

California Wireless Association Official Newsletter

**Ninth Circuit Flip-Flop in *Sprint v. San Diego*
Sprint to Seek Supreme Court Review**

Among the litanies of bad news that spread across the country in late 2008, the wireless industry faced a stunning decision out of the Ninth Circuit: *Sprint v. County of San Diego*. Reversing several years worth of decisions on Section 253 of the Telecommunications Act of 1996, the en banc panel of judges held, for all practical purposes, that local wireless ordinances are protected from facial challenges unless they actually prohibit wireless services in all instances.

Section 253 states that “No state or local law, regulation or legal requirement may prohibit of have the effect of prohibiting the provision of telecommunications services.”

The decision impacts wireline providers as well as wireless providers because the court not only reversed its prior decisions in the Sprint case,

**“Meeting at the Montage”
New Advisory Board Set To Identify Priorities for CalWA**

When CalWA was founded, in 2006, the Board of Directors recognized the need to have a steering committee made up of key people at carriers and infrastructure companies who could offer advice and direction to the organization.

It’s taken us over two years

but also reversed its initial section 253 decision from 2001, a case that became the standard bearer for restric-



CalWA filed a joint amicus in support of Sprint along with PCIA and NewPath Networks.

tions on local abuses, *Auburn v. Quest*.
The Sprint decision appears to align the court with *Level 3 v. City of St. Louis*, a recent Eighth

and a name change, but the group, which we call the Advisory Board, is finally formed and is off to a great start.

On December 9, 2008, at the Montage Resort and Spa in Laguna Beach, CalWA Board members sat down with representatives from almost every

Circuit decision that concluded that challenges to fee requirements under section 253 require actual evidence of prohibition. According to the Eighth Circuit, section 253 was misinterpreted by other circuits, including the Ninth Circuit, derisively referring to one Ninth Circuit case as “creative quotation.” The Ninth Circuit took this criticism to heart and went beyond the Eighth Circuit holding to render facial challenges, in any practical sense, impossible.

The result is that five circuits have ruled on section 253, two of which require proof of prohibitive effect and three of which still are able to infer prohibitive effect from burdensome ordinances. Sprint filed its petition for certiorari in December, asking the Supreme Court to accept the case for review. CalWA filed a joint amicus in support of Sprint along with PCIA and NewPath Networks.

major carrier and tower company. This collection of strong personalities generated heady discussion about how CalWA might become a force for positive change in the state and what issues should be our primary focus. The Advisory Board will meet quarterly or as otherwise needed.

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Thanks to BCI Communications, our 2008 title sponsor at the Arroyo Trabuco Golf Tournament.

Special points of interest:

- Fall Golf Tourny: Arroyo Trabuco Golf Club Works Its Magic Again
- Assemblyman Mike Davis To Speak at February Luncheon

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SAVE THE DATE!
February 20, 2009
Lunch at The Island Hotel
in Newport Beach
12:00 noon
Representative Mike Davis!

Message from the President

By Jon Dohm,
President

I love watching all the “end of the year” shows, especially the year in sports programs. It always amazes me to reflect back on how much happened during the course of one short year.



This would be a good time to do the same with respect to CalWA—to reflect back through 2008 and talk about the association’s successes and how we have moved forward in a positive direction. Rather than focus too much on the past, I’d like to touch on just a couple of accomplishments that I’m particularly proud of, then tell you about what to expect in 2009.

At the beginning of 2008, CalWA’s Board of Directors made the decision to scale-back somewhat on our events calendar in favor of focusing on the business of the organization. In particular, the Board sought to

strengthen all our Committee’s, and to focus on gaining more meaningful participation in the association from our true “customers”—the carriers that provide wireless services throughout California.

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I believe CalWA made great progress in both areas. While additional help is always needed and will certainly be sought this coming year, CalWA’s Committees developed strong leadership and participation in 2008. The results were seen in the quality of CalWA’s events, educational conferences and a steady increase in membership and sponsorships. CalWA reached out to our carriers, and this effort culminated the creation of a carrier

“Advisory Board”, which conducted a kick-off meeting on December 9th. All carriers have expressed interest in the Advisory Board and all the carriers but one were able to attend this initial meeting. We are very excited by the prospect of working closely with this group to help shape, guide and prioritize issues for CalWA in 2009.

What are CalWA’s New Year’s resolutions for 2009? We will continue our quarterly luncheon events, beginning in February. We will offer numerous educational conferences and sessions to our membership. We will expand the role and influence of our Regulatory Committee. We will seek to increase cooperation between our association and public agency planners and decision-makers. We will increase the role and participation of the carriers we represent. There’s certainly more, but those are a few of our ambitious goals. As always, CalWA needs the help and support of our membership to be successful. We look forward to your participation and efforts in the coming year. ‡

Thank You to Our Amazing 2008 Sponsors!

As we head into 2009, the CalWA Board of Directors wants to extend a special thanks to our 2008 annual sponsors.

Thank you to our Titanium Sponsors: Cricket Communications and Talley Communications.

Thank you also to our Platinum Sponsors: Crown Castle International, American

Tower, Trillium, Channel Law Group, BlackDot, and the LYLE Company.

You are the financial lifeblood of this organization. Thank you for your commitment to CalWA’s growth and success.

2009 is going to be a great year for our CalWA annual sponsors! With increased benefits and exposure opportunities for

both our Titanium and Platinum sponsors, we are working hard to give our sponsors the recognition they deserve. So don’t miss out on a great opportunity! We will be introducing our 2009 annual sponsors in the first newsletter of the new year.

For more information about 2009 annual or event sponsorships, please contact Lauren Go at lgo@lyleco.com. See you all in 2009!!



Fall Golf Tourney: Arroyo Trabuco Works Its Magic Again



CalWA extends its warm thanks and appreciation to our title sponsor BCI Communications, and all our other sponsors and players. See you in September 2009!

CalWA Members' Corner

TOWERCO COMPLETES ACQUISITION OF SPRINT NEXTEL TOWERS: DEAL INCLUDES 935 TOWERS IN CALIFORNIA

TowerCo recently announced the completion of a previously announced tower acquisition from Sprint Nextel of approximately 3,080 towers. The two companies have also signed a long-term leasing agreement for TowerCo to provide Sprint Nextel with wireless communications towers to support the company's CDMA, iDEN and WiMAX networks.

Richard Byrne, president and CEO of TowerCo stated, "We are very excited that we have completed the purchase of the Sprint Nextel towers. Wireless carriers continue to grow and enhance their networks, creating strong demand for the towers we've just acquired. Given that demand and the major metropolitan

market concentration of the towers, we have every expectation the portfolio will perform exceptionally well."

The transaction includes 935 towers in California, with 598 in the Los Angeles BTA, 101 in the San Francisco BTA, 80 in San Diego and 42 in Sacramento.

For inquiries or more information on TowerCo, please visit the TowerCo website at www.towerco.com



CalWA Welcomes Our 2009 Sponsors!

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California Wireless Association Mission Statement

The California Wireless Association (CalWA) is a non-profit professional association that brings a unified voice to the wireless industry as we find ourselves facing the uniquely challenging marketing, operations and regulatory terrain of our state.

In addition to providing general awareness of the wireless industry, educating consumers and public officials about the wireless industry and the critical role it plays in California, CalWA cultivates and fosters relationships among the members of the wireless industry and conducts fundraising for several charitable organizations.

Regulatory Committee Starts Hot List Tracker

CalWA's Regulatory Committee has started a tracker for hot button issues that the Association is following. The Tracker also lists key projects that the Committee has initiated.

The brainchild of Julian Quattlebaum and Matt Yergovitch, the Committee's Co-Chairs, the tracker assists the Committee with staying on top of a myriad of developments across the state.

Included in the list of items to date are:

- 1 CalWA Model Ordinance
- 2 FCC "Shot-Clock" Petition
- 3 New ordinances under development in Banning, Santa Cruz, San Mateo County, Pasadena, Solana Beach, and Lake County, etc.

- 4 Moratoria adopted and proposed in Irvine, Downey and Glendale
- 5 Regulatory hurdles in San Diego, Irvine, and San Francisco
- 6 Litigation developments including Sprint's Petition for Certiorari in *Sprint v. San Diego County* (and CalWA's amicus filing)

The Regulatory Committee is always on the lookout for new developments. Please contact Matt Yergovitch at myergovitch@fmhc.com or Julian Quattlebaum at jq@channellawgroup.com if you are aware of other developments in California or at the federal level or if you are interested in attending the Regulatory Committee meetings.

Rep. Davis To Speak

CalWA is very pleased to announce that Representative Mike Davis is the keynote speaker at the 2009 Winter Luncheon in Newport Beach on February 20, 2009. The event will be held at the site of our initial launch, the Island Hotel near Fashion Island.

Elected in 2006, Rep. Davis represents the 48th District and is chair of the Committee on Transportation and serves on the Committee on Utilities and Commerce.

Registration details to come soon.