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).