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May 14, 1997

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MAY 14 1997

Federal Communications Commission
Kathleen Q. Abernathy

EX PARTE

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

RE: Telecommunication Carriers' Use of Customer Proprietary Network Information and Other Customer Information (CC Docket 96-115) and Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services (WT Docket 96-162)

Dear Mr. Caton:

On Tuesday, May 13, 1997, I met with Suzanne Toller, legal advisor to Commissioner Chong, to discuss the above proceeding. Please associate the attached material with the above-referenced proceeding

Two copies of this notice are being submitted to the Secretary 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

cc: Suzanne Toller

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AirTouch Communications, Inc.

**Telecommunications Carriers' Use of Customer Proprietary Network Information
and Other Customer Information
CC Docket 96-115**

and

**Amendment of the Commission's Rules to Establish Competitive Service Safeguards
for Local Exchange Carrier Provision of Commercial Mobile Radio Services
WT Docket 96-162**

April 16, 1997

**Brian Kidney
Kathleen Q. Abernathy**

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 or 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 so that competitors can construct networks and offer competitive alternatives to BOC monopolies without BOC interference.**
- **CPNI, in particular, should be protected to ensure that customers of BOC and other LEC monopolies are not anticompetitively targeted by LEC affiliated CMRS or long distance carriers.**

CRITICAL ISSUES

- The FCC should 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 which is made available to competitors on same terms and conditions. (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)).
- The FCC should not revise the categories of “telecommunications services” to merge local exchange, interexchange, or CMRS buckets.
 - BOCs continue to retain monopoly power that no IXC or CMRS competitor can match.

CUSTOMER APPROVAL REQUIREMENTS

- The FCC has authority to determine type of prior customer approval that is in the public interest.
- In traditionally competitive markets, such as CMRS and long distance, carriers should be given flexibility regarding customer approval.
- In traditionally monopoly markets, such as local exchange, carriers should be held to a strict standard regarding the use of CPNI, obtained merely because customers had no alternative.
 - Customers should provide written authorization for their local telephone CPNI to be used in marketing competitive services.
 - The “Notice and Opt Out” mechanism proposed by some LECs fails to provide adequate information to the BOC customer.
 - LECs should not be able to use CPNI to target certain customers for the purpose of obtaining authorization to market other telecommunications services.

CUSTOMER APPROVAL REQUIREMENTS (Cont'd)

- CPNI authorization must be obtained in advance of -- not concurrent with -- solicitations for competitive service offerings.
- Until LEC markets are competitive, LECs should be required to seek authorization from their customers to release CPNI to all other competing telecommunications carriers as a prerequisite to their use of such information. This ensures that LEC affiliated enterprises do not obtain an anticompetitive advantage merely because of their affiliation.
- The joint marketing authorization for LEC/CMRS services, read together with Section 222, means that such joint marketing can be performed only after LEC customers have given authorization to use their CPNI.