

Before the
FEDERAL COMMUNICATIONS COMMISSION **RECEIVED**

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Only UTC does not subscribe to this elemental point. UTC argues that the transition rules are final rules and are not dependent on the outcome of the remaining issues being considered by the Commission. UTC claims that these remaining issues are concerned with only minor implementation "details," such as timing.²

Contrary to UTC's assertion, as both a practical and legal matter, questions of timing, the processes that will govern voluntary and involuntary transitions, and the definition of "comparable alternative facilities" are critical issues that must be resolved before the transition plan can have meaning. As noted by the North American Telecommunications Association, these issues are especially important with respect to the unlicensed band.³

For the reasons discussed above, the Commission should grant Apple's Petition. It should hold in abeyance the transition rules adopted in the Order until it has resolved the significant issues that remain undecided. Any other approach threatens to result in a piecemeal implementation of what must be a coordinated process and to undermine effective judicial review of the Order, if such review is deemed necessary by any party to this proceeding.

relocation is unnecessary, because the Commission is committed to providing adequate protection for existing licensees.

Despite these strong public policy arguments against having any class of existing microwave users exempt from the mandatory relocation requirements, UTC and APPA have urged the Commission to adopt a sweeping expansion of the exempt class. In addition to asserting that utilities should be part of the exempt class, they argue for an extremely broad definition of exempt licensees, which would include not only licensees in the Local Government Radio Service, but also all state and local licensees who had chosen to be licensed in the Power Radio Service.

The problem of overreaching by certain existing microwave users exists elsewhere as well. The Commission has struggled to craft a transition plan that fairly balances the needs of microwave licensees against the public interest in developing next-generation telecommunications systems, including PCS. Despite the fact that, as noted by Cox Enterprises, the current proposal is if anything lopsided in favor of microwave users,⁴ several existing users continue to press for a transition plan that grants them every conceivable benefit at the expense of reasonableness and fairness. Their comments are peppered with suggestions for rules that would bias the relocation process in favor of microwave licensees and remove reasonableness as the governing standard in this process.

For example, several commenters argue that the existing microwave users must retain the right to have complete and absolute control over the engineering, construction, and testing of replacement facilities – whether or not their decisions are exercised reasonably.⁵ The American Petroleum Institute argues that neither the FCC nor an arbitrator should be empowered to pass on an existing user's choice of medium, frequency assignment, or system configuration.⁶ Finally, the

⁴ Opposition of Cox Enterprises, Inc., ET Docket No. 92-9, at 9 (filed Mar. 30, 1993).

⁵ Statement of the American Petroleum Institute in Support of Petition for Clarification and/or Reconsideration, ET Docket No. 92-9, at 7 (filed Mar. 30, 1993); Comments of Association of American Railroads on Petitions for Reconsideration and Clarification, ET Docket No. 92-9, at 3-4 (filed Mar. 30, 1993); Comments of Lower Colorado River Authority on Petitions for Reconsideration and Clarification, ET Docket No. 92-9, at 6 (filed Mar. 30, 1993); Comments of UTC at 13-14.

⁶ Statement of the American Petroleum Institute at 6.

Association of American Railroads and the Lower Colorado River Authority argue that PCS providers should be required to compensate existing users for all costs incurred as a result of relocation, whether or not these costs are "currently

CERTIFICATE OF SERVICE

I, Barbara Prudlow, hereby certify that a copy of the foregoing Reply Comments of Apple Computer, Inc. to Petitions for Clarification and/or Reconsideration has been served via first-class mail, postage prepaid, this 9th day of April, 1993, to the following:

Jonathan D. Blake
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Post Office Box 7566
Washington, D.C. 20044
Attorney for American Personal Communications

Mr. J. Barclay Jones
Vice President for Engineering
Americal Personal Communications
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

Mr. Douglas G. Smith, President
Omnipoint Communications, Inc.
7150 Campus Drive
Colorado Springs, CO 80920

Mark J. Tauber
Piper & Marbury
1200 19th Street, N.W.
Washington, D.C. 20036

Wayne V. Black
Keller and Heckman
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
Attorney for the American Petroleum Institute

Ted Coombes
American Public Power Association
2301 M Street, N.W.
Suite 300
Washington, D.C. 20037

Thomas J. Keller
Verner, Liipfert, Bernhard, McPherson and Hand, Chartered
901 15th Street, N.W.
Suite 700
Washington, D.C. 20005
Attorney for the Association of American Railroads and the Lower
Colorado River Authority

Werner K. Hartenberger
Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Suite 500
Washington, D.C. 20037
Attorney for Cox Enterprises, Inc.

Albert H. Kramer
Keck, Mahin & Cate
1201 New York Avenue, N.W.
Penthouse Suite
Washington, D.C. 20005-3919
Attorney for the North American Telecommunications Association

Douglas G. Smith
President
Omnipoint Communications, Inc.
7150 Campus Drive
Colorado Springs, Colorado 80290

John D. Lane
Wilkes, Artis, Hedrick & Lane, Chartered
1666 K Street, N.W.
Washington, D.C. 20006
Attorney for the Public Safety Microwave Committee

Jeffrey L. Sheldon
Utilities Telecommunications Council
1140 Connecticut Avenue, N.W.
Suite 1140
Washington, D.C. 20036



/s/ Barbara Prudlow
Barbara Prudlow