

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

In the Matter of Federal-State Joint Board
on Universal Service

)
)
) CC Docket No. 96-45
)
)
)

RECEIVED
JUL 17 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

AIRTOUCH COMMUNICATIONS, INC.
PETITION FOR CLARIFICATION AND PARTIAL RECONSIDERATION

AIRTOUCH COMMUNICATIONS, INC.

Kathleen Q. Abernathy
David A. Gross
AirTouch Communications, Inc.
1818 N Street, N.W.
Washington, D.C. 20036
(202) 293-2800

Charles D. Cosson
Lynn Van Housen
AirTouch Communications, Inc.
One California Street, 29th Floor
San Francisco, CA 94111
(415) 658-2000

July 17, 1997

No. of Copies rec'd
List ABCDE

02 11

TABLE OF CONTENTS

	Page
SUMMARY	1
I. The Commission Should Reconsider Those Portions of the <i>Universal Service Order</i> Which Are Inconsistent with the Competitive Neutrality Principle	3
A. If Support Is Extended to Non-Primary Connections, Support Should Be Available to All Eligible Carriers on an Equal Basis	4
B. The Commission Should Eliminate the Requirement that CMRS Providers Obtain a Waiver to Become an Eligible Carrier	6
C. Minor Technical Revisions to the Rules Are Warranted to Ensure Competitive Neutrality	9
1. Potential Ambiguity in Competitive Carrier Support Levels	9
2. Voice Grade Access Definition	9
3. Lines	10
II. The Commission Should Allow CMRS Providers to Use Their TRS Procedures in Reporting their Revenues for the Universal Service Programs	10
III. The Universal Service Order Is Inconsistent with the Express Directives of Section 332(c)(3) of the Communications Act	12
CONCLUSION	17

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

In the Matter of Federal-State Joint Board
on Universal Service

)
)
) CC Docket No. 96-45
)
)
)

To: The Commission

**AIRTOUCH COMMUNICATIONS, INC.
PETITION FOR CLARIFICATION AND PARTIAL RECONSIDERATION**

AirTouch Communications, Inc. ("AirTouch")¹ submits this petition seeking clarification and partial reconsideration of the Commission's recent *Universal Service Order*.²

SUMMARY

AirTouch raises three issues in this petition. It first requests that the Commission revise a number of universal service rules which are incompatible with the competitive neutrality principle governing universal service reform. For example, the Commission has determined that universal support should be extended to *all* access connections provided by an incumbent LEC in high cost areas, rather than to primary connections alone as the Joint Board had recommended. By contrast, competitive carriers are entitled to support only for *new and replacement* connections and not existing connections. While AirTouch believes that only a person's primary

¹ AirTouch is a wireless communications company with interests in cellular, paging, personal communications services, satellite, and other operations.

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, FCC 97-157 (released May 8, 1997), *summary reprinted in* 62 Fed. Reg. 32862 (June 17, 1997)("Universal Service Order"), *Errata*, FCC 97-157 (released June 4, 1997), *Order on Reconsideration*, FCC 87-246 (released July 10, 1997); *see also Recommended Decision*, 12 FCC Rcd 87 (Joint Board 1996)("Recommended Decision.").

connection should be eligible for universal service support, if the Commission decides to extend support to all incumbent LEC lines, support should be extended equally to all connections provided by competitive carriers in the same areas.

The Commission should also eliminate the requirement that CMRS providers obtain waivers from state commissions as a condition to becoming an eligible carrier because they are unable to currently support access to E911 services. The Commission has already determined the circumstances under which CMRS providers must support E911 access, and the requirement to obtain waivers would result in needless delays and would impose administrative costs. Further, the Commission has not imposed a similar waiver requirement on landline carriers which are incapable of supporting other "core" universal services. With respect to the competitive neutrality requirement, this petition also identifies other areas where changes to the universal service rules should be made.

Second, AirTouch asks the Commission to clarify that CMRS providers, in allocating their revenues between jurisdictions for purposes of reporting their universal service contribution levels, can use the same procedures they currently use in reporting revenues for the Telecommunications Relay Service ("TRS") program. CMRS providers face a unique challenge in allocating revenues among jurisdictions because of the mobile nature of their service, and they have therefore developed special procedures (including sampling studies and surrogates) in reporting their TRS revenues. The TRS fund procedures have worked well, and, for the time being, CMRS providers should be authorized to use the same procedures for reporting their universal service revenues.

Finally, the *Universal Service Order* is inconsistent with the express directives of Section 332(c)(3) of the Communications Act, which specifies that CMRS providers may be subjected to state universal service requirements *only* when CMRS becomes a substitute for landline service for a substantial portion of the communications within the state. The Commission reported to Congress earlier this year that CMRS is not a substitute for landline services. Consequently, under the unambiguous mandate of Section 332(c)(3) and basic principles of statutory construction, states may not impose universal service obligations on CMRS providers.

I. The Commission Should Reconsider Those Portions of the *Universal Service Order* Which Are Inconsistent with the Competitive Neutrality Principle

The Commission has determined that all universal service programs should comply with the principle of competitive neutrality, noting that such a principle “is consistent with congressional intent and necessary to promote ‘a pro-competitive, de-regulatory national policy framework.’”³

Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage or disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.⁴

The Commission explained that applying competitive neutrality in formulating universal service programs would ensure that “no entity receives an unfair competitive advantage that may skew the market place or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers.”⁵ The concept of competitive neutrality includes

³ *Universal Service Order* ¶ 48.

⁴ *Id.* ¶ 47.

⁵ *Id.* ¶ 48.

“technological neutrality” to ensure that universal service support is “not . . . biased toward any particular technolog[y]” and to foster the development of competition, including competition between landline and wireless technologies.⁶

Several portions of the *Universal Service Order* are inconsistent with the competitive/technological neutrality principle. AirTouch therefore requests that the Commission revise those rules to comply with this cardinal principle of universal service reform.

A. If Support Is Extended to Non-Primary Connections, Support Should Be Available to All Eligible Carriers on an Equal Basis

The Joint Board recommended that universal support be extended only to a residential or business customer’s primary connection to the network, holding that it was “not necessary” to extend support to additional connections or any connections from second residences.⁷ The Commission, however, decided to extend high cost support to “all lines” — both residential and business — served by an incumbent LEC.⁸

AirTouch agrees with the Joint Board recommendation, and it urges the Commission on reconsideration to adopt the Joint Board recommendation.⁹ However, if the Commission

⁶ *Id.* ¶ 49.

⁷ *Recommend Decision*, 12 FCC Rcd at 132-134.

⁸ *Universal Service Order* ¶¶ 275, 296.

⁹ The Commission should also reconsider its decision to extend support to a primary business network connection. For example, the California Commission has declined to extend support to any business connections, noting the competition for business customers will be more intense than competition for residential customers and that the size of the fund and the burden on ratepayers would become too large if primary business connections were to receive support. See *Universal Service*, Decision No. 96-10-66, 1996 Cal. PUC LEXIS 1046, at 58 (Cal. Pub. Util. Comm’n released Oct. 25, 1996).

declines to do so, AirTouch then asks that the Commission modify its implementing rules to conform to the competitive neutrality principle.

Under the current rules, incumbent LECs will receive support for all residential and business connections they provide in high cost areas. An incumbent LEC's competitors, in contrast, will receive support only for new and replacement connections — with no support being given for their existing customer base.¹⁰ This arrangement obviously is not competitively neutral as it would place CMRS providers with an existing customer base at a competitive disadvantage *vis-a-vis* an incumbent.¹¹ In addition, competitive carriers would be effectively required to subsidize their competitor's services, because CMRS universal service contributions will be used to subsidize the incumbent LEC's services.

The Commission has stated repeatedly that it wants wireless carriers to compete with the exchange services provided by an incumbent.¹² CMRS providers cannot achieve this

¹⁰ See 47 C.F.R. 54.307(a) ("A competitive eligible telecommunications carrier shall receive universal support to the extent that the competitive eligible telecommunications carrier captures an incumbent local exchange carrier's (ILEC) subscriber lines or serves new subscriber lines in the ILEC's service area."); see also *Universal Service Order* ¶ 287.

¹¹ For example, why should a consumer with two landline connections receive a subsidy for both connections, while his neighbor, with one landline connection and one CMRS connection, receive a subsidy for only one of his connections? Even more troubling, consider a consumer with only one connection but wanting a second connection. A CMRS provider will have difficulty competing for this second connection if the incumbent can offer it with subsidies (paid in part by the CMRS provider attempting to compete with the incumbent).

¹² See, e.g., *Competition in the Commercial Mobile Radio Services, Second Annual Report*, 1997 FCC LEXIS 1513, 7 Comm. Reg. (P&F) 1, 34, n. 273 and accompanying text (released March 25, 1997); *Telephone Number Portability, First Memorandum Opinion and Order on Reconsideration*, 6 Comm. Reg. (P&F) 1106, 1152, ¶ 135 (released March 11, 1997); *Competitive Service Safeguards for Local Exchange Carrier Provision of CMRS, Notice of Proposed Rulemaking, Order on Remand, and Waiver Order*, 11 FCC Rcd. 16639, 16664 (1996).

objective if in high cost areas incumbent LEC services are fully subsidized while their services are only partially subsidized.

In sum, AirTouch recommends that the Commission reconsider its rules so that high cost support is extended only to a person's primary residential network connection. If, however, the Commission decides to extend support to all of an incumbent's lines, it should then modify its rules so that all carriers are treated equally under universal service programs by receiving support for all lines served.

B. The Commission Should Eliminate the Requirement that CMRS Providers Obtain a Waiver to Become an Eligible Carrier

A carrier wanting to become eligible to provide universal service and receive support must provide all nine "core" universal services the Commission has identified.¹³ One of the "core" services an eligible carrier must provide is access to emergency services, including access to enhanced 911 services.¹⁴ However, CMRS providers do not now provide access to E911 services, and they are unable to offer this capability until two criteria — both outside their control — are met: a locality (1) must request CMRS providers to offer this capability and must be capable of receiving the data elements associated with CMRS E911 access, and (2) must first establish a cost recovery mechanism.¹⁵

In the *Universal Service Order*, the Commission acknowledged that requiring CMRS providers to support E911 access as a condition of eligibility when FCC rules do not

¹³ See 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.101(b); *Universal Service Order* ¶ 134.

¹⁴ *Universal Service Order* ¶¶ 72-74.

¹⁵ See *id.* n.111, (referencing *Wireless E911 Report and Order*, FCC 96-264, 3 Comm. Reg. 967 (released July 26, 1996)).

require the capability until a locality meets certain requirements “would be contrary to the principle that universal service policies and rules be competitively neutral.”¹⁶ However, rather than grant CMRS providers a blanket exemption from the E911/eligible carrier requirement prior to the occurrence of the two triggering criteria, the Commission has instead required CMRS providers to petition state commissions “to request[] additional time to complete the network upgrades needed to provide . . . access to enhanced 911 service.”¹⁷ Commission rules further specify that a state commission may grant such a petition “only upon finding that exceptional circumstances prevent an otherwise eligible telecommunications carrier from providing access to enhanced 911 service.”¹⁸ The Commission has placed the burden of demonstrating “exceptional circumstances” on CMRS providers.¹⁹ Thus, as a practical matter, over the next few years every CMRS provider wanting to become an eligible carrier will be required to file a waiver petition in each state in which it operates.

This procedure does not serve the public interest.²⁰ Requiring CMRS providers to obtain a waiver as a condition to becoming an eligible carrier will result in needless delay,

¹⁶ *Universal Service Order* ¶ 90.

¹⁷ 47 C.F.R. § 54.101(c); *see Universal Service Order* ¶ 91.

¹⁸ *See* 47 C.F.R. § 54.101(c); *see also Universal Service Order* ¶ 91 (petitioner must meet a “heavy burden that such a . . . period is necessary and in the public interest” and demonstrate “‘exceptional circumstances’ warranted the granting of support.”).

¹⁹ 47 C.F.R. § 54.101(c).

²⁰ A CMRS provider should not be required to seek “permission” from a state commission for “additional time” when Commission rules already specify the circumstances when a CMRS provider must begin supporting access to E911 services. Further, a CMRS provider should not be required to demonstrate “exceptional circumstances” when the “triggers” for wireless E911 access are entirely within the control of local governments.

impose unnecessary costs on both CMRS providers (which must prepare and prosecute numerous petitions) and state commissions (which must review and approve the petitions); the waiver process may also invite mischief if a state commission seeks to modify the triggers which the Commission has adopted.

In addition, the procedure the Commission adopted for CMRS providers is not competitively neutral with the approach it has adopted for landline carriers unable to provide other “core” universal services. Some LECs are still incapable of providing single-party service, a “core” universal service. However, these non-compliant LECs are not required to file a waiver petition, much less demonstrate “exceptional circumstances” to obtain a waiver. The Commission explained that such a procedure was unnecessary if the state has already adopted a timetable by which LECs must offer single party service.²¹ The same analysis and procedure should apply to CMRS providers. If landline carriers can “rely upon” previously adopted state commission timetables, CMRS providers should also be able to rely upon previously adopted FCC timetables — especially when the triggers for CMRS E911 access are entirely within the control of local governments.

AirTouch therefore asks the Commission to reconsider the requirement that CMRS providers must file and obtain a waiver from a state commission as a condition to becoming an eligible carrier.

²¹ *Universal Service Order* ¶ 93.

C. Minor Technical Revisions to the Rules Are Warranted to Ensure Competitive Neutrality

There are several universal service rules which have been promulgated with landline technologies in mind and which should also be revised to ensure compliance with the principle of competitive/technological neutrality.

1. Potential Ambiguity in Competitive Carrier Support Levels. Rule 54.307(a)(1) provides that a competitive eligible carrier “shall receive support for each line it serves based on the support the ILEC receives for each line.” Incumbent LECs receive support from three programs: the high-cost fund, the DEM weighting program, and the long-term support program. There is, however, an ambiguity in the underlying rules. Specifically, Rule 54.303 expressly states that “competitive eligible . . . carriers will receive Long Term Support.” There is no comparable provision in the high-cost and DEM weighting rules.²² To remove potential controversy in the future, AirTouch recommends that the Commission either remove the quoted clause in Rule 54.303 or that it add a similar clause in the high-cost and DEM weighting rules.

2. Voice Grade Access Definition. Voice grade access is one of the nine “core” universal services. Rule 54.101(a)(1) defines voice grade access as “a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating that there is an incoming call.” The second sentence of this rule provides: “For purposes of this Part, voice grade access shall occur within the frequency range of

²² See 47 C.F.R. §§ 36.601 and 54.301.

between approximately 500 Hertz and 4,000 Hertz, for a bandwidth of approximately 3,500 Hertz.”

AirTouch recommends that the Commission delete this second sentence from Rule 54.101(a)(1). Given the first sentence, the second sentence appears redundant. More importantly, the sentence describes only analog technologies, and does not encompass digital technologies, including those used by CMRS providers. Read literally, this Rule would preclude many CMRS providers from becoming eligible carriers.

3. Lines. Several universal service rules reference “lines,” which apply to landline technologies alone.²³ AirTouch recommends that the Commission either replace these words with “network connections” or “subscriber accounts” or instead add the phrase, “or equivalent facility.”

II. The Commission Should Allow CMRS Providers to Use Their TRS Procedures in Reporting their Revenues for the Universal Service Programs

The new universal service programs require all carriers to allocate their revenues between state and interstate jurisdictions so they can report their revenues by jurisdiction and make their appropriate contribution. The *Universal Service Order* did not, however, specifically address how carriers, and particularly CMRS providers, are to allocate their end-user telecommunications services revenues between jurisdictions. To minimize administrative expenses, AirTouch asks the Commission to confirm that CMRS providers may use their TRS procedures and results in calculating the revenue which they must report for the universal service programs.

²³ See, e.g., *id.* §§ 54.307(a), 54.307(b). The Part 36 Rules are replete with references to “lines” and loops.” So long as the Part 54 universal service rules are written in a competitively neutral manner, it may be unnecessary to revise the Part 36 rules as well.

Performing a state/interstate allocation is relatively easy for landline carriers. The location of landline calls is fixed and generally can be determined from readily available information such as V&H coordinates, answer number identification (“ANI”), and the like. In contrast, these same methods are often not available (or if available, not useful) to CMRS providers. Besides, even if the CMRS industry had ready means to identify the jurisdictional nature of their traffic at the time each call was made, the fact remains that CMRS is mobile and the jurisdictional nature of the call can change during the course of a call.²⁴

CMRS providers allocate their telecommunications services revenues between jurisdictions for purposes of the Telecommunications Relay Service (“TRS”) program. Under the TRS program, CMRS providers have developed various means to allocate service revenues between jurisdictions, including the use of samples and surrogates. These techniques have enabled CMRS providers like AirTouch to meet their legal obligations while keeping their administrative costs to a minimum.

The TRS program and the universal service programs use a different revenue base for determining one’s contribution — with the TRS program using gross revenues and the universal service programs instead using end-user revenues.²⁵ Nevertheless, with these programs

²⁴ For example, thousands of times daily in the Washington, D.C. metropolitan area a call can begin as an intrastate call but end as an interstate call. Indeed, a call can begin as an intrastate call, become an interstate call, but end as an intrastate call.

²⁵ Contributions to the TRS program are based on a carrier’s relative share of gross interstate services revenues. 47 C.F.R. § 64.604(c)(4)(iii)(A). Contributions to the high-cost and low-income universal service programs are based on a carrier’s relative share of interstate and international end-user telecommunications service revenues. *Id.* § 54.703(c). Contributions to the new school/library/health care program will be based on a carrier’s relative share of interstate, intrastate, and international end user telecommunications services. *Id.* § 54.703(b).

carriers must still allocate their revenues between the state and interstate jurisdictions. For CMRS providers, the most cost-effective way to report their universal service revenues by jurisdiction would be to use their TRS calculations and then subtract out their wholesale (or non-end-user) telecommunications and other non-telecommunications service revenue.

The TRS reporting procedure has worked well. To avoid imposing new and unnecessary administrative costs and burdens on carriers, AirTouch asks the Commission to confirm that, for the time being, CMRS providers may use their TRS methodologies and calculations in determining whether their end-user telecommunications services revenue is state or interstate.

III. The Universal Service Order Is Inconsistent with the Express Directives of Section 332(c)(3) of the Communications Act

The *Universal Service Order* is inconsistent with the express directives of Section 332(c)(3) of the Communications Act. AirTouch therefore asks the Commission to revise the *Universal Service Order* to resolve this fundamental inconsistency.

Congress substantially amended Section 332(c) of the Communications Act in 1993 to establish a "Federal regulatory framework governing the offering of all commercial mobile services."²⁶ This approach was deemed necessary to foster the "growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."²⁷

²⁶ H.R. Conf. Rept. No. 103-213, at 490 (1993), *reprinted in* 1993 U.S.C.C.A.N. 378, 1179; *see also* The Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 393, *amending* the Communications Act of 1934 and codified in relevant part at 47 U.S.C. § 332(c)(3).

²⁷ H.R. Rept. No. 103-111, at 260 (1993), *reprinted in* 1993 U.S.C.C.A.N. 378, 587.

To facilitate these important federal policies, Congress preempted the states from regulating CMRS entry and rates.²⁸ Of importance to this proceeding, Congress also precluded states from imposing universal service requirements on CMRS providers *unless* “such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State.” Specifically, Section 332(c)(3)(A) provides in pertinent part:

Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates.

The Commission advised Congress only four months ago that CMRS is not a substitute for landline exchange services.²⁹ Consequently, under the express and unambiguous directive of Section 332(c)(3), states may not impose universal service obligations on CMRS providers. Put another way, under Section 332(c)(3) CMRS providers may be subjected only to federal universal service requirements — unless and until CMRS becomes a substitute for landline exchange service for a substantial portion of the communications within a state.

Nonetheless, in the *Universal Service Order* the Commission has determined Section 332(c)(3) “does not preclude states from requiring CMRS providers to contribute to state

²⁸ See 47 U.S.C. § 332(c)(3); States may petition the FCC for authority to regulate CMRS rates, but the FCC is authorized to grant such petitions only when, among other things, CMRS becomes a “substantial substitute” for landline service. See *id.* § 332(c)(3)(ii); *State Regulatory Authority over Intrastate Cellular Service Rates*, 10 FCC Rcd 7486, 7493 (1995).

²⁹ *Second CMRS Competition Report*, 7 Comm. Reg. (P&F) at 31-33, text accompanying notes 247-259; see also *First CMRS Competition Report*, 10 FCC Rcd 8844, 8869-70 (1995).

support mechanisms.”³⁰ The problem with this conclusion is that it ignores the plain language of Section 332(c)(3), and is inconsistent with the directives of this statutory provision. The Supreme Court has ruled that “[s]tatutory construction ‘is a holistic endeavor . . . and at a minimum, must account for a statute’s *full* text, language as well as punctuation, structure, and subject matter.’”³¹ The Supreme Court has also recently declared:

It would be dangerous in the extreme to infer from extrinsic circumstances that a case for which the words of the instrument expressly provided shall be exempt from its operation.³²

The *Universal Service Order* violates this fundamental rule of statutory construction — that is, a legislature is presumed to have used no superfluous words and that, as a result, effect must be given to *every* word, clause and sentence of a statute.³³

³⁰ *Universal Service Order* ¶ 791.

³¹ *U.S. Nat’l Bank v. Independent Ins.*, U.S., 113 S. Ct. 2173, 2182 (1993) (internal citations omitted)(emphasis added).

³² *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 254 (1992) (citing *Sturges v. Crowninshield*, 4 Wheat (17 U.S.) 122, 4 L.Ed. 529 (1819)).

³³ See Sutherland, *Stat. Const.* § 46.06 (5th ed. 1992). AirTouch submits that a recent federal court decision suffers from the same defect. See *Mountain Solutions v. Kansas*, 1997 U.S. Dist. LEXIS 7822 (D. Kan. May 23, 1997). That court held that the second (universal service) sentence in Section 332(c)(3) “serves as an exception, not to section 254(f), but to the first sentence of section 332(c)(3)(A).” Slip Op. at 18. The defect with this reasoning is that the court ignored altogether (and therefore rendered superfluous) the third sentence in Section 332(c)(3). The third sentence specifies the circumstances when a state may exercise rate authority over CMRS, not the second sentence as this federal court believed. The second sentence specifies the circumstances when a state may exercise universal service authority over CMRS — whether or not it has rate authority.

It is another cardinal rule of statutory construction that a statute such as the Communications Act should be construed to produce a harmonious whole.³⁴ Section 254(f) of the Act provides that “[e]very telecommunications carrier that provides *intrastate* telecommunications shall contribute . . . to the preservation and advancement of universal service in that State.” This provision can be harmonized with Section 332(c)(3), given the express Congressional determination that CMRS is different from landline services — that is, CMRS “operates without regard to state lines” — and that, as a result, CMRS should be subject to “a *Federal* regulatory framework.”³⁵ These two provisions can be harmonized by reading Section 254(f) to apply to all carriers providing intrastate services *other than* CMRS — *unless and until* CMRS becomes a substitute for landline service for a substantial portion of the communications within a state.

If, however, the Commission determines that the two provisions cannot be harmonized and that they are in direct conflict, the Commission must then still give effect to the express directive of Section 332(c)(3). It is also an axiomatic rule of statutory construction that “[a]ny conflict between special and general laws must . . . be resolved in favor of the special law.”³⁶ Section 254 is a general statute dealing with all aspects of universal service. Section

³⁴ See Sutherland § 46.05; see also *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1018, 104 S. Ct. 2862 (1984).

³⁵ See notes 25 and 26 *supra*. Congress re-affirmed the uniqueness of CMRS in the Telecommunications Act of 1996 by, among other things, determining that CMRS providers should not be subject to the same interconnection requirements imposed on landline LECs. See 47 U.S.C. § 251(b).

³⁶ See Sutherland § 40.02 at 191-92. (“Thus, the existence of a general law covering the subject matter does not necessarily establish that such a law is applicable. In fact, a statute of general nature does not repeal an earlier statute on the same subject of a specific nature . . .”).

332(c)(3), in contrast, is a specific statute dealing with one small aspect of universal service: state authority over one specific service: CMRS. Thus, under settled rules of statutory construction, the Commission must still give effect to the explicit directives of Section 332(c)(3) limiting state universal authority over CMRS.

The same result is also required by the express terms of the Telecommunications Act of 1996. Section 601(c)(1) of the 1996 Act, titled “No Implied Effect,” states that “[t]his Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless *expressly* so provided in such Act or amendments.”³⁷ Nothing in the 1996 Act, including Section 254, “expressly” modifies, impairs, or supersedes Section 332(c)(3). To the contrary, in the 1996 Act Congress expressly re-affirmed the continued validity of Section 332(c)(3) by adding Section 253(e), which provides that “[n]othing in this section shall affect the application of Section 332(c)(3) to [CMRS] providers.”

The Commission must interpret and apply the Communications Act in a manner consistent with the express directives in Section 332(c)(3). AirTouch therefore requests that the Commission reconsider that portion of its *Universal Service Order* so that the provisions of Section 332(c)(3) are given effect as Congress intended.

³⁷ Telecommunications Act of 1996, Pub. L. 104-104, 601(c)(1), 110 Stat. at 143 (emphasis added).

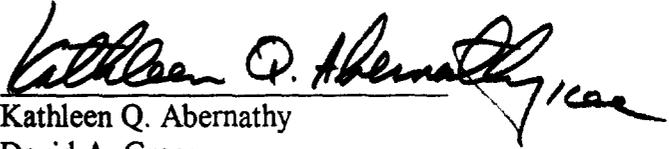
CONCLUSION

For the foregoing reasons, the Commission should clarify and reconsider its *Universal Service Order* as set forth above.

Respectfully submitted,

AIRTOUCH COMMUNICATIONS, INC.

By:


Kathleen Q. Abernathy

David A. Gross

AirTouch Communications, Inc.

1818 N Street, N.W.

Washington, D.C. 20036

(202-293-2800

Charles D. Cosson

Lynn Van Housen

AirTouch Communications, Inc.

One California Street, 29th Floor

San Francisco, CA 94111

(415) 658-2000

July 17, 1997

CERTIFICATE OF SERVICE

I, Jo-Ann G. Monroe, do hereby certify that copies of the foregoing "Petition for Clarification and Partial Reconsideration" were served this 17th day of July, 1997 by first class United States mail, postage prepaid to the following:

***The Honorable Reed E. Hundt, Chairman**
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

The Honorable Laska Schoenfelder
Commissioner
South Dakota Public Utilities Commission
500 E. Capital Avenue
Pierre, SD 57501

***The Honorable Rachelle B. Chong,**
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Martha S. Hogerty
Public Counsel for the State of Missouri
P.O. Box 7800
Harry S. Truman Building, Room 250
Jefferson City, MO 65102

***The Honorable Susan Ness, Commissioner**
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Paul E. Pederson, State Staff Chair
Missouri Public Service Commission
P.O. Box 360
Truman State Office Building
Jefferson City, MO 65102

The Honorable Julia Johnson
Commissioner
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Charles Bolle
South Dakota Public Utilities Commission
State Capital, 500 E. Capital Avenue
Pierre, SD 57501-5070

The Honorable Kenneth McClure,
Commissioner
Missouri Public Service Commission
301 W. High Street, Suite 530
Jefferson City, MO 65102

Lori Kenyon
Alaska Public Utilities Commission
1016 West Sixth Avenue, Suite 400
Anchorage, AK 99501

The Honorable Sharon L. Nelson
Chairman
Washington Utilities and Transportation
Commission
P.O. Box 47250
Olympia, WA 98504-7250

Debra M. Kriete
Pennsylvania Public Utilities Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Mark Long
Florida Public Service Commission
2540 Shumard Oak Blvd.
Gerald Gunter Building
Tallahassee, FL 32399-0850

Sandra Makeeff
Iowa Utilities Board
Lucas State Office Building
Des Moines, IA 50319

Philip F. McClelland
Pennsylvania Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, Pennsylvania 17120

Michael A. McRae
D.C. Office of the People's Counsel
1133 15th Street, N.W., Suite 500
Washington, D.C. 20005

Terry Monroe
New York Public Service Commission
Three Empire Plaza
Albany, NY 12223

James Bradford Ramsay
National Association of Regulatory Utility
Commissioners
P. O. Box 684
Washington, D.C. 20044-0684

Brian Roberts
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

***Tom Boasberg**
Federal Communications Commission
Office of the Chairman
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Rowland Curry
Texas Public Utility Commission
1701 North Congress Avenue
P. O. Box 13326
Austin, TX 78701

Bruce B. Ellsworth
New Hampshire Public Utilities
Commission
8 Old Suncook Road, Building No. 1
Concord, NH 03301-5185

***Sheryl Todd**
Universal Service Branch
Accounting and Audits Division
Common Carrier Bureau
Federal Communications Commission
2100 M Street, N.W., Room 8611
Washington, D.C. 20554

***International Transcription Service**
2100 M Street, N.W., Room 140
Washington, D.C. 20037

Deonne Bruning
Nebraska Public Service Commission
300 The Atrium
1200 N Street, P.O. Box 94927
Lincoln, NE 68509-4927

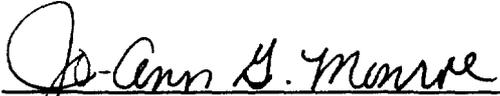
***James Casserly**
Senior Legal Advisor
Office of Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

***Daniel Gonzalez**
Legal Advisor
Office of Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

***Emily Hoffnar**
Federal Communications Commission
2100 M Street, N.W., Room 8623
Washington, D.C. 20554

Lee Palagyi
Washington Utilities and Transportation
Commission
1300 South Evergreen Park Drive S.W.
Olympia, WA 98504

Barry Payne
Indiana Office of the Consumer Counsel
100 North Senate Avenue, Room N501
Indianapolis, IN 46204-2208


Jo-Ann G. Monroe

*By Hand