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June 22, 1995

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JUN 22 1995

Regina Keeney, Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, N.W.  
Room 5002  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

VIA HAND DELIVERY

Re: ET Docket No. 92-9;  
Reaccommodation of Displaced  
Incumbents For Emerging Technologies

Dear Ms. Keeney:

We are writing to you on behalf of our client, the American Petroleum Institute (API), to express to you the growing concern of its membership over unfounded allegations made by the Personal Communications Industry Association (PCIA) in recent letters to you dated May 24, 1995, and in an earlier communication dated April 28, 1995 to Chairman Hundt. PCIA seems intent upon submitting repeated correspondence to the Commission in which it improperly requests the Commission to reopen and materially alter important elements of the 1850-1990 MHz transition plan (ET Docket No. 92-9).<sup>1/</sup> In its two recent communications, PCIA asks the Commission to make significant changes to its rules. API did not address the first letter to the Chairman because it believed PCIA's motives were apparent -- PCIA was attempting to unduly influence the PCS negotiations which have just recently commenced, and to secure publicity for its own promotional purposes. However, since PCIA has submitted a second improper request to the Commission, API is concerned that the Commission may be inclined to afford PCIA's submissions far greater weight than they should ever receive unless definite facts are presented

<sup>1/</sup> On April 28, 1995, PCIA submitted to Chairman Reed Hundt similar correspondence in which it attempted to alter by personal letter the Commission's established rules.

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to dispel misleading allegations. Accordingly, API submits this response and urges the Commission to adhere to its established mechanisms for the 1850-1990 MHz reaccommodation process.

PCIA complained to you that there are "several problems" with the Commission's established negotiation and relocation rules and procedures; yet, early voluntary negotiations have just begun. API strongly recommends that the Commission disregard PCIA's suggestions and simply allow the negotiation process, with its free market underpinnings, to run its course.

Moreover, after extensive rule making proceedings, the Commission previously addressed and adequately resolved the issues raised by PCIA. For instance, PCIA contends that an interpretative problem exists because microwave licensees continue to receive authorizations for operations and "there is no sound basis for according any such new authorizations a primary status." The Commission, however, fully considered this issue through the notice and comment process, and concluded that minor modifications to existing systems are entitled to primary status and that primary status should be allowed for new microwave systems where a special showing of need is demonstrated. First Report and Order, ET Docket No. 92-9, 7 FCC Rcd at ¶ 31. The Commission explained that:

Existing 2 GHz fixed facilities, licensed before January 16, 1992, can make certain modifications and minor extensions and retain primary status. This policy gives fixed microwave licensees significant flexibility, and together with our voluntary/involuntary agreement provisions, appropriately balances and satisfies our divergent objectives.  
(Emphasis added.)

First Report and Order, ET Docket No. 92-9, at ¶ 31.

PCIA requested the Commission to commence the two-year voluntary negotiation period for all PCS spectrum blocks, not just the A and B blocks. This suggestion would, if adopted, wreak havoc upon the negotiation process for both incumbents and future licensees. Incumbents in the C, D, E and F blocks would be severely disadvantaged by having to negotiate the relocation of facilities from these frequency blocks in far less time than those having stations authorized on assignment from the A and B blocks. This was not the Commission's intention, and it should flatly reject this groundless proposal.

Regina Keeney, Chief  
June 22, 1995  
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KELLER AND HECKMAN

PCIA also seeks to alter the twelve-month testing period and to change the manner in which microwave licenses would be held in the interim. The Commission has already determined that:

The 2 GHz microwave licensee would not be required to relocate until the comparable alternative facilities are available to it for a reasonable time to make adjustments and ensure a seamless handoff.

First Report and Order, ET Docket No. 92-9, at ¶ 24. Furthermore, the Commission made no dramatic change, as requested by PCIA, that would permit the PCS licensee to hold the microwave license during this period.

It is API's hope that PCIA will cease harassing incumbent microwave licensees with these repeated ex parte attempts to change the rules. API submits that, in the interest of fairness to those who participated in the PCS rule making proceedings, any and all changes to those rules should be made through the notice and comment procedure. Indeed, they must. 5 U.S.C. §553 (1994). Even if the changes sought by PCIA were indeed necessary, the proper course of action available to PCIA would be a Petition for Rule Making, not a series of "grand-standing" personal letters to you and the Chairman.

Respectfully submitted,

AMERICAN PETROLEUM INSTITUTE

By: Wayne V. Black  
Wayne V. Black  
Its Attorney

Enclosures



Personal  
Communications  
Industry  
Association

Jay Kitchen, *President*

May 24, 1995

Regina Keeney  
Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 5002  
Washington, D.C. 20554

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MAY 25 '95  
FEDERAL COMMUNICATIONS  
COMMISSION  
OFFICE OF THE  
SECRETARY

Dear Ms. Keeney,

The Personal Communications Industry Association ("PCIA") respectfully requests that the Wireless Telecommunications Bureau take several important actions to facilitate the deployment of important new Personal Communications Services and to remove future procedural uncertainties facing the industry. As you know, PCS auction winners are now undertaking the challenging task of relocating incumbent microwave licensees to clear the way for new wireless services. Several problems and interpretative issues potentially affecting these efforts warrant consideration and attention.

**New Microwave Authorizations for Operations in PCS Spectrum Should Not Be Afforded Primary Status.** PCIA understands that microwave licensees are continuing to seek and receive authorizations for operations in the PCS spectrum. With the advent of the relocation process, however, there is no sound basis for according any such new authorizations a primary status. This is simply adding to the burdens of the relocation process. In such respects, of course, grants on a secondary basis could proceed with the risks of investment borne by the microwave licensee.

**Public Notice Starting the Voluntary Relocation Period for Microwave Relocation for All PCS Spectrum Blocks Should Be Promptly Issued.** The Commission recently announced that April 5, 1995, would be the start date for A and B Block voluntary microwave relocation periods. However, PCS licensees undertaking the band clearing process must not only relocate co-channel microwave links, but also adjacent channel links in the other blocks. Consequently, relocation of links in the C, D, E & F blocks may prove necessary to deploy A and B block PCS services in many markets. Accordingly, a public notice should be released that begins the voluntary relocation start date for all PCS spectrum blocks, not just the A and B blocks.

**Clarification of the Twelve Month Testing Period Procedures Is Needed.** The Commission's rules establish a twelve month period following a relocation during which the microwave licensee has the right to be restore to the 2 GHz band if alternative facilities prove

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May 24, 1995  
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unacceptable. Several aspects of this twelve month period warrant clarification in the following manner: (1) the twelve month period should begin with the microwave licensees acceptance of the cut over from its 2 GHz facilities; (2) the PCS licensee should have the option of holding the microwave license during that twelve month period; (3) at the end of the twelve month period, the party holding the microwave license should surrender the authorization to the Commission; and, (4) the Commission should give public notice that the link has been decommissioned.

PCIA believes that the foregoing actions and clarifications will eliminate unnecessary impediments and uncertainties that might otherwise delay the advent of PCS services to the public. Accordingly, the Bureau can and should promptly pursue their implementation.

Respectfully submitted,



Jay Kitchen



Personal  
Communications  
Industry  
Association

Jay Kitchen, *President*

April 28, 1995

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554

Re: PCS/Microwave Relocation Issues

Dear Mr. Chairman:

The Commission's allocation of spectrum for Personal Communications Services ("PCS") and, in particular, the PCS band plan that was largely a product of your office's tireless work with the industry, represents a major achievement for the agency. More recently, the smooth and timely implementation of the auction for the A and B block spectrum exceeded virtually everyone's expectations, both within and outside the agency. You are to be commended for your efforts in placing these valuable PCS licenses in the hands of entrepreneurs who, in turn, may now proceed to provide innovative and beneficial services to the public.

The PCS industry is now gearing up for the difficult work required to bring your vision, and the vast promise of this exciting new technology, into reality. For example, PCIA is now developing plans for facilitating the relocation of entire microwave systems, as opposed to ad hoc replacement of individual microwave links, in response to microwave licensees' concerns. PCIA's efforts also include continued exploration of the feasibility of implementing a cost sharing program to encourage coordinated relocation activities among affected PCS providers.

Unfortunately, just as PCS is moving forward, it has become apparent that there exists a substantial potential for serious troubles to arise from abuses of the rules adopted to protect microwave licensee interests in the relocation process. These troubles threaten the realization of the Commission's goals for prompt deployment of PCS service to the public notwithstanding the PCS industry's commitment to that process.

PCIA firmly and unquestionably supports the rights of microwave licensees to the provision of full cost compensation and comparable alternative facilities in exchange for their agreement to relocate from the PCS spectrum. Indeed, PCIA has worked very hard in

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this context. The current rules largely track PCIA proposals and most recently the Association worked hard to maintain tax relief for relocation sales and exchanges. However, it has now come to PCIA's attention that those rules may be misused by certain parties to achieve perverse results which were unintended by the agency and are clearly not in the public interest.

At least one major organization seeking to represent collectively microwave licensees in the relocation process has distributed materials that graphically underscore and promote the use by incumbent microwave licensees of their inherent bargaining leverage to extract excessive premium payments in relocation negotiations. This marketing material clearly suggests exploiting the FCC's safeguards -- which were adopted to protect microwave licensees from being abused themselves -- to extract enormous payouts from PCS licensees. That material stresses the economic pressures faced by PCS licensees who need to move quickly to implement service because of the substantial financing costs that would result from any delay and points out the control a microwave licensee can exercise to block prompt service deployment by stalling on its relocation negotiations. The implicit message conveyed is that the combination of the existing rules and the large sums paid out by auction winners encourage strategic behavior by microwave licensees that the FCC never contemplated, never would endorse, and should not tolerate now.

If this suggested pattern of abuses materializes, the FCC can and should consider several options to prevent such misuse of its rules. First, the Commission should consider whether the voluntary negotiation periods afforded under the rules should or, indeed, can be maintained in an environment where microwave licensee organizations are seeking to misuse them for purely private pecuniary gain. Elimination of such periods could go a long way toward diffusing the threat that microwave licensees could delay the introduction of PCS services as a means to extract unwarranted concessions.

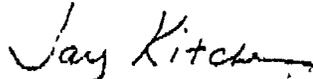
Second, the FCC should consider whether or not to place a limit on the total cost compensation and value of comparable alternative facilities available to microwave licensees in order to eliminate any possibility that an unmerited premium could be sought or obtained during the mandatory negotiation period.

Finally, the Commission should consider whether the current 12 month testing period -- which permits a microwave licensee to be returned to its original facilities within a year after cutover to new facilities where the latter prove not to be comparable -- should be eliminated to prevent efforts by microwave licensees to extract premiums for early release from this obligation.

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As stated above, PCIA is strongly committed to facilitating the achievement of the Commission's and the industry's goals for early deployment of PCS. PCIA therefore urges you to take whatever actions may be necessary to ensure that the economic interests of private parties are not permitted to interfere with the public interest in delivery of these important and valuable services.

Respectfully submitted,

  
Jay Kitchen