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**NYNEX**

July 31, 1997

Ex Parte

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

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JUL 31 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: WT Docket No. 96-162

Dear Mr. Caton:

Today, Don Brittingham representing Bell Atlantic, and I, representing NYNEX, met with Suzanne Toller, Legal Advisor to Commissioner Chong regarding the item captioned above. During the meeting, we emphasized that the current joint marketing rule can no longer be imposed as a result of Section 601(d) of the Telecommunications Act and that the FCC should not adopt any new rules governing the resale and joint marketing of CMRS and other telecommunications services. The attached material served as the points of discussion.

Any questions on this matter should be directed to me at either the address or the telephone number shown above.

Sincerely,



Attachment

cc: S. Toller



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**AMENDMENT OF THE COMMISSION'S RULES  
TO ESTABLISH  
COMPETITIVE SERVICE SAFEGUARDS FOR  
LEC PROVISION OF CMRS**

**NOTICE OF PROPOSED RULEMAKING  
WT DOCKET NO. 96-162**

**Bell Atlantic/NYNEX**

**July 30, 1997**

**1. The Telecommunications Act of 1996 and the Sixth Circuit Court's Decision in *Cincinnati Bell* require that the cellular structural separations requirement (Section 22.903) be repealed.**

- Regulations should be imposed only when absolutely necessary, and by the "least intrusive" means necessary.
- Regulation must be applied symmetrically; i.e., the same regulations should apply to all LECs (not just the BOCs) and all broadband CMRS (not just cellular).
- There is no evidence to show that structural separations is necessary or that non-structural safeguards are inadequate. Rules cannot be based on unsupported speculation.

**2. No joint marketing and resale rules are needed.**

- Section 601(d) of the 1996 Act explicitly permits the joint marketing and resale of CMRS with other telecommunications services. The provision is self-executing, and section 22.903(e) must be eliminated.
- The relief granted under 601(d) was intended to enable the BOCs to offer one-stop shopping as their competitors have long been able to do.
- The Commission should not impose special regulations on BOCs that would continue to distort the market by advantaging other competitors.
- Existing safeguards alone ensure that there are identifiable transactions between a LEC and its CMRS affiliate or within a LEC's own business, that costs are appropriately allocated, and that the Commission can monitor those transactions.

**3. The cellular CPNI rule (Section 22.903(f)) must be repealed.**

- New CPNI rules, applicable to all carriers, will be established pursuant to Section 222(c) under the Commission's CPNI proceeding (CC 96-115).
- Requiring compliance with Section 22.903(f) would result in unauthorized disclosure of CPNI, thereby undermining customers' exercise of the rights granted by Congress.

## Proposed Changes to Language in Section 22.903

If Section 22.903 is retained in any form, the following changes should be made at a minimum. These changes are necessary to (1) eliminate the joint marketing/resale and CPNI requirements that are no longer enforceable under the Act, (2) replace the structural separations requirement with a separate affiliate requirement for the operation of a cellular radiotelephone system, and (3) apply the same requirements to all LECs, not just the BOCs. In addition, the filing of affiliated interconnection contracts with the FCC is not required by the Act and unnecessary given that these contracts are filed with each state regulatory commission.

### 22.903 Conditions applicable to ~~former Bell Operating Companies~~ Local Exchange Carriers.

~~Ameritech Corporation, Bell Atlantic Corporation, BellSouth Corporation, NYNEX Corporation, Pacific Telesis Group, Southwestern Bell Corporation, U.S. West, Inc.~~ Local exchange carriers (LECs), their successors in interest and affiliated entities (~~BOCs~~) may ~~engage in the provision of~~ operate a cellular radiotelephone system in the area in which they provide local exchange service only in accordance with the conditions in this section, unless otherwise authorized by the FCC. ~~LECs~~ BOCs may, subject to other provisions of law, have a controlling or lesser interest in or be under common control with separate corporations that operate a cellular radiotelephone system in the area in which the LEC provides local exchange service ~~provide cellular service~~ only under the following conditions:

(a) *Access to landline facilities:* ~~LECs~~ BOCs must not sell, lease or otherwise make available to the separate corporation any transmission facilities that are used in any way for the provision of its landline telephone services, except on a compensatory, arm's-length basis. ~~Separate corporations must not own any facilities for the provision of landline telephone service.~~ Access to landline exchange and transmission facilities for the operation of a cellular radiotelephone system ~~provision of cellular service~~ must be obtained by separate corporations on the same terms and conditions as those facilities are made available to other entities.

(b) *Separate Affiliate Requirement*~~Independence~~. Each ~~S~~separate corporations must maintain its own books of account. ~~operate independently in the provision of cellular service.~~ Each separate corporation must—

- (1) ~~Maintain its own books of account;~~
- (2) ~~Have separate officers;~~
- (3) ~~Employ separate operating, marketing, installation and maintenance personnel; and,~~
- (4) ~~Utilize separate computer and transmission facilities in the provision of cellular services.~~

(c) *Research or development.* Any research or development performed by LECs ~~BOCs~~ for separate corporations, either separately or jointly, must be on a compensatory basis.

(d) *Transactions.* All transactions between the separate corporation and the LEC ~~BOC~~ or its affiliates that involve the transfer, either direct or by accounting or other record entries, of money, personnel, resources, other assets or any things of value, shall be reduced to writing. ~~A copy of any contract, agreement or other arrangement entered between such entities with regard to interconnection with landline network exchange and transmission facilities must be filed with the FCC within thirty days after the contract, agreement, or other arrangement is made.~~ A copy of all other contracts, agreements or arrangements between such entities shall be kept available by the separate corporation for inspection upon reasonable request by the FCC. The provision shall not apply to any transaction governed by the provision of an effective state or federal tariff.

(e) ~~*Promotion.* BOCs must not engage in the sale or promotion of cellular service on behalf of the separate corporation. However, this does not prohibit joint advertising or promotional efforts by the landline carrier and its cellular affiliate.~~

(f) ~~*Proprietary information.* BOCs must not provide to any such separate corporation any customer proprietary information, unless such information is publicly available on the same terms and conditions.~~

(g) *Provision of other Public Mobile services.* Separate corporations may include, as part of their operations, the provision of other Public Mobile services.

(f) *Sunset Provision.* These provisions sunset on September 1, 2000 [or three years after the FCC order is released].