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Building The
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March 23, 1995

CTIA

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

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

RECEIVED

MAR 23 1995

Dear Mr. Caton:

On Thursday, March 23, 1995, Mr. Randall S. Coleman, Vice President, **FEDERAL COMMUNICATIONS COMMISSION OFFICE OF SECRETARY** 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,

Timothy R. Rich

Attachments

No. of Copies rec'd 041
List ABCDE



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Randall S. Coleman
Vice President for
Regulatory Policy and Law

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March 23, 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 shortly 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 two weeks, CTIA has provided to you information indicating the growth of a broad consensus among service providers, manufacturers, retailers, legislators and consumers favoring competition over regulation in competitive markets.¹ The California state legislators, in particular, recognize 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, the record demonstrates that the CPUC's rate regulations themselves harm consumers by interfering with the competitive marketplace and forcing them to pay more for service than is necessary. The CPUC's regulations delay the availability of services, slow the decline in effective prices, and suppress subscribership. Moreover, in spite of its promises to help consumers, the CPUC has concerned itself with protecting the margins of a specific class of competitors in California. By requiring reseller margins, the

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Everyone -- except the CPUC and the resellers -- recognizes 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.

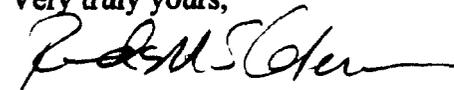
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Randall S. Coleman

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Randall S. Coleman
Vice President for
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March 23, 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 shortly 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 two weeks, CTIA has provided to you information indicating the growth of a broad consensus among service providers, manufacturers, retailers, legislators and consumers favoring competition over regulation in competitive markets.¹ The California state legislators, in particular, recognize 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

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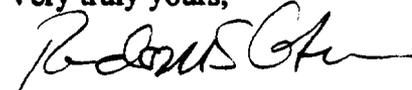
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Randall S. Coleman
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March 23, 1995

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 shortly 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 two weeks, CTIA has provided to you information indicating the growth of a broad consensus among service providers, manufacturers, retailers, legislators and consumers favoring competition over regulation in competitive markets.¹ The California state legislators, in particular, recognize 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

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Randall S. Coleman
Vice President for
Regulatory Policy and Law

March 23, 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 shortly 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 two weeks, CTIA has provided to you information indicating the growth of a broad consensus among service providers, manufacturers, retailers, legislators and consumers favoring competition over regulation in competitive markets.¹ The California state legislators, in particular, recognize 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

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March 23, 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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California Issues Paper No. 4



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How California Wireless Customers Suffer From State Regulation:

California PUC Regulations Cost Consumers Millions

March 23, 1995

How California Wireless Customers Suffer From State Regulation: California PUC Regulations Cost Consumers Millions

The California Public Utilities Commission's (CPUC) regulations harm wireless consumers in California by forcing consumers to:

- pay unnecessarily high prices
- wait unnecessarily for new services
- even forego wireless service altogether

The CPUC has repeatedly enforced regulations that maintain high prices and restrict consumer choice, even though a solid majority of Californians oppose regulating wireless service. Although both consumers and providers favor more choice, and more innovative and affordable service plans, the CPUC has deprived consumers of those options and forced them to pay more than was necessary.

The CPUC Forces Consumers to Pay Unnecessarily High Prices

Californians pay more for their wireless service than they would in any other state. The CPUC forces consumers to pay higher prices by:

- limiting the amount of promotional "gift" plans to a \$25 nominal value, preventing carriers from giving "car kits" to long-term or high-volume users to enable them to convert their portable phones to car phones;
- limiting the availability of free airtime to customers by imposing a \$100 limit on the value of such programs;
- prohibiting the combination of equipment discounts and service, forcing customers to pay more for both equipment and service;
- prohibiting cash-back offers, such as a \$400 offer associated with a three-year service term, *even after thousands of customers had already signed up for the offer.*

In spite of these anti-consumer restrictions, cellular customers *are* paying gradually lower rates in California, as many new customers sign up for promotional plans -- thereby lowering the effective price for consumers. For example, in its Los Angeles market, AirTouch Communications offered introductory plans which saved consumers anywhere from 4% to 18% off of the non-discounted tariffed rate. Moreover, AirTouch notes that, at the end of 1994, over 50% of its customers subscribed to one of its three low-cost promotional plans.¹

¹ See Ex Parte filing of AirTouch Communications, PR Docket 94-105, March 15, 1995.

In other words, despite the CPUC's misguided efforts, wireless carriers are responding to the market's competitive forces by offering these reduced-rate promotional plans. Continuing the CPUC's present regulatory authority -- or permitting the even more intrusive regulatory regime which the CPUC has proposed -- will endanger the kinds of discount packages that provide consumers with more choices, and ultimately, lower prices.

The CPUC speaks of consumer protection, but its efforts have been aimed at protecting the profit margins of a particular class of competitors: cellular service resellers. **The CPUC has consistently held up rates to create a profitable umbrella under which resellers can enjoy healthy margins.**² Unfortunately, the resellers' profits have come at the expense of the consumers, who are forced to pay unnecessarily high rates and must endure repeated delays for new service offerings.

Even when new service offerings are permitted, the CPUC has often limited the availability of such plans. In effect, the CPUC precludes the facilities-based carriers from using more efficient marketing and distribution channels -- which lower the margin between wholesale and retail prices -- and thus from passing the savings on to the wireless customer. In spite of this, consumers have enjoyed the benefits of competition -- whenever the CPUC has eventually, and reluctantly, allowed the market to work.

Even when the CPUC claims to be working on behalf of the consumer, their efforts produce perverse results. The CPUC forced consumers to pay more for both equipment and service when it refused to permit carriers to bundle service and equipment. For example, Atlantic Cellular cannot offer the same discounts on its service and equipment in California as it can in its other, unregulated, markets. **The CPUC ignored the fact that bundling is a recognized strategy for lowering the costs of equipment and service, one which the Department of Justice, Federal Communications Commission, and staff of the Economics Bureau of the Federal Trade Commission have approved as pro-consumer and pro-competitive.** All the CPUC did for consumers was require them to spend more money on both service and equipment.

California is the only state where bundling is prohibited. Even though the Bakersfield Cellular Telephone Company proposed in June, 1993, that the CPUC eliminate the bundling restriction, the CPUC delayed considering it until February, 1995, when an Administrative Law Judge recommended modifying the restriction. Fittingly, the CPUC was to consider the issue on March 22, 1995, but it has delayed it once again. Moreover, while the ALJ has made this suggestion, the CPUC has rejected its ALJ's recommendations before, and the enforcement of the CPUC's rules often deviates from the "relaxed" interpretation which has been expected.

Again, these are the real-life facts that illustrate the CPUC's role in maintaining inordinately high prices for wireless service in California. Additionally, solid economic

² Nationwide Cellular, the nation's largest cellular reseller, recently announced a record year for 1994, with 33% gross margins on cellular revenue.

evidence exists to support this California experience. Professor Jerry A. Hausman, MacDonal Professor of Economics, MIT, has found that state regulation leads to higher prices:

**Table 1: Average Cellular Prices in the Top 10 MSAs: 1994
160 Minutes of Use (80% Peak)**

<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

Table 1 clearly shows that higher monthly service prices are the result of regulation. Every regulated price in Table 1 is greater than every unregulated price in Table 1. As Professor Hausman has observed, "The probability that every regulated price would exceed every unregulated price if the prices had no relationship to regulation is 0.00002."³ In fact, **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 to low usage customers.**

Professor Hausman's analysis also 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.⁴

The CPUC Has Delayed and Restricted Wireless Service

The CPUC's regulations have consistently impeded the growth of the wireless market by limiting or delaying consumers' service choices. Some examples of the CPUC's delays and restrictions include:

- holding up the Bakersfield Cellular Telephone Company's efforts to lower roaming rates by almost five months (from May 21, 1993, to October 6, 1993);

³ See Jerry A. Hausman, "The Cost of Cellular Telephone Regulation," filed March 10, 1995, in PR Docket No. 94-105, by AirTouch Communications, at 11.

⁴ *Id.* at 18.

- delaying a High Volume Discount Plan for four months, in response to a competitor's objections, and eventually limiting its availability to only certain subscribers' rate plans;
- delaying by eight months a Multi-Line Plan which would have offered discounts to individuals affiliated with a common entity, in response to competitor's objections;
- delaying by a year one carrier's efforts to establish a uniform roaming rate across its markets in the state, and limiting the plan's eventual approval to only temporary status.
- requiring 30 days notice for new pricing plans, allowing competitors to delay them by filing opposition with the CPUC.

Because such delays and restrictions are well-known, **many carriers no longer even attempt to introduce certain rate plans and service programs that have been successfully offered in other states.** For example, U S WEST Cellular has stated that "the CPUC process, and the restrictions imposed, . . . caused U S WEST to not offer various promotions and plans in San Diego which have been successfully offered and implemented by its affiliates in other states. Thus, popular programs are denied to California's cellular customers."⁵ Thus, the CPUC determines the ultimate result in the wireless market -- fewer consumer choices and higher prices. Granting the CPUC continued regulatory authority only perpetuates its role as market referee, rather than let market forces offer a better result -- more choices and lower prices.

State Regulation Lowers Subscribership and Discourages Growth

In addition to these real-life stories of the CPUC's detrimental effect on the availability of wireless services, there is concrete economic evidence proving that state regulation, in general, limits the growth and availability of wireless communications.

Professor Hausman has found that **subscribership to cellular is higher in unregulated states than in regulated states.** By analyzing changes between 1989 and 1993, Professor Hausman has 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.

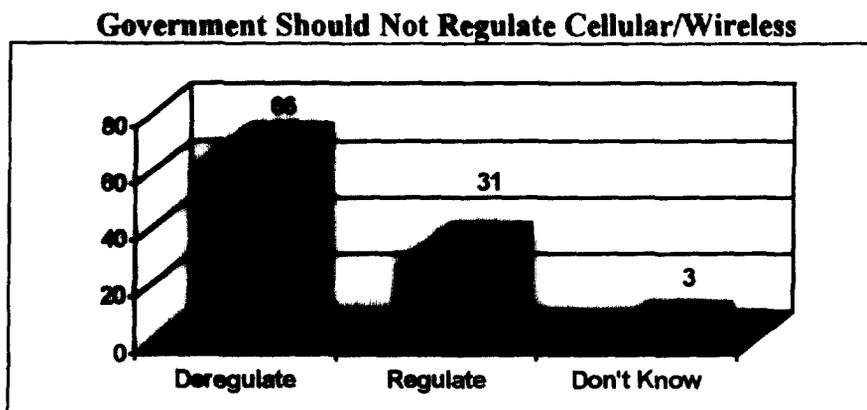
⁵ See *Opposition of U S WEST Cellular of California*, PR Docket No. 94-105, filed September 19, 1994, at 11.

Table 1: Cellular Penetration in the Top 10 MSAs: 1994
 New York is used as basis: New York = 1.00

<u>MSA #</u>	<u>MSA Name</u>	<u>1989 Penetration</u>	<u>1993 Penetration</u>	<u>Regulated</u>
1	New York	1.00	1.00	YES
2	Los Angeles	1.42	1.30	YES
3	Chicago	2.04	2.92	NO
4	Philadelphia	1.45	1.61	NO
5	Detroit	1.72	1.74	NO
6	Dallas	1.71	2.06	NO
7	Boston	1.79	2.35	YES
8	Washington	2.47	2.39	NO
9	San Francisco	1.37	1.40	YES
10	Houston	1.45	1.98	NO
	Average Regulated	1.29	1.30	YES
	Average Unregulated	1.82	2.19	NO

Despite These Facts, the CPUC Seeks to Continue its Misguided Regulations

The facts speak for themselves, and the consumers of California know these facts, even if their PUC does not. A recent poll reveals that 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.⁶



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

⁶Public 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.

their rates. However, cellular phone users are not alone; California legislators, manufacturers, retailers, and service providers all recognize that the CPUC is the primary obstacle to competition and its benefits.

CPUC Doesn't Meet the Congressional Test -- the Market Isn't Failing Consumers, the CPUC is Failing Them

In 1993, Congress elected competition over regulation, but it 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 ignores the fact that the only conditions unique to California are the PUC's own misguided regulations. The CPUC itself is responsible for impeding the decline in rates, limiting competition, and denying consumers the benefits of unfettered competition which are available in deregulated states.

The CPUC must be preempted in order to provide consumers with the full range of the benefits of competition.