BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Petition of the State of Ohio	)	PR Docket No. 94-109
	)	
For Authority to Continue to Regulate Commercial Mobile Radio Services	)	

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OPPOSITION OF THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA")[1] respectfully submits its Opposition to the petition for reconsideration of the Public Utilities Commission of Ohio ("Ohio" or "PUCO")[2] in the above-captioned proceeding.[3] In its petition, PUCO requests permission to supplement its petition with the results of an adjudication of a cellular resale

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[1] CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service providers, including cellular, personal communications services, enhanced specialized mobile radio, and mobile satellite services.

[2] See Petition for Reconsideration of the Public Utilities Commission of Ohio in PR Docket 94-109 (filed June 19, 1995) ("Ohio petition" or "petition").

[3] See Petition of the State of Ohio for Authority to Continue to Regulate Commercial Mobile Radio Services, PR Docket No. 94-104, Report and Order, FCC 95-193 (released May 19, 1995) ("Ohio Order").

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complaint.[4] As demonstrated below, PUCO's petition should be denied.

The Commission properly exercised its statutory power in denying Ohio the authority over CMRS rate regulation. Ohio's petition for reconsideration, which requests authority to continue its investigation of a reseller complaint, represents a thinly-veiled attempt to regulate cellular rates. As such, it should be denied as well. Ohio simply lacks jurisdiction over CMRS rates because it was unable to meet its statutory burden for retaining such authority. It cannot now regain such rate regulation authority under the guise of its investigatory powers.

I. THE COMMISSION PROPERLY EXERCISED ITS STATUTORY AUTHORITY BY DENYING OHIO'S PETITION TO CONTINUE REGULATING CMRS RATES.

Congress amended Section 332 of the Communications Act to preempt state and local government regulation of CMRS provider rates and entry[5] in an effort to promote marketplace competition and to "foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."[6] In implementing the statute, the Commission

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[4] Ohio petition at 3, citing Complaint of West Side Cellular, Inc. dba Cellnet of Ohio, Inc., Case No. 93-1758-TP-CSS.

[5] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002, codified in part at 47 U.S.C. § 332(c).

[6] H.R. REP. NO. 111, 103d Cong., 1st Sess. 260 (1993). The Commission endorsed this principle:

(continued...)

properly characterized the Congressional mandate that "no State . . . shall have authority to regulate"[7] CMRS rates as conveying "an unambiguous congressional intent to foreclose state regulation [of CMRS] in the first instance."[8]

Against this general preemptive backdrop, the Congress provided a very limited exception whereby states that were already regulating CMRS rates could petition the Commission to request authorization to retain such jurisdiction. In implementing this limited exception, the Commission properly determined that "Ohio, or any other state, should not be allowed to continue regulating CMRS overall"[9] unless it, "consistent with the statute, clear[s] substantial hurdles,"[10] i.e., it provides documentary evidence in support of continuing or initiating state CMRS regulation.

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[6](...continued)
Our preemption rules will help promote investment in the wireless infrastructure by preventing burdensome and unnecessary state regulatory practices that impede our Federal mandate for regulatory parity.

Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, 1421 (1994) ("CMRS Second Report").

[7] 47 U.S.C. § 332(c)(3).

[8] Ohio Order at ¶ 8, citing CMRS Second Report, 9 FCC Rcd at 1504.

[9] Ohio Order at ¶ 12.

[10] CMRS Second Report, 9 FCC Rcd at 1421 (emphasis added). The Commission provided explicit examples of the types of evidence it would regard as pertinent for review of state petitions. See id. at Appendix A.

The Commission, in applying the statutory criteria to the Ohio petition, found that Ohio failed to meet its statutory burden. Specifically, the Commission found that --

(1) Ohio failed to meet the statutory requirements of demonstrating that "market conditions for the service(s) at issue fail to protect subscribers adequately from unjust and unreasonable rates, or unjustly and unreasonably discriminatory rates"[11]; and

(2) Ohio lacked authority to regulate future CMRS because Section 332(c)(3)(A) "wholly displaces state regulation of CMRS entry."[12]

Having found no basis on which to grant an exception, the Commission properly carried out congressional intent by rejecting Ohio's petition and effectively removing Ohio's jurisdiction to regulate CMRS rates.

II. THE COMMISSION SHOULD REJECT PUCO'S PETITION AS IT REPRESENTS AN ATTEMPT TO REGAIN AUTHORITY OVER CMRS RATES.

PUCO's petition for reconsideration is a thinly-veiled attempt to regain authority over CMRS rates under the guise of investigating a cellular resale complaint. Put simply, the Commission lacks the authority to permit PUCO to continue its investigation over CMRS rates because PUCO is unable to demonstrate the requisite conditions necessary to retain CMRS rate authority.

Specifically, PUCO requests permission to continue investigating a complaint involving the following issues: (1)

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[11] See Ohio Order at ¶ 31.

[12] Id. at ¶¶ 31 and 45. See also 47 U.S.C. § 332(c)(3)(a) ("no State or local government shall have any authority to regulate the entry of . . . any [CMRS].")

whether the cellular respondents "did not maintain separate accounting records for their wholesale and retail operations in violation of PUCO orders," (2) whether "the respondents had been unlawfully cross-subsidizing their retail operations with profits generated through their wholesale operations," and (3) whether "the respondents provided service to their retail operations at rates lower than those which they offered to" the cellular reseller.[13]

While the Commission specifically preserves Ohio's regulation of "terms and conditions" of intrastate CMRS,[14] such authority does not comprehend the investigation Ohio wishes to complete. As the Commission notes, Ohio "has lost authority to regulate 'the rates charged' for CMRS rates"; therefore, "Ohio may not prescribe, set, or fix rates in the future."[15] Because Ohio has been unable to conclude whether state regulation is warranted,[16] there is no sufficient statutory basis to extend Ohio's investigatory powers.[17] Moreover, the Commission's

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[13] Ohio petition at 3.

[14] See Ohio Order at ¶¶ 43-44 (Ohio may lawfully regulate complaints regarding customer billing practices, information, and billing disputes. Moreover, it can require "that licensees identify themselves to the public utility commission . . . so long as nothing more than standard informational filings is involved").

[15] Id. at ¶ 43.

[16] Id. at ¶ 38 ("OPUC itself has not concluded that market conditions fail to protect consumers.")

[17] See 47 U.S.C. § 332(c)(3)(A) (as a condition precedent to continued intrastate rate regulation authority, states must (continued...)

authority to resolve interstate complaints under Section 208 of the Act[18] provides protection against allegations of unreasonable or discriminatory CMRS rates or practices.[19]

It would be impossible at this time for the Commission to extend Ohio's authority over CMRS as requested in its petition. The Commission lacks the authority to override the proper implementation of an express mandate from Congress. Because Ohio failed to meet the statutory threshold for continued regulation, and now requests an extension of its illusory CMRS rate authority, the Commission is without the ability to provide the requested relief. Accordingly, Ohio's petition should be denied for containing requests that, by law, simply cannot be granted.

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[17](...continued)
demonstrate that market conditions fail to protect subscribers adequately from unjust and unreasonable rates or unjustly or unreasonably discriminatory rates).

[18] 47 U.S.C. § 208.

[19] See CMRS Second Report, 9 FCC Rcd at 1479 ("In the event that a [commercial mobile radio services] carrier violated Section 201 or 202 [of the Act], the Section 208 complaint process would permit challenges to a carrier's rates or practices and full compensation for any harm due to violations of the Act.")

CONCLUSION

For the foregoing reasons, CTIA respectfully requests that the Commission deny PUCO's petition for reconsideration.

Respectfully submitted,

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July 5, 1995

CERTIFICATE OF SERVICE

I, Andrea D. Williams, certify that I served a copy of this "Opposition of the Cellular Telecommunications Industry Association" to the petition for reconsideration today, July 5, 1995, via first-class mail to the parties listed below:

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