's petition. PUC regulation has resulted in higher rates for cellular services and contributed to greater government expenditures. Continued rate authority by the PUC over this dynamic industry will result in less investment, less jobs, and a less robust market.

We seek to improve California's economy and business climate. Eliminating unnecessary regulation over cellular rates will serve that end.

Respectfully,

  
\_\_\_\_\_  
MICKEY CONROY, CHAIRMAN  
ASSEMBLY UTILITIES &  
& COMMERCE COMMITTEE

  
\_\_\_\_\_  
DIANE MARTINEZ, VICE-CHAIR  
ASSEMBLY UTILITIES  
& COMMERCE COMMITTEE

  
\_\_\_\_\_  
JIM COSTA  
SENATOR, 16th DISTRICT

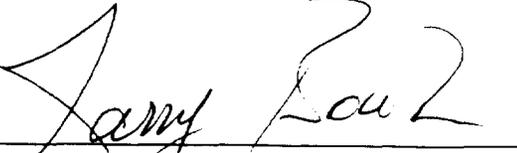
cc: Commissioners Barrett, Ness, Quello  
California Congressional Delegation

# California Legislature



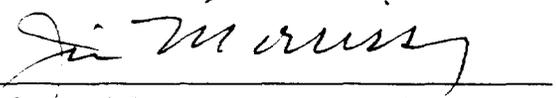
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Assemblyman Richard Rainey  
Chair, Local Government



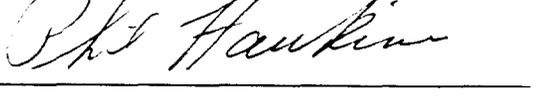
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Assemblyman Larry Bowler  
Vice Chair, Transportation  
Committee



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Assemblyman Jim Morrissey  
Member, Utilities & Commerce



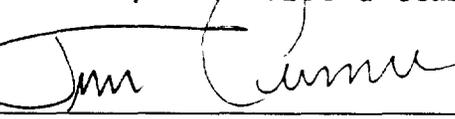
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Assemblyman Phil Hawkins  
Member, Utilities & Commerce



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Assemblyman Pete Knight



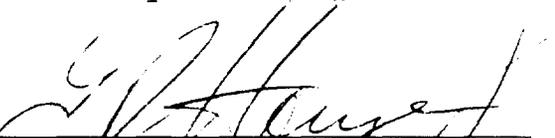
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Assemblyman Jim Cunneen



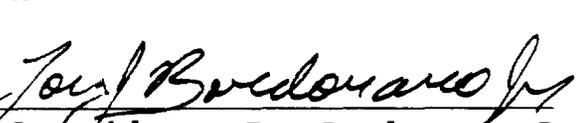
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Assemblyman Steve Kuykendall  
Member, Utilities & Commerce



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Assemblyman George House  
Member, Utilities & Commerce



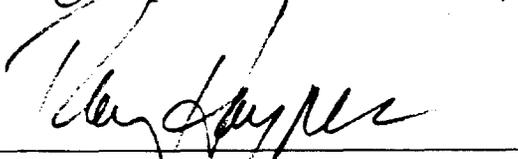
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Assemblyman Tom Bordonaro, Jr.



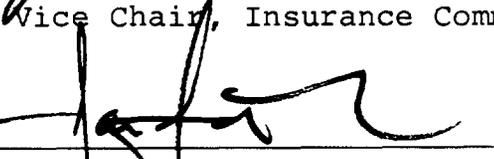
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Senator John Lewis  
Vice Chair, Insurance Committee



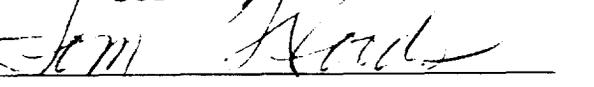
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Senator Ray Haynes  
Vice Chair, Health & Human  
Services Committee



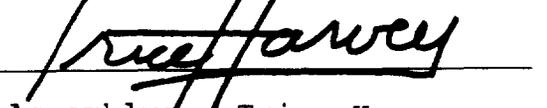
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Assemblyman Jan Goldsmith



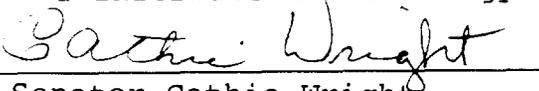
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Assemblyman Tom Woods  
Chair, Televising the Assembly  
& Information Technology



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Assemblyman Trice Harvey  
Chair, Agriculture Committee



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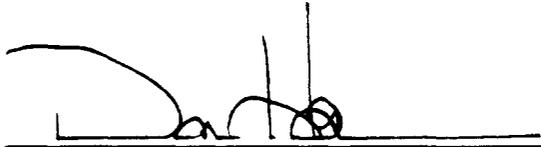
Senator Cathie Wright  
Vice Chair, Budget & Fiscal  
Review Committee



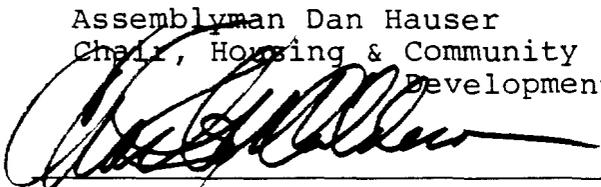
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Assemblywoman Barbara Alby  
Member, Utilities & Commerce

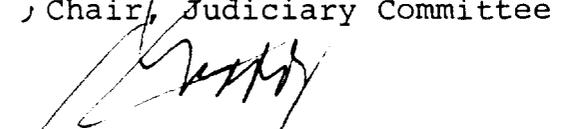
# California Legislature



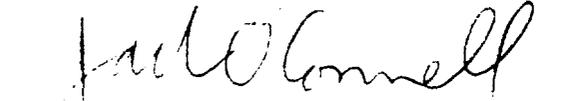
Assemblyman Dan Hauser  
Chair, Housing & Community  
Development



Senator Charles Calderon  
Chair, Judiciary Committee



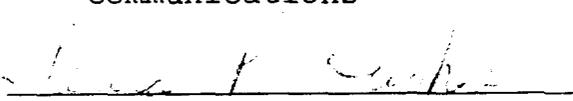
Senator Ken Maddy  
Senate Republican Leader



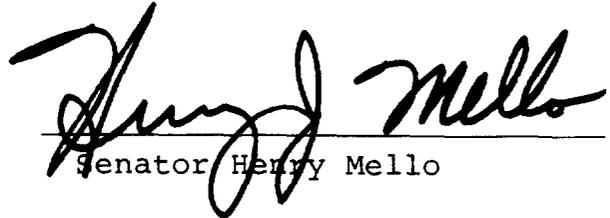
Senator Jack O'Connell  
Chair, Toxics & Public Safety  
Management Committee



Senator Dave Kelley  
Member, Energy, Utilities &  
Communications



Senator Teresa Hughes  
Member, Energy, Utilities &  
Communications



Senator Henry Mello



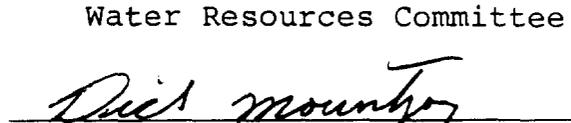
Senator Mike Thompson  
Chair, Revenue & Taxation Committee



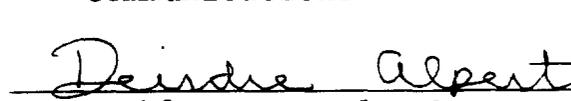
Senator Pat Johnston  
Chair, Appropriations Committee



Senator Ruben Ayala  
Vice Chair, Agriculture &  
Water Resources Committee



Senator Richard Mountjoy  
Member, Energy, Utilities &  
Communications



Assemblywoman Dede Alpert  
Member, Utilities & Commerce

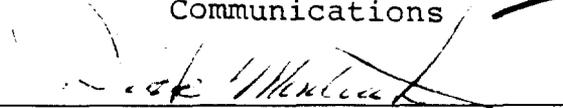
# California Legislature



Senator Bill Leonard  
Member, Energy, Utilities &  
Communications



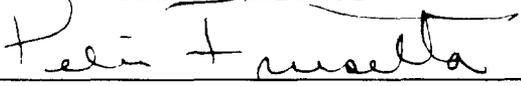
Assemblyman Bruce Thompson



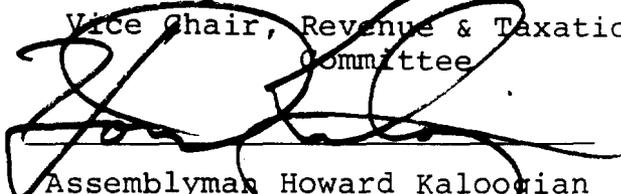
Senator Dick Monteith  
Vice Chair, Housing & Land  
Use Committee



Assemblyman Nao Takasugi  
Vice Chair, Revenue & Taxation  
Committee



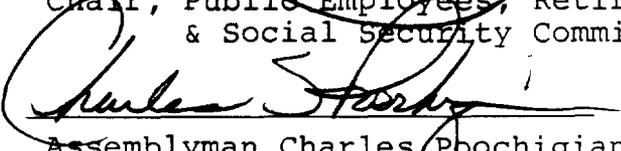
Assemblyman Peter Frusetta  
Vice Chair, Water, Parks &  
Wildlife Committee



Assemblyman Howard Kaloogian  
Chair, Public Employees, Retirement  
& Social Security Committee



Assemblyman Jim Battin

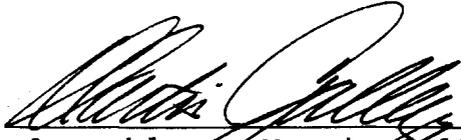


Assemblyman Charles Ppochigian  
Vice Chair, Budget Committee

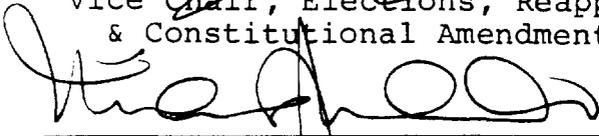


Assemblyman Willard Murray  
Member, Utilities & Commerce

# California Legislature



Assemblyman Martin Gallegos  
Vice Chair, Elections, Reapportionment  
& Constitutional Amendments



Assemblyman Mike Machado  
Vice Chair, Agriculture  
Committee

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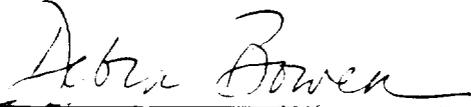
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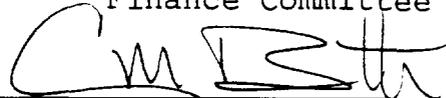
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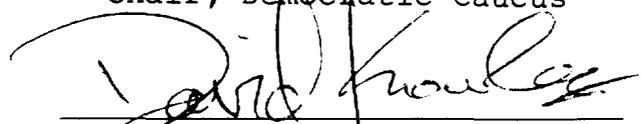
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Assemblywoman Debra Bowen  
Vice Chair, Banking &  
Finance Committee



Assemblyman Cruz Bustamante  
Chair, Democratic Caucus



Assemblyman David Knowles  
Chair, Insurance Committee

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***California Issues Paper No. 2***



**Building The  
Wireless Future**

**CTIA**

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Telecommunications  
Industry Association  
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**Californian Legislators Oppose Regulation of Wireless  
--Urge FCC to Reject California PUC Petition to Regulate**

March 13, 1995

## **California Legislators Oppose Regulation of Wireless -- Urge FCC to Reject California PUC Petition to Regulate**

**Key leaders in the California Assembly and Senate, in a bipartisan display, have urged the FCC to reject the California PUC's petition to regulate the competitive wireless industry.**

Led by Mickey Conroy, Chair, and Diane Martinez, Vice-Chair, of the California Assembly's Utilities and Commerce Committee, and Senator Jim Costa, 45 California legislators wrote to FCC Chairman Reed Hundt, on March 7, 1995, saying **"the competitive wireless marketplace, marked by the entry of multiple new licensees, provides a far better mechanism for delivering quality services and lower prices than the cumbersome regulatory process."**

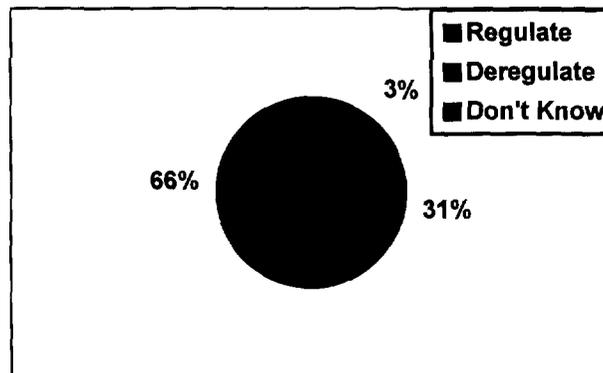
Chairman Conroy and a broad cross-section of the California legislature emphasized that **"PUC regulation has resulted in higher rates for cellular services and contributed to greater government expenditures. Continued rate authority by the PUC over this dynamic industry will result in less investment, less jobs, and a less robust market."**

### **Most Californians Oppose State Regulation**

These legislators are more in touch with consumers than the California PUC, as a recent poll reveals **63 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. **Sixty-six percent of cellular phone users feel government should not regulate the cellular industry**, according to a new statewide poll by Public Opinion Strategies.<sup>1</sup>

#### **Government Should Not Regulate Cellular/Wireless**

**Cellular phone users have more reason to know what hurts or helps them most -- and they have concluded that regulation hurts them by limiting their choices and raising their rates.**



<sup>1</sup> 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.

## **Competition Is Superior To State Regulation As A Means of Improving Consumer Welfare**

Many of California's state legislators and consumers have joined Congress in recognizing that state regulation of the wireless industry harms consumers by moving the competitive struggle from the marketplace to the regulatory hearing room. Instead of investing in customer service and product innovation to win over consumers, companies are forced to rely upon lawyers to win a competitive advantage from regulators.

In 1993, Congress affirmed that competition is the first resort, and regulation the last, when it amended the Communications Act to preempt rate regulation by states. Unfortunately, some state regulators are mis-using the narrowly-tailored exception which Congress created to allow states to apply to the FCC for permission to continue to regulate rates if they could provide evidence demonstrating the competitive marketplace was failing to serve consumers.<sup>2</sup>

For example, **the California PUC has applied to continue its rate regulations, even though the evidence shows that those regulations harm -- not help -- consumers.** (The California PUC has also misrepresented its request, claiming that its request is simply for an eighteen month extension of regulation while further competition develops. In fact, the California PUC has asked for an extension of regulatory authority for eighteen months, during which it will be applying a new and more intrusive regulatory system than it previously applied, after which it will determine whether to continue to apply its new system or apply yet another regulatory regime. Neither of these attempts is permissible under the statute.)

The California PUC's proposals, and its analysis of market events, ignore the fact that **California has the highest cellular prices and the lowest cellular penetration of any state as a direct result of its regulations.** In fact, the California PUC does not recognize that its own evidentiary submissions show that competitive market forces are working to produce lower prices. **The fact is prices are declining, and the principal obstacles to such price declines are the PUC's own misguided regulations** which delay rate reductions and new service offerings.

**The common-sense conclusion is: regulations do not help consumers when they delay service for months or years, prevent some services from ever being made available to consumers, and force rates to remain above market-driven levels.**

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<sup>2</sup> Congress provided that states that regulated cellular on June 1, 1993, might petition for authority "to continue exercising authority over such rates" and to continue such "existing" regulations during the pendency of its petition.

## The Record Shows State Regulation Forces Customers to Pay More

Professor Jerry A. Hausman, MacDonald Professor of Economics, MIT, has found that **cellular prices are 15 percent higher in states which regulate cellular compared with states which do not regulate cellular service.**<sup>3</sup> His economic analysis indicates that **in California, consumers pay between \$240.5 million and \$250 million more per year because of regulation.** These costs actually increase as customer numbers grow. Since his original calculations, Professor Hausman has recently calculated the cost of regulation may be as much as \$363.4 million per year.<sup>4</sup>

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

<u>MSA Name</u>	<u>Monthly Price</u>	<u>Regulated</u>
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

Professor Hausman concludes that higher monthly service prices are the result of regulation on the basis of Table 1. **Every regulated price in Table 1 is greater than every unregulated price in Table 1.** Furthermore, analysis indicates that regulation is responsible for 15 percent higher rates across all user levels, from high to medium and low usage customers. As Professor Hausman observes, **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**

	<u>January 1994</u>	<u>November 1994</u>	<u>Percent Change</u>
<b>Boston</b>	<b>Regulated \$79.91</b>	<b>Unregulated \$69.99</b>	<b>-12.41%</b>
<b>Hartford</b>	<b>Regulated \$93.31</b>	<b>Regulated \$90.75</b>	<b>-2.74%</b>

<sup>3</sup> Affidavit of Jerry A. Hausman, filed September 19, 1994, in PR Docket No 94-105, by AirTouch Communications.

<sup>4</sup> See Jerry A. Hausman, "The Cost of Cellular Telephone Regulation," filed March 10, 1995, in PR Docket No. 94-105, by AirTouch Communications, at 18.

Indeed, as Professor Hausman has also observed, the sequence of events in the real world proves that regulation leads to higher prices, and not the other way around. California's regulations predated the creation of cellular, and have always constrained prices.

### **State Regulation Suppresses Subscribership and Discourages Growth**

Professor Hausman has also found that **subscribership to cellular is higher in unregulated states than in regulated states**. Moreover, 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 subscription in regulated states is simple consumer response to the higher prices produced by regulation. Thus, regulation leads to both higher prices and lower subscription, and neither result is consistent with the expectations of Congress.

### **The California Regulators Don't Meet Their Burden**

Congress elected competition over regulation in 1993 and created the exception which permits states to apply for permission to continue to regulate rates. The law reads that any state wishing to regulate rates 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 that statutory and regulatory test.**

Instead, California's regulators offer unsupported assertions and a superficial analysis which misconstrues their own submissions. The California PUC has ignored the fact that it is the PUC's own misguided regulations which are impeding competition.

The PUC itself is responsible for slowing the decline in rates, impeding competition, and denying consumers the benefits of competition available in deregulated states. The PUC is out of touch and out of step with consumers, legislators and Congress. The California PUC's rules keep rates artificially high, suppress demand, and don't deliver what Californians want. Moreover, the California PUC doesn't meet the burden of proof established by law. The California PUC's regulations must be preempted both to fulfill the law and to meet consumers' needs.