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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Redevelopment of Spectrum to	)	
Encourage Innovation in the	)	ET Docket No. 92-9
Use of New Telecommunications	)	
Technologies	)	

COMMENTS OF ROCKY MOUNTAIN TELECOMMUNICATIONS ASSOCIATION

ROCKY MOUNTAIN
TELECOMMUNICATIONS ASSOCIATION

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SUMMARY

Rocky Mountain Telecommunications Association (RMTA) applauds the Commission's efforts to establish an emerging technologies band that will allow the provision of PCS and other advanced services to the public. However, RMTA urges the Commission to adopt an exception for rural areas, where relocating existing 2 GHz licensees to higher frequency bands or alternative technologies may not be feasible. In rural areas like those contained in the Rocky Mountain region, the unavailability of antenna sites often precludes the use of shorter microwave hops in higher frequency bands. This lack of alternative sites is due to the wide canyons existing in the mountains, as well as the restrictions on developing protected National Parks, Bureau of Land Management and Forest Service lands, military bases, and Indian Reservations. And while the Commission has concluded that 4 and 6 GHz band frequencies can be used to accomplish the same average path lengths as the 2 GHz band, in rural areas, there is an urgent need for significantly longer path lengths to reach isolated subscribers. Path fade, rain attenuation, and other distortion are likely to make use of 4 to 6 GHz frequencies for these longer pathlengths ineffective. More importantly, the Commission's reallocation plan is likely to cause existing and future licensees, who do not have the same need for long hops, to quickly exhaust the available 4 and 6 GHz band channels, so that adequate spectrum will not be left once the grandfathered co-primary period for local exchange carriers using 2 GHz is over. The wider bandwidth that is used in 4 and 6 GHz radios, and the lack of a channelization plan for the higher bands make relocation of rural 2 GHz operations to these bands inefficient. Therefore, licensees in rural areas should be given indefinite co-primary status, as the Commission proposes to do for state and local government licensees.

The Commission should pursue the availability of both government spectrum and the broadcast auxiliary services spectrum for PCS (and/or 2 GHz relocation) in rural areas, since these bands are lightly used there, and would not suffer the same propagation problems as higher bands. The Commission should also institute safeguards to ensure a smooth transition for relocated 2 GHz licensees, including the requirement that the existing licensee be entitled to designate the technology, system design, and equipment to be used to replace its service, as well as a mandatory testing of the replacement technology for reliability.

The Commission should define the cost elements for which PCS licensees will be responsible when reallocating existing 2 GHz users, so as to clarify (and thereby expedite) the negotiation process. The Commission likewise should establish a binding arbitration procedure to resolve any negotiation impasse. The Commission should also adopt its proposal to award tax certificates to licensees for relocating to non-radio technology, since tax certificates will encourage the exploration of such technologies and more efficient use of the spectrum. The Commission has ample authority to award the tax certificates.

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To: The Commission

COMMENTS OF ROCKY MOUNTAIN TELECOMMUNICATIONS ASSOCIATION

Rocky Mountain Telecommunications Association (RMTA) hereby submits its comments in response to the Commission's Notice of Proposed Rule Making, ET Docket No. 92-9, Mimeo No. 38323 (released February 7, 1992) (hereinafter "NPRM"). As discussed below, RMTA applauds the Commission's efforts to clear the way for development and implementation of personal communications services (PCS) and other emerging technologies. However, RMTA wishes to bring to the Commission's attention stark differences between the rural environment and the urban setting for which PCS is ideally suited. Circumstances prevailing in the Rocky Mountain area and other rural regions of the country call for certain defined exceptions to the reallocation plan proposed in the NPRM. In particular, there may be instances in which rural local exchange carriers will be unable to relocate to either higher microwave bands or other technologies such as fiber optic circuits. RMTA also

submits herein its comments on other aspects of the NPRM, which are designed to clarify the Commission's proposed transition plan in a way that is fair to both existing microwave carriers and prospective PCS licenses.

I. Statement of Interest.

1. RMTA is a telecommunications association made up of nearly 90 members, including exchange carriers as large as U S WEST, several national holding companies and some 80 smaller commercial telephone companies, cooperatives, and Native American-owned operations providing telephone service to their Reservations. All of the members of RMTA are engaged in providing telecommunications services throughout the Rocky Mountain region of the United States, including the States of Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming, as well as portions of other bordering States. The association was formed in 1947 for the purpose of promoting provision of the highest quality of telephone service, and ensuring a viable local exchange and toll telephone network throughout the Rocky Mountain region for the long term. Its member companies are constantly faced with difficult and unique challenges in the provision of basic and advanced services.

2. Because of the rugged terrain in many portions of the Rocky Mountain region, and because the population is generally scattered and sparse, the costs of providing service are significantly higher than in urban areas, and the revenues

generated are lower. These high cost telephone service areas are heavily dependent on the use of microwave in the low density rural areas. Much of the microwave is, by necessity, in the 2 GHz band, since the links used to carry traffic must often extend for 30 to 60 miles.[1] Forty-eight of the exchange carriers who are members of RMTA have one or more 2 GHz microwave systems. It is estimated that RMTA members are licensed for at least 190 microwave paths where the same carrier is licensed for both ends of the path, plus numerous paths where each end is licensed to a different carrier (i.e., a "mid-air meet"). In many rural areas of the Rocky Mountain region, there are few or no hospitals, ambulance services, fire departments, police departments, towing companies, and other services vital to the public health and welfare. It is therefore of extreme importance that these services and emergency personnel be linked to surrounding communities by reliable communications. The residents of these rural areas are dependent on microwave "backbones", often comprised of 2 GHz facilities, as their only link for business and personal communications, as well as their sole means of reaching help in the event of an emergency.

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[1] The 2 GHz microwave paths used by RMTA member Arizona Telephone Company is summarized in Exhibit 1 hereto. As shown therein, five of its six 2 GHz paths are greater than 20 miles in length, with one path extending 36.7 miles and another extending 48.2 miles. The average path length for RMTA member Union Telephone Company, in Wyoming, is approximately 40 miles, with its longest path extending 54.6 miles. These path lengths are typical for many RMTA members.

3. The members of RMTA have no wish to obstruct the progress of PCS and other emerging technologies, since these new services may someday enhance the quality of rural life in the Rocky Mountain region. And in urban areas, PCS will have immediate benefits to the public, with relatively few adverse consequences for displaced 2 GHz licensees, since alternative technologies are available. However, it is with the above background in mind that RMTA wishes to raise its concern that the vital communications services its members provide are not disrupted, since such disruption would be to the immediate and substantial detriment of the public.

II. The Commission Should Provide Extended Co-Primary Status Where Alternative Technologies are Not Suitable.

4. The NPRM proposes to afford each existing 2 GHz licensee a grandfathered "co-primary" status for a period to be determined in this rule making, which period will either be ten years (referred to by the Commission as allowing for "complete amortization"), or 15 years (termed to be the "useful life" of the 2 GHz equipment). In general, RMTA supports the adoption of the 15 year grandfathered period, at least for rural areas of the country. It is not uncommon for rural microwave systems to utilize the same equipment for at least 15 years. And in rural areas of the country, the scattered and sparse nature of the population creates higher construction and maintenance costs, and generates lower revenues. Therefore, it is more important for carriers to be

able to operate their 2 GHz radios throughout the useful life of the equipment. While the equipment may be amortized at the end of a ten year period, a small rural carrier may not be able to afford an equipment upgrade at that time.

5. More importantly, there will be rural areas in the Rocky Mountain region and elsewhere, where conversion to another frequency band, or to other technologies (such as fiber optic) is simply not feasible, either before or after the end of the co-primary status period. The Rocky Mountains include many wide canyons, which create the need for communications links that are 30 to 60 miles in length, in order to bridge these canyons. The Commission's study on reallocating the 2 GHz band[2] recognizes that "the pathlength over which a microwave system can reliably operate is inversely proportional to frequency, i.e., as frequency increases, the usable pathlength becomes shorter." Study, at p. 15. The Study also recognizes that cost is one of the most important concerns in planning microwave operations, and that the principle technical consideration for cost is the pathlength of the microwave link. Id. However, in a mountainous, rural environment, use of long 2 GHz microwave paths is not simply a cost cutting measure. Often, the communications link simply cannot be established without these long paths.

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[2] "Creating New Technology Bands for Emerging Telecommunications Technology," FCC/OET TS 92-1 (January, 1992) (hereinafter "Study").

6. Even if the cost of using shorter hops in the higher frequency bands was not a consideration, there often are simply no intermediate sites for the additional facilities that would be required. Wide canyons force the carriers to have their transmitters separated by considerable distances. And even if intermediate sites exist, there are often restrictions on the use of the intervening land. Many areas of the Rocky Mountain are dominated by protected National Parks, restricted Bureau of Land Management and U. S. Forest Service land, or military bases. There are also restrictions on establishing tower facilities on lands designated as Indian Reservations. And even where an intervening site is not protected by law, the cost of developing the land for use as an electronic communications site is often prohibitive. RMTA estimates that the cost of establishing a new mountain site (including access roads, power, support buildings, and the tower itself) can often reach one million dollars. This cost is only exacerbated by the added expense of maintaining access to these sites during the harsh weather conditions prevalent in the mountains.

7. The NPRM indicates that "in the last five years technological advancements in optical communications have resulted in fiber being very competitive with fixed microwave." Id., para. 2, n. 17. However, mountainous terrain and great distances between, transmission points can make

fiber (or any form of buried cable) prohibitively expensive, if not impossible to construct. Likewise, open wire systems are cost prohibitive, have limited capacity, and are impossible to maintain, especially during winter months.

8. An example of both the difficulty and importance of implementing 2 GHz communications links in the Rocky Mountain region is described in the attached article concerning the provision of telephone service by RMTA member Arizona Telephone Company to Supai Village, Arizona (Exhibit 2 hereto). In January, 1992, a new 2 GHz system was activated to provide reliable communications to that village of 500 residents located at the bottom of the Grand Canyon complex, 10 miles from the closest road. Without the microwave system, this community would be isolated from help in the event of an emergency, and from a reliable business and personal communications capability.

9. The Commission's Study recognizes that higher bands are subject to less reliable propagation, increased "path fading" and rain attenuation which affects signal reliability more so than at 2 GHz. See Study at pp. 16-17. Indeed, the Commission concludes that bands above 6 GHz are so susceptible to these problems, that they will not be suitable substitutes for 2 GHz frequencies, except for short hops. Id. However, the Commission concludes that the higher antenna gain that can be achieved in the 4 and 6 GHz bands makes these frequencies suitable replacements for the 2 GHz band despite increased

fading problems.[3] It is respectfully submitted that in many rural areas, the 4 and 6 GHz bands will not ensure continued reliable service to the subscribers of RMTA's member carriers.

10. RMTA is concerned that, once the Commission relegates the 2 GHz band to secondary status, any available spectrum in the 4 to 6 GHz bands is likely to be exhausted in the very near future. The Commission can take official notice of the fact that the 4 GHz band is already heavily used, even in rural areas, by the large interexchange carriers and regional Bell operating companies (RBOCs) for the important purpose of hauling large volumes of traffic between exchanges. This is especially true in the Rocky Mountain region, where microwave is often the only cost effective means of carrying telephone traffic. And by the time the co-primary protection period for telephone common carriers using 2 GHz expires (in either 10 or 15 years), it is likely that any remaining 4 and 6 GHz spectrum will have been licensed in many regions. Even if PCS providers have not yet requested existing 2 GHz licensees to relocate to the 6 GHz band, many of these licensees (especially those who need only short microwave paths) will do so simply because they will know that their continued use of the 2 GHz band will soon be on an unprotected basis. Indeed, it can be expected that more and more

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[3] As discussed herein, these higher gains may require the use of larger, heavier antennae, which create problems related to tower loading and disruption of communications due to "tower sway" in windy conditions.

applicants requesting new systems will seek the 4 and 6 GHz bands, since such applications are already being granted on a secondary basis. See NPRM, at para. 23.

11. Because most 4 and 6 GHz radios are designed to utilize a wider bandwidth than 2 GHz radios, the relocation of 2 GHz licensees to these higher bands will be inefficient. Most 2 GHz radios can be used to provide a maximum of 192 channels of communication, which is ideally suited for carrying the exchange traffic of rural communities.[4] On the other hand, most 4 and 6 GHz radios have a much greater channel capacity, thereby occupying more bandwidth. This is presumably due in large part to the Commission's 900 channel minimum loading requirement for these bands. See Rule Section 21.710(c). The significantly wider bandwidth of these radios will only increase the speed at which available 4 and 6 GHz spectrum is exhausted, since licensees will be moved to radios utilizing 900 to 3,000 channels of communication, whether they need that capacity or not. Even if the manufacturers begin to develop 4 and 6 GHz radios that occupy less bandwidth, unless the Commission were to develop a channelization plan for the higher bands, this would not prevent a depletion of available spectrum. And a channelization plan of 6 GHz could

[4] Exhibit 1 hereto shows the number of channels utilized over each of the 2 GHz paths licensed to Arizona Telephone Company, for hauling telephone traffic from the rural communities it serves. As shown therein, this traffic can be accommodated using between 19 and 36 channels for each path.

not easily be implemented, since there are already many licensees operating on these frequencies who require the full bandwidth of the existing high capacity radios. See Exhibit 3 hereto (Engineering Statement of Darryl K. DeLawder, P.E.) at para. 19.

12. Even if there is 6 GHz spectrum available at the end of the grandfathered period, RMTA has serious concerns as to whether this spectrum is truly fungible with 2 GHz under the conditions prevalent in the Rocky Mountain region. The Commission bases its assumption that the 4 to 6 GHz bands are adequate substitutes for 2 GHz on the fact that these higher bands are already being used for pathlengths comparable to the "average" pathlength for existing 2 GHz operations. In particular, the Commission's Study finds that the average pathlength of existing 2 GHz operations is 17 miles, while the average pathlength for 4 to 6 GHz operations ranges between 21 and 27 miles. Study at p. 18. However, while the increased antenna gain achieved in 4 and 6 GHz bands may overcome the increased path fade and rain attenuation over a path 20 to 30 miles long, this may not be the case where the 2 GHz path to be replaced is 30 to 60 miles long.[5] At these greater distances, which are not uncommon in rural areas, multipath fading and rain attenuation can be significantly greater. Id. at paras 3-15. Also, because a 6 GHz signal has a significantly narrower beamwidth than a 2 GHz signal, the

[5] See Exhibit 3 hereto, at para 2.

swaying of the microwave tower due to wind conditions can interrupt the path. Since 2 GHz operates with a wider beamwidth, the antennae do not have to be so precisely aimed at the receive sites, and these operations are therefore more forgiving of tower sway. See Exhibit 3, at para. 11.

13. Also, while the Commission's Study (at p. 33) found that the average cost to convert from 2 GHz to 6 GHz equipment is approximately $25,000 per facility, this difference can be significant, especially for small telephone companies providing service to sparsely populated high cost areas, who may have several facilities to convert. While this additional cost may be absorbed by a PCS licensee seeking to relocate the telephone carrier during the co-primary period, the greater likelihood is that PCS will be reaching many rural areas in 10 to 15 years, when the co-primary period is over. At that time, the additional cost burden will fall on the telephone carrier and its subscribers.[6]

14. In light of the unsuitability of higher frequency bands and other technologies in the Rocky Mountain region and other rural areas, and the fact that spectrum in the 4 to 6 GHz bands may not be available at the end of the proposed co-primary period, it is respectfully submitted that carriers

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[6] Indeed, even the PCS licensees themselves may be dependent on the 2 GHz microwave backbone that is used to haul telephone traffic to and from a given region. However, those PCS licensees who are able to make alternative arrangements to haul their traffic have no incentive to avoid disrupting a 2 GHz microwave backbone, even though it may drive up the costs for PCS operations in general.

providing rural local exchange service should be entitled to an indefinite co-primary status, where the 2 GHz band is the only suitable spectrum over which service can be continued. The Commission's NPRM proposes to afford this indefinite co-primary status to state and local government 2 GHz operations, because of "the need to avoid any disruption of police, fire and other public safety communications." NPRM, at para. 25. As described in Exhibit 2 hereto, in a rural setting, reliable telephone service is often the primary medium for police, fire and other public safety-related communications. Accordingly, telephone communications under these circumstances should be entitled to a similar exception.

15. RMTA proposes that, if a local exchange carrier's 2 GHz microwave system provides services in a "rural" area (i.e., a community of less than 10,000 inhabitants which is either located within a Rural Service Area as defined by the Commission for cellular licensing, or is more than 20 miles from any major metropolitan area), then the carrier's co-primary status for use of 2 GHz should be extended indefinitely.[7] If at any time a PCS licensee wishes to

[7] The above definition of "rural" is designed to include communities that are not easily served by alternative technologies, especially in mountain regions. The population figure of 10,000 has been proposed in House Bill 5238 ("the Revitalization of Health and Education in Rural America Act of 1992") as a definition of "rural." Fine tuning of the above definition may be appropriate, both with regard to the population figure and the proposed distance to major metropolitan areas, as necessary to achieve the objective of preventing disruption of vital services.

relocate the rural carrier's 2 GHz system to another band or technology, it must bear the full cost of this relocation. The carrier should only be required to implement the relocation upon an acceptable showing by the PCS licensee that the new system or technology will provide reliable service.

16. The Commission should also require any PCS licensee wishing to relocate a 2 GHz common carrier system under these circumstances to demonstrate that the PCS system cannot be accommodated in other available spectrum, including the portion of the 2 GHz band not used by the common carrier, as well as the Government spectrum which may eventually be reallocated. See NPRM at para. 11, n. 11.

17. Likewise, if a local exchange carrier can demonstrate that no other technology or frequency band is suitable to accomplish a communications link in a rural area (especially when the necessary service requires radio paths greater than 30 miles in length), then the exchange carrier's application for new or additional 2 GHz facilities should be granted on co-primary basis, so long as the carrier can demonstrate (through frequency coordination) that existing 2 GHz users will not receive interference from the proposed system.

III. The Commission Should Pursue the Availability of Other, More Suitable Spectrum for PCS and/or Relocation of Existing Licenses.

18. The NPRM acknowledges current Congressional efforts to make available up to 200 MHz of spectrum that is currently allocated for use by the Federal Government. Id. However, because it is uncertain when spectrum will be made available, the Commission has not taken this Government spectrum into account when planning its proposed reallocation of the 2 GHz band. Recognizing the problems associated with a reallocation of Government spectrum, RMTA urges the Commission to nonetheless vigorously pursue this initiative, so that additional spectrum can eventually be available to alleviate the potential relocation problems associated with rural areas, which are described above. The Government spectrum could be used by the PCS licensees directly (so as to make relocations unnecessary), or could be designated as spectrum to which existing 2 GHz systems could be moved, without the path fading and other problems associated with the 4 and 6 GHz bands. A portion of the Government spectrum to be made available is in the 1.71-1.85 GHz band.[8]

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[8] The NPRM indicates that, with regard to this Government spectrum, "it should be noted that there are Government space, fixed, mobile, and aeronautical operations in this band that support national security and other Governmental services to the public." NPRM at para. 21, n. 18. In rural areas, these existing operations may not preclude use by common carriers, especially since common carrier operations often need to derive less than 100 channels of communication. See, e.g., Exhibits 1 and 2 hereto. This

19. The NPRM also indicates that the broadcast auxiliary services spectrum (1.99-2.11 GHz) is not a suitable band for PCS, because of heavy current use and future channel requirements that may result from the advent of broadcast advanced television service. NPRM at para. 18. However, RMTA urges the Commission to explore limited use of the broadcast auxiliary band, where it can be shown by a PCS licensee that there is little or no use of this spectrum by broadcasters in a particular rural area, and that there would be adequate spectrum remaining to accommodate future broadcast use even if the PCS licensee were to operate on a portion of this spectrum, or a 2 GHz common carrier operation were to be relocated to this band. The Commission has previously authorized such limited use of the broadcast auxiliary band in rural areas, on a waiver basis. See Memorandum Opinion and Order (MO&O), 2 FCC Rcd 2413. In that MO&O, the Commission authorized rural telephone companies to utilize this band to provide telephone exchange service, in the rugged, sparsely populated terrain located in Southern Texas, near the Mexican border. These systems continue to operate today, without creating any apparent interference and/or spectrum shortage problems for broadcasters. Again, because this spectrum is

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is in contrast to the minimum requirement of 900 channels for 4 and 6 GHz band operations set forth in Section 21.710(c) of the Commission's Rules.

in the 1.9 to 2.1 GHz band, it should not suffer the path fade and rain attenuation problems associated with long paths in the higher bands.

IV. The Commission Should Implement Safeguards to Ensure a Smooth Transition of Service for Relocated Licensees.

20. The Commission's Study recognizes that "the current 2 GHz fixed microwave facilities provide many important and vital services to the U.S. public. Any relocation of these important operations to other communications frequencies or services must be made in a manner that ensures the minimum disruption to existing licensees and to the public." Study at page 13. The accuracy and significance of this conclusion cannot be understated. In order to ensure minimum disruption to existing licensees and their public subscribers, RMTA urges the Commission to require that the existing licensee be entitled to designate the technology, system design, and equipment to be used to replace its existing service. For local exchange carriers, this equipment could be chosen from the approved equipment lists of the Regional Bell Operating Companies and/or the Rural Electrification Administration, so that the PCS licensee can be assured that suitable equipment is being utilized.

21. Also, before any existing 2 GHz licensee is required to cut over to a new system or technology, the PCS licensee must demonstrate (by thorough testing under conditions that simulate actual usage) that the new system will provide service that is reliable to the satisfaction of the licensee.

The reliability factor should not be limited to that of the old 2 GHz system which is to be replaced, because the Commission's proposed reallocation scheme will in all likelihood force many existing common carriers to forestall upgrading and expanding their 2 GHz systems, since such modifications may be construed as major modifications not qualifying for co-primary status.

22. The Commission should also establish expedited processing procedures for applications proposing to relocate common carrier systems to another frequency band. In this regard, the Commission should consider routinely granting special temporary authority as necessary to promptly test the proposed new system, and to make the service transition as "invisible" to the subscribers as possible.

V. The Commission Should Clearly Define the Elements of Compensation for Relocating Existing 2 GHz Licensees.

23. The NPRM contemplates that PCS licensees would negotiate with existing 2 GHz microwave carriers to relocate them to another frequency band, or to a different technology. RMTA urges the Commission to clearly define both the negotiation procedures and the elements that make up compensation for existing 2 GHz systems. This will help ensure that existing licensees are not forced to bear expenses associated with the relocation that should borne by the PCS licensee, and would also help minimize impasses in the negotiation process. In this regard, it is recommended that the Commission establish a detailed "check list" of those

costs for which a PCS licensee will be responsible. Because of unique circumstances that may arise on a case-by-case basis, it will be impossible to compile an all-inclusive check list. However, by defining the basic responsibilities of a PCS licensee wishing to relocate existing operations, the Commission will allow the parties to focus on any unique circumstances at the start.

24. The "check list" of costs to be borne by the PCS licensee for relocating a 2 GHz operation to another band should include, at a minimum, the following elements:

a. New radio equipment, including spare parts and antennae.
b. System design
c. Additional transmitter site costs (if shorter path lengths are needed), including additional transmitters, site rental, power, access roads, and new towers.
d. Frequency coordination
e. Application costs
f. Legal and engineering fees
g Zoning and other regulatory approvals
h. The cost of new towers (if the antennae for higher frequency bands create additional loading which cannot be accommodated by the existing tower).
i. Replacement of coaxial cable with waveguide, if needed.
j. Equipment needed to test the new system to ensure continued reliable operation.

25. Costs associated with switching to fiber or buried cable will be different. This "checklist" should include:

a. System design
b. Costs of fiber/cable facilities and construction
c. Right of way/easement acquisition
d. Zoning and regulatory approvals (including any environmental, archeological or other necessary federal, state or local authority).

26. The Commission should also establish a procedure such as binding arbitration, whereby Commission-appointed arbitrators knowledgeable about microwave and telephone communication matters could resolve negotiation impasses between the parties. This would help to ensure the prompt resolution of any disagreements, to the benefit of both parties. However, this arbitration mechanism would be effective only if the arbitrators are provided with clearly defined guidelines on which to base their judgment, such as the "check list" described above. Otherwise, the Commission and the industry will be faced with a sea of inconsistent decisions.

VI. The Commission Should Grant Tax Certificates to Licensees Relocating to Alternative Technologies.

27. In the NPRM, the Commission stated that it would encourage existing fixed microwave licensees to consider non-radio alternatives (e.g. fiber optics) to meet their telecommunications needs. NPRM at n. 17. To encourage migration from microwave radio technology, the Commission has proposed to award tax certificates to fixed microwave licensees who receive financial compensation from entities seeking to use the spectrum for new technologies, as part of an agreement to surrender their license and use other, non-radio technology. Id. These tax certificates would exempt the existing licensees from any tax consequences that would otherwise be incurred as a result of the compensation paid for relocating. The Commission has requested comment on whether

it has the authority under Section 1071 of the Internal Revenue Code to award the certificates to non-broadcast licensees. Id.

28. Section 1071 of the Internal Revenue Code authorizes the Commission to award tax certificates to licensees for the "sale or exchange" of interests in "radio broadcasting stations" to effectuate new Commission policy. 26 USC § 1071(a). Although the radio services in question here are not strictly defined as "radio broadcast services,"[9] the Commission has broadly interpreted this section to include the award of tax certificates for transfers of interests in nonwireline cellular licenses and other non-broadcast entities. See Telocator Network of America, 58 RR 2d 1443 (1985) (wherein the Commission explained in great detail its authority to award tax certificates to nonwireline cellular and other non-broadcast licensees); See also Continental Telephone Corp., 43 FCC 2d 827, 838 (1973) recon., 51 FCC 2d 285 (1975) (Commission awarded tax certificates for sales of cable television systems compelled by its rules prohibiting cable television/telephone company cross-ownership).

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[9] Section 3(dd) of the Communications Act defines a radio broadcast station as "a radio station equipped to engage in broadcasting..." 47 USC § 153(dd). Section 3(o) defines broadcasting as "the dissemination of radio communications intended to be received by the public..." 47 USC § 153(o).

29. The Commission's proposal to grant of tax certificates will encourage microwave licensees to weigh non-radio alternatives, and could free much needed spectrum for emerging technologies. This proposal is well within the Commission's authority, and should be adopted.

VII. Conclusion.

30. In light of the foregoing, RMTA urges the Commission to adopt the "rural exception" proposed above, in recognition of the significant differences between rural, mountainous regions and the urban and suburban areas that are ideally suited for PCS and other emerging technologies.

Respectfully submitted,

ROCKY MOUNTAIN TELECOMMUNICATIONS ASSOCIATION

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