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May 22, 2017

Senator Ricardo Lara, Chair  
Senate Appropriations Committee  
State Capitol, Room 5050  
Sacramento, CA 95814

Re: Catastrophic financial consequences for the State of California  
from passing SB 649 during the current session.

Dear Senator Lara -

There are two core points in this letter and both are presented, first in general outline, and also detailed support. As I recognize that your time is limited. Also, though not engaged in the political world, I have studied enough to see that you have been a consistent and strong advocate for the health of all residents, and based on science, I appeal to your convictions in that very area, the rights of our residents to health.

First, this letter advises you, as Chair of the Senate Appropriations Committee of the extreme fiscal risks to the State of California if SB 649 were passed into law, especially in the light of rapidly evolving changes in federal policies towards reimbursement. One of the leading reasons for this extreme risk to California's solvency is the current federal trend towards non-reimbursement of, for one example, its Fair Housing partners for litigation costs and losses from EMS related claims.

Secondly, this letter will advise you and thus the Senate Appropriations Committee of material flaws in proper Notice when this Bill was brought before the Senate Governance and Finance Committee, as chaired by Senator McGuire, late last month. We, who oppose this Bill, were hampered in our ability to fully exercise First Amendment Rights due to the fact, in context and amongst others, that the State of California issued conflicting positions on the same day as to whether or not SB 649 was actually on the agenda of the Governance and Finance Committee, since it had been taken off by the Chair's instruction, and then returned, I say this respectfully, with improper Notice. Far beyond only Probable Cause, this letter is given to you as Chair along with the May 21, 2017 DECLARATION OF PAUL H. MCGAVIN, wherein a detailed chronology of the Due Process deficiencies is documented.

The attached MCGAVIN DECLARATION is in Mr. McGavin's own words, though I helped put the paragraphs he had written into Declaration form and I am therefore familiar with the contents of that Declaration. It is suggested that review by legal scholars will force the conclusion articulated there, that there have been clear failures of Due Process. It is also

well established from the discussion between the members of the Senate Governance and Finance Committee that emails concerning the Amendments to SB 649, and thus those Amendments themselves, were underway *on the very morning of the date upon which the hearing before Governance and Finance actually took place, so that there is no possibility that either any two day written notice to other Committee members of said Amendments, nor any two day prior submission to Rules could have possibly taken place.*

## THE EXTREME FINANCIAL GRAVITY OF THE SITUATION

Someplace in here I need to make it clear that I don't enjoy this, don't like doing it, and am only bringing this to your attention because the humanitarian stakes, in terms of damaged and lost human lives, are so high that given my level of study on this issue (which was set off by losing four colleagues or friends to brain cancer), it is morally necessary for me to bring the facts here stated to your attention.

***Due to emerging federal trends towards State responsibility***, California faces such potentially overwhelming litigation costs and exposures due to massive medical expense costs should SB 649 become law. The reasons for this are not scientifically difficult to see, nor even any longer in serious dispute: 1) Copious documentation, including most recently from the \$24 million dollar study from the National Institutes of Health released on May 27, 2016, shows that non-ionizing radiation from cellular devices and antennas is cancer causing, and; 2) SB 649 proposes to put these generators of cancer-causing radiation on so many lamp posts and utility poles that there will be, literally, a 'small cell' antenna on every urban and suburban bloc. We point out, simply stated, that it is not good governance practice to promote the issuance of cancer causing radiation on every block. Rather than becoming a joint-venturer with the telecom companies by allowance of this Bill, real study of both the fiscal and health implications of this proposed radiation broadcast should be undertaken, so that reasonable analysis of this, given the high human life stakes, should take place within the Senate before any such deployment, which necessarily, given calendar, means in the next legislative session.

As Senator Hertzberg has pointed out, some people, in their materialistic quests, want the benefits of technology badly enough that they either blind themselves to the risks, or accept the risks. He calls this the Diet Coke Society, and in a general sense you and I would agree that he has a point these days. His remarks in full in this regard commence at 5:12:34 in the hearing on SB 649 at the Senate Governance and Finance Committee hearing, although his words indicated that he was not present for the health discussions of the consequences of this Bill. From an outsider's perspective, Senator Hertzberg spoke to the need for balancing of social costs and social rewards. It would place an undue burden on your time to put all his remarks here, though we have them transcribed, I recommend watching and listening. This justifiably honored Senator made an analogy between the benefits of automobiles and the tragic deaths that come from their ubiquitous use. Thus the Senator's commentary included:

[at 5:12:34]:

My big picture observation is that the world is moving faster.  
My big picture observation is the Diet Coke society: the

benefits without the burden. My big picture observation is in crafting public policy, what you're doing here so importantly, is a place for balancing those things.

[at 5:13:23]:

But we make balances. We have automobiles: **there were 38,000 deaths in society last year**. People dead. Dead because of cars, not just injured. But we say there is a value to having an automobile and we make these public policy decisions, in terms of those balances.

I admire Senator Hertzberg, obviously a widely shared view and for good reason including based upon his apparent Eidetic quality. However, for those who study the published science on this, or even read about it in secondary publications (search: mother jones cell phones), ***further contemplation immediately shows why the 'tolerable risk balance' approach is not appropriate determination of whether we will intentionally expose the entire California population to a constancy of proven carcinogenic radiation.*** Once that study takes place, even from respectable secondary sources, a distinction emerges showing the impropriety of application of the traditional 'balancing social gain and social harm' approach in this particular instance. There are several reasons this conclusion will reside in the mind of every Legislator who actually looks at this with depth, I won't try to list them all, but consider the following: 1) SB 649 contemplates saturating the entire population with carcinogenic radiation of a sort that the World Health Organization long ago classified as a Group 2B Carcinogen, and which the U. S. National Institutes of Health have determined through an unbiased \$25 million dollar study, causes the formation of glioma cells, which is what causes glioblastoma brain cancer, the one that kills you, as well as acoustic neuroma. 2) The ubiquity of this saturation means that every man, woman and child will get far more than his or her fair share of abuse, and: 3) We, as a society, including you as Senators, have learned that avoidance of careless practices, such as reckless or impaired driving for one example, will also avoid the tragic or at least disruptive consequences of such conduct. 4) Similarly and more generally, we can typically avoid injurious conduct if we want, such as avoiding high rock climbing without ropes, avoiding dangerous drugs, driving carefully, and watching carefully where we step. ***Usually there are choices.*** But with the unleashing of the radiation that SB 649 promises (and compromise to the property rights of municipalities), a baby, for one example, has no choice, ***his or her exposure is not escapable.*** And that is particularly important with kids, since extremely credible research based on observable phenomena such as skull development shows that they are at the greatest risk. And that's why, even though I personally share the general view that we are in a Diet Coke society, where materialistic gains are sought with recognized demographic, and while I agree that in most cases 'balancing' is necessary, frying kids brains and bodies without anyone's express consent, or even real knowledge, is not the proper standard, no more than it would be for the intentional unleashing of any disease. I would like to say more, but conscious of your time, further financial risks to the State of California from the intentional irradiating of its

constituents, in the era of modern political trends will next be outlined, and then should be studied by political professionals, which I am not.

Among so many legal issues that listing all would overburden this letter, in SB 649 California faces un-enumerated but substantial legal exposure because no language is provided for compliance with the Americans with Disabilities Act 42 USC 12101 et seq, despite that the Bill makes glancing reference to the federal statute. With disabilities from electromagnetic sensitivity having grown in stature of legal recognition, Federal and State actions have already been moving in favor of EMS Complainants under EEOC workplace accommodations, and under 504 education rules for compliance. Complainants have sought, and appear to be gaining, understanding of the need for extension into public housing accommodations under in Fair Housing jurisdictional renderings at HUD. Our best expert on this, Ms. Merry Callahan, cannot testify in person, due to her very own sensitivity, but she writes well as a studious advocate with a memory competitive with Senator Hertzberg in quality, and in this paragraph I am serving her analysis and concerns, and in the next.

Here's a vital part from the standpoint of California's pocketbook: ***HUD has recently directed that it will not be reimbursing its State Fair Housing partners for litigation costs or outcomes in EMS related claims.*** These claims continue to stand on their own merit, however, and are a clear and unfunded fiscal problem at both the State and municipal levels. Senator(s), the main point here is the moral point. Anybody who can take off the blinders of popular fad and look at the science can see that the core issue here is moral, and for those antiques like me who continue to believe in the accountability of the soul, my silence now would just bring up thoughts of Martin Niemoller, 'First they came for the Socialists.'

So this is my way of doing what appears to be morally necessary, and, sure, I ask that of you. But in addition to the moral issue that affecting DNA progression in kids brains without permission is not okay, if California persists in insistence joining in irradiation of her constituents, the Court and legal exposure, since *everyone* is being blasted, and nobody's health is being helped by that, could be so catastrophic as to have bankruptcy implications which may not be the subject of any fair attempt to insulate. Unlike The Hague, there is no dike tall enough to hold back the mega-tsunami of distress if this massive experiment comes out as science indicates that it will. At the very least, this Bill should be studied at far greater length than the current calendar can allow.

Having done what I can do deal with the financial consequences related from the merits of SB 649, this paper will now assure that from this letter the State has Notice of the serious Due Process violations that inadvertence brought upon those who have elected to devote portions of their lives to opposition to this Bill.

#### THE PROCEDURAL DUE PROCESS MESS AND ITS FINANCIAL CONSEQUENCES

The public was not given fair Notice of the hearing on this Bill before the Senate Governance and Finance Committee in late April of this year. There is no question but that

there is Probable Cause for lawsuits on this basis, deprivation of Due Process, but deeper examination, which we have done and here deploy, shows why an even handed Court is more likely than not to find that, indeed, there were material procedural violations which had an adverse effect on those seeking to plan their lives sufficiently to allow objection to this Bill.

The attached seven-page MAY 21, 2017 DECLARATION OF PAUL H. MCGAVIN TO THE CALIFORNIA SENATE APPROPRIATIONS COMMITTEE sets forth the story of the this man Gavin's search for fair citizen input into the discussion of Senate Bill 649. For me to cut and paste his entire fact-laden DECLARATION would expand this letter by another seven pages, and as that Verified DECLARATION speaks for itself, I hereby incorporate it by this reference into this Notice letter as though more fully set forth herein, and this letter will only contain a brief overview, not even a digest, just a few of the lead points.

There were numerous flaws in the so-called Notice given to the public concerning the calendaring of the SB 649 before the Governance and Finance Committee, and flaws in the form of non-compliance with standing practices and rules regarding notice of amendments to members of that Senate Committee, and to the Rules Committee. A capsule of the story includes that the matter was taken off calendar by the Chair, and then restored at the very last conceivable minute, through a means that had two different State web sites providing directly contradictory information as to whether this matter was back on the calendar. McGavin, and his colleague Graham, and then literally hundreds of others, due to email reporting of what was actually shown on the very State website to which McGavin was directed, seemingly be the most credible Senate source(s), namely that the matter remained off-calendar, even though it had been restored, as was shown on one more obscure website. This is a situation where two official State websites simultaneously published contradictory data, and McGavin, just doing as he was told, believed in the one of those websites which continued in the position that the Bill was off-calendar, which meant 'for this session.' In addition there were violations, copious and provable, of amendments being inserted into the finally approved Bill in the early morning hours of the very day upon which the hearing took place, sans anything even vaguely approaching the proper presentation of written copies of amendments to the other members of the Committee two days before the hearing. There was no notification of the amendments to Rules. And Mr. McGavin has asked that I also mention that the Bill, in the form in which it left the Governance and Finance Committee, ***had deleted the prior standards for ground (as opposed to pole-mounted) power supplies, in a situation where the industry has advocated power supplies the size of an apartment refrigerator, and such large power supplies are already the fact of life in Palo Alto in its Rush to Judgement on this matter.*** I do not like being involved in this issue. I do not like finding it morally necessary to spend any time on this political stage. I am nearing 70, I would like to ranch, and fish, and have time with those I love. But I also write to you today, Senator Lara, with genuine respect for you based on my observations, and I say to you, in all due and earned respect, that as a civil trial lawyer who has handled or supervised, as near as I can tell, 1600 civil cases, including career-level public entity work, there are genuine and serious flaws in the Due Process allowed to Mr. McGavin, his colleagues, and the opponents to SB 649.

I did not write his DECLARATION. I asked him to write it, provided some standards which were generally well followed, repeatedly stressed the importance of a Verification, and then put it in the form of a Declaration, although it happens to be presented more in the Federal, or Affidavit, style. I wasn't there, this is his testimony, not mine.

However, from all I can tell McGavin is an honest person trying to help his fellows. I am stating to you that any serious and experienced civil trial lawyer to whom you show that DECLARATION is going to tell you that McGavin and his many colleagues in this have a justiciable basis for suit, and a probable likelihood of positive outcome. Which, again, is more money. Even the CTIA should urge that this Bill be put into the next session for that reason, as I said in verbal remarks before your honored Committee, please, take away that procedural sword from me, for although we would lose legality advantage if proper Notice were given, it would be the most worthy possible trade-off in order to get the science on this Bill studied at a serious level, including through the Senate Health and Human Services Committee and likely other places not understood by me, an amateur in politics, just hoping to make some small but catalytic contribution.

#### BRING IN THE GROWN-UPS

At the last hearing of the Senate Governance and Finance Committee, chaired by Mr. McGuire, whom I know and like, the representative of CTIA was seated behind me as I gave verbal remarks, and as I returned to my seat I quipped, 'at least the medical field will benefit if this passes.' To this Mr. Carlson immediately quipped back: "Bite me."

In most circumstances I would have no complaint about Mr. Carlson responding with high school level sarcasm, such directness is sometimes more refreshing than constant political correctness. But, though I didn't have any 'feelings,' from this abruptness, at least it was direct. Plus, there is no good reason to hold it against Mr. Carlson, who was doing his job, his colleagues should adopt that phrase as his nickname, as a compliment to his tenacity. We know of each other. I have locked horns with CTIA repeatedly before, in San Francisco, when I was the primary correspondent for the Environmental Health Trust in support of the San Francisco cellular telephone ordinance, which was not actually 'lost,' in Court, despite what may come from San Francisco opportunism to the contrary. And as they well know, I was a strong correspondent in support of the Berkeley cellular telephone ordinance, which has now withstood scrutiny at the Federal District Court. Through our five years of work at [www.greenswan.org](http://www.greenswan.org), at massive personal and financial cost, we have been engaged with CTIA. And now this. The issue which causes me to title this BRING IN THE GROWN-UPS is the *pattern of conduct which Mr. Carlson's remark exemplifies*. Two examples, Mr. Carlson's remark, and then next a remark by a senior lobbyist for one of the telecom giants, define a juvenile trend in industry analysis quality, yet lives are at stake.

After the last hearing before your Appropriations Committee, Mr. McGavin and I were approached in the halls. This included approach by a Senate staffer who wanted, she said, to better understand our Due Process arguments, though the research she mentioned

didn't happen to pan out, we looked. The remarks next mentioned here came from a senior telecom lobbyist, who I will name if requested, but he wasn't being mean spirited, and so it seems the better course not to make an unnecessary permanent record involving his name. It is what he said that counts, and what he said, the more I thought about it, was the most disturbing argument in favor of SB 649 that I have heard.

The industry-argument, for many years, has been that direct, non-thermal damage to tissue is 'impossible,' since non-ionizing radiation simply isn't strong enough to cause chemical, or 'ionic,' change in an atom or molecule, and that the only way that damage to tissue can occur is through accumulated thermal effect. This is not new territory. Nor is it correct in application of theory here, including because the mechanism of DNA damage has been documented as mechanical, or 'acoustic,' in physics terms, Swicord and Francis, U of Maryland, 1983, before Swicord went to FDA, and then Motorola. What this senior telecom representative said showed new territory frightening in implication.

The nice gentleman involved, probably a devoted family man doing his best for his family by lobbying up here, looking like a kindly grandfather except for the jet black of his hair. I bear him no ill will. But, in explaining the industry position, one more time, he explained his position that non-ionizing radiation didn't have nearly the energy required to affect the *neutrons* involved, so that it was impossible for people to get hurt. Neutrons. I am not making this up. Nothing about valence or electron shell. I found that frighteningly shocking. I have wondered whether he was just testing me, but he's too nice a guy, and lacking the high level guile that it would take to incorrectly say 'neutrons,' instead of electrons, as a test of my knowledge.

That is a high school chemistry level valence issue, not quantum computing. Yet this nice gentleman, in his professional capacity, argued the incapacity of non-ionizing radiation to affect *neutron* change. Yet, so far as I have so far learned, and I am always open to education on this and everything else, the generally accepted scientific understanding of this issue, including the understanding put forth by CTIA, *is concerned with electron shell charge valence issues*, the argument is that there isn't enough energy to cause an electron to jump its pre-irradiation shell, hence this is non-ionizing radiation. There is not an argument that I had ever before heard, even from industry, concerned with *neutrons*. I want to avoid taking cheap shots here, Carlson's 'bite me,' *deserved mention only as part of a pattern* and this other industry lobbyist was simply a nice man with an incorrect understanding of the science affecting his advocacy. But this is not the time for un-studied enthusiasm, because we have millions of lives ***sure to be affected by this radiation***. This is not the time for juvenile phrases or mis-stated science. This is not a hobby or a game, this is serious.

Very truly yours,



Harry V. Lehmann