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February 28, 1996

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**EX PARTE**

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 Tuesday, February 27, 1996, Brian Kidney, David Gross and I, on behalf of AirTouch Communications, met with Michele Farquhar, Chief of the Wireless Bureau, and her staff, Rosalind Allen, Karen Brinkmann, Diane Law, and Kathleen Hamm regarding the above-referenced proceeding. 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,

*Kathleen Q. Abernathy*  
Kathleen Q. Abernathy

Attachment

- cc: Rosalind Allen
- Karen Brinkmann
- Michele Farquhar
- Kathleen Hamm
- Diane Law

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## **FCC HAS AUTHORITY TO REQUIRE SEPARATE SUBSIDIARIES**

- Cincinnati Bell decision does not prohibit FCC from maintaining the separate subsidiary requirement of Section 22.903.
- It does require FCC to reconcile the structural and non-structural safeguards used to regulate BOC provision of in-region cellular and PCS.
- Before allowing integrated BOC wireless activities, FCC must require BOCs to quantify harm of a separate subsidiary requirement.
- FCC could conclude that separate subsidiary requirement is necessary for all in-region BOC wireless activities because no non-structural safeguard plan would be adequate to protect consumers.

## **FCC HAS AUTHORITY TO REQUIRE SEPARATE SUBSIDIARIES (Cont'd)**

- Both Section 271(h) and Section 272(f)(3) contain language requiring the Commission to enact appropriate competitive safeguards.
- Section 601(d) of the 1996 Act allows BOCs to joint market CMRS and landline services but contains no language against structural separation. When this section was proposed in the House, its sponsor stated that this section “does not lift the FCC’s prohibition against the Bell operating telephone companies providing cellular services” on an integrated basis.
- There is significant harm to BOC competitors if structural separation or equally effective non-structural safeguards are not imposed.
  - BOCs have refused to provide competitors access to essential facilities at reasonable prices.
  - BOCs maintain incentive and ability to discriminate.
  - BOCs have ability to access their wireline customer proprietary network information (CPNI) while wireless competitors do not.

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# **AirTouch Communications**

**GEN Docket No. 90-314**

**February 27, 1996**

**Kathleen Abernathy**

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## **NEED FOR EFFECTIVE SAFEGUARDS**

- **Bell Operating Companies (BOCs) have continued control over essential bottleneck facilities.**
- **This creates a unique ability to leverage their wireline market power to advance wireless interests in instances where BOCs have in-region cellular and broadband PCS licenses.**
- **Other wireless competitors -- including new PCS entrants -- can not effectively compete absent FCC imposed safeguards that protect against discrimination and cross-subsidization.**
- **FCC must implement effective safeguards -- such as a separate subsidiary requirement -- so that competitors can construct networks and offer competitive alternatives to BOC monopolies without BOC interference.**

## **SIXTH CIRCUIT REMAND**

- A recent Sixth Circuit decision, Cincinnati Bell Telephone Co. v. FCC, 69 F.3d 752 (6th Cir. 1995), provides an opportunity for the FCC to re-examine the competitive issues raised by LEC in-region cellular and broadband PCS activity.
- Court's primary concern was with the disparate treatment in the FCC's rules of LEC in-region PCS systems and LEC in-region cellular systems.
- FCC should conduct a rulemaking proceeding looking into BOC wireless safeguards and examine competitive effects and costs and benefits of both cellular and PCS structural and non-structural rules.

## **NON-STRUCTURAL SAFEGUARD PLAN OF PACIFIC BELL MOBILE SERVICES**

- The FCC previously concluded that commencement of PCS service by BOCs would be contingent on the BOC 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 BOCs. 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); this issue can now be addressed as part of the Sixth Circuit remand proceeding.
- During the pendency of the Sixth Circuit remand proceeding, the FCC must not approve the non-structural safeguard plan of any of the BOCs.