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AIRTOUCH™
Communications

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MAY 22 1997
Federal Communications Commission
Office of Secretary

May 22, 1997

**EX PARTE**

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

RE: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information (CC Docket No. 96-115)
&
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 Wednesday, May 21, 1997, David Gross and I, on behalf of AirTouch Communications, Inc. met with David Solomon, Eliza Katz, and John Nakahata of the Office of General Counsel to discuss the above proceedings. Please associate the attached material with the above-referenced proceedings.

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

Attachments

cc: David Solomon
Eliza Katz
John Nakahata

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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**

**May 20, 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.

# TELECOMMUNICATIONS ACT OF 1996

- Adoption of Section 222 of the Telecommunications Act of 1996 does not invalidate effectiveness of Section 22.903(f) of the Commission's Rules.

- Congress was aware of the restrictions on BOC provision of cellular services because the BOCs lobbied for the elimination of all the Section 22.903 restrictions, but were only successful in obtaining relief from the joint marketing restriction in Section 22.903(e).

- In Section 601(d) of the 1996 Act Congress stated that Bell Operating companies could jointly market and sell CMRS in conjunction with telephone exchange service despite restrictions in Section 22.903 of the Commission's regulations.

- Significantly, Congress did not disturb any of the other restrictions in Section 22.903.

- Therefore, the Commission retains the jurisdiction and the discretion to determine what provisions of Section 22.903 continue to serve the public interest by promoting competition in the wireless arena.

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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

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

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

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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).

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 /LHP

Kathleen Q. Abernathy
David A. Gross

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