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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 20, 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 Monday, March 20, 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

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Randall S. Coleman
Vice President for
Regulatory Policy and Law

March 20, 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. Over the last week, CTIA provided to the FCC the results of a recent poll showing that California consumers are aware of the superiority of competition over regulation of competitive markets,[1] and drew your attention to the bipartisan consensus in the California Assembly and Senate which agrees 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."[2]

In fact, this consensus is growing, with a broad range of service providers, manufacturers, and retailers concluding that continued regulation of cellular rates is not in the best interest of consumers, businesses or the economy. In particular, the American Electronics Association, the California Manufacturers Association, the California Retailers Association and the California Chamber of Commerce have all gone on record strongly opposing the CPUC's petition to regulate cellular service rates.

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[1] 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.
[2] See CTIA's California Issue Paper No. 2, "California Legislators Oppose Regulation of Wireless -- Urge FCC to Reject California PUC Petition to Regulate, filed March 14, 1995, in PR Docket No. 94-105.

As these associations and their members recognize, the CPUC's rate regulations themselves interfere with the competitive marketplace. Delays in service offerings, slower declines in effective prices, and lower subscribership can all be traced to the CPUC's regulations. These regulations already harm consumers. The CPUC's proposal of an even more intrusive regulatory regime -- in addition to deviating from the petitions allowed under the Omnibus Budget Reconciliation Act's narrow exception -- also threatens consumer welfare, as well as thousands of jobs, and jeopardizes billions in investment and significant trade benefits.

Industry, consumers, and legislators all recognize that the CPUC bears the heavy burden of proving that regulation is required because of market failure. The CPUC has failed to make this showing. Indeed, the CPUC's evidence supports the opposite conclusion -- that it is the CPUC which is failing consumers by impeding the competitive market's generation of benefits for consumers.

Attached is an issues paper summarizing the recent letters from the California industries, and the evidence on the record before the FCC in the California proceeding. As CTIA has argued -- and continues to argue -- 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

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Randall S. Coleman
Vice President for
Regulatory Policy and Law

March 20, 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. Over the last week, CTIA provided to the FCC the results of a recent poll showing that California consumers are aware of the superiority of competition over regulation of competitive markets,[3] and drew your attention to the bipartisan consensus in the California Assembly and Senate which agrees 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."[4]

In fact, this consensus is growing, with a broad range of service providers, manufacturers, and retailers concluding that continued regulation of cellular rates is not in the best interest of consumers, businesses or the economy. In particular, the American Electronics Association, the California Manufacturers Association, the California Retailers Association and the California Chamber of Commerce have all gone on record strongly opposing the CPUC's petition to regulate cellular service rates.

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Industry, consumers, and legislators all recognize that the CPUC bears the heavy burden of proving that regulation is required because of market failure. The CPUC has failed to make this showing. Indeed, the CPUC's evidence supports the opposite conclusion -- that it is the CPUC which is failing consumers by impeding the competitive market's generation of benefits for consumers.

Attached is an issues paper summarizing the recent letters from the California industries, and the evidence on the record before the FCC in the California proceeding. As CTIA has argued -- and continues to argue -- the California PUC has failed in four critical respects.

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Randall S. Coleman
Vice President for
Regulatory Policy and Law

March 20, 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. Over the last week, CTIA provided to the FCC the results of a recent poll showing that California consumers are aware of the superiority of competition over regulation of competitive markets,[5] and drew your attention to the bipartisan consensus in the California Assembly and Senate which agrees 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."[6]

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Randall S. Coleman
Vice President for
Regulatory Policy and Law

March 20, 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. Over the last week, CTIA provided to the FCC the results of a recent poll showing that California consumers are aware of the superiority of competition over regulation of competitive markets,[7] and drew your attention to the bipartisan consensus in the California Assembly and Senate which agrees 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."[8]

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Randall S. Coleman
Vice President for
Regulatory Policy and Law

March 20, 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. Over the last week, CTIA provided to the FCC the results of a recent poll showing that California consumers are aware of the superiority of competition over regulation of competitive markets,[9] and drew your attention to the bipartisan consensus in the California Assembly and Senate which agrees 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."[10]

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California Issues Paper No. 3

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California Industry Speaks Out Against CPUC Regulation of Cellular Rates

- **American Electronics Association**
- **California Chamber of Commerce**
- **California Manufacturers Association**
- **California Retailers Association**

March 17, 1995

California Industry Speaks Out Against CPUC Regulation of Cellular Rates

A broad range of service providers, manufacturers and retailers in California are going on the record, urging FCC Chairman Reed Hundt and his fellow commissioners to reject the California PUC's petition, concluding that **continued regulation is not in the best interest of California's consumers, businesses or its economy.**

The American Electronics Association, Orange County Council, (AEA) voted on February 15, 1995, to go on record opposing the CPUC's petition, arguing that **"the State PUC is micro-managing the cellular business and creating an environment that is anti-competitive."**[1] The AEA has properly stressed that **"the burden should be on the state to prove continued regulation of an industry is required because market conditions fail to provide subscribers or customers with adequate protections."** In fact, the competitive market has not failed in California. It is the CPUC's own rate regulation of cellular in California that has created higher costs to end users and has hampered competition in California.[2]

As the AEA, other industry groups, and legislators emphasize by their opposition to state cellular rate regulation, the CPUC does not speak for the businesses and consumers in California, or for the state of California. These groups recognize and strongly defend full and unfettered competition as the best servant of the consumer interest.

Jobs are also the issue! The California Manufacturers Association (CMA) strongly opposed the CPUC's petition, noting the thousands of direct cellular industry jobs at stake, plus thousands more related to sales, equipment manufacturing and research in California.[3] The CMA observed that many manufacturers and software providers have benefited from the commercial application of cellular research and technology, creating or preserving jobs which might otherwise have been lost. As the CMA emphasized, the contributions of the wireless industry in California include not only more than $3 billion in investment, and thousands of jobs, but also significant trade benefits.

Adding to the growing list of opponents to the CPUC petition is the California Retailers Association. This group, representing a broad retail membership with approximately $70 billion in annual sales and more than 4,000 individual store locations, has urged the FCC to reject the CPUC petition, emphasizing that "an open, competitive

---

[1] The AEA is the largest technology trade group in the U.S., representing more than 1,600 companies in California and over 3,000 companies nationwide including software, telecommunications, system integration and semiconductor firms.

[2] In voting to oppose the PUC petition, the AEA noted that the types of damage caused by PUC regulation includes such aberrations as often making it more cost effective for very low frequency users of cellular "to sign up for cellular service in a different state and use the phone in California on a roaming basis with an overall lower cost than if the customer had signed up for regular service in California."

[3] See Letter from William Campbell, President, California Manufacturers Association, to Reed Hundt, Chairman, FCC, dated March 6, 1995.

market . . . best predicts to deliver low cost service to the consumer" and that "deregulation will lead to greater penetration by the industry, which will benefit all users and the population as a whole."[4]

The California Chamber of Commerce, too, has joined in opposing the CPUC petition, and praising the contributions of cellular companies to the state economy "in spite of ill-considered and harmful regulation."[5]

Continued rate regulation of cellular in California -- and the prospect of more intrusive regulations under the CPUC's expansive request -- threatens these benefits.

Key Legislators Join In Urging FCC to Reject CPUC Petition

The consensus opposing the CPUC's petition includes a broad range of service providers, retailers, manufacturers, consumers, economists and important political players. For example, a bipartisan group of legislators in the California Assembly and Senate wrote to FCC Chairman Reed Hundt on March 7, 1995, urging the FCC to reject the California PUC's petition to regulate the competitive wireless industry.

Led by Mickey Conroy and Diane Martinez, Chair and Vice-Chair of the California Assembly's Utilities and Commerce Committee, and State Senator Jim Costa, 45 of California's legislators wrote **"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."**

This broad cross-section of the California legislature agreed 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 service providers, retailers, manufacturers, and legislators are more in touch with consumers than the California PUC.

- **Sixty-three 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.

---

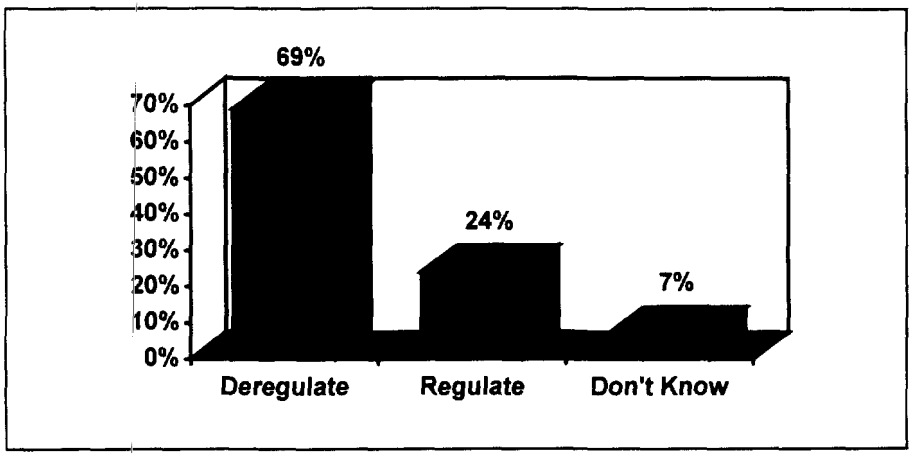
[4] See Letter from Bill Dombrowski, President, California Retailers Association, to Reed Hundt, Chairman, FCC, dated March 15, 1995.

[5] See Letter from Allan Zaremberg, California Chamber of Commerce, to Reed Hundt, Chairman, FCC, dated March 7, 1995.

- **Sixty-nine percent of cellular phone users feel that since there is competition in new high technology industries, government should not spend taxpayer money to interfere with the free market, unless there is a very serious problem**, according to a new statewide poll by Public Opinion Strategies.[6]

This demonstrates that cellular consumers have a keen awareness of the relative merits of competition and regulation, and endorse competition and the free market as the best provider of high technology services and products.

Government Should Not Spend Taxpayer Money to Interfere with the Free Market in High Technology Industries



Regulations Hurt Consumers

Consumers, manufacturers, retailers, service providers, economists and state legislators all recognize that state regulation of the wireless industry harms consumers by diverting resources from customer service and product innovation. Instead of competing to satisfy consumers, companies are forced to compete for the attention and approval of regulators.

In 1993, Congress acted to change this dynamic by amending the Communications Act to preempt rate regulation by states and return the competitive contest to the marketplace. Congress created a narrowly-tailored exception to the law, permitting states to continue to regulate rates, provided they could demonstrate to the FCC that the competitive marketplace was failing to serve consumers. This exception is now being mis-used.[7]

---

[6] 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.

[7] 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 California PUC, for one, has applied to continue its rate regulations, even though the evidence shows that those regulations harm -- not help -- consumers. Moreover, although the statute permits application to continue regulations in effect on June 1, 1993, the California PUC has asked for an "extension" of regulatory authority during which it will apply 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. The CPUC's request is not permissible under the statute.

The California PUC's proposals, and its analysis of market events, ignore the widely-recognized facts that California has the highest cellular prices and the lowest cellular penetration of any state as a direct result of its regulations. **Legislators, manufacturers, and service providers all recognize that the California PUC is the primary obstacle to competition.** In fact, the California PUC's own filings with the FCC show that competitive market forces are working to produce lower prices. Competitive benefits in the form of lower effective prices and more attractive service plans have followed each incremental relaxation of state regulation. But the California PUC has failed to recognize the relationship between its own regulations and effective prices, and it continues to harm consumers by delaying or preventing rate reductions, promotional offerings, and new service offerings.

The fact that California's effective rates have been declining is widely recognized. The American Electronics Association and the California Manufacturers Association have both joined in recognizing that California's rates have declined -- but that **rates decline further and faster in states which do not regulate**.

Indeed, as Professor Jerry A. Hausman, MacDonald Professor of Economics at MIT, has observed, the sequence of events in the real world proves that regulation leads to higher prices, and not the other way around. Unregulated markets, over time, have produced greater price declines than regulated markets. The removal of regulation in Massachusetts provided a dramatic example of this contrast, when rates fell 12.41 percent in Boston between January and November 1994, compared with rates in Hartford, Connecticut, which fell only 2.74 percent over the same period.[8]

The fact is: the competitive market is working to reduce effective prices, and the principal obstacles to such price declines are the PUC's own misguided regulations.

State Regulation Forces Customers to Pay Higher Rates

Professor Hausman has found that **cellular prices are consistently five to 15 percent higher in states which regulate** cellular compared with states which do not

[8] Jerry A. Hausman, "The Cost of Cellular Telephone Regulation," filed March 13, 1995, in PR Docket No. 94-105, by AirTouch Communications, at 18.

regulate cellular service, based on econometric analysis.[9] Indeed, a simple comparison of cellular rates in regulated and unregulated markets demonstrates that higher monthly service prices are the result of regulation. Among the top 10 MSAs, the average regulated price per month (for 160 minutes of use) is $98.10, while the average unregulated price is $70.59. That is a difference of 39 percent. A stricter economic analysis indicates that rates are 15 to 17 percent higher in these markets as a result of regulation, when all other factors are taken into account.

State Regulation Slows Subscriber 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 by an average of 32.6 percent in unregulated states, compared with subscriber growth of 28.2 percent in regulated states. The main reason for lower subscribership and slower growth in regulated states is simply the higher prices produced by regulation. Congress never expected a petitioner to favor regulations which lead to both higher prices and lower subscribership, and the FCC should not grant such a request.

The California Regulators Don't Meet Their Burden

In the Omnibus Budget Reconciliation Act of 1993, Congress required 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 fail to meet that statutory and regulatory test**.

Competition is working in California, but the PUC itself is responsible for slowing the decline in rates and denying consumers the greater benefits of competition available in deregulated states. There is no market failure there is regulatory failure -- the CPUC's regulations are working against the interests of Californian consumers. The PUC is out of touch and out of step with consumers, service providers, manufacturers, legislators and Congress. **The California PUC's regulations must be preempted both to fulfill the law and to meet consumers' needs.**

[9] Affidavit of Jerry A. Hausman, filed September 19, 1994, in PR Docket No 94-105, by AirTouch Communications.

MAR 8 1995

CALIFORNIA CHAMBER of COMMERCE

ALLAN ZAREMBERG

March 7, 1995

Reed Hundt, Chairman
Federal Communications Commission
1919 M Street, NW, Room 814
Washington D.C. 20554

Dear Chairman Hundt:

The California Chamber of Commerce strongly urges you to reject the petition of the California Public Utilities Commission to continue the nation's strictest regulation over California's cellular industry. We believe that such continued regulation is not in the best interest of California's consumers and its economy.

California's cellular industry has been a tremendous boost to the state in spite of ill-considered and harmful regulation. California is such an ideally mobile state that it should be the leader in cellular communications and technology. We are concerned the state and its consumers will be denied the full benefits of vigorous competition by this needless regulation.

Continued regulation is even more questionable in light of new wireless competitors soon to come to each market in large part as a result of the FCC's broadband auction that is nearing completion.

California's Public Utilities Commission represents only one opinion in the state of California. We strongly urge you to reject California's petition to allow for full and unfettered competition for California's cellular industry.

Sincerely,

Allan Zaremberg

AZ:dl

1201 K Street, 12th Floor PO Box 1736 Sacramento, California 95812-1736 Facsimile (916) 444-6684 Telephone (916) 444-6670

cc: Commissioner James H. Quello
Commissioner Andrew C. Barrett
Commissioner Susan Ness
The Honorable Pete Wilson, Governor
Bob White, Chief of Staff
George Dunn, Deputy Chief of Staff
Congressman Christopher Cox
Congressman Carlos Moorhead
Congresswoman Anna Eshoo
Congressman Henry Waxman
Congressman Brian Bilbray
Stephen E. Carlson, Cellular Carriers Assoc. of CA

March 6, 1995

California
Manufacturers
Association

Reed Hundt, Chairman
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

William Campbell
esident

Dear Chairman Hundt:

We are writing to urge the Commission to reject the California Public Utilities Commission's petition to continue regulating cellular rates.

In the midst of the recent recession, defense cutbacks and business flight from California, the state's cellular industry stood out like a diamond in the rough. Cellular phones became one of the fastest growing consumer products in history. With annual growth rates reaching 45 percent, California has, and will continue to benefit handsomely from the industry's productivity.

However, despite the economic boost that cellular has brought the state, the California Public Utilities Commission imposes the country's strictest cellular regulation. The California Manufacturers Association is especially sensitive to any regulatory encroachments that might damage an emerging industry.

Consider some of the cellular's benefits to California:

- The state's cellular carriers alone account for nearly 5,000 jobs. Countless other jobs are provided by the industry to equipment manufacturers, researchers, the computer industry and construction contractors.

- Many of the state's defense contractors, including TRW, Hughes, Aircraft & Loral have found cellular research and technology development to be a valuable means of staying competitive and preventing layoffs.

- The industry has made almost $3 billion in capital investments.

- Led by California's wireless firms, cellular telephones and technology are fast becoming internationally omnipresent, providing a balance of trade that tips strongly in California's and the country's favor.

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Under the context of these benefits, the fact that cellular rates are dropping and the industry is becoming more competitive, it is very difficult to understand why California's PUC wants to continue stringent regulations on cellular.

The purpose of regulation is to protect customers from monopoly power. Cellular phones are a great means of communication, but they are certainly not the necessity that electricity, gas, or even landline phones are. Indeed, cellular only has seven percent market penetration in California, less than most other states due in large part to stifling regulation.

We urge you to reject the California Public Utilities Commission's petition. It will allow competition to flourish in California's cellular industry and provide benefits to California's businesses and citizens.

Sincerely,

WILLIAM CAMPBELL

WC:jir

c: Commissioner James H. Quello
Commissioner Andrew C. Barrett
Commissioner Susan Ness

bc:Maggie Wilderotter, McCaw/Cellular One, Immediate Past President, CCAC
Brian Kidney, AirTouch Communications, President, CCAC

980 Ninth Street, Suite 2100
Sacramento, CA 95814-2741

CALIFORNIA RETAILERS ASSOCIATION

Incorporated in 1933

(916) 443-1975
FAX (916) 441-4218

William S. Davila • Chairman
Kenneth Wilkerson • Vice Chairman
William E. Dombrowski • President

Board of Directors

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Ralphs Grocery Company
Los Angeles

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Certified Grocers of CA, Ltd.
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Thrifty/Payless
Williamsville

Jorge Pont
The Harris Company
San Bernardino

Ed Powers
Kmart Corporation
Troy

Michael J. Read
Albertson's, Inc.
Boise

Richard K. Rothschild
Sears, Roebuck and Co.
Chicago

Sandra B. Salyer
Mervyn's
Hayward

John M. Shepherd
Safeway, Inc.
Oakland

Kenneth Wilkerson
Robinson's - May
Los Angeles

March 15, 1995

Mr. Reed Hundt, Chairman
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Dear Chairman Hundt:

The California Retailers Association urges the Commission to reject the California Public Utilities Commission's petition to continue regulating the state's cellular industry.

Our association believes that an open, competitive market, which is quickly becoming more so with the entrance of additional mobil services, best predicts to deliver low cost service to the consumer. In addition, we believe that deregulation will lead to greater penetration by the industry, which will benefit all users and the population as a whole.

The California Retailers Association represents a broad based group of major retailers, including department and specialty stores, grocery stores, and chain drug stores. Our members represent approximately $70 billion in annual sales and more than 4,000 individual store locations.

Sincerely,

Bill Dombrowski

Bill Dombrowski
President

WED:jm