

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



March 27, 1995

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REGISTRATION ROOM

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

Re: PR Docket No. 94-105; Ex Parte Presentation

Dear Mr. Caton: **DOCKET FILE COPY ORIGINAL**

In accordance with Section 1.1206(a)(1) of the FCC's Rules, two copies of this notice with the attached letter are being submitted to your office.

Sincerely,

Ellen S. LeVine  
Counsel for California

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## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



March 27, 1995

Michael Wack  
Wireless Communications Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20036

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Re: PR Docket No. 94-105

Dear Mr. Wack:

The California Public Utilities Commission ("CPUC") hereby responds briefly to yet another ex parte filing made by the cellular industry to the Federal Communications Commission ("FCC") on March 24, 1995. This filing is from the Cellular Telecommunications Industry Association ("CTIA") and purports to support the denial of the CPUC petition herein.[1] Among other things, CTIA cites two examples in which it claims CPUC regulation burdened the cellular industry. The CPUC's records indicate that the first example is a complete fabrication; the second example does not appear in CPUC records, and given the fact that the allegations contained are completely unsubstantiated, it merits no serious consideration.

With respect to the first example, the CPUC was apprised by PacTel Cellular (now AirTouch) of a contract which PacTel Cellular had entered into with UPS in April, 1992. At that time, the CPUC informed PacTel Cellular that the contract did not require CPUC review because the service was an "enhanced service" not regulated by the CPUC. The contract thus went into effect without any review or delay by the CPUC.

In March, 1993, RAM filed a complaint against PacTel Cellular and UPS, alleging that the contract was unlawful. The CPUC held no hearings on this complaint, and has taken no formal action on it. It bears emphasis that during the pendency of the complaint the

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1 The CPUC renews its motion to strike all such filings which introduce new information and deny the CPUC an effective and fair opportunity to respond. See Motion By California To Strike Ex Parte Filings Made By AirTouch, dated March 15, 1995. Indeed, the CPUC notes that CTIA's latest ex parte filing is one of several which CTIA has recently made with the FCC, none of which the CPUC has seen with the exception of the instant one.

Michael Wack  
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contract remained in full force and effect, and no service was disrupted, altered or otherwise impeded.

With respect to the second example, the CPUC has no record of any complaint, request for waiver, or other pleading filed with the CPUC by Highway Master to substantiate the allegations made on its behalf by CTIA. Inasmuch as these allegations are vague and unsubstantiated, and given CTIA's gross distortion of the facts underlying the UPS contract, CTIA's allegations on behalf of Highway Master cannot reasonably be accorded any weight.

Finally, statements by former CPUC Commissioner Wilk are stale and outdated. These statements, made in 1993, discuss "court-like" proceedings before the CPUC, but the CPUC no longer conducts any formal proceedings for cellular carriers seeking to change their rates. As previously discussed by the CPUC, such carriers may raise or lower their rates in California on same day notice. Moreover, the proceeding in which the CPUC determined, based on substantial evidence, that cellular markets in California are not currently competitive, was a notice and comment proceeding, much like proceedings of the FCC. CPUC D.94-11-019. Indeed, the cellular industry challenged the CPUC order resulting from that proceeding on the basis that it was not "court-like." CPUC D.95-03-043 (March 23, 1995).

In short, CTIA's further allegations about CPUC regulation are false, unsubstantiated, and otherwise meritless. They must be rejected.

Sincerely,



Ellen S. LeVine  
Counsel for CPUC

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