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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR 20 1992

In the Matter of)
Redevelopment of Spectrum to)
Encourage Innovation in the Use of)
New Telecommunications Technologies)

Federal Communications Commission
Office of the Secretary

ET Docket 92-9

TO: The Commission

OPPOSITION TO PETITION TO SUSPEND PROCEEDING

American Personal Communications ("APC")^{1/} hereby opposes the "Petition to Suspend Proceeding" filed on April 10, 1992 by the Association of American Railroads, the Large Public Power Council, and the American Petroleum Institute (collectively, "Incumbents").

APC, a proponent of Personal Communications Services ("PCS"), has petitioned the Commission to allocate frequencies in the 1.85-1.99 GHz band to PCS and believes strongly that the legitimate interests of 2 GHz band microwave users can be accommodated in this proceeding. APC, like the Commission, has not proposed a "band clearing" measure; rather, both APC and the Commission have proposed sharing between incumbent microwave users and PCS licensees.^{2/} APC has demonstrated

^{1/} American PCS, L.P., d/b/a American Personal Communications.

^{2/} See Notice of Proposed Rule Making, ET Docket No. 92-9, at 2, 11-12 (FCC 92-20, released February 7, 1992) (the "Notice"); see also Petition of APC for Amendment of the Commission's Rules to Allocate Spectrum for Provision of Personal Communications Services and PCS Microwave and to Create a New Subpart of the Commission's Rules to Authorize PCS as a New Service (May 3, 1991) ("APC Petition").

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that virtually all current microwave users will be able to continue to operate without interference or relocation even after implementation of PCS.^{3/} And APC, like the Commission, favors an approach by which PCS licensees will reimburse any microwave users that do move to other suitable frequency bands for the full reasonable costs of relocation.^{4/}

APC has agreed with the Utilities Telecommunications Council ("UTC") that the 1.71-1.85 GHz band should be considered as a potential relocation band for any microwave users that may vacate the 2 GHz band and for new licensees. See APC Comments on UTC Petition for Rule Making (Docket 92-9, filed April 13, 1992). APC also has agreed with UTC that the Commission should consider modifications to the technical rules for the 3.7-4.2, 5.925-6.425, and 10.7-11.7 GHz bands in connection with this proceeding. See id.

Accordingly, APC agrees with Incumbents that the 1.71-1.85 GHz band should be considered for shared federal/private point-to-point microwave use. Incumbents' proposal in this regard appears to parallel that of UTC. The Commission can accommodate this proposal fully by requesting comment in this docket on UTC's Petition, as APC suggested in

^{3/} See APC, Frequency Agile Sharing Technology ("FAST") Report on Spectrum Sharing (filed July 1991) ("FAST Report").

^{4/} See Notice at 12-13; APC Petition at 16-17.

its Comments.^{5/} APC disagrees with Incumbents, however, that this proceeding must be "suspended" to permit this accommodation to occur or that the 1.71-1.85 GHz band should be considered for PCS in lieu of the 1.85-1.99 GHz band. Neither approach is necessary or constructive.

Demand to "Suspend" Proceeding. Incumbents ask the Commission to "suspend procedural dates and hold this rulemaking proceeding in abeyance" until the Commission has requested the National Telecommunications and Information Administration ("NTIA") to authorize shared use of the 1.71-1.85 and 2.2-2.29 GHz bands and the Commission's staff has performed an authoritative "study" of the uses of that band. Incumbents' request would needlessly delay this proceeding.

As Incumbents point out, the Commission can begin a process by which frequencies under the control of the federal government may be redesignated for private or shared use. This process can be commenced without "suspending" this docket. Given that even the initial comment date in this proceeding has been delayed until June 1992 at Incumbents' request, there will be time enough to consider the value of redesignation of government bands during the course of this

^{5/} Even if this is not done, the Notice gives sufficient notice that parties should comment on the concept of redesignating the 1.71-1.85 GHz band for federal/private microwave sharing. See Notice at 10-11 & 11 n.18.

proceeding.^{6/} There is no need to stop this proceeding dead in its tracks to accommodate Incumbents' request.^{7/}

Use of 1.71-1.85 GHz band for PCS. Incumbents suggest that the 1.71-1.85 GHz band should be used for new technologies such as PCS. Comments on an appropriate allocation for PCS should be made in the context of a PCS rule making proceeding or as comments in this docket. Incumbents' premature comments on this score should be rejected.

As UTC recognizes, it may be appropriate to consider the use of the 1.71-1.85 GHz band as a home for 2 GHz

^{6/} Incumbents gloss over the import of the pending legislation concerning redesignation of government-controlled frequencies. It is true, of course, that legislation is not required to accomplish a redesignation of frequencies. It also is true, however, that the federal government has a legitimate interest in retaining sufficient spectrum to permit government users to continue to operate effectively. S. 218 would require 200 MHz of government-controlled spectrum to be permanently redesignated for private use. Should the bands identified by Incumbents be designated for private or federal/private use without regard to the legislative process and if S. 218 were then to pass, the government could stand to lose as much as 430 MHz of spectrum. The issue of how to credit any spectrum redesignated in the absence of legislation against any amount required to be redesignated by legislation must be considered. APC agrees with UTC that these issues can be resolved favorably.

^{7/} It also is rather unclear to APC why -- if for purposes other than delay -- Incumbents wish to require the Commission's staff to perform as exhaustive an analysis of the government band as it performed of the band over which the Commission actually has jurisdiction. If Incumbents and NTIA are correct that the 1.71-1.85 GHz band is only lightly used, it would follow naturally that the band would have sufficient spectrum for use as a band for relocation of 2 GHz users or for new users. A simple cataloguing of available frequencies within that band should suffice to answer the initial question of its availability for the proposed use, and the NTIA study cited by Incumbents may satisfy this need almost entirely.

incumbents that relocate or for new microwave licensees seeking 2 GHz frequencies. The majority of government users in the 1.71-1.85 GHz band are fixed, point-to-point microwave users that utilize off-the-shelf equipment that is similar to that employed by 2 GHz microwave users,^{8/} and the technical standards for microwave use in the 2 GHz band and the 1.71-1.85 GHz band are "virtually identical." UTC Petition at 18. Sharing the 1.71-1.85 GHz band between federal and private microwave users thus could be sensible.

Use of this band for PCS, in contrast, would be a policy mistake that would put the United States out of step with its major industrial competitors. As the Policy Statement in General Docket 90-314 recognizes, "important equipment, cost and international considerations" point toward a PCS allocation at 1.85-1.99 GHz. Policy Statement, FCC 91-338, at 2 (October 25, 1991). The 1992 World Administrative Radio Conference created a worldwide allocation for terrestrial PCS systems at 1.885-2.025 GHz. Administrations throughout the world have centered on that general frequency range for PCS allocations. The member states of the European Community -- Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom -- have conformed national allocations to an EC Directive requiring PCS to be authorized in the 1.8-

^{8/} See H.R. Rep. No. 102-113, 102d Cong., 1st Sess. at 16 (1991); Federal Spectrum Usage of the 1710-1850 and 2200-2290 MHz Bands, NTIA TR 92-285 at 4-3, 5-22 (March 1992).

1.9 GHz range. Japan has announced that its PCS service will be implemented this year in the 1.9 GHz range. Hong Kong, Singapore, and Thailand all have centered on PCS allocations in the 1.85-1.99 GHz range; Canada may do so as well. A United States PCS allocation at 1.71-1.85 GHz at this late date would deny American consumers the international economies of scale that will benefit consumers from around the world.

Conclusion. Delays in implementing cellular telecommunications caused an estimated \$86 billion loss to the United States economy.^{9/} Projections of the value of PCS to the U.S. and world economies range from \$50-60 billion by the end of this decade to \$190 billion by the end of the 2010. Our major industrial competitors are moving ahead to initiate domestic bases from which to export PCS equipment and expertise and are ejecting incumbent users from the 2 GHz band without reimbursement of relocation costs. No other nation in the world has proposed requiring new licensees to shoulder the costs of relocating incumbent users or otherwise has displayed the sensitivity to incumbent interests embodied in the Notice in this docket.^{10/} The Commission is appropriately

^{9/} A recent study by the National Economic Research Association found that delays in authorizing and licensing cellular telecommunications cost the U.S. economy \$86 billion. See Communications Daily, November 18, 1991, at 5.

^{10/} In the member states of the European Community, point-to-point microwave users in the 1.8-1.9 GHz band have been given secondary status to PCS as of December 31, 1991. In France and Germany, even military users are being moved out of the 1.8 GHz band. In Hong Kong, Thailand, Malaysia, and other Far East countries, incumbents are simply being required

accommodating the legitimate needs of incumbent users in this docket and should continue to do so.

Incumbents incorrectly characterize this proceeding as one proposing to "displace" or "dislodge" current users of the 2 GHz band and characterize themselves as parties "targeted for displacement." See Petition at 2, 3, 4, 7, 10, 11, 16. While this polemic may be useful for Incumbents as a political matter, it demonstrates a serious misconstruction of the Notice. The Notice proposes to permit new technologies to share 2 GHz frequencies with current users. The Notice explicitly is not a band-clearing measure, despite Incumbents' efforts to characterize it as such.

Because of their misconstruction of the Notice, Incumbents fail to recognize that an "opportunity exists for a win-win situation," Petition at 2, regardless of whether federal spectrum is redesignated for private use. Between 50 and 100 MHz of vacant spectrum in the 1.85-1.99 GHz band exists at 96.3 percent of locations in the largest U.S. cities and between 100 and 140 MHz of vacant spectrum in that band is available in 72 percent of locations in those cities.^{11/} APC

to vacate the 1.85-1.99 GHz band, in some cases by as early as 1994. APC neither applauds nor advocates such draconian measures, but it is useful to bear in mind that the United States is unique in the world in its sensitivity to the needs of incumbent users.

^{11/} See FAST Report at 22. NTIA also analyzed microwave usage in the 1.85-1.99 GHz band in Los Angeles, New York, Chicago, Dallas, and San Francisco and found that "usage in this band is shown . . . to be low. The busiest sites in all cities shows 88% of the band unused. The 50% all-cities

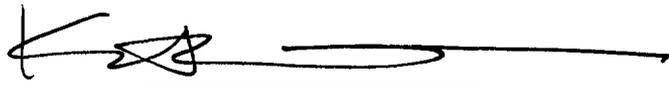
has proposed a shared allocation that would permit this vacant spectrum to be reclaimed for the implementation of PCS.^{12/}

This valuable vacant spectrum should not be permitted to lay fallow in perpetuity but should be shared efficiently and economically to permit PCS to be implemented in this country.

The legitimate proposals embodied in the Petition should be considered in the context of this docket. The Petition's request that this proceeding be "suspended" or that the 1.71-1.85 GHz band be considered for PCS should not be granted.

Respectfully submitted,

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average shows a minimum of 99% of the band unused." NTIA, Spectrum Usage Measurements in Potential PCS Frequency Bands 149 (Washington, D.C.: Dep't of Commerce, NTIA Report No. 91-279, 1991).

^{12/} APC also recognizes that in a very few locations in a very few congested markets, PCS licensees ultimately may require additional spectrum that now is occupied by microwave users. In these rare cases, APC has proposed that PCS licensees reimburse incumbents for the reasonable costs of relocating to other frequency bands.

CERTIFICATE OF SERVICE

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