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ORIGINAL

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EX PARTE OR LATE FILED

March 21, 1995

EX PARTE

RECEIVED

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

RE: PR Docket No. 94-105; Petition of the People of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority Over Intrastate Cellular Service Rates

Dear Mr. Caton:

On Tuesday, March 21, 1995, Brian Kidney, Mary Cranston and I, on behalf of AirTouch Communications met with Rudy Baca, Legal Advisor to Commissioner Quello. We provided the attached and discussed 1994 AirTouch data filed last week with the FCC. Please associate this material with the above-referenced proceeding.

Two copies of this notice are being submitted to the Secretary in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me at 202-293-4955 should you have any questions or require additional information concerning this matter.

Sincerely,

Kathleen Q. Abernathy /klm

Kathleen Q. Abernathy

Attachments

cc: Rudy Baca

No. of Copies rec'd 0+1
List ABCDE

AirTouch Cellular Pricing -- 1993/1994

Starting in 1993 AirTouch began the introduction of a series of heavily discounted service plans that include Super-Value Plans, Corporate/Volume Purchaser Contract Plans and Government Contract Plans.

Since the middle of 1993 18 new discounted service plans with one or two year contracts have been introduced.

Most effective marketing tool, *promotions*, include either the waiver of tariffed charges, discounts of tariff charges or free airtime.

In 1994 AirTouch introduced its lowest priced service plan, the Super-Value 20 starter plan which included 20 minutes of airtime per month

- Introductory promotion (available for 107 days) reduced tariffed price from $34.99 to $29.99, a **14% reduction**.

Another promotion involving the Super-Value 1000 plan -- available for 95 days -- had an effective price of $359.99 or approximately $80 and **18% less** than the non-discounted tariff rate.

The two-year Super-Value Plans were introduced with a promotion lasting 175 days and discounted by $20 per month (total value of $240 or a **4 to 14% reduction** depending upon the Super-Value plan)

In 1994 AirTouch increased the number of promotions, as the duration, in LA.

	No. of Promotions	
Type of Promotion	1993	1994
Waiver of Service Establishment	4	9
Credit on service	2	9
Free airtime	2	2

For Super-Value Plans and the Corporate/Volume Purchaser Plans, service establishment rates waived for approximately 167 days and 132 days, respectively.

Credits of $100 or more per cellular phone number available for over 300 days in 1994 for customers signing up on Super-Value Plans or the Corporate/Volume Purchaser Plans.

AirTouch Communications

Cellular Service Rates and CPUC Petition
PR File No. 94-105

March 21, 1995

THE CPUC HAS NOT DEMONSTRATED THAT MARKET CONDITIONS IN CALIFORNIA FAIL TO PROTECT SUBSCRIBERS FROM UNJUST AND UNREASONABLE RATES

- The California market is structurally more competitive than any other market in the United States, with current competition from a third competitor (Nextel), and imminent entry by two other competitors (Pacific Telesis and Cox).

- The majority of AirTouch customers are on discount plans affording savings above the basic rates on which the CPUC rests its case. The number of AirTouch's customers using the basic plan in Los Angeles has decreased to only 14.4%.

- The CPUC acknowledges that despite system expansion and technological innovation, the basic rate has not increased, rather it has actually declined 14% in real terms.

- Despite bearing the burden of proof, the CPUC chose not to provide any quantitative analysis of the price declines provided through discount plans. The undisputed record evidence demonstrates that AirTouch's prices in Los Angeles have declined by 35% since 1986 and that prices have continued to decline throughout this proceeding.

- The CPUC submitted no evidence to show that cellular prices in California are not reasonable in light of enhanced service quality, system expansion and technological innovation.

- The CPUC submitted no evidence showing that California cellular prices are inconsistent with similar regulated markets. Regulation, not market failure, has inflated prices in California.

THE CPUC HAS NOT IDENTIFIED UNIQUE MARKET CONDITIONS IN CALIFORNIA THAT FAIL TO PROTECT SUBSCRIBERS

The CPUC rests its case on four central "findings" typical of other regulated cellular markets and known to Congress when deciding to preempt state regulation:

- The "government-created duopoly structure" of the cellular industry, and "interlocking ownership interests" among cellular carriers.
- There is insufficient "competitive pressure" from ESMR and PCS service providers to "check prices and earnings" of cellular carriers.
- "Prices of wholesale cellular carriers in California are among the highest in the nation," have remained "strikingly similar" in particular markets, and "have not significantly declined" during the past ten years.
- Cellular carrier earnings are "well above" those found in "competitive markets" and "cannot be explained completely by spectrum scarcity value."

- The duopoly market structure and pattern of interlocking ownership is no different in California than other states.
- The competitive pressure to "check price and earnings" of cellular carriers by ESMR and PCS service providers, has been <u>more</u> effective in California, where entry has already occurred and cellular carriers have responded by lowering prices.
- California cellular rates have followed a pattern similar to rates in other benchmark regulated markets. Indeed, the CPUC cannot explain why rates are consistently higher in regulated states than unregulated states. Moreover, the CPUC has chosen to ignore significant price declines allowed once the CPUC granted limited pricing flexibility.
- The CPUC has not established that the rates of return in California are any different than returns in other cellular markets.

DESPITE BEARING THE BURDEN OF PROOF, THE CPUC FAILED TO SUBMIT ANY QUANTITATIVE RATE ANALYSIS TO SUPPORT ITS CLAIMS.

CPUC'S EVIDENCE

- The CPUC relies solely on the basic rate to support its claims but concedes that the basic rate has decreased by 14% in real terms.
- The CPUC's data demonstrate that the vast majority of California customers subscribe to discount plans.
- The CPUC alleges a "pattern of similar basic rates" but concedes that "similar prices may be observed in a competitive market."

MARKET EVIDENCE SUBMITTED BY CELLULAR CARRIERS

- Quantitative analysis shows that the majority of cellular subscribers in California benefit from significant savings available through discount plans.
- Prices have continued to decline during this proceeding.
- Carriers have reduced rates in response to Nextel's entry.
- The promotional plans offered by cellular carriers in California are typical of those offered in other states.
- Despite improved service quality and expanded coverage areas, basic rates have not increased.
- Regression analysis demonstrates that consumers in regulated states pay more for cellular service than consumers in unregulated states.
- The CPUC's regulation has artificially inflated prices by imposing the reseller margin and denying requests for pricing flexibility. When the CPUC granted limited pricing flexibility, the cellular carriers immediately reduced prices.
- Consumers in other states have benefitted from reduced rates since deregulation.
- Subscriber growth data demonstrate consumer acceptance of rates and service quality.

THE RECORD WILL NOT SUPPORT A FINDING THAT THE CPUC'S REGULATION IS "NECESSARY TO ENSURE" JUST AND REASONABLE RATES

- The rates that the CPUC now claims are "too high" were approved by the CPUC and found to be just and reasonable pursuant to state law. Consistent with its findings that cellular rates are reasonable, the CPUC has never ordered a rate reduction for cellular service.

- All rate reductions that have occurred in California have been initiated by the carriers. Thus, market forces, not CPUC regulation, has reduced prices.

- In violation of the FCC's rules, the CPUC failed to describe its proposed rules in detail, much less show how those rules would result in reasonable rates. To the contrary, the CPUC's regulatory scheme will not ensure that rates are just and reasonable.

  - The CPUC-mandated reseller margin (approximately 14-38%), which has artificially inflated prices for consumers, would continue.

  - The "unbundling" proposal will not cause lower consumer rates because it does not increase capacity or reduce costs.

  - The CPUC is unsure of the technological and economic feasibility of the reseller switch and has left it up to the resellers to determine whether the switch is viable.

- The CPUC's regulatory regime will cost consumers an additional $240 million within the next 12 months.

- The CPUC has failed to present evidence to rebut the showing that state regulation of cellular service has resulted in consumers paying an average of 39% more per month than consumers in unregulated states.

- Since the August 1994 deregulation in Massachusetts, consumers have benefitted from cellular price deductions of about 12%, providing additional evidence supporting AirTouch's data on the cost of regulation.

THE CPUC'S REGULATORY SCHEME IS FLATLY AT ODDS WITH CONGRESS' INTENT

- Congress sought to ensure that "similar services are accorded similar regulatory treatment" because "disparities in the current regulatory scheme could impede the continued growth and development of commercial mobile services."
  - The CPUC has created a new asymmetrical regulatory framework, classifying cellular carriers as "dominant" and all other wireless service providers as "nondominant."
  - The CPUC's unbundling directive is imposed solely on cellular carriers, and not on other wireless competitors.
  - Only cellular carriers would be subject to CPUC rate regulation.
  - Nextel and PCS carriers (including Cox, which is already licensed, and Pacific Bell) are not rate regulated, but they are able to protest cellular carriers' requests for pricing flexibility at the CPUC.
  - The CPUC proposal creates the very type of impediment to the development of CMRS that Congress sought to avoid.
- The CPUC's new regulations also include physical interconnection requirements affecting interstate calls that are plainly preempted under section 2(a) of the Communications Act. Reseller switch interconnection is more appropriately addressed in the Commission's rulemaking on interconnection to ensure that national standards are established that do not conflict with federal goals.
- Denial of the Petition is the only decision that will "give the policies embodies[d] in section 332(c) an adequate opportunity to yield the benefits of increased competition and subscriber choice anticipated by [Congress]."

CONSISTENT WITH THE COMMISSION'S PRIOR FINDINGS ON WIRELESS COMPETITION, THE PETITION MUST BE DENIED

- In finding that tariffing should be eliminated, the Commission concluded that ". . . [c]ompetition, along with the impending advent of additional competitors, leads to reasonable rates. . . . Cellular providers do face some competition today, and the strength of the competition will increase in the near future . . . ."

- The record in this proceeding is consistent with the Commission's findings supporting elimination of tariffing and thus the Commission must conclude that competition, along with impending competition, has lead to reasonable rates in California.

- It would be inconsistent to find that the FCC's forbearance from tariffing is warranted, but not preemption of the more restrictive regulations imposed by the CPUC.

- A finding that continued state regulation is warranted in California would also be arbitrary since the Commission acknowledged that California is the only state in which the new entrants are already competing:

  "Nextel has successfully begun offering wide-area digital SMR service <u>in competition</u> with cellular carriers in California markets," and "wide-area SMR operators are in competition with cellular carriers."

  "The large number of companies that have expressed interest in PCS licenses allays the concern that we might otherwise have with 'potential competition' . . . . . Wide-area SMR service could develop as a competitor to the cellular industry, with Nextel beginning to offer service in competition with cellular carriers in California markets."

THE COMMISSION RETAINS THE JURISDICTION TO PROTECT CONSUMERS

- Section 332(c) provides that CMRS providers are to be treated as common carriers subject to Title II regulation, except to the extent the Commission decides to forbear from applying sections other than 201, 202 and 208. Nothing in section 332(c) limits this authority only to interstate service.

- It is irrelevant that section 332(c) does not specifically refer to intrastate service. Other sections exempted in section 2(b) from the prohibition on Commission jurisdiction over intrastate service also do not specifically refer to intrastate rates. Yet the Commission has interpreted those sections as giving it authority over intrastate service.

- The Congressional framework will provide ample protection to consumers, even in the absence of state rate regulation. Sections 201 and 202 prohibit unjust, unreasonable or discriminatory rates, and section 208 provides a mechanism for resolving consumer complaints.

conduct comparative hearing to determine which of 2 competing license applicants would best serve public interest; § 331 has displaced normal procedures for channel reallocation as well as normal procedures for issuing licenses, including requirement of comparative hearing; no due process violations occur when Commission applies § 331 to deprive applicant of comparative hearing. Multi-State Communications, Inc. v FCC (1984) 234 US App DC 285, 728 F2d 1519, cert den (1984) 469 US 1017, 83 L Ed 2d 358, 105 S Ct 431.

Res judicata bars television station license applicant's action to have 47 USCS § 331 declared unconstitutional, where challenged provision became law in midst of and mooted applicant's comparative hearing proceeding before Federal Communications Commission (FCC), by which it might have acquired license to operate New York station, and allowed New York station owner to move station to New Jersey and acquire new license without opposition because New Jersey had no television service, because circuit court previously ruled on provision's effect and FCC's application of provision to preclude applicant's efforts to obtain New York station license did not unlawfully deprive applicant of due process rights in applicant's former suit against FCC. Multi-State Communications, Inc. v United States (1986, SD NY) 648 F Supp 1203.

§ 332. Mobile services

(a) Factors which Commission must consider. In taking actions to manage the spectrum to be made available for use by the private mobile services, the Commission shall consider, consistent with section 1 of this Act [47 USCS § 151], whether such actions will—

(1) promote the safety of life and property;

(2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and market-place demands;

(3) encourage competition and provide services to the largest feasible number of users; or

(4) increase interservice sharing opportunities between private mobile services and other services.

(b) Advisory coordinating committees. (1) The Commission, in coordinating the assignment of frequencies to stations in the private mobile services and in the fixed services (as defined by the Commission by rule), shall have authority to utilize assistance furnished by advisory coordinating committees consisting of individuals who are not officers or employees of the Federal Government.

(2) The authority of the Commission established in this subsection shall not be subject to or affected by the provisions of part III of title 5, United States Code [5 USCS §§ 2101 et seq.], or section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)).

(3) Any person who provides assistance to the Commission under this subsection shall not be considered, by reason of having provided such assistance, a Federal employee.

(4) Any advisory coordinating committee which furnishes assistance to the Commission under this subsection shall not be subject to the provisions of the Federal Advisory Committee Act [5 USCS Appx].

(c) Common carrier treatment of commercial and private mobile services; state preemption; regulatory treatment of communications satellite corporation; space segment capacity; foreign ownership. (1) Common carrier treatment of commercial mobile services. (A) A person engaged

in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this Act [47 USCS §§ 151 et seq.], except for such provisions of title II [47 USCS §§ 201 et seq.] as the Commission may specify by regulation as inapplicable to that service or person. In prescribing or amending any such regulation, the Commission may not specify any provision of section 201, 202, or 208 [47 USCS § 201, 202, or 208], and may specify any other provision only if the Commission determines that—

(i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory;

(ii) enforcement of such provision is not necessary for the protection of consumers; and

(iii) specifying such provision is consistent with the public interest.

(B) Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this Act [47 USCS § 201]. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act [47 USCS §§ 151 et seq.].

(C) The Commission shall review competitive market conditions with respect to commercial mobile services and shall include in its annual report an analysis of those conditions. Such analysis shall include an identification of the number of competitors in various commercial mobile services, an analysis of whether or not there is effective competition, an analysis of whether any of such competitors have a dominant share of the market for such services, and a statement of whether additional providers or classes of providers in those services would be likely to enhance competition. As a part of making a determination with respect to the public interest under subparagraph (A)(iii), the Commission shall consider whether the proposed regulation (or amendment thereof) will promote competitive market conditions, including the extent to which such regulation (or amendment) will enhance competition among providers of commercial mobile services. If the Commission determines that such regulation (or amendment) will promote competition among providers of commercial mobile services, such determination may be the basis for a Commission finding that such regulation (or amendment) is in the public interest.

(D) The Commission shall, not later than 180 days after the date of enactment of this subparagraph [Aug. 10, 1993], complete a rulemaking required to implement this paragraph with respect to the licensing of personal communications services, including making any determinations required by subparagraph (C).

(2) Non-common carrier treatment of private mobile services. A person engaged in the provision of a service that is a private mobile service shall not, insofar as such person is so engaged, be treated as a common carrier for any purpose under this Act [47 USCS §§ 151 et seq.]. A common carrier (other than a person that was treated as a provider of a private land mobile service prior to the enactment of the Omnibus Budget Reconciliation Act of 1993 [Aug. 10, 1993]) shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982. The Commission may by regulation terminate, in whole or in part, the prohibition contained in the preceding sentence if the Commission determines that such termination will serve the public interest.

(3) State preemption. (A) Notwithstanding sections 2(b) and 221(b) [47 USCS §§ 152(b) and 221(b)], no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates. Notwithstanding the first sentence of this subparagraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service and the Commission shall grant such petition if such State demonstrates that—

(i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or

(ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State.

The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition. If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such periods of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory.

(B) If a State has in effect on June 1, 1993, any regulation concerning the rates for any commercial mobile service offered in such State on such date, such State may, no later than 1 year after the date of enactment of the Omnibus Budget Reconciliation Act of 1993 [Aug. 10, 1993], petition the Commission requesting that the State be autho-

rized to continue exercising authority over such rates. If a State files such a petition, the State's existing regulation shall, notwithstanding subparagraph (A), remain in effect until the Commission completes all action (including any reconsideration) on such petition. The Commission shall review such petition in accordance with the procedures established in such subparagraph, shall complete all action (including any reconsideration) within 12 months after such petition is filed, and shall grant such petition if the State satisfies the showing required under subparagraph (A)(i) or (A)(ii). If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such period of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory. After a reasonable period of time, as determined by the Commission, has elapsed from the issuance of an order under subparagraph (A) or this subparagraph, any interested party may petition the Commission for an order that the exercise of authority by a State pursuant to such subparagraph is no longer necessary to ensure that the rates for commercial mobile services are just and reasonable and not unjustly or unreasonably discriminatory. The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition in whole or in part.

(4) Regulatory treatment of communications satellite corporation. Nothing in this subsection shall be construed to alter or affect the regulatory treatment required by title IV of the Communications Satellite Act of 1962 [47 USCS §§ 741 et seq.] of the corporation authorized by title III of such Act [47 USCS §§ 731 et seq.].

(5) Space segment capacity. Nothing in this section shall prohibit the Commission from continuing to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage.

(6) Foreign ownership. The Commission, upon a petition for waiver filed within 6 months after the date of enactment of the Omnibus Budget Reconciliation Act of 1993 [Aug. 10, 1993], may waive the application of section 310(b) [47 USCS § 310(b)] to any foreign ownership that lawfully existed before May 24, 1993, of any provider of a private land mobile service that will be treated as a common carrier as a result of the enactment of the Omnibus Budget Reconciliation Act of 1993, but only upon the following conditions:

(A) The extent of foreign ownership interest shall not be increased above the extent which existed on May 24, 1993.

(B) Such waiver shall not permit the subsequent transfer of ownership to any other person in violation of section 310(b) [47 USCS § 310(b)].

(d) Definitions. For purposes of this section—

(1) the term "commercial mobile service" means any mobile service (as

defined in section 3(n) [47 USCS § 153(n)]) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission;

(2) the term "interconnected service" means service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) or service for which a request for interconnection is pending pursuant to subsection (c)(1)(B); and

(3) the term "private mobile service" means any mobile service (as defined in section 3(n) [47 USCS § 153(n)]) that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.

(June 19, 1934, ch 652, Title III, Part I, § 332 [331], as added Sept. 13, 1982, P. L. 97-259, Title I, § 120(a), 96 Stat. 1096; Oct. 5, 1992, P. L. 102-385, § 25(b), 106 Stat. 1502; Aug. 10, 1993, P. L. 103-66, Title VI, § 6002(b)(2)(A), 107 Stat. 393.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"Section 3679(b) of the Revised Statutes", referred to in subsec. (b)(2), which appeared as 31 USCS § 665(b), was repealed by Act Sept. 13, 1982, P. L. 97-258, § 5(b), 96 Stat. 1068, which Act enacted Title 31 as positive law. Similar provisions appear as 31 USCS § 1342.

The "Omnibus Budget Reconciliation Act of 1993", referred to in subsec. (c)(2), (3)(B), and (6), is Act Aug. 10, 1993, P. L. 103-66, 107 Stat. 312. For full classification of this Act, consult USCS Tables volumes.

Amendments:

1993. Act Aug. 10, 1993 (effective and applicable as provided by § 6002(c) of such Act, which appears as a note to this section), in the section heading, deleted "Private land" preceding "mobile services"; in subsec. (a), in the introductory matter and in para. (4), deleted "land" preceding "mobile services"; in subsec. (b)(1), deleted "land" preceding "mobile services"; and substituted subsecs. (c) and (d) for former subsec. (c) which read:

"(c)(1) For purposes of this section, private land mobile service shall include service provided by specialized mobile radio, multiple licensed radio dispatch systems, and all other radio dispatch systems, regardless of whether such service is provided in discriminately to eligible users on a commercial basis, except that a land station licensed in such service to multiple licensees or otherwise shared by authorized users (other than a nonprofit, cooperative station) shall not be interconnected with a telephone exchange or interexchange service or facility for any purpose, except to the extent that (A) each user obtains such interconnection directly from a duly authorized carrier; or (B) licensees jointly obtain such interconnection directly from a duly authorized carrier.

"(2) A person engaged in private land mobile service shall not, insofar

as such person is so engaged, be deemed a common carrier for any purpose under this Act. A common carrier shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982.

"(3) No State or local government shall have any authority to impose any rate or entry regulation upon any private land mobile service, except that nothing in this subsection may be construed to impair such jurisdiction with respect to common carrier stations in the mobile service.".

Redesignation:

This section, which was enacted as § 331 of Part I of Title III of Act June 19, 1934, ch 652, was redesignated § 332 of such Act by Act Oct. 5, 1992, P. L. 102-385, § 25(b), 106 Stat. 1502.

Other provisions:

Effective date of amendments made by Act Aug. 10, 1993. Act Aug. 10, 1993, P. L. 103-66, Title VI, § 6002(c), 107 Stat. 396, provides:

"(1) In general. Except as provided in paragraph (2), the amendments made by this section [amending this section and 47 USCS §§ 152, 153, and 309] are effective on the date of enactment of this Act.

"(2) *Effective dates of mobile service amendments.* The amendments made by subsection (b)(2) [amending this section and 47 USCS §§ 152 and 153] shall be effective on the date of enactment of this Act, except that—

"(A) section 332(c)(3)(A) of the Communications Act of 1934 [subsec. (c)(3)(A) of this section], as amended by such subsection, shall take effect 1 year after such date of enactment; and

"(B) any private land mobile service provided by any person before such date of enactment, and any paging service utilizing frequencies allocated as of January 1, 1993, for private land mobile services, shall, except for purposes of section 332(c)(6) of such Act [47 USCS § 332(c)(6)], be treated as a private mobile service until 3 years after such date of enactment.".

Transitional rulemaking for mobile service providers. Act Aug. 10, 1993, P. L. 103-66, Title VI, § 6002(d)(3), 107 Stat. 397, provides:

"Within 1 year after the date of enactment of this Act, the Federal Communications Commission—

"(A) shall issue such modifications or terminations of the regulations applicable (before the date of enactment of this Act) to private land mobile services as are necessary to implement the amendments made by subsection (b)(2) [amending this section and 47 USCS §§ 152 and 153];

"(B) in the regulations that will, after such date of enactment, apply to a service that was a private land mobile service and that becomes a commercial mobile service (as a consequence of such amendments), shall make such other modifications or terminations as may be necessary and practical to assure that licensees in such service are subjected to technical requirements that are comparable to the technical requirements that apply to licensees that are providers of substantially similar common carrier services;

"(C) shall issue such other regulations as are necessary to implement the amendments made by subsection (b)(2) [amending this section and 47 USCS §§ 152 and 153]; and

"(D) shall include, in such regulations, modifications, and terminations, such provisions as are necessary to provide for an orderly transition.".

CODE OF FEDERAL REGULATIONS

Federal Communications Commission—Stations in the maritime services, 47 CFR Part 90.

Federal Communications Commission—Personal communications services, 47 CFR Part 99.

RESEARCH GUIDE

Law Review Articles:

Boudreaux, Ekelund, The Cable Television Consumer Protection and Competition Act of 1992: the triumph of private over public interest. 44 Ala L Rev 355, Winter, 1993.

Bell, Price discrimination: territorial pricing for cable television services and the meeting competition defense under the Cable Television Consumer Protection and Competition Act of 1992. 19 J Legis 63, 1993.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Relationship with other laws
3. State regulation
4. Frequency assignment coordination
5. Regulation of mobile service

1. Generally

FCC, in granting authority for low power television stations to operate in same spectrum space as private land mobile radio service, did not err in deferring consideration of land mobile radio service's need for spectrum space until it consider rulemaking petition, since, in light of rapidly increasing demand for low power television, Commission was justified in treating expedition of low power television's authorization as important goal. Neighborhood TV Co. v FCC (1984) 239 US App DC 292, 742 F2d 629.

System's service of ineligible users does not compel conclusion that system falls outside statutory definition of 47 USCS § 332, nor does anything in § 332 dictate that private nature of land mobile service is affected by offering that service indiscriminately to eligible users on commercial basis. Re Paul Kelley d/b/a American Teltronix, Licensee of Station WNHM 552, FCC 90-103 (Adopted March 21, 1990).

2. Relationship with other laws

To extent that teletext services may constitute mobile radio services within definition of 47 USCS § 153(n), they are governed by 47 USCS § 331(c). Re Amendment of Commission's Rules, FCC 83-120 (Adopted Mar. 31, 1983).

3. State regulation

State public utilities commission has jurisdiction over public radio paging when interconnected with telephone lines. In re Public Utils. Comm'n Declaratory Ruling (F-3436) (1985, SD) 364 NW2d 124.

Business which provided private carrier paging system was operating private land mobile radio system because it did not resell services or facilities of common carrier for profit, and state was therefore precluded from subjecting business to any regulation under 47 USCS § 332, notwithstanding contention that business may have served ineligible users. Re Paul Kelley d/b/a American Teltronix, FCC 88-282 (Adopted August 23, 1988).

4. Frequency assignment coordination

Filing procedures involving frequency coordinators are within mandate of 47 USCS § 332(b)(1). Re Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, FCC 88-301 (Adopted September 22, 1988).

5. Regulation of mobile service

Private carrier paging system is not subject to interconnection restrictions of 47 USCS § 332(c)(1),

since system's customers are not "authorized users" of system's land station; interconnection restriction applies only to shared systems where land station is controlled directly by authorized users and not to every shared system merely because end-users have access to system through licensee. Telocator Network of America v FCC (1985) 245 US App DC 360, 761 F2d 763.

47 USCS § 332(c)(1) was not intended to limit private carrier systems to existing configurations; only limitation is that systems with shared land stations are to be subject to interconnection restrictions. Telocator Network of America v FCC (1985) 245 US App DC 360, 761 F2d 763.

To extent that teletext services may constitute mobile radio services within definition of 47 USCS § 153(n), they are governed by 47 USCS § 331(c). Re Amendment of Commission's Rules, FCC 83-120 (Adopted Mar. 31, 1983).

§ 333. Willful or malicious interference

No person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under this Act [47 USCS §§ 151 et seq.] or operated by the United States Government.

(June 19, 1934, ch 652, Title III, Part I, § 333, as added Sept. 28, 1990, P. L. 101-396, § 9, 104 Stat. 850.)

§ 334. Limitation on revision of equal employment opportunity regulations

(a) Limitation. Except as specifically provided in this section, the Commission shall not revise—

(1) the regulations concerning equal employment opportunity as in effect on September 1, 1992 (47 C.F.R. 73.2080) as such regulations apply to television broadcast station licensees and permittees; or

(2) the forms used by such licensees and permittees to report pertinent employment data to the Commission.

(b) Midterm review. The Commission shall revise the regulations described in subsection (a) to require a midterm review of television broadcast station licensees' employment practices and to require the Commission to inform such licensees of necessary improvements in recruitment practices identified as a consequence of such review.

(c) Authority to make technical revisions. The Commission may revise the regulations described in subsection (a) to make nonsubstantive technical or clerical revisions in such regulations as necessary to reflect changes in technology, terminology, or Commission organization.

(June 19, 1934, ch 652, Title III, Part I, § 334, as added Oct. 5, 1992, P. L. 102-385, § 22(f), 102 Stat. 1499.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

Act Oct. 5, 1992, P. L. 102-385, § 28, 106 Stat. 1503, which appears as 47 USCS § 325 note, provides that this section shall take effect 60 days after the date of enactment of such Act.

CODE OF FEDERAL REGULATIONS

Federal Communications Commission—Radio broadcast services, 47 CFR Part 73.