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March 14, 1996

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MAR 14 1996

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 Wednesday, March 13, 1996, Brian Kidney and I, on behalf of AirTouch Communications, met with David Siddall, Legal Advisor to Commissioner Ness, 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

Attachment

cc: David Siddall

No. of Copies rec'd 0+1

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.