

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

FEB 12 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

ET Docket 92-9

TO: The Commission

REPLY COMMENTS OF AMERICAN PERSONAL COMMUNICATIONS
ON THIRD NOTICE OF PROPOSED RULE MAKING

American PCS, L.P., d/b/a American Personal Communications, a partnership of American Personal Communications, Inc. and The Washington Post Company ("APC") agrees with those parties finding that a "transition period" of no more than three years is absolutely critical to the success of the personal communications services ("PCS") industry.^{1/} This position fully protects incumbent microwave users and is precisely consistent with Congressional intent.^{2/}

APC was surprised and, quite frankly, disappointed that several incumbent microwave user groups chose simply to ignore the compromise hammered out by the members of Congress

^{1/} Parties expressing this view include those in the vanguard of the PCS movement and important industry associations. See Comments of the United States Telephone Association, Telocator, APC, Cox Enterprises, Inc., Omnipoint Communications, Inc., Time Warner Telecommunications, Associated PCN Company, Pacific Telesis Group, Ameritech, and Personal Communications Network Services of New York. Southern Natural Gas Company also agreed that a three-year period would be appropriate for urban areas, but suggested an eight-year period for rural areas.

^{2/} See Comments of APC, pp. 2-4.

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that have so forcefully represented the views of the incumbent microwave community. Those parties now generally support a five-year transition period that would commence with the licensing of new users in an area -- a plan that could prevent involuntary relocation until near the close of the decade.^{3/} In addition, a small contingent of parties composed of PCS' future competitors cling rather predictably to the outer limits of the Commission's proposal.^{4/}

None of these views should carry the day. Under the overall relocation architecture structured by the Commission, no incumbent ever will be required to relocate unless all its costs are paid and comparable facilities are available at an alternative frequency band. Even if no transition period at all were established, this plan would meet completely all the legitimate needs of the incumbent microwave community. Any

^{3/} Parties supporting a sliding five-year transition period include the Utilities Telecommunications Council ("UTC"), the American Public Power Association, and the Edison Electric Institute. The National Rural Electric Cooperative Association is alone in suggesting an eight-year national period combined with a prohibition on relocations in any particular area before three years after licensing of the new user. The Association of American Railroads and the Lower Colorado River Authority, in virtually identical pleadings and alone among incumbents, support a period of at least 10 years.

^{4/} Telecommunications industry parties supporting a 10-year period include GTE Service Corp., NYNEX Corp., Southwestern Bell Corp., and Telephone & Data Systems, Inc. GE American Communications, Inc., a satellite company concerned about relocation of incumbents to the 4 GHz band, also supports a 10-year period; GE's valid concerns are more appropriately addressed in proceedings relating to the Further Notice in this docket and should not influence the length of a transition period.

delay -- even a three-year transition plan -- could be used to permit incumbents to leverage squatters' rights in publicly owned spectrum for their own financial advantage, or to delay the implementation of new technologies such as PCS to protect entrenched wireless telecommunications providers from facing new competition. Neither of these purposes is a valid regulatory objective. As APC set out in its Comments, any "transition period" adopted must be as short as possible. If three years is the shortest of the range of options, that option should be selected.

It should be emphasized once again that the "transition period" under consideration by the Commission is not a period in which all microwave users will be required to "transition" to frequencies above 2 GHz. Quite to the contrary, the Commission has committed to permit all 2 GHz microwave incumbents to have co-primary status indefinitely and only to be required to relocate upon the request of a new user.^{5/} Indeed, the use of the term "transition period" is a holdover from the initial Notice in this docket, which did

^{5/} GTE, in particular, appears to misunderstand the meaning of the proposed "transition period." Contrary to GTE's statements, former Chairman Sikes did not testify before the Senate Communications Committee that "the period would be 'an extended, perhaps indefinite, period of time.'" GTE Comments, p. ii. Rather, he testified that incumbents would have co-primary status indefinitely but would be required to relocate, upon full guarantee of cost reimbursement and reliable operation, to accommodate new technologies. Regardless of the transition period adopted, all incumbents will have indefinite co-primary status, exactly as Chairman Sikes testified. If not asked to relocate, they can remain in the band indefinitely.

propose, as one option, a true "transition period" after which incumbents would revert to secondary status. That, of course, no longer is the case. The period now being considered by the Commission actually is a "non-transition" period -- one during which incumbents will not be required to "transition" to higher frequencies. Incumbent microwave users thus need not be concerned with having a period of sufficient length to locate new frequencies, engineer new systems, and install new equipment. All these activities would occur only after the expiration of the "transition period" (unless, of course, an incumbent agrees to relocate as an entirely private matter). Accordingly, the time that may be required to consummate relocation to another frequency band is absolutely irrelevant to the length of the "transition period" to be selected.

There is no valid regulatory objective for the adoption of any "transition period" longer than three years. Accordingly, that option should be selected by the Commission.

Comparable Facilities. In its Comments, APC pointed out that decisions surrounding relocation are highly individualized. The Commission's overall transition plan thus properly focuses on the case-by-case needs of each microwave user. For the same reason, APC agrees with commenters that suggest it is unnecessary for the Commission to craft an overarching national definition of "comparable" facilities

that would apply to all microwave relocations.^{6/} The parties involved in a particular relocation should be left to determine the type of system that will be "comparable" to the old facilities. The nature of the existing facilities will provide an appropriate model for the needs of the incumbent. In the overwhelming majority of cases, the parties will agree on replacement facilities. If, however, there is disagreement, the parties should have access to an alternative dispute resolution mechanism, under the Commission's aegis, to resolve any dispute about whether new facilities are "comparable" to the old.

Additions to Existing Facilities. The American Association of Railroads ("AAR") argues that "all modifications, expansions and new facilities" in the 2 GHz band should be granted primary status "without a special showing of need." AAR Comments, p. 22 (emphasis added). This proposal, which goes far beyond the Commission's policy statement on the same issue, must not be adopted. Allowing all "new facilities" to be accorded unrestricted primary status without exception or any special showing would be the exception that swallows the rule allocating spectrum for new technologies. Although AAR may have legitimate interests in certain new facilities, the sheer breadth of AAR's proposal would permit speculators to obtain and hold for ransom

^{6/} See, e.g., Comments of Personal Communications Network Services of New York, p. 13; United States Telephone Association, pp. 2-3; Edison Electric Institute, pp. 4-5.

frequencies that will be crucial to the implementation and expansion of PCS.^{7/} As APC repeatedly has pointed out, the 1.85-1.99 GHz band is the sole portion of the spectrum that will be available for PCS; point-to-point microwave users have a plethora of spectrum options -- that are being increased in proceedings related to the Further Notice in this docket -- outside the 2 GHz band that incumbents use routinely and reliably today.^{8/} The Commission's current policy on this score protects AAR's legitimate interests. The demand that new microwave applicants be permitted to swallow up the only spectrum that will be available for PCS should be denied as unfair and contrary to good spectrum management.

Unlicensed PCS. APC agrees with UTC, a premier representative of incumbent users, that a plan to accommodate

^{7/} Presumably, AAR would require PCS operators to pay to relocate these "new" facilities after the expiration of the three-year transition period. This would be a handy way to have the fledgling PCS service, in effect, pay for "new" microwave facilities.

^{8/} See APC Comments, pp. 12-13 (ET Docket 92-9, June 8, 1992) ("the Potomac Electric Power Company has 32 microwave paths -- 26 of those are in the 6 GHz band, and only three are in the 2 GHz band. Duke Power Company uses the 6 GHz band for 68 percent of its microwave paths within South Carolina. The Tennessee Valley Authority uses the 8 GHz band for 70 percent of its microwave paths. The Bonneville Power Administration operates 86 percent of its paths at 8 GHz. The Federal Aviation Administration, which controls air traffic functions that are absolutely critical to public safety in the United States, operates 94 percent of its microwave paths at 8 GHz. The South Carolina Public Service Authority operates 15 microwave paths in the 6 GHz band in South Carolina, with an average path length of 11.8 miles and with one path more than 23 miles in length"). This evidence stands un rebutted.

unlicensed PCS by relocating incumbents to other portions of the 1.85-1.99 GHz band would be poor policy:

UTC questions the viability, and wisdom, of relocating 2 GHz microwave systems to other portions of the non-government 2 GHz band. UTC suspects that most private microwave systems operating in the unpaired 1910-1930 MHz band were coordinated in this part of the band as a "last resort," and that relocating to other portions of the 2 GHz band may be impossible. Even where it is possible, it makes little sense to relocate a microwave system into another part of the band as this might require further relocation by a new service licensee authorized to use the same spectrum.

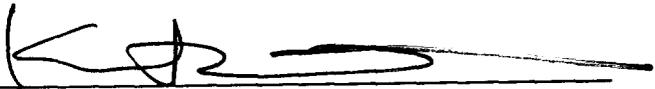
UTC Comments, p. 24 (emphasis added).^{9/} Unlicensed PCS providers can and should relocate incumbents either to the 1.71-1.85 GHz band, to the extent it becomes available, or to bands higher than 3 GHz where these microwave licensees

^{9/} The proposal of Omnipoint Communications, Inc. to require PCS licensees to bear the cost of relocating 1910-1930 MHz band incumbents for the benefit of unlicensed users also should not be adopted. (Licensed PCS proponents already have endorsed allocating the most sparsely populated portion of the 1.85-1.99 GHz band for unlicensed usage.) If unlicensed users are the economic boon their proponents claim them to be, those companies will be able to bear the cost of clearing the spectrum on which their services will operate. At any rate, the legality of a proposal that would require PCS licensees to expend, in the aggregate, tens of millions of dollars to benefit a different and unrelated group of companies would be questionable at best.

can remain without anticipating a potential second move to accommodate licensed PCS.^{10/}

Respectfully submitted,

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^{10/} We believe it is necessary to clarify Apple's statement that the decision to grandfather state and local government public safety microwave users "will harm such services." Apple Comments, p. 5. Insofar as this claim might apply to licensed PCS, it is a matter of Commission record that APC has established a sharing technology that works in practice and fully protects microwave users. Effective sharing between microwave users and licensed PCS no longer is an "assumption," it is a fact. The licensed PCS industry has made a commitment to abide by interference protection rules that will ensure that microwave users that do not or cannot relocate will not suffer interference from PCS. State and local government licensees should be assured that no microwave licensee in the 1.85-1.99 GHz band will be "harmed" by licensed PCS.