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

In the Matter of	)	
	)	
Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies	)	ET Docket No. 92-9
	)	RM-7981
	)	RM-8004

To: The Commission

REPLY COMMENTS OF TIME WARNER TELECOMMUNICATIONS ON THE THIRD NOTICE OF PROPOSED RULEMAKING

Time Warner Telecommunications ("TWT"), by its attorneys, hereby submits its reply to the comments filed on January 13, 1993, in response to the First Report and Order and Third Notice of Proposed Rule Making in ET Docket No. 92-9, released October 16, 1992, 7 FCC Rcd 6886 (1992) ("Third Notice"). In the Third Notice, the Commission adopted its earlier proposal to allocate the 1850-1990, 2110-2150, and 2160-2200 MHz bands for the development and implementation of emerging technologies,1/ as well as the basic structure of a plan to reaccommodate the fixed microwave licensees currently using that spectrum. In addition to adopting the basic features of this reaccommodation plan, the Commission sought further comment on,

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1/ Third Notice at ¶ 21. The Commission has proposed to allocate a minimum of 90 MHz of spectrum between 1850-1895 and 1930-1975 MHz for licensed personal communications services ("PCS") and has proposed to designate spectrum between 1910 and 1930 MHz for unlicensed PCS use. See Amendment of the Commission's Rules to Establish New Personal Communications Services, Notice of Proposed Rule Making and Tentative Decision, 7 FCC Rcd 5676 (1992), at ¶¶ 37, 43.

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inter alia, the length of the plan's initial "transition period," during which proponents of emerging technology services will be permitted to negotiate voluntary relocation agreements with existing fixed microwave users but can not request the involuntary relocation of these incumbent users. Third Notice at ¶¶ 23, 24. In soliciting comments, the Commission proposed a transition period of between three and ten years. Id. at ¶ 27. In response, most fixed microwave licensees have argued that this transition period should be lengthy -- at least five years and in some cases eight to ten years.2/ For the reasons set forth below, TWT submits that these commenters have offered no valid reason for establishing such a lengthy transition period. To the contrary, the record developed in this proceeding -- when coupled with the elements of the reaccommodation plan adopted to date -- demonstrates that this period should be no longer than three years if, indeed, a transition period is created at all.

Under the reaccommodation plan adopted in the Third Notice, proponents of emerging technology services were permitted to negotiate voluntary relocation agreements with existing fixed microwave users beginning on January 27, 1993. During the so-called transition period that constitutes the initial stage of

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2/ See, e.g., Comments of American Petroleum Institute, Commonwealth Edison Company, Montana Power Company, Central and South West, Questar Service Corporation, Metropolitan Water District of Southern California, Utilities Telecommunications Council, American Public Power Association, Edison Electric Institute, Northwest Iowa Power Cooperative, Niagara Mohawk Power Corporation, Association of American Railroads, and American Gas Association.

the Commission's reaccommodation plan, such voluntary agreements are the only means an emerging technology service provider has of achieving the relocation of an incumbent user of spectrum which has been allocated for emerging technologies -- even if the microwave user's operations interfere with those of the emerging technology service provider. Third Notice at ¶ 24.

After the expiration of this transition period, all existing fixed microwave licensees will retain co-primary status unless and until the spectrum requirements of an emerging technology provider conflict with an incumbent's operation. When such a conflict occurs, the emerging technology service provider may require the incumbent fixed microwave licensee to relocate involuntarily to another frequency band (or alternative medium), but only if the emerging technology service provider fulfills certain conditions designed to protect the interests of the microwave licensee.3/ Specifically, the emerging technology service provider must (1) guarantee payment of all relocation costs, including all engineering, equipment, site, FCC, and other reasonable additional costs; (2) complete all activities necessary for implementing the new facilities, including engineering, frequency coordination, and cost analysis of the complete relocation procedure; and (3) build the new microwave or

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3/ Throughout this proceeding, the Commission and the parties have focused on relocation of existing users outside of the non-government 2 GHz band. Therefore, TWT acknowledges the concerns raised by the Utilities Telecommunications Council ("UTC") regarding the wisdom of relocating existing 2 GHz microwave systems to other portions of the non-government 2 GHz band. See Comments of UTC at 24.

alternative system and test it for comparability to the existing 2 GHz system. Moreover, the incumbent will not be required to relocate until the comparable facilities are available to it for a sufficient period of time in which to make adjustments and to ensure a move without disruption. Id. at ¶ 24.

The comprehensive protections accorded incumbent users under the terms of this reaccommodation plan -- the retention of co-primary status at the end of the transition period until a relocation request is made, the guaranteed payment of all relocation costs and the implementation of all relocation procedures by the emerging technology service provider who makes such a request, and the assurance of comparable facilities as a prerequisite to any relocation -- ensure that incumbent users will not be harmed in any way as a result of relocation. In light of these protections, there is nothing to be gained by creating a lengthy transition period. Indeed, as other commenters have convincingly argued, a transition period during which only voluntary agreements are permissible is in fact unnecessary.4/ Therefore, if there is to be a transition period at all, it should not be longer than three years in duration.

The incumbent microwave users who filed comments in this proceeding make a number of arguments in favor of a lengthy transition period. These arguments, however, appear to be based on misapprehensions regarding the transition plan. Northwest

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4/ See, e.g., Comments of Cox Enterprises, Inc. at 6; Comments of Pacific Telesis Group at 1-2.

Iowa Power Cooperative, for example, asserts that three years would not provide enough time for the FCC to determine the "stability" of the higher frequency relocation bands and further argues that equipment for use at the higher relocation frequencies may not be available for at least eight years.5/ Other commenters also note that spectrum sharing technology has not been fully explored and that relocations at higher frequencies or to alternative media may be premature and ultimately unnecessary if spectrum sharing eventually proves feasible.6/ However, these arguments are irrelevant because, under the plan adopted by the Commission, an incumbent would not have to undertake even an involuntary relocation if the suitability of higher frequency relocation bands has not been established or if equipment for use at higher frequencies is not available.

Several incumbent users also claim that meaningful negotiations can be achieved only during a longer transition, which would allow time to establish the true market value for relocations.7/ This argument, however, merely advocates a mechanism for extracting windfall profits from new service providers. The incumbents are entitled to reimbursement of the costs of relocating to comparable alternative facilities. They

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5/ Comments of Northwest Iowa Power Cooperative at second of unnumbered pages.

6/ See, e.g., Comments of Southwestern Bell Corporation at 14-15; Comments of Association of American Railroads at 15.

7/ See, e.g., Comments of American Gas Association at 3.

are not entitled to (and the public interest would be disserved by awarding them) a premium for vacating needed spectrum.8/

As TWT pointed out in its initial comments, a lengthy transition period would actually undercut the Commission's fundamental purpose in creating a transition period in the first place -- to create incentives to negotiate voluntary relocation agreements. If the Commission adopts a lengthy transition period, incumbents -- armed with the knowledge that they would be fully protected from harm even after the transition period had ended -- could refuse to negotiate with emerging technology service providers during the entire period, thereby delaying unacceptably the introduction of new services. Such a delay would frustrate the demand for new wireless telecommunications services and jeopardize the United States' leadership position in the world wireless telecommunications market.

Moreover, a lengthy transition period would cause harm to emerging technology service providers by withholding from them for a long period the assurance of clear spectrum, because throughout the transition period incumbent users will have primary status and presumably have priority in interference disputes. Such uncertainty with respect to clear spectrum availability will in turn make it very difficult for emerging technology service providers to attract investors and secure the capital necessary for their operations.

8/ See Comments of Telocator at 7; Comments of American Personal Communications at 3 n.7; Comments of Omnipoint Communications, Inc. at 1.

In sum, incumbent microwave users will sustain no harm if the Commission adopts a three-year transition period, or, indeed, no transition period at all. On the other hand, a lengthy transition period will harm emerging technology service providers and also may cause delays in the development of emerging technology services that will be detrimental to the United States' competitive position in these markets.

For the foregoing reasons, TWT urges the Commission to adopt a transition period of no more than three years, commencing on the earlier of (1) the effective date of the rechannelization plans in this docket or (2) the adoption of a licensing scheme for PCS in General Docket 90-314.

Respectfully submitted,

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February 12, 1993

CERTIFICATE OF SERVICE

I, Rachel T. Barksdale, hereby certify that a copy of the foregoing "Reply Comments of Time Warner Telecommunications on the Third Notice of Proposed Rulemaking" has been sent by hand delivery to the following on this 12th day of February, 1993:

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