

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the matter of:

Promotion of Competitive Networks in  
Local Telecommunications Markets

WT Docket No. 99-217

Wireless Communications Association  
International, Inc. Petition for  
Rulemaking to Amend Section 1.4000  
of the Commission's Rules to Preempt  
Restrictions on Subscriber Premises  
Reception or Transmission Antennas  
Designed To Provide Fixed Wireless  
Services

Cellular Telecommunications Industry  
Association Petition for Rule Making  
and Amendment of the Commission's  
rules to Preempt State and Local  
Imposition of Discriminatory And/Or  
Excessive Taxes and Assessments

Implementation of the Local  
Competition Provisions in the  
Telecommunications Act of 1996

CC Docket No. 96-98

**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES  
COMMISSION AND OF THE PEOPLE OF THE  
STATE OF CALIFORNIA**

The California Public Utilities Commission and the People of the State of California (California or CPUC) respectfully submit these Comments in response to the Notice of Proposed Rulemaking (NPRM) issued by the Federal Communications Commission (FCC or Commission) on July 7, 1999. In the *NPRM*, the Commission

seeks comments on issues to help ensure that competitive providers will have reasonable and nondiscriminatory access to rights-of-way, buildings, rooftops, and facilities in multiple tenant environments.

In October 28, 1998, the California Public Utilities Commission issued a decision addressing access to rights-of-way, D.98-10-058 in docket R.95-04-043/I.95-04-044, Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service (CPUC Decision). The CPUC Decision was issued to facilitate the opening of the local exchange market within California to competition. California exercised its jurisdiction under federal and state statutes and adopted rules governing the rates for and nondiscriminatory access to the poles, ducts, conduits, and rights-of-way (ROW) owned or controlled by a telecommunications company or a major electric utility generally applicable to all competitive local carriers (CLECs) and incumbent local exchange carriers (ILECs) competing in the local exchange market within the service territories of the large and mid-sized ILECs. Certain aspects of the CPUC Decision are the subject of pending rehearing applications at the CPUC. The issues on rehearing which are relevant to the FCC's *NPRM* are the CPUC's decision to grant competitive carriers nondiscriminatory access to the incumbent carriers' facilities in multi-unit buildings up to the minimum point of entry (MPOE) *i.e.* the demarcation point between the regulated utility's facilities and cable, wire, or equipment owned by the building owner, the CPUC's jurisdiction over building owners, and the prohibition of exclusive contracts between carriers and building owners. Another issue subject to a rehearing at

the CPUC is the CPUC's decision to grant competitive carriers nondiscriminatory access to rights-of-way which are under the control of cities, counties and other political subdivisions. We have attached the CPUC Decision to these comments to inform the Commission of California's regulations concerning these matters.<sup>1</sup> No aspect of this decision has been stayed.

In addition, we take this opportunity to comment on an issue raised by the *NPRM*. The Commission sought comment on whether and under what circumstances, the Commission should preempt any State regulation of access that may be inconsistent with any regulations that the Commission may adopt, or whether the Commission's regulations should apply only in States that do not enforce their own nondiscriminatory access rules. (*NPRM*, ¶ 62.) In the CPUC Decision, pursuant to the Communications Act, section 224(c)(1), and state law, the CPUC promulgated a nondiscriminatory access rule applicable to the ILECs and CLECs. California believes that any state nondiscriminatory access rule, whether it applies to utilities or any other entities, which facilitates competitive entry on a noncompetitive basis, should not be preempted on the basis that it is "inconsistent" with the FCC's regulations. Nondiscriminatory access can be accomplished in a variety of ways and the states should be afforded the opportunity to devise their own solutions. If, on the other hand, a state promulgates regulations which discriminate or preclude open access, this would conflict with federal law and should be preempted on a case-by-case basis. It would be premature at this time to establish any

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<sup>1</sup> We have previously submitted the CPUC Decision to the Commission in the context of certifying to the Commission that California regulates the rates, terms, and conditions for pole attachments pursuant to section

general preemption over any state regulation of access that may be inconsistent with the Commission's regulations it adopts.

Respectfully submitted,

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