

# FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 22

[FCC 96-339]

### Competitive Service Safeguards for Local Exchange Carrier Provision

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; waiver.

**SUMMARY:** In this *Memorandum Opinion and Order*, the Commission grants the Petition for Limited Waiver of Ameritech Communications Incorporated ("ACI"). In the petition, ACI sought a limited waiver of certain provisions of Section 22.903 of the Commission's rules, which set forth limitations on Bell Operating Companies that provide cellular service. As a result of the Commission's grant of the waiver, ACI is allowed to provide cellular service with access to ACI's landline facilities both inside and outside of Ameritech's region, on the conditions described further below.

**EFFECTIVE DATE:** August 22, 1996.

**FOR FURTHER INFORMATION CONTACT:** Jane Halprin, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418-0620.

**SUPPLEMENTARY INFORMATION:** This *Memorandum Opinion and Order*, in Docket No. 95-14, adopted on August 9, 1996, and released on August 22, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street, N.W., Washington, D.C. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857-3800.

#### *Synopsis of the Memorandum Opinion and Order*

##### I. Background

1. On October 11, 1995, Ameritech Communications, Incorporated ("ACI") filed a Petition for Limited Waiver ("Petition") with the Commission. The Petition sought a waiver of certain provisions of Section 22.903 of the Commission's rules, 47 CFR § 22.903, which set forth various limitations on Bell Operating Companies ("BOCs") that provide cellular service. Specifically, ACI, as an affiliate of Ameritech Corporation (a BOC), sought a waiver of Section 22.903(a), 47 CFR § 22.903(a), which prohibits BOC affiliates that provide cellular service from owning any facilities for providing

landline telephone service. ACI also sought a waiver of Section 22.903(e), 47 CFR § 22.903(e), which prohibits BOCs from promoting or selling cellular service for their affiliates; ACI sought such a waiver to the extent that the provision would prohibit it from promoting or selling cellular service for Ameritech's cellular subsidiary, Ameritech Cellular Services ("ACS"). According to its Petition, ACI contended that it sought these limited waivers so that it could resell cellular services, or sell cellular services as a sales agent for ACS, to ACI customers, and thereby offer those customers one-stop shopping opportunities.

2. On October 19, 1995, the Wireless Telecommunications Bureau sought comment on ACI's Petition to determine whether the request was consistent with the waiver criteria set forth in the Commission's rules, and whether the request was consistent with the Commission's public interest goals. See Public Notice, DA 95-2198, "Wireless Telecommunications Bureau Seeks Comment on Ameritech's Petition for Partial Waiver of Section 22.903 of the Commission's Rules" (released October 19, 1995). The Bureau received several comments. In this *Memorandum Opinion and Order*, the Commission grants ACI a waiver of Section 22.903(a), and declaratory relief from Section 22.903(e).

##### II. Discussion

3. In its Petition, ACI, as a separate affiliate of Ameritech, sought authority to provide wireless and wireline service, as a facilities-based carrier. ACI sought a waiver of Section 22.903(a), which prohibits BOC affiliates from owning facilities for providing landline telephone service, because it needs to purchase switching equipment for landline traffic. ACI also sought a waiver of Section 22.903(e), which prohibits BOC affiliates from promoting or selling cellular service for another BOC affiliate, because ACI wishes to be a sales agent for ACS. In support of its Petition, ACI explained that it is a start-up carrier, and is structurally separate from Ameritech Operating Companies in all material respects, thereby diminishing opportunities for BOC cross-subsidization and interconnection discrimination. Thus, ACI explained, a waiver would further the public interest by promoting competition.

4. Several commenters opposed the waiver, claiming that a waiver would be anticompetitive. However, based on the record in this proceeding, and uncontroverted information received in another proceeding, "Ameritech Communication's Inc. Petition for

Nondominant Status" (filed July 21, 1995), the Commission disagreed, and granted the waiver.

5. The Commission concluded that ACI's relationship with Ameritech and its other affiliates complies with the basic requirement of Section 22.903, which requires that BOCs provide cellular service through structurally separate subsidiaries.

6. In granting the requested waiver, the Commission noted two important events that transpired since ACI filed its Petition. First, the Telecommunications Act of 1996 was enacted. Public Law No. 104-104, 110 Stat. 56 (1996), amending the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.* Section 601(d) of the Act permits ACI to engage in joint marketing and resale of cellular services with landline services on the terms set forth in its Petition. However, the Commission stated that it would continue to apply the other requirements of Section 22.903 to ACI (except for 22.903(a), for which a waiver was granted, as explained below). Thus, the Commission noted that "joint sales" or resale by ACI of Ameritech's cellular services together with landline services must involve services acquired on an arm's length basis from ACI's affiliates, consistent with the affiliate transaction accounting rules and with the basic structural separation requirement of Section 22.903. The Commission observed that, because ACI is already established as a structurally separate affiliate, this requirement conforms not only with Section 601(d) but also with ACI's business plan. The Commission thus granted declaratory relief from Section 22.903(e), subject to certain conditions, discussed above.

7. The second development since ACI filed its petition is that the Commission has commenced a comprehensive review of competitive safeguards as they apply to local exchange carriers that provide commercial radio services ("CMRS"), including BOCs that provide cellular service. In the *CMRS Safeguards Notice of Proposed Rulemaking*, 61 FR 46420 (September 3, 1996), the Commission proposed to amend Section 22.903(a) to permit a BOC cellular affiliate to own landline facilities for the provision of competitive landline local exchange service. The Commission has already waived Section 22.903(a) for all BOC affiliates' out-of-region operations (*i.e.*, regions where the BOC is not the local exchange carrier), including ACI. The Commission concluded that ACI's separation from Ameritech's other affiliates provided a substantial basis for extending a waiver for ACI's in-region

operations as well. ACI's separation from both incumbent cellular operations and from incumbent local exchange operations lessens the Commission's concerns about improper cross-subsidization and discriminatory interconnection practices. Therefore, the Commission decided to permit ACI to provide cellular service with access to the landline facilities, both inside and outside Ameritech's region, as long as ACI remains structurally separate from Ameritech's telephone local exchange operating companies and its cellular affiliate.

### III. Ordering Clauses

It is ordered that, pursuant to Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 and 303, and Sections 1.3 and 22.119 of the Commission's rules, 47 CFR §§ 1.3 and 22.119, a waiver of Section 22.903(a), 47 CFR § 22.903(a), is GRANTED to Ameritech Communications, Incorporated.

It is further ordered that, pursuant to Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 and 303, and Section 1.2 of the Commission's rules, 47 CFR § 1.2, Ameritech Communications, Incorporated, IS DECLARED not subject to Section 22.903(e), subject to the conditions discussed herein.

### List of Subjects in 47 CFR Part 22

#### Radio.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

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## SOCIAL SECURITY ADMINISTRATION

### 48 CFR Chapter 23

RIN 0960-AE12

### Establishment of Acquisition Regulations

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes an agency acquisition regulation for the Social Security Administration (SSA) to implement and supplement the Federal Acquisition Regulation (FAR). SSA was established as an independent agency March 31, 1995 in accordance with the Social Security Independence and Program Improvements Act (SSIIPIA). Publication of this rule terminates the

application of the Health and Human Services Acquisition Regulation (HHSAR) to SSA acquisitions and contracts.

**EFFECTIVE DATE:** This regulation is effective October 28, 1996.

**FOR FURTHER INFORMATION CONTACT:** Susan Reed, Division of Policy and Information Management, Office of Acquisition and Grants, 1710 Gwynn Oak Ave., Baltimore, MD, 21207, telephone (410) 965-9547, telefax (410) 966-1261.

### SUPPLEMENTARY INFORMATION:

#### A. Background

SSA was formerly an operating division of the Department of Health and Human Services (HHS). SSA acquisitions and contracts were subject to requirements and procedures set forth in the FAR, supplemented by the Health and Human Services Acquisition Regulation (HHSAR), contained in Chapter 3 of Title 48 of the Code of Federal Regulations. The SSIIPIA established SSA as an independent agency on March 31, 1995. Section 106(b) of the SSIIPIA provided that the Department regulations, such as the HHSAR, continue to apply until such time as the Commissioner of SSA modifies, terminates, suspends, sets aside, or repeals them. Now, because of its independence, SSA will implement and supplement the regulatory parts of the FAR through its own agency supplement, the Social Security Acquisition Regulation (SSAR), maintained in Chapter 23 of Title 48 of the Code of Federal Regulations. By this publication, the SSAR supersedes and terminates HHSAR application to SSA. The SSAR will, however, comprise only those policies and procedures which have a significant effect beyond SSA's internal operating procedures or have a significant cost or administrative impact on contractors or offerors.

In order to implement its own streamlined, yet effective acquisition guidance process, SSA has elected to publish only a skeletal agency acquisition regulation, the SSAR, and to incorporate the bulk of its acquisition and contracting policies and procedures into an internal document, a desktop handbook. The handbook is limited to specific internal contracting and acquisition procedures, including workflow procedures, designations and delegations of authority, and internal reporting requirements.

We anticipate making minimal future additions and changes to the SSAR. We will do so, however, when circumstances warrant. SSA will follow the FAR and SSAR for all regulatory

requirements and our own internal guidance contained within the handbook.

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act, Public Law 98-577, requires the preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. We certify that this rule will not have a significant economic impact on a substantial number of small entities because the rule merely reflects the adoption of a new chapter for the publication of the SSAR and does not initiate any new policies or procedures which would impact the public. Therefore, a regulatory flexibility analysis is not required.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

#### D. Administrative Procedure Act

This rule is being published as a final rule instead of as a proposed rule. Section 702(a)(5) of the Social Security Act makes the regulations we prescribe subject to the rulemaking procedures established under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553. The APA generally requires publication of a notice of proposed rulemaking and the solicitation of comments from interested persons. However, the APA provides exceptions to notice and comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

After due consideration, we have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking because such procedure is unnecessary. These final regulations will alter no substantive procedures or policies. They will merely terminate the application of the HHSAR to SSA acquisitions and contracts. The procedures and policies in effect after the date SSA gained the status of an independent agency will remain largely unchanged. The differences are of form only and are necessary to adapt the former regulations to the operating structures of this agency. Accordingly, promulgation