



ORIGINAL

DOCKET FILE COPY ORIGINAL
Kathleen Q. Abernathy
Vice President
Federal Regulatory

EX PARTE - LATE FILED

AirTouch Communications
1818 N Street N.W.
Suite 800
Washington, DC 20036

Telephone: 202 293-4960
Facsimile: 202 293-4970

March 20, 1996

EX PARTE

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

MAR 20 1996

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, March 19, 1996, David Gross and I, on behalf of AirTouch Communications, met with David Nall, Michael Wack and Barbara Esbin of the FCC's Wireless Bureau to discuss the above-referenced proceeding. Please associate the attached 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

Attachment

cc: Barbara Esbin
David Nall
Michael Wack

021

AirTouch Communications

GEN Docket No. 90-314

March 13, 1996

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.

CRITICAL ISSUES FOR NEW RULEMAKING PROCEEDING

- In the new rulemaking proceeding, the FCC should tentatively conclude that the goal of creating effective competitive safeguards is promoted by maintaining the following requirements of Section 22.903:
 - BOCs must not provide any CPNI to a wireless affiliate unless the information is made publicly available on same terms and conditions. (Section 22.903(f)).
 - The wireless affiliate has access to BOC facilities only on compensatory, arm's-length basis. (Section 22.903(a)).
 - R&D by BOC for wireless affiliate done only on a compensatory basis. (Section 22.903(c)).
 - All transactions between wireless affiliate and BOC must be in writing and available for FCC inspection. (Section 22.903(d)).

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.

TITLE IV—REGULATORY REFORM

SEC. 401. REGULATORY FORBEARANCE.

Title I is amended by inserting after section 9 (47 U.S.C. 159) the following new section:

“SEC. 10. COMPETITION IN PROVISION OF TELECOMMUNICATIONS SERVICE.

“(a) REGULATORY FLEXIBILITY.—Notwithstanding section 332(c)(1)(A) of this Act, the Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that—

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

“(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

“(3) forbearance from applying such provision or regulation is consistent with the public interest.

“(b) COMPETITIVE EFFECT TO BE WEIGHED.—In making the determination under subsection (a)(3), the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.

“(c) PETITION FOR FORBEARANCE.—Any telecommunications carrier, or class of telecommunications carriers, may submit a petition to the Commission requesting that the Commission exercise the authority granted under this section with respect to that carrier or those carriers, or any service offered by that carrier or carriers. Any such petition shall be deemed granted if the Commission does not deny the petition for failure to meet the requirements for forbearance under subsection (a) within one year after the Commission receives it, unless the one-year period is extended by the Commission. The Commission may extend the initial one-year period by an additional 90 days if the Commission finds that an extension is necessary to meet the requirements of subsection (a). The Commission may grant or deny a petition in whole or in part and shall explain its decision in writing.

“(d) LIMITATION.—Except as provided in section 251(f), the Commission may not forbear from applying the requirements of section 251(c) or 271 under subsection (a) of this section until it determines that those requirements have been fully implemented.

“(e) STATE ENFORCEMENT AFTER COMMISSION FORBEARANCE.—A State commission may not continue to apply or enforce any provi-