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Federal Communications Commission  
Office of Secretary

June 11, 1997

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**EX PARTE**

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M St., N.W., Room 222  
Washington, D.C. 20554

Dear Mr. Caton:

Re: Non-Accounting Safeguards, CC Docket No. 96-149; CMRS Non-Structural Safeguards, WT Docket No. 96-162; Gen. Docket No. 90-314 Establishment of PCS

Yesterday, Bruce Beard, Senior Attorney, Southwestern Bell Mobile Systems, Jim Tuthill, Vice President and General Counsel, Pacific Bell Mobile Systems and I met with Jackie Chorney, Senior Legal Advisor to Chairman Hundt, Don Stockdale, Deputy Chief, Policy and Program Planning Division, Common Carrier Bureau, and Greg Rosston, Deputy Chief Economist, Office of Plans and Policy, to discuss the issues summarized in the attachment.

We are submitting two copies of this notice in accordance with the Commission's rules. Please stamp and return the provided copy to confirm your receipt. Please contact me at (202) 383-6423 should you have any questions.

Sincerely,

Gina Harrison  
Director  
Federal Regulatory Relations  
Pacific Telesis Group  
(A Subsidiary of SBC Communications, Inc.)

cc: J. Chorney  
G. Rosston  
D. Stockdale

# **Section 22.903 Harms Competition**

**SBC Communications Inc.**

**June 10-11, 1997**

## LEVEL PLAYING FIELD REQUIRES REMOVAL OF 22.903

- The records in 96-162 and 90-314 support lifting 22.903.
- Regulatory consistency and symmetry of CMRS require lifting of 22.903.
- Structural separation rules, like 22.903 harm competition.

## THE RECORDS SUPPORT LIFTING 22.903

- The FCC has already ruled that non-structural safeguards provide satisfactory protection for LEC CMRS:
  - 1982-cellular providers (other than AT&T) 89 FCC2d 58, 77-80 (1982).
  - 1993-PCS providers, including BOCs, 8 FCC Rcd 7700, 7747-52 (1993).
  - 1995-SMR providers, 10 FCC Rcd 6280, 6293-94 (1995).

## THE RECORDS SUPPORT LIFTING 22.903

- 90-314 established sufficiency of cost accounting and non-discrimination rules.
- Commission approved PBMS safeguards plan.
- 96 Telecom Act provides additional protection:
  - Establishes procedure for negotiating interconnection agreements which are open for public inspection.
- 96 Telecom Act affirmed Commission's application of non-structural safeguards for CMRS.

## THE RECORDS SUPPORT LIFTING 22.903

- Fourteen years of CMRS interconnection experience provides excellent benchmark.
- SBC, with major out-of-region CMRS interests has negotiated satisfactory interconnection agreements with other BOCs.
- “With respect to interconnection, no commenter, on this record, has demonstrated that Pacific Bell is discriminating unreasonably in favor of its PCS affiliate.” DA 96-256, Feb. 27, 1996.
- There is nothing to support extension of the 22.903 rules to PCS or any other CMRS provider.

# REGULATORY CONSISTENCY REQUIRES LIFTING 22.903

- Congress and the Commission seek regulatory symmetry for CMRS.
- “Congress saw the need for a new approach to the classification of mobile services to ensure that similar services would be subject to consistent regulatory classification.” GN Docket 93-252, para. 13.
- Regulatory symmetry requires lifting 22.903:
  - symmetry with non-BOC CMRS providers
  - symmetry with the Commissions’ PCS and SMR rules
- Lifting rules is consistent with Congressional and Commission intent to streamline regulation.

# REGULATORY CONSISTENCY REQUIRES LIFTING 22.903

- The Sixth Circuit recognized the BOCs are at a disadvantage because of the lack of symmetry:
  - “the disparate treatment afforded the Bell Companies impacts on their ability to compete in the ever-evolving wireless communications marketplace.” 69 F.3rd at 768.
- Competitors don’t have the constraint of structural separation.

# STRUCTURAL SEPARATION HARMS COMPETITION

- Creates artificial inefficiencies:
  - separate officers, operating, installation and maintenance personnel:
    - prevents one-stop shopping;
    - prevents integration of SBC CMRS operations.
- Commission in 90-314 recognized that integration would benefit consumers-structural separation harms consumers.
- The only winners are BOC competitors.
- Retreating from 90-314 would harm competition
  - No justification, either in or outside of the record.