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

NOV - 8 1993

In the Matter of)
)
Amendment of the Commission's)
Rules to Establish New)
Personal Communications)
Services)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

GEN Docket No. 90-314

and

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

ET Docket No. 92-9

COMMENTS OF
MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation ("MCI"), by its attorneys, hereby submits its comments in response to the Petitions for Clarification and/or Reconsideration of the Commission's Third Report and Order in ET Docket No. 92-9, See Public Notice, Report No. 1979, October 18, 1993. These comments also address the related "Emergency Petition" in GEN Docket No. 90-314. See Public Notice, DA 93-1278, October 22, 1993.

Retuning. Apple Computer, Inc. (Apple) urges the Commission to adopt measures encouraging the "retuning" or "repacking" of existing 2 GHz microwave users from the unlicensed PCS band into portions of the licensed PCS band. As Apple concedes in its petition, the Commission has previ-

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ously considered and rejected Apple's "repacking" proposal as a means of expediting the wholesale clearance of the unlicensed PCS band.

If the Commission were to encourage "repacking" as a means of facilitating attainment of Apple's vision of unlicensed PCS as "on-and off-ramps of the 'data highway'" (Apple Emergency Petition, September 13, 1993 at p. 4), it might thereby convert the wideband licensed PCS superhighways into blind alleys. Accordingly, Apple's petition should be denied.

Apple has never demonstrated the feasibility of its broad-scale repacking plan, despite numerous opportunities to do so both in ET Docket No. 92-9 and in GEN Docket No. 90-314. Apple has not demonstrated that any significant portion of the existing 2 GHz radios are capable of being retuned to another 2 GHz band.

Even if retuning were demonstrated to be feasible, it would almost inevitably cause delays or increase the costs of implementing licensed PCS services in the target bands, or both. A temporary repacking plan, such as the five-year reserve proposal described in Apple's "Emergency Petition," would also expose incumbent microwave licenses to two-step relocation.

A clearly superior alternative to "repacking" is expedited action by the Commission to obtain access to the adjacent 1710-1850 MHz government bands for relocation of

those incumbents who cannot move, or should not be required to move, to the higher bands. See, e.g., Association of American Railroads (AAR) Petition at 2-4. The Commission should continue to pursue this option, and reject Apple's in-band "repacking" proposal.

Public Safety Exemption. A number of petitioners (Public Safety Communications Council, American Association of State Highway and Transportation Officials, Public Safety Microwave Committee and Forestry-Conservation Communications Association) seek reconsideration of the Commission's decision to limit to public safety users the class of incumbent microwave licensees exempt from involuntary relocation. The Commission's efforts to narrow the exemption and thereby reduce barriers to the implementation of licensed PCS are commendable. If PCS is to be funded, built and run successfully, virtually all incumbents -- public safety or not -- must be moved out of the band quickly.

As these petitioners note, the Commission's decision to subject all state and local government microwave systems (other than those in the police, fire, and emergency medical services) to involuntary relocation may impact some systems that are integral segments of emergency communications systems. However, the record in this proceeding does not support the wholesale exemption of all microwave stations licensed to state and local government agencies. At least some of the communications needs of some agencies can be met

in higher frequency bands or through alternative transmission media.

Rather than extend a blanket relocation exemption to all state and local government licensees in this band, the Commission might consider establishing a system of priorities for access to the 1710-1850 MHz government band. Such a system might give first priority to public safety agencies, with lower priorities assigned to other state and local government agencies, systems that are part of recognized emergency communications networks, and so on. This would facilitate relocation of those incumbents with the greatest need to remain in the 2 GHz band, and would lessen the risk that PCS licensees would have to accommodate a substantial number of incumbent users on a permanent basis.

Commencement of Transition Period. Several parties seek reconsideration or clarification of the Third Report and Order insofar as it states that the two-year voluntary negotiation period will commence with the "acceptance of applications" for emerging technology services. Various alternative starting dates are proposed by petitioners for both the licensed and the unlicensed bands.

From the perspective of a PCS entrant, a two year voluntary negotiation period is a very long time. The commencement of that period should not be postponed any longer than absolutely necessary. MCI believes that an appropriate date for the commencement of the voluntary

negotiation period for the licensed PCS bands is the date upon which the Commission issues a public notice announcing the "tentative selectees" (or their competitive bidding equivalent) for a given PCS service area and frequency block.

Once a PCS applicant has attained tentative selectee status (whether by being selected through the competitive bidding process or by filing a non-mutually exclusive application), the tentative selectee should not be required to await completion of the remaining steps of the licensing process to begin negotiating relocation agreements with incumbents. Of course, any expenditures by the tentative selectee in anticipation of a future license grant would be incurred at the option, and the risk, of the tentative selectee and could not thereafter serve as the basis for any claims to reimbursement asserted against any other party who ultimately receives that license.

Tax Certificates. MCI supports the requests of those parties (AAR, Apple, the Unlicensed PCS Ad Hoc Committee for 2 GHz Microwave Transition and Management (UTAM) and the Utilities Telecommunications Council (UTC), for clarification that tax certificates should be available for all incumbents relocating from any portion of the PCS band, and throughout the entire transition period. There is no sound public policy rationale for limiting the availability of the incentive provided by tax certificates, either to entities

who relocate from the licensed (as opposed to the unlicensed) portion of the PCS band, or to those who agree to relocate before (or after) any particular date in the voluntary transition timetable.

Mobile Satellite Exemption Request. AMSC Subsidiary Corporation (AMSC) asks the FCC "to reconsider its decision to apply relocation rules in the 1970-1990 MHz and 2160-2180 MHz bands." AMSC Petition, at 1. AMSC states that it proposed in January 1992 that those frequency bands be used "for a satellite component to ground-based Personal Communications Services." Id.

AMSC has participated in both of the major PCS-related dockets for nearly two years (Petition, notes 1 and 2). AMSC's request that the Commission, on reconsideration, limit the applicability of 2 GHz relocation rules to terrestrial services is clearly untimely. AMSC should have raised this issue when it first proposed the use of a portion of this band for satellite services. Its delay in submitting this request until after the adoption of final rules is both unexplained and inexcusable. See Section 1.429 (b) of the Commission's rules.

AMSC's belated claim that the Commission should clear the spectrum in advance, rather than require the satellite licensee to "spend the more than \$400 million expected to be needed to relocate the existing users" is both untimely and disingenuous. McCaw Cellular Communications, Inc., the

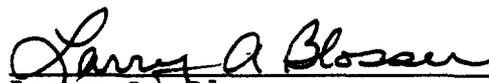
largest current shareholder of AMSC, with approximately 31.5% of AMSC's outstanding shares, has expressed an interest in acquiring a controlling interest in AMSC; McCaw itself is in the process of merging with AT&T. (See Comments of COMSAT Mobile Communications, dated November 1, 1993, in File No. ENF-93-44.) AMSC, which filed a Registration Statement with the SEC on October 18, 1993 in connection with an upcoming initial public offering, cannot credibly plead that it should be excused from incurring the same relocation costs that will be incurred by other licensees in the emerging technology band on the basis of poverty. Neither AMSC's existing shareholders (including McCaw, the nation's largest cellular carrier) nor its future owners -- which may include AT&T, the dominant U.S. interexchange carrier and a worldwide manufacturer of telecommunications equipment, as well as investors who purchase AMSC shares in the planned initial public offering -- are entitled to an exemption from the relocation process that will apply to all other licensees in the emerging technology band.

If the Commission were to honor AMSC's belated implicit request to clear its targeted portion of the emerging technology spectrum before licensing, it would be arbitrarily and unreasonably favoring licensees of one technology (hybrid satellite-based PCS) over competing terrestrial PCS licensees, for whom final rules have already been adopted. Moreover, any "exemption" given to AMSC or other "non-ter-

restrial" PCS system operators would have spillover effects in the terrestrial bands. Potentially, PCS licensees needing to clear an incumbent user occupying the lower-band frequencies corresponding to the "proposed" MSS allocation would receive a partial "free ride" on the coattails of the AMSC-proposed satellite clearance process. Certainly, the injection of this "who pays and who doesn't?" issue at the reconsideration stage of this rulemaking proceeding can only exacerbate delays already expected to occur in the clearance process. For these reasons, AMSC's petition should be denied.

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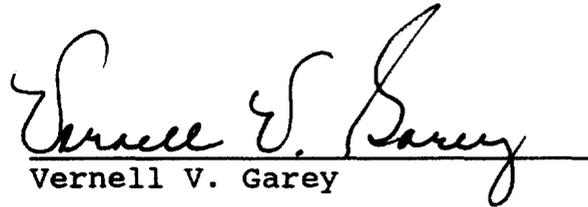

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Dated: November 8, 1993

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I, Vernell V. Garey, hereby certify that copies of the foregoing "**COMMENTS**" in GEN DOCKET No. 90-314 and ET Docket No. 92-9 were mailed first-class, postage prepaid, to the following on this 8th day of November 1993.


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