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

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

To: The Commission

COMMENTS OF
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA") hereby submits its comments on the petition for reconsideration filed by the Public Safety Microwave Committee, the Association of Public-Safety Communications Officials-International, Inc., the County of Los Angeles, and the Forestry-Conservation Communications Association in the above-captioned proceeding.¹ As the trade association for prospective providers of Personal Communications Services ("PCS"), PCIA is necessarily concerned by petitioners' request to permanently exempt public safety microwave licensees from any obligation to relocate from spectrum allocated for PCS. The petition does not adequately explain why the current FCC policy of a five year transition period,

¹ Hereinafter referred to as "Petition." See Memorandum Opinion and Order, FCC 94-60 (released March 31, 1994).

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full cost compensation and comparable alternative facilities does not fully protect important public safety interests.

In its Memorandum Opinion and Order, the FCC concluded on its own motion "that it would be in the public interest to subject all incumbent facilities, including public safety, to mandatory relocation if an emerging technology provider requires the spectrum."² The Commission took this step based upon showings by a number of interested parties that it might otherwise be unable to provide "adequate spectrum for operation of licensed services in major urban areas where there are a large number of incumbent public safety fixed microwave facilities"³ For example, American Personal Communications explained that "public safety microwave paths comprise a large percentage of incumbents in major markets."⁴ Citing the Los Angeles MTA as illustrative, Cox similarly argued that even "a 20 or 30 MHz allocation to each PCS licensee may prove inadequate for the introduction of PCS because of the public safety exemption," which would shield numerous urban systems from relocation.⁵

Predicated upon these showings and the recognition that sharing of the same frequencies by PCS and fixed microwave

² Memorandum Opinion and Order, ¶ 34.

³ Id.

⁴ Id., ¶ 32 (footnote omitted).

⁵ Id.

facilities would be impossible, the FCC became "convinced that PCS service may be precluded or severely limited in some areas unless public safety licensees relocate."⁶ But, the agency nonetheless determined that those licensees still warranted special consideration in the relocation process. It therefore adopted a five-year transition plan for public safety systems, providing additional time to plan and implement a relocation in the form of a four-year voluntary negotiation period and a one-year mandatory negotiation period.⁷

The Commission also found that important public safety systems would not be disrupted by this mandate because of the adequacy of its other transition requirements, including: (1) payment of full cost compensation; (2) provision of comparable alternative facilities; and (3) completion of all activities necessary to permit the new operations, including a full build out and testing of the replacement system, prior to relocation.⁸ Further, relocated entities would have the right to be returned to their original microwave facilities within one year if the new facilities fail to provide equal or better performance.⁹

⁶ Id., ¶ 34.

⁷ Id., ¶ 35.

⁸ Id.

⁹ Id.

Notwithstanding the Commission's thorough analysis of the public safety issue and comprehensive requirements for ensuring that these critical operations are fully protected, petitioners seek to resurrect the earlier blanket exemption of certain public safety licensees from any relocation requirement. They claim that the FCC lacks a record basis for its action and that public safety licensees would, in fact, experience unreasonable hardship from being forced to negotiate a move.¹⁰

PCIA submits, however, that the Commission correctly evaluated the implications for PCS deployment of a failure to relocate the numerous public safety systems throughout the Emerging Technology spectrum. Its decision is strongly supported in the record and represents a careful balancing of the interests of all affected parties. Accordingly, because "PCS service may be precluded or severely limited in some areas unless public safety licensees relocate," which would "defeat [the FCC's] primary goal in this proceeding of providing usable spectrum for the implementation of emerging technologies," the Commission should not reconsider its application of the mandatory relocation requirement to those facilities absent a concrete showing of any potential economic or operational harm to public safety services.

¹⁰ Petition at 12-17, 19-20.

Initially, there is ample evidence before the FCC that, as a practical matter, PCS systems will be unable to share spectrum with microwave links. This fact was emphasized at the PCS Task Force hearings, where AirTouch Communications noted that "PCS operators will require clear spectrum to provide a commercial, high quality system" and Comsearch explained that the "original belief that PCS can co-exist with microwave is being replaced by spectrum sharing as a stop gap accommodation while prioritizing relocations."¹¹ These commenters confirmed the earlier evidence cited by the Commission in the Memorandum Opinion and Order that spectrum sharing would not be feasible.

Equally importantly, the FCC has appropriately considered the interests of all affected parties together with the public interest in promoting the deployment of PCS in crafting its transition rules. Public safety microwave licensees are afforded an extended four-year voluntary negotiation period, a full one-year mandatory negotiation period, and all of the protections otherwise provided by the rules to ensure that the continuity and reliability of their operations will be maintained both during the transition and upon relocation to their new facilities. Indeed, no evidence

¹¹ Statement of AirTouch Communications, GEN Docket No. 90-314, filed April 7, 1994, at 4; Statement of Comsearch, GEN Docket No. 90-314, filed April 7, 1994, at 5-6.

of potential harm to public safety licensees arising from the Commission's transition rules is offered in the petition. Accordingly, no case for the reconsideration request has been made.

For all the foregoing reasons and to facilitate the broadest possible deployment of PCS capabilities throughout the nation, PCIA urges the Commission to maintain its current rules and policies that are carefully crafted and appropriate to protect the legitimate concerns of public safety microwave licensees.

Respectfully submitted,

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June 29, 1994

CERTIFICATE OF SERVICE

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