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August 24, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

RE: GEN Docket 90-314, Amendment of the Commission's Rules to Establish New Personal Communications Services and Implementation of Section 309(j) of the Communications Act, Competitive Bidding, PP Docket No. 93-253

Dear Mr. Caton:

On Thursday, August 24, 1995 David Gross and I, on behalf of AirTouch Communications, met with John Cimko, Chief, Policy Division, Wireless Bureau and Michael Wack, Deputy Chief, Wireless Bureau regarding the above-referenced proceedings. The attached material was used in the presentation. Please associate this material with the above-referenced proceeding.

Two copies of this notice were submitted to the Secretary of the FCC 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 202-293-4960 should you have any questions or require additional information concerning this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathleen Q. Abernathy".

Kathleen Q. Abernathy

Attachments

cc: John Cimko
Michael Wack

AirTouch Communications, Inc.
Ex Parte Presentation

General Docket No. 90-314

Kathleen Abernathy
and David Gross

August 24, 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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Non-Structural Safeguard Plan of Pacific Telesis Mobile Services
General Docket No. 90-314

- The FCC previously concluded that commencement of PCS service by local exchange carriers (LECs) would be contingent on the LEC implementing an acceptable plan for non-structural safeguards against discrimination and cross-subsidization.
- The FCC did not specify the specific non-structural safeguards that would be required of such LECs. However, such a plan must -- at a minimum -- ensure “against discrimination and cross-subsidization” (Broadband PCS Order, 8 FCC Rcd at 7748).
- Safeguard issues deferred “to a separate proceeding” that has not yet been initiated (Second CMRS Report and Order, 9 FCC Rcd at 1493).
- The lack of generally applicable non-structural safeguard rules means that the FCC must carefully review the individual circumstances surrounding each LEC’s plan and ensure that the public interest will be served by its approval.

Pacific Bell's Plan Inadequate

- Pacific Bell's plan provides no basis for the FCC to assess compliance with CMRS interconnection obligations.
 - Not even specific information on how Pacific Bell intends to provide interconnection to its own PCS operation.
- Another area of concern is Pacific Bell's Plan to have significant joint marketing efforts between Pacific Bell's telephony and PCS sales personnel.
- Pacific Bell alone will be able to market jointly its wireline and 30 MHz broadband wireless services in Pacific Bell's service area, while FCC rules at the same time prohibit other BOCs from jointly marketing their wireline and cellular services -- both in and out-of-region.

FCC Has Authority to Require a Separate Subsidiary

- The FCC has both the flexibility to tailor the requirements for approving each LEC plan to specific circumstances and the legal responsibility “to ensure that the dominant landline carrier does not act anti-competitively... .” (Second CMRS Report and Order, 9 FCC Rcd at 1491).
- FCC’s decision not to require structural safeguards for BOC/LECs is subject to reconsideration by the Commission.
- “[T]he filing of a timely petition for reconsideration of the order, under long-standing Commission precedent, provides the Commission with jurisdiction to address any issues that were decided in the order ...” (FCC Motion to Dismiss, dated May 24, 1995, at 9 (emphasis in original)).
- The FCC can also decide that no non-structural safeguards plan would be adequate to protect consumers and therefore require Pacific Bell to use a separate subsidiary.
- Such a decision is the only one that would be consistent with Section 22.903 of the Commission’s Rules.
- Such a decision would also be consistent with the FCC’s statement that BOCs can “provide PCS through their separate cellular subsidiaries” (Broadband PCS Order at 7751-52, n.98).

FCC Has Authority to Require a Separate Subsidiary (Cont'd)

- The Commission seems to have specifically recognized that it will tailor its safeguard requirements to the individual circumstances of each LEC, as “the Commission can play a positive role in fostering this competitive environment by examining and establishing the proper mix of safeguards designed to ensure that no CMRS provider gains an unfair competitive advantage resulting from its size or its preexisting position in particular CMRS markets” (Second CMRS Report and Order at 1493).

48-15 + 21

BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks.

R. 93-04-003

Investigation on the Commission's Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks.

I. 93-04-002

PROTEST ON BEHALF OF AIRTOUCH PAGING OF CALIFORNIA (U-2111-C), AIRTOUCH CELLULAR (U-3001-C), LOS ANGELES SMSA LIMITED PARTNERSHIP (U-3003-C) AND SACRAMENTO-VALLEY LIMITED PARTNERSHIP (U-3004-C) TO WIRELESS INTERCONNECTION TARIFFS FILED BY PACIFIC BELL AND GTE CALIFORNIA INCORPORATED

Pursuant to the Administrative Law Judge's Ruling Extending Time For Filing Protests to Tariff Filings (Aug. 31, 1994) ("Order"), AirTouch Communications, on behalf of AirTouch Paging of California (U-2111-C), AirTouch Cellular (U-3001-C), Los Angeles SMSA Limited Partnership (U-3003-C) ("LASLP"), and Sacramento-Valley Limited Partnership (U-3004-C) ("SVLP") respectfully submits this protest to the proposed wireless interconnection tariffs filed by Pacific Bell and GTE California Incorporated ("GTEC"). Pursuant to the Order, this protest is timely.

1. AirTouch Paging of California is a radiotelephone utility providing one-way paging service throughout California. AirTouch Cellular is a cellular carrier providing service in the Greater San Diego metropolitan area. LASLP is a cellular carrier providing service in the Greater Los Angeles metropolitan area. SVLP is a cellular carrier providing service in the Greater Sacramento metropolitan area. AirTouch Cellular is the general

partner of both LASLP and SVLP. Correspondence and other communications regarding this protest may be addressed to: Richard Nelson, Director - Regulatory, AirTouch Communications, 2999 Oak Road, MS 1050, telephone number (510) 210-3885. Counsel may direct communications to Scott Johnson at the below address.

2. Pacific Bell is a wireline carrier providing local exchange service throughout California. Its address is 140 New Montgomery, San Francisco, California 94105, telephone number (415) 542-0373.

3. GTEC is a wireline carrier providing local exchange service throughout California. Its address is One GTE Place, Thousand Oaks, California 91362, telephone number (805) 372-6000.

4. Decision No. 90-06-025 considered whether it would be more appropriate for local exchange carriers to provide cellular interconnection pursuant to tariffs or contracts and determined "there is no need to require LECs to tariff these arrangements. To do so will only result in burdensome tariff filings and modifications of the tariffs to provide for unique arrangements which may turn out to be the norm because of distinct network arrangements."¹

5. In April 1993, Pacific Bell petitioned the Commission to modify D. 90-06-025 to allow it to provide cellular interconnection pursuant to tariffs.² However, even Pacific Bell's original request recognized that individually negotiated interconnection contracts would be appropriate to address special circumstances.³

¹ Decision No. 90-06-025 (1990) 36 CPUC 2d 464, 497; see also Ordering Para. 13 at 517.

² Petition to Modify Decision 90-06-025 (filed Apr. 15, 1993); see also Response of Pacific Bell to Protests to Pacific Bell's Petition to Modify D. 90-06-025 (filed July 1, 1993).

³ Pacific Bell's Petition to Modify at p. 8, fn. 10 ("Pacific is still willing to meet a carrier's additional, unique needs through approved contracts"); see, also, D. 94-09-076 (Sept. 15, 1994) at p. 14 ("although interconnection arrangements would now be offered primarily by tariff, LECs may use contracts as the needs of the carriers dictate").

6. In April 1994, the Commission determined that, although it would be time-consuming to develop a tariff with "sufficient flexibility to meet the needs of the cellular carriers' varying systems,"⁴ (1) local exchange carriers should file cellular interconnection tariffs that include unbundled rate elements and are based on direct embedded costs;⁵ (2) tariffs must be "supported by careful cost studies";⁶ and (3) individually-negotiated interconnection contracts will be appropriate when cellular carriers can "negotiate less expensive and/or more individualized arrangements with Pacific (and GTEC) when they can demonstrate that such arrangements are justified."⁷

7. Cellular carriers' consistent position has been that a "one-size-fits-all" approach would be economically inefficient: Cellular carriers will end up paying rates that are too high; they will have no incentive to develop more efficient networks to deliver traffic to the local exchange carriers; and local exchange carriers will not receive the benefit of such efficiencies.⁸

8. In September 1994, the Commission determined that local exchange carriers should be required to offer wireless interconnection tariffs that "include rate elements for all services currently offered under RTU-LEC and cellular carrier-LEC intercompany agreements or contracts. Any discrete service currently included in such agreements or contracts for interconnection should be included as part of an unbundled wireless interconnection tariff." D. 94-09-076 at pp. 16-17 (adopting new Finding of Fact No. 16

⁴ D. 94-04-085 (April 20, 1994) at p. 6

⁵ *Id.* p. 15 (Ordering Para. No. 1).

⁶ *Id.* at p. 8; see, also, D. 94-09-076 at p. 13 ("tariff supported by careful cost studies is the best way to avoid cross-subsidization problems with other LEC services").

⁷ D. 94-04-085 at p. 11; see also *id.* at pp. 14 (Conclusion of Law No. 3), 15 (Ordering Para. No. 4); D. 94-09-076 at p. 16 (Finding of Fact No. 13).

⁸ For example, by using SS7 technology, AirTouch will not attempt to deliver a call to the local exchange carrier unless that call will go through. If the called party's line is busy, a busy signal will be returned to the calling party immediately--without tying-up capacity on the local exchange carrier's network with an unsuccessful call attempt. This lowers the local exchange carrier's costs but requires a significant investment by the wireless carrier. Cellular interconnection rates should reflect--and provide an incentive for--such efficiencies.

in D. 94-04-085).⁹ It also determined that "LEC wireless interconnection tariffs should include a wide range of service and price options, and should be designed to offer wireless service providers the maximum flexibility to adapt to changes within the market on short notice." *Id.* at 17 (adopting new Conclusion of Law No. 6 in D. 94-04-085).

9. Neither Pacific Bell nor GTEC has included in its proposed tariff all rate elements currently offered to wireless carriers under contract or tariff. Neither local exchange carrier has included in its proposed tariff all discrete services currently offered to wireless carriers by contract and tariff. For the services they have included, neither carrier has provided services on an unbundled basis. Neither carrier has provided the "wide range of service and price options" which will allow wireless carriers "maximum flexibility to adapt to changes within the market on short notice."¹⁰

Pacific Bell Proposed Tariff

10. In response to Decision No. 94-04-085, Pacific Bell filed with the Commission a Wireless Carrier Services tariff for access service interconnection previously obtained under contract. Although Pacific Bell's proposed tariff closely resembles the terms agreed to by Pacific Bell and AirTouch, it still violates Pacific Bell's obligations to provide "just and reasonable service . . . [and] facilities." Pub. Util. Code §451. It also violates Pacific Bell's obligations to give no "preference or advantage" or "subject any corporation or person to any prejudice or disadvantage." *Id.* §453. Furthermore, it violates Pacific Bell's obligations to include in its proposed tariff all rate elements currently offered to any wireless carrier by contract or tariff, on an unbundled basis, to allow wireless carriers "maximum flexibility to adapt to changes within the market on short notice." D. 94-09-076 at pp. 16-17.

⁹ See, also, D. 94-09-076 at 18 (adding Conclusion of Law No. 7) (wording is nearly identical but requires that tariffs include all rate elements found in existing "agreements, contracts, or tariffs").

¹⁰ *Id.* at 17 (adopting new Conclusion of Law No. 6 in D. 94-04-085).

11. Although Pacific Bell contends its tariff is cost-based, it is not. In arguing that the differences between cellular and other traffic do not affect costs, Pacific Bell tries to blur the distinction between incremental costs and allocated costs.¹¹ Although the type of interconnection through which traffic is handled may be standard, costs are significantly affected by the nature of the traffic. For example, cellular carriers have clearly established that cellular traffic is more evenly spread over the day.¹² As Pacific Bell well knows, costs to carry calls during a busy hour are much higher; indeed, incremental costs to carry traffic during off-peak hours can be insignificant. To the degree that cost studies on which Pacific Bell's tariff rely are based upon traffic with a significantly different character, the tariffs are not cost-based.

12. In December 1993, Pacific Bell committed to providing updated cost studies within two years of the date on which it signed contracts with various cellular carriers.¹³ If the Commission allows Pacific Bell to file tariffs using Business Message Toll Service ("Business MTS") studies as a surrogate, it must also require Pacific Bell to update its cost studies no later than April 1996. This will fulfill both Pacific Bell's commitment and the Commission's requirement for "careful cost studies."¹⁴

13. Pacific Bell's proposed tariff is unclear whether a wireless carrier may place orders for service for mobile-to-land calls out of its access tariffs for intrastate and

¹¹ See, e.g., Response of Pacific Bell to Protests to Pacific Bell's Petition to Modify D. 90-06-025 at p. 6 (claims of uniqueness are "illusory because they all use a combination of some sort of a very limited number of interconnections").

¹² See, e.g., CCAC Response to RCC Interconnection Cost Study (Sept. 7, 1993) at p. ES-2. A copy is attached as Exhibit 1. For example, 90 percent of business MTS traffic occurs during the day, compared with 72 percent for cellular traffic. No single hour accounts for more than 10 percent of cellular traffic while five different hours (9 a.m. to noon and 2 p.m. to 4 p.m.) each have more than 10 percent of the business MTS traffic. There are also differences in the average length of the haul, average ringing times, completion ratios, holding times, and expenses for customer service, billing, marketing, sales, record keeping, etc. Id. at pp. ES-2 to ES-4.

¹³ Letter from J.D. (Dave) Cheves to Steven Carlson (Dec. 20, 1993) ("Pacific will conduct a new cellular cost study, the primary purpose of which will be to recognize the impact on Pacific's network of efficiencies implemented by cellular carriers"). A copy is attached as Exhibit 2. AirTouch's interconnection contract with Pacific Bell was signed April 29, 1994.

¹⁴ D. 94-04-085 at p. 8; D. 94-09-076 at p. 13.

interstate calls. Pacific Bell's contract with AirTouch allows AirTouch to do so and minutes of use are counted toward volume commitments. Doing so provides incentives for efficiencies that benefit both wireless carriers and local exchange carriers and, in general, results in lower prices charged to wireless carriers and their customers. Pursuant to D. 94-09-076,¹⁵ the Commission should order Pacific Bell to modify its tariff to clearly allow wireless carriers to complete calls over Feature Group D trunks.

14. Although wireless carriers are co-carriers,¹⁶ Pacific Bell's tariff does not treat them as such. Specifically, Pacific Bell does not agree to honor the assignment of NXX codes issued by another local exchange carrier. The Commission should order Pacific Bell to modify its tariff to require Pacific Bell to route and rate land-to-mobile calls to the nearest point-of-interface maintained by a wireless carrier and designated for such calls. Doing so will (1) lower Pacific Bell's costs; (2) lower rates charged to wireless carriers for such calls; and (3) provide an incentive for wireless carriers to build efficient networks; (4) lower costs to landline callers; and (5) promote number conservation.¹⁷

15. As the Commission stated, it will be time-consuming to develop a tariff that is flexible enough to meet the needs of cellular carriers with varying needs.¹⁸ Based on the poor quality of Pacific Bell's first effort, Pacific Bell may well want to revisit its claims that tariffs are more appropriate than contracts. In any event, its proposed tariff is filled

¹⁵ D. 94-09-076 at pp. 16-18 (Finding of fact No. 16; Conclusions of Law Nos. 6, 7).

¹⁶ See, e.g., 47 C.F.R. §20.11(b).

¹⁷ Charges for landline callers will be eliminated entirely if the wireless carrier compensates the local exchange carrier for such calls. See, e.g., Sheet 729 (LP1 and LM1, caller pays; LP2 and LM2, wireless carrier pays). However, when Pacific Bell refuses to recognize NXX codes assigned to a wireless carrier by another local exchange carrier, it routes calls to the other local exchange carrier—usually resulting in a toll charge for the landline caller even if the wireless carrier agreed to pay such usage charges.

¹⁸ D. 94-04-085 at p. 6

with editorial, grammatical and careless errors it will want to correct.¹⁹ These range from simple inconsistent use of language²⁰ to ill-defined concepts²¹ to blatant attempts to impede competition.²²

16. Several inconsistencies will need to be addressed. For example, under the first paragraph on Sheet 727, wireless carriers are "not responsible" for certain calls which are completed due to an error by Pacific Bell; however, the next paragraph states that, because "some calls may bypass the blocking system, . . . customers [presumably either the wireless carrier or its subscribers] will be liable for these charges" (emphasis added). Either these provisions are inconsistent or their distinction is unexplained. The

¹⁹ See, e.g., Sheet 719 ("of-of-band" and an extra "#" sign); Sheets 736, 740-D (extra carriage returns); Sheet 730 (comma instead of a period at the end of a sentence); Sheet 740-H (period in place of a comma); Sheet 740-J (words run together); and inconsistent hyphenation and spelling throughout (e.g., Land-to-Mobile, point-to-point, "isynchronous" [Sheet 715], line-by-line, non-recurring, landline, and "v/s" and "vs.").

²⁰ For example, Pacific Bell's tariff refers to itself as "Udliiry," "Pacific" and "Pacific Bell." Wireless carriers are referred to as "WCs," "a customer," "the paging carrier" and "the Carrier." A cellular switch is referred to as an "MTSO," "WC's switching equipment," "the WC's switch" and "the WC's control point." The same concept is written three separate ways on the same page with no apparent change in meaning. See Sheet 728 (Compare "The call originator . . . tariff A6.2 to reach an WC's paging or mobile numbers" to "The Landline call originator . . . Utility's tariff No. A6.2 for Land-to-Mobile calls." to "Land to Mobile [sic] Usage will be billed to the call originator . . . Utility's Tariff Schedule Cal. P.U.C. No. A6.2."). Similarly, it appears the same thought is expressed two different ways on Sheets 739 and 740 ("only [the/] calls [exceeding/outside] the local calling area"); and Sheets 740-D and 740-L ("for [the life of the/a] [5/3] year term").

²¹ For example, 700, 800 and 900 numbers are referred to a "the Utility's service codes" even though they are used by many carriers, not just Pacific Bell (Sheet 720). Certain charges will be billed to the wireless carrier "as appropriate" with no explanation of the circumstances under which Pacific Bell would consider it appropriate to do so (Sheet 724). Certain meet-point billing arrangements are being negotiated and will be added to the tariff later; this information is meaningless and should be deleted (id.).

²² See, e.g., Sheet 721 (requiring that, as a condition of routing "Cellular Call Completion" traffic to Directory Assistance, a wireless carrier agree to handle no such calls itself and send no traffic to any Pacific Bell competitor). An express refusal to deal may be a per se antitrust violation. See, also, Sheet 740-P (retroactively imposing an additional cost of 2 cents per call in the event a wireless carrier elects to shift its service to another provider). It is unclear how far back in time such charges would extend. Obviously, this charge could be a significant barrier to entry for a new "Cellular Call Completion" competitor trying to compete for the business of a wireless carrier that has used Pacific Bell's service extensively. It would, in fact, impose the biggest barrier to attracting the best customers. See, also, Sheet 723 (requiring that wireless carriers agree to NXX withdrawals notwithstanding the anticompetitive effects Pacific Bell has attempted to force on wireless carriers in the 310/562 area code conversion now before the Commission); Sheet 716 (prohibiting a wireless carrier from engineering its network at any grade of service—better or worse—other than a 1% level of blocking notwithstanding the fact that carriers may choose to differentiate themselves by providing higher quality or lower prices than Pacific Bell's preferred approach); Sheet 719 (prohibiting a wireless carrier from providing its customers with any cost savings that may be available if all customers are routed to a limited number of long distance carriers). All such anticompetitive provisions must be removed from the tariff.

way in which usage on Sheet 730 is measured is unclear; it should be clarified that all usage is an actual measurement, with no rounding-up of individual calls. Sheet 731 lists several items a "customer" (apparently a wireless carrier) may request. There are apparently other such items but there is no indication what they are.

17. On Sheet 737, annual growth rates are at a simple 10%; on Sheet 740-A, similar rates grow at a compound interest rate. On Sheets 737, 740-B and 740-K, the base year is defined to be 1993; on Sheet 740-A, the base year is undefined.²³ For a new carrier (or a carrier first taking service under the tariff in the future), adopting 1993 as a base year makes little sense. However, an undefined base year is also unacceptable without an explanation of the way it will be determined. On Sheet 740-B, Pacific Bell appears to give a wireless carrier the opportunity to establish it has met an efficiency requirement but makes it subject to a "jointly agreed upon report." This right will be illusory if Pacific Bell can unreasonably refuse to agree. Furthermore, there is no explanation what will happen if the two carriers cannot agree.²⁴

18. Sheets 737, 740-A and 740-I each state certain consequences for "failure to comply" with certain conditions.²⁵ It is unclear when the determination is made, how often it will be made, and whether there is any requirement to give notice to the wireless carrier or any opportunity for the wireless carrier to cure. It is also unclear how or when calls will be re-rated, when the re-rated calls will be billed, or what payment terms may

²³ Sheets 737, 740-A, 740-B and 740-K each state "usage totals can include" various types of traffic. It is unclear whether this is permissive or mandatory and, if it is optional, it needs to be clear that it is the wireless carrier which may make the election. The reference to a 1993 base year also creates an anomaly in the first year's requirement for a 10% growth "over the prior year," which will not be 1993.

²⁴ The provision also states the "first audit period will be six months from the effective date." This apparently means that the first audit will be performed at that time, but it does not state what period of time the audit will cover. See, also, similar provision on Sheet 740-J.

²⁵ For some reason, there is no comparable provision on Sheet 740-B. But, see Sheet 740-D (how to handle situation if one condition is met and the other is not). Wording of each of these four similar provisions differs. See, also, Sheet 740-L (re-rating calls if certain conditions not met).

apply.²⁶ Although several of these provisions allow for "banking," it is also unclear that a wireless carrier may retroactively meet call volumes and have its calls again rated at the lower rate.

19. There is a conflict between provisions on Sheets 740-B and 740-C. One states that, to qualify, a wireless carrier must "first meet" certain conditions; the other states the carrier will have a "window of six months" to do so.²⁷ Similarly, there appears to be a conflict between the requirement for annual traffic levels and the provision (Sheets 740-C to 740-D) under which a wireless carrier may receive a notice of its failure to deliver adequate traffic volumes after only nine months.²⁸ Also on Sheet 740-D, it is unclear when the "5 year term" (during which a wireless carrier will be unable to convert back) will begin.²⁹

20. Sheet 740-G states there is a "requirement for a trunk efficiency level," but there is no indication what it is. Sheet 740-H indicates that "retroactive or delayed usage" may be billed at a rate other than the rate in effect at the time the calls were made with no explanation how this will be done. Sheet 740-J indicates the average may be CGSA³⁰ or LATAwide, but Pacific Bell needs to clarify that it is the wireless carrier that makes the election. Sheet 740-O states that certain charges will apply "regardless of whether Call Completion is actually achieved." The meaning of this statement is unclear.

21. Pacific Bell's obligation is to propose a tariff with "maximum flexibility," not a tariff so filled with ambiguities (like those noted above) that neither Pacific Bell nor a wireless carrier will be able to know in advance how the tariff will be applied. The

²⁶ Compare provisions on Sheets 740-D, 740-L.

²⁷ The same inconsistency appears on Sheets 740-K and 740-L.

²⁸ The attempt to deal with "new Market [sic] entrants" turns this provision into nonsense since, by definition, the base year traffic for a new entrant will be zero.

²⁹ Compare similar provision on Sheet 740-L.

³⁰ The first reference is misspelled "CSGA."

Commission should order Pacific Bell to re-file its proposed tariff and include all rate elements currently offered to any wireless carrier by contract or tariff, on an unbundled basis, to allow wireless carriers "maximum flexibility to adapt to changes within the market on short notice." D. 94-09-076 at pp. 16-17.

GTEC Proposed Tariff

22. In response to D. 94-04-085, GTEC filed with the Commission a Wireless Interconnection Services tariff. This proposed tariff violates GTEC's obligations to provide "just and reasonable service . . . [and] facilities." Pub. Util. Code §451. It violates GTEC's obligations to give no "preference or advantage" or "subject any corporation or person to any prejudice or disadvantage." Id. §453. Furthermore, it violates GTEC's obligations to include in its proposed tariff all rate elements currently offered to any wireless carrier by contract or tariff, on an unbundled basis, to allow wireless carriers "maximum flexibility to adapt to changes within the market on short notice." D. 94-09-076 at pp. 16-17.

23. Although GTEC's tariff does not suffer from the careless drafting mistakes of the Pacific Bell tariff, it has a much more fatal flaw: it is a major step backward to a time when local exchange carriers included rate elements that were not cost-based.³¹ Specifically, GTEC's proposed tariff ignores the Commission's order that tariffs include unbundled rate elements that are based on direct embedded costs³² "supported by careful cost studies."³³ Contrary to recent Commission decisions, GTEC seeks to shift prices to transport from switching and call set-up.

24. Until last week, GTEC refused to provide to wireless carriers with copies of cost studies supporting its proposed tariff and has still not provided them to AirTouch

³¹ See, e.g., GTE tariff at Sheets 3,4 (mileage rate bands) and Sheets 6 (switch termination charges).

³² D. 94-04-085 at p. 15 (Ordering para. No. 1).

³³ Id. at p. 8; see, also, D. 94-09-076 at p. 13.

for its review. GTEC should be ordered to make such information available (and the Commission should delay any final decision until there has been adequate time for independent review by wireless carriers and other parties).

25. GTEC's proposed tariff is unclear that a wireless carrier may place orders for service for mobile-to-land calls out of its access tariffs for intrastate and interstate calls. Doing so provides incentives for efficiencies that benefit both wireless carriers and local exchange carriers and, in general, results in lower prices charged to wireless carriers and their customers. The Commission should order GTEC to modify its tariff to clearly state that wireless carriers may complete calls over Feature Group D trunks.

26. Although GTEC today honors NXX codes assigned to a wireless carrier by another local exchange carrier, its proposed tariff does not do so. The Commission should order GTEC to modify its tariff to require GTEC to route and rate land-to-mobile calls to the nearest point-of-interface maintained by a wireless carrier and designated for such calls.

27. GTEC should be required to perform cost studies based upon wireless carrier traffic by April 1996. After it has done so, GTEC should be required to file cost-based tariffs based on such studies. This will fulfill the Commission's requirement for "careful cost studies."³⁴

28. Overall, the prices and terms of GTEC's proposed tariff are out-of-line with the terms agreed to by GTEC in its contract with AirTouch. There are no provisions for volume discounts and no financial incentives for wireless carriers to provide efficient interconnections. AirTouch's networks have been configured to maximize the benefits to AirTouch and GTEC of the interconnection contracts between the parties. It is unjust and unreasonable for GTEC to propose a tariff that makes a fundamental--and one-

³⁴ D. 94-04-085 at p. 8; D. 94-09-076 at p. 13.

sided--change in a mutually agreed upon relationship. GTEC's failure to include in its proposed tariff the "rate elements for all services currently offered under RTU-LEC and cellular carrier-LEC intercompany agreements or contracts," violates D. 94-04-085 (as modified by D. 94-09-076).³⁵ GTEC should be ordered to re-file its proposed tariff and include "any discrete service currently included in such agreements or contracts." *Id.*

29. Several inconsistencies will need to be addressed and clarifications made.³⁶ For example, Sheets 14 and 15 seem to prohibit a wireless carrier from providing its customers with any cost savings that may be available if all customers are routed to a limited number of long distance carriers.

30. Sheet 15 requires that wireless carriers agree to give back NXX codes and follow "code conservation policies recognized by the industry." Sheet 21 gives GTEC sole discretion to change NXX codes assigned to a wireless carrier when "the requirements of the service demand." However, there is no assurance the policies will be reasonable and no explanation what kind of "service demands" will justify the kind of anticompetitive effects GTEC and Pacific Bell have attempted to force on wireless carriers in the 310/562 area code conversion now before the Commission. All such provisions should be removed from the tariff.

31. Sheet 2 refers to calls "terminating on the Utility's network." The provision should also cover exchanged and interexchanged calls which terminate on the network of another carrier.³⁷ Sheet 7 refers to a "Calling Scope" that, on the one hand, appears to be limited to a toll-free local calling area and, on the other, includes the worldwide area from which calls may originate or terminate. This mis-definition causes confusion as the

³⁵ D. 94-09-076 at 16-17 (Finding of Fact No. 16); see, also, *id.* at 18 (Conclusion of Law No. 7).

³⁶ See also Sheet 30 ("respectively," not "respectfully").

³⁷ See, also, Sheet 14 (calls may be placed "only to the numbers served by the End Office to which the connection is made").

term is used throughout the tariff.³⁸ There are additional internal inconsistencies in the use and definition of various terms, including the terms used for end user customers of both the wireless carrier and the local exchange carrier.³⁹ Sheet 18 states that "special construction charges may apply" without stating when they will or will not apply.

32. Sheet 19 states that when "the cost of interconnecting a WC justifies it, the Utility will negotiate an individualized interconnection agreement with the WC." While this acknowledgment that there are circumstances where individualized interconnections agreements are appropriate is helpful and correct, the Commission should order GTEC to state clearly the criteria for such agreements and what costs will be considered.

33. GTEC's proposed tariff violates D. 94-04-085 (as modified by D. 94-09-076). The Commission should order GTEC to re-file its proposed tariff and include all rate elements currently offered to any wireless carrier by contract or tariff, on an unbundled basis, to allow wireless carriers "maximum flexibility to adapt to changes within the market on short notice." D. 94-09-076 at pp. 16-17.

WHEREFORE, AirTouch requests that, pursuant to Public Utilities Code Sections 451, 453 and 701, the Commission should:

- Reject Pacific Bell's and GTEC's proposed wireless interconnection tariffs and order each company to promptly file a revised tariff which is cost-based and complies with the requirements of D. 94-04-085 (as modified by D. 94-09-076). Specifically, each revised tariff must include all rate elements for services currently offered under existing interconnection agreements, contracts, or tariffs; must include a wide range of service and

³⁸ See, e.g., Sheets 14, 28, 29. Sheets 28 and 29 refer to a "Local Calling Scope" which appears to be an undefined term.

³⁹ See, e.g., Sheets 12 (wire line customers), 13 (network landline user, mobile end user), 17 (Landline customers), 20 (landline telephone).

price options designed to offer wireless carriers the maximum flexibility to adapt to changes within the market on short notice; must include any discrete service currently included in such agreements, contracts, or tariffs; and must offer such rate elements, services, and price options on an unbundled basis.

- Order Pacific Bell and GTEC to perform cost studies based upon wireless carrier traffic by April 1996. Such studies should examine market-specific and carrier-specific data such as the average length of the haul, average ringing times, completion ratios, holding times, and expenses for customer service, billing, marketing, sales, record keeping, and other activities. After they have completed such studies, each company should be ordered to file cost-based tariffs based on their updated studies and provide wireless carriers with copies of such studies so the wireless carriers can provide the Commission with their independent analysis of the basis for proposed rate revisions.
- Order Pacific Bell and GTEC to revise their tariffs to clearly state that wireless carriers may place orders for service for mobile-to-land calls out of intrastate and interstate access tariffs. Wireless carriers must be allowed to complete calls over Feature Group D trunks (with Feature Group D minutes of use counted toward volume commitments). Doing so will provide incentives for efficiencies that benefit both wireless carriers and local exchange carriers.
- Order Pacific Bell and GTEC to file revised tariffs which require each carrier to honor NXX codes assigned to a wireless carrier by another local exchange carrier. Specifically, tariffs should require that each local exchange carrier route and rate land-to-mobile calls to the nearest point-of-

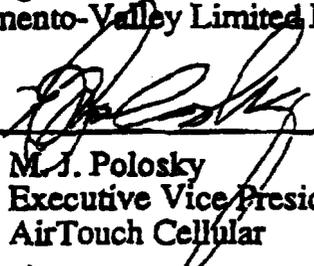
interface maintained by a wireless carrier and designated by the wireless carrier for such calls.

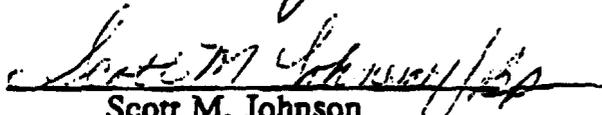
- **Order Pacific Bell and GTEC to file revised tariffs that correct errors, conflicts and inconsistencies, resolve ambiguities and make other clarifications (as noted herein and identified by other parties). Specifically, Pacific Bell and GTEC should be ordered to remove proposed tariff provisions that attempt to impede competition, including restrictions on routing directory assistance traffic to other carriers; anti-competitive fees to change to a competing directory assistance provider; forced changes of NXX codes assigned to wireless carriers; unreasonable restrictions on system engineering standards; and restrictions on wireless carriers' arrangements with long distance carriers.**
- **Order that, upon submission of revised tariffs, all parties will have the opportunity to provide comments. If necessary, the Commission should hold evidentiary hearings.**
- **Order Pacific Bell and GTEC to negotiate individualized interconnection agreements when wireless carriers can establish the need for less expensive and/or more individualized arrangements.**
- **Order other relief the Commission determines is just and appropriate.**

Dated at WINDY CREEK, California, this 26th day of September, 1994.

AirTouch Communications
AirTouch Cellular
Los Angeles SMSA Limited Partnership
Sacramento-Valley Limited Partnership

By:


M. J. Polosky
Executive Vice President
AirTouch Cellular


Scott M. Johnson
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VERIFICATION

I, M. J. Polosky, am Executive Vice President, AirTouch Cellular and as such I am authorized to make this verification on behalf of AirTouch Paging of California, AirTouch Cellular, Los Angeles SMSA Limited Partnership, and Sacramento Valley Limited Partnership. I am a board-elected officer.

I have read the foregoing Protest On Behalf of AirTouch Paging of California (U-2111-C), AirTouch Cellular (U-3001-C), Los Angeles SMSA Limited Partnership (U-3003-C) and Sacramento-Valley Limited Partnership (U-3004-C) to Wireless Interconnection Tariffs Filed by Pacific Bell and GTE California Incorporated and to the best of my knowledge, verify that the content thereof is true.

I declare the foregoing is true and correct.

EXECUTED this 26th day of September, 1994, at LIPIA, N. ST. ALBERT, California.



**M. J. Polosky
Executive Vice President
AirTouch Cellular**