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March 20, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

MAR 20 1996

EX PARTE

Re: CMRS Nondiscrimination Safeguards, GN Docket No. 90-314

Dear Mr. Caton:

This letter, filed in original with two duplicates, reports that the attached letter was hand-delivered to the FCC staff members as indicated on March 20, 1996. The letter addresses how the Telecommunications Act of 1996 affects the customer premises equipment ("CPNI") provision of Section 22.903(f).

If you have any questions regarding this submission, please do not hesitate to contact the undersigned.

Respectfully submitted,

Leonard J. Kennedy
Leonard J. Kennedy

LJK/car
Enclosure

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Kathleen Q. Abernathy
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March 20, 1996

David Nall, Esq.
Acting Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 7002
Washington, D.C. 20554

Re: CPNI Provisions of the TCA and Section 22.903(f)

Dear David:

One of the most significant provisions of the new Telecommunications Act of 1996 ("TCA") is Section 222, the section that allows customers to control their customer proprietary network information ("CPNI").^{1/} AirTouch Communications, Inc. ("AirTouch") strongly supports customer participation in the telecommunications marketplace, robust competition and customer control over CPNI. We further believe that the CPNI provisions of the TCA must be read to support the growth of competition.

The Commission's current rules on CPNI were adopted to promote competition by prohibiting incumbent monopoly local exchange carriers from using their customers' CPNI anti-competitively. One such restriction is the prohibition of Section 22.903(f) which prevents a Bell Operating Company ("BOC") from disclosing CPNI to its cellular affiliate unless the CPNI is "publicly available [to other carriers] on the same terms and conditions." While the wireless market has become increasingly competitive, the local exchange market has not. Consequently, the public interest concerns that prompted the adoption of this rule are still valid today.

New Section 222(c)(1) states that a telecommunications carrier may only "use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the

^{1/} See TCA at § 702, establishing 47 U.S.C. § 222.

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publishing of directories" unless, inter alia, it has the approval of the customer. This section gives customers explicit control over their CPNI for the first time, establishing a statutory floor for customer CPNI protection. This section does not, however, vitiate Section 22.903(f). Nothing in Section 222(c)(1) affects the Commission's power (and obligation) to establish additional policies to promote competition in the public interest. As a result, the Commission can, and must, address the competitive problem of unfettered sharing of CPNI between BOCs and their wireless affiliates. To the extent a customer specifically requests in writing the release of CPNI to another person pursuant to Section 222(c)(2), then the restriction set forth in Section 22.903(f) would likely no longer apply.^{2/} However, this does not change the fact that Section 22.903(f) remains an important competitive safeguard that has not been materially altered or eliminated by the TCA. Certainly Section 222(c)(1) should not be read to allow unrestricted BOC access to customer CPNI in a manner that eliminates the protections of Section 22.903(f).

The TCA is about competition. Indeed, Congress specifically stated that the TCA is intended to "provide for a pro-competitive, de-regulatory national policy framework to accelerate rapidly private sector development of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."^{3/} In keeping with Congress' purpose in passing the TCA, the Commission must

^{2/} However, AirTouch also believes that the Commission is obligated to investigate the best means of effectuating the purposes of Section 222(c)(2) in light of Section 22.903(f). For example, the Commission should focus on the statutory meaning of the term "affirmative written request" and establish rules that promote competition while protecting the customer's right to control its CPNI.

^{3/} See Preface to the Telecommunications Act of 1996, Joint Explanatory Statement of the Commission of Conference, 104th Cong. Rec. 1107 (January 31, 1996).

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read Section 222(c)(1) in a manner that preserves the competitive safeguards of Section 22.903.
Any other reading would be contrary to the purposes of the TCA and contrary to the public
interest.

Sincerely,

AIRTOUCH COMMUNICATIONS, INC.


Kathleen Q. Abernathy
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