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April 14, 2021 (morning)

TO: California Senate Standing Committee on Energy, Utilities and Communications, this submission to each Senators serving thereon, and to the immediate attention, please, of senior consultants Ms. Nadia Bautista and Ms. Sarah Smith

FROM: Harry V. Lehmann, trial lawyer

RE: Constitutional, legal, practical and moral objections to SB 556 et al for the reasons stated herein, this letter providing lawful Notice

Dear Senators and Senior Staff:

Please scrutinize what is deployed in this letter, in the form of legal Notice, to objectively determine to your satisfaction whether the following points are accurate.

What is said and done at this moment from each of us, given the stakes, should be sufficiently objective, from all sides so that for sustained Legislative dignity, such that each vote on SB 556 and companion Bills, providing for obliteration of Local Control over the construction of so-called "small cell," antennas, will be found by the Governor, the Courts, and the Court of Public Opinion to have been the result of good faith empirical analysis.

The starting point about SB 556 is that we must, all of us, be scientifically objective, if we are to live up to our respective Oaths of public service, including our obligations for lawful defense of our Constitutions, federal and California.

Because of the profound procedural, in particular Due Process, and severe content flaws respectfully shown below, it is not necessary for this Committee to consider the cumulative exposure of pulsed, data-modulated, Radio-frequency Electromagnetic Microwave Radiation (RF-EMR) and the resulting adverse impacts on the biology of your individual constituents and their families of voting adults into account in your rendering an immediate rejection of each of these Bills, including: SB 556, AB 537 and SB 378.

CONSTITUTIONAL AND FLAWS IN ALL PENDING SMALL CELL BILLS:

Respectfully, Senators:

1. Each and all pending Bills from the telecommunications industry fail to recognize and accommodate the reality that the business activity exclusions in HO-3 and variant homeowners policies, leave each owner of every residential structure not only uninsured for lawsuits based on a large number of subjects, but without any provision, due to denial of coverage letters, for provision of defense counsel to protect your constituents from such legal assaults. Subject matters will involve easement violation (utility pipe and wire easements do not actually accommodate [near-spherical] wireless radiation broadcast); will involve aesthetic concerns of neighbors and passers-by including, under the California Supreme Court's 2019 ruling in T-Mobile v San Francisco, the "negative health consequence", in the judges' ruling "concerns" of members of the public upon encounter with such individual antennas on structures and, including public aesthetic concerns grounded in the clear proven science demonstrating immediate adverse neurological, cardiac and hormonal effects, DNA damages and even carcinogenic effects. Such concerns are of course disruptive of the daily aesthetic experience. The carriers cannot offer actually insured promises of indemnity in this regard, because, as you know, they cannot get insurance or most importantly re-insurance for damages from injury illness or death caused by EMF/RF-EMR microwaves. – as all policies from Lloyd's of London, AM Best and others have had a pollution exclusion for EMF/RF-EMR for over a decade. Sadly, compliance with the FCC's scientifically-unsound RF-EMR exposure guideline does NOT provide actual public safety. Therefore, as is done with our insurance pools shared between cities, any of these Bills from the telecommunications industry should at least include a requirement that the industry submit to a statewide insurance pool, meeting coverage requirements as determined by the Office of Legislative Counsel, in collaborative consultation with the executive leadership working under the California Insurance Commission and the contributions of the Commission itself.

2. Each and every of the pending Bills including SB 556 and as listed above is defective wherever the term 'small cell' is used, this resulting from the fact that on December 5, 2019, an FCC Order became effective – an Order which deleted the FCC's definition of the term "Small Wireless Facility" and the Commission has provided no l lawful definition of the term "Small Wireless Facility" since that time. This deletion of the term "Small Wireless Facility" [as to antennas] occurred on December 5, 2019, in the efforts of the FCC staff and Commission to comply with the August 9, 2019 holding of the DC Circuit in Case No, 18-1129, *Keetoowah et.al. v FCC*, which requires an

environmental assessment for every 5G installation. This intentional deletion, the word used being 'delete,' was never corrected through the statutorily required Notice of Proposed Rule Making as required by federal and state laws as part of our public entitlement to Due Process of Law. Instead, Commission staff spit-balled a change in Rule by the autocratic fiat that the lawfully required provisions for public Notice of such rule making was, through prestidigitation of the keyboard, no longer required. This is both contrary to applicable CFR standards, and a clear violation of the "Arbitrary and Capricious" standard in the Administrative Procedure Act, the same issue the FCC faced as a result of Keetoowah at the start of this roundabout administrative dance.

3. As was the case when we all faced SB 649 back in 2017, each of these pending industry-originated Densifed 4G/5G infrastructure Bills impose liability upon the owners of all of the structures, State, County, City, District, Utility and Private, upon which such structures, ***the only purpose of which is to broadcast radiation*** are constructed. In addition to the plethora of easement issues, each one of these installations now requires an National Environmental Policy Act (NEPA) review and it is inevitable that our increasingly well-informed public will recognize that in circumstances as provided in regulation, as to each and every such installation, each with different topography and recipient fact patterns, these proposed, non-defined, now so-called so-called "small" Wireless Telecommunications Facilities (sWTFs) will be, or at least some large segment will be, of a sort such that Petition for Environmental Assessment to the FCC's Wireless Telecommunications Bureau will be an entitlement of persons claiming effect from such proposed installations, including, per our California Supreme Court, aesthetic concern grounded in health worry being incommoded because "lines or equipment might generate noise, cause negative health consequences, or create safety concerns . . . All these impacts could disturb public road use, or disturb its quiet enjoyment." (2019 T-Mobile v San Francisco). ***It is respectfully noted that any Senator or member of the Assembly has the unencumbered and free speech right to decline to support any bill because of that Legislator's moral concerns, with no lawful obligation to thereafter explain***. Back in 2017; SB 649 was intended to roar emerged as the wounded squeaker which Governor Brown mercifully Vetoed. These 'put it on any structure you like,' Bills, each and all, suffer from the same governmental liability issues in SB 649, see my letter to Assembly Appropriations of July 19, 2017. Respectfully, these factors stated in 2017 are equally applicable to SB 556 et al include the following same problems which were in SB 649:

> Senate Bill 649 can shift liability exposure from the telecom industry to the State of California.

The most important purpose of this letter is to alert Assemblymembers of previously undisclosed economic consequences which to the undersigned appear legally very likely to ensue from the passage of SB 649. State lawyers with extensive trial experience should evaluate what is said here and advise Appropriations and the Assembly whether the warnings here represent real issues. The consequence of greatest concern is that passage of SB 649, contrary to appearances, ***will result in the mass transfer of liability for cellular microwave injury from the telecom industry to State government, with $Billions involved.*** Whether this here-disclosed consequence is the result of a brilliant and intricate multiple-stage legal stratagem by the best lawyers that Telecom could retain, or whether the industry just got lucky, the result for the State of California will be the same, financial ruin. Consider the following factors:

1. The State can't be sued for 'negligence' or other basic common-law theories of relief, and Claimants can only sue as allowed in the Government Code.

2. The main CA Government Code section which is virtually always pled by all experienced public entity lawyers is Dangerous Condition of Public Property, Government Code 835. .

3. If the 'taking,' of county and city properties in SB 649 is allowed, then what next follows when the cell tower is affixed to the publicly-owned utility pole, due to the 'fixtures,' doctrine and other legal reasons, is the merger of antenna and pole into Public Property. This is a complex issue with other criteria supporting the same Public Property finding.

4. Through the 'Firefighters Exemption' to SB 649, prohibiting cellular antenna construction near where firefighters sleep, based on health grounds as pushed by their unions, ***the State is acknowledging that its new melded-exposure property is Dangerous***.

5. As a result of the above the enabling legislation makes the resulting Public Property Dangerous in character in the light of Government Code 835, which in turn makes lawsuits against the State much easier.

6. There is now overwhelming evidence of DNA and cellular damage from radio-frequency EMF as emitted by cellular phones and towers. If you have doubt about this, set up a debate between me and the best they've got. See prior letters, notably of May 23rd to Senate Appropriations, with integrated sworn Declaration of McGavin.

7. It is a matter of well-established public record that the international re-insurance industry has long refused to insure any aspect of the telecom industry for injuries caused by cellular devices or installations. There is no net.

8. ***The only avenue left to the cellular industry, other than just honestly facing up to this mess and helping us solve it, is to shift the legal responsibility to government***.

9. Though good challenge may be on the horizon, the current stance of federal law under the Telecommunications Reform Act of 1996 it is not possible to prevail against a cellular company for liability for a phone made in roughly the last two decades.

10. Seasoned and competent counsel, where injuries occur of a sort consistent with EMF injury to DNA, including glioblastoma as indicated by glioma from the NIH study, will file suit against responsible corporate entities, broadly, and also sue the State of California. Right now many serious lawyers avoid this area due to the 1996 Telecommunications Reform Act. However the practical immunity offered to telecom under the act is conditional upon compliance with FCC standards, and there are now material means available to show that none of the currently marketed smart phones meet FCC standards when measured *as actually used in the field*, namely up against the face.

11. In the instance of the successful bar to civil prosecution which is currently provided by said industry-inspired 1996 Act, and in a State where 'joint and several liability' means that a 5% liability contributor has 100% of financial responsibility from a loss, ***the result of the combination of the factors stated above is that in the instance of suit, including 'friendly,' all financial burdens from cellular injury are shifted to the State of California, under the results from SB 649 as here-projected, through exercise of the federal regulatory bar to such prosecution of cases against the telecom industry.***

4. Senate Bill 556 and each and every of the companion Bills thereto violate the terms of the U. S. Government's Telecommunications Reform Act of 1996, long since passed into law. The particular example noted to the Senate herein is that the 1996 Act, as passed by both Houses, in 'cooperative federalism,' affirmed the locally controlling entities' capacity to regulate the 'operations,' of Wireless Telecommunications Facilities (WTFs). This requires that each local entity is entitled to at the least a Permit application with sufficient description of any proposed installation and its technical attributes such that sufficient data are supplied to local governing entities. An example of such entitlement to information and control as reasonably necessary over station 'operations,' necessarily includes that each such local entity be informed of any increases in effective radiated power output [wattage ERP].

5. The access to the governmental process now imposed upon members of the public wishing to communicate views to their Legislative representatives is in both design and implementation in clear violation of the Constitutional Due Process rights of rights of your constituents under both federal and state Constitutions. Specifically, the procedures now in place have turned the hearing process into a managed puppet show with such a high level of deprivation of rights that not only the Compelling State Interest

standard, which applies here, is violated, the current supposed public comment Rules don't even meet the far lower Rational Basis standard. Therefore, when the 'tyrannical' is used in this capsule discussion of the resulting deprivation of Due Process of Law which follows, this is not meant as an inflammatory or condemning term, but merely as an accurate descriptor. Most importantly, businesses of all sorts and religious institutions as well have long ago adjusted to carrying on complete meetings which involve the same level of intellectual input that was available to participants before the Covid disaster arrived. There is absolutely no insurmountable technical barrier which requires the severe limitations which the current supposedly applicable Rules require. To be clear, even assuming a near worst case scenario, where infection in the Capital from residual surface area contamination joined with aerosol concerns, there is no practical electronic barrier preventing Senate and Assembly Committees from performing their ordinary functions in the prior ordinary time increments, via video conferencing means, of which Zoom is the popular, but far from the sole, example. There must be something happening here, I say to the thief of our liberties, based on what Chicago's former mayor had in mind when he said; "never let a good crisis go to waste." Therefore, given that this situation could have been addressed without limiting to two "approved," (who, and by whom?) speakers, one yeah, on nay, followed by time constraints so severe that the provision of evidence has been precluded.

The current Rules constitute a tyrannical approach, violation of the Due Process rights of the public to know and understand and supply comment to their Legislative representatives. As to risk from contaminated surfaces, the April 8, 2021 simplified instructions from CDC include the note that: "In most situations the risk from touching a surface is low," with a link to the following language: "Quantitative microbial risk assessment (QRMA) studies have been conducted to understand and characterize the relative risk of SARS-CoV-2 fomite transmission and evaluate the need for and effectiveness of prevention measures to reduce risk. Findings of these studies suggest that the risk of SARS-CoV-2 infection via the fomite transmission route is low, generally less than 1 in 10,000 which means that each contact with a contaminated surface has less than a 1 in 10,000 chance of causing an infection." ***There is no realistic risk presented by receipt of printed documents.***

Certainly, we have all been recipients of varied and changing reports from experts regarding Covid since January of 2020, tand the above CDC citation to link is not stated from any biological arrogance.

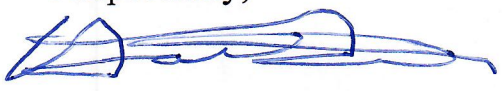
We need to pull together on this issue, including the polite approach of wearing masks in congested indoor places and reasonable social distancing. However, the appearance of what has happened here is that the Rules now in force have changed the dynamic from a government of the people, to a government 'to' the people, and this is not going to serve anyone but the super wealthy and their industries. As a matter of equity as well as for Constitutional reasons, any Bill which goes through the current process, in which evidence based substantive public comment is excluded (a "me-too" agreement to a set-up show of analysis is not substantive), will ultimately serve only to advance entrenched power for the reasons referenced here, which is not consistent with American democratic processes, regardless of any political affiliation. It is noted that the submission procedures now in place allow a Legislator to stop receiving submissions on any Bill of her choice: "*Check mark the author staff name in the Author Staff section. If the Author is not accepting submissions for the desired bill, there will be no staff name to select.*" This is the referee choosing sides before the start of the game.

6. Finally the issue of "negative health consequences" is addressed, including specifically in light of the decision of our California Supreme Court in the 2019 T-Mobile v San Francisco ruling that negative health consequences are allowable local government entity issues of lawfully permitted aesthetic importance as the basis for avoidance of incommoding the public's quiet enjoyment of streets, homes, parks and common spaces. Our laws are the floor upon which we dance, otherwise we're all in the pool below, whatever its constituency. At the most elemental level it simply is not true that in California local governments cannot take the perceptions of the public as to health into account in making determinations for siting of these antennae facilities, the sole purpose of such facilities being the broadcast of radiation. It is now shown beyond reasonable scientific dispute, see the original report of the NIH's National Toxicology Program on its $25+ million and 30-month study of cellular radiation as first published on May 27, 2016 (and quoted in opposition to SB 649 in that year) which demonstrated carcinogenic effect. The NTP panel stated on March 28, 2018 that there was 'clear evidence' of this cancer causing effect, also shown in the final NIH/NTP report of early November of that year. Please see the submission of Dr. Beatrice Golomb in August of 2017, providing a strong annotated advocacy against the inevitable damage from persistent microwave saturation of our citizens, which was, if memory serves, 26 pages in length including this highest level Professor of Medicine's submission of 22 pages of high grade scientific studies showing physiological damages

from this radiation. You are on Notice of that letter and its contents. Additionally, the Committee's own evaluation of the text of the Telecommunications Reform Act of 1996 will show by simple search (it is available at FCC in Word and WordPerfect) that the word "health," is never mentioned. In the reality of the actual language, there is no constraint on the actions of any governmental entity where 'direct physical harm' to humans is involved. Many have bemoaned (see Alan Watts) that our Western viewpoint sees mankind, and our individuals, "in the environment," and let's face it, doing harm, as opposed to the view in some other societies that rather than being 'in' the environment, mankind is 'of' the environment, as Watts put it, individuals not being separate, but being wave on an ocean of humanity; I paraphrase from 50 year old memory, but that's going to be close. As a General Semanticist, in which it is fair to say I have background, where we see that precise language is a key to precise thought, I see, based on well established history in language used and common dictionary definitions of the period, that this traditional Western viewpoint was clearly the linguistic expectation of the framers of the 1996 Act. For further hard data on health consequences of your actions on these Bills, please kindly see the data at www.mdsafetech.org , where I believe Dr. Golomb's commentaries can be found in great depth. So, what can our Senate and Assembly do in the face of this controversy. It is respectfully suggested that any member of either House has the unencumbered right to object to any Bill on the basis of that Senator or Assemblymember that any involved Bill does not satisfy the "moral concerns," of that Legislator, no further comment required, and it is clearly immoral to be subjecting people to continuous carcinogenic radiation against their will and without their control.

This note has been prepared on short notice and is not submitted as covering every legal and Constitutional issue, it isn't a great letter, it is just what one old trial dog could cook up in a day, maybe this isn't not much of a letter. But whatever the failings of this submission in phrasing, this coordinated passel of Industry Bills are each and all subject to the defects in compliance above noted, and your Committee and each that follows are respectfully and strongly urged to turn back against this tide of carcinogenic radiation now poised to poison California. I write as an experienced litigator in scientific proof cases.

Respectfully,



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