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**JUN 22 1995**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

June 22, 1995

**EX PARTE**

William F. Caton  
Acting Secretary  
Federal Communications Commission  
Mail Stop 1170  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Dear Mr. Caton:

Re: *RM-8643, Petition for Rulemaking of Pacific Bell Mobile Services Regarding a Plan for Sharing the Costs of Microwave Relocation; CC Docket No. 94-54, Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services; RM-8658, Petition for Rulemaking of Section 68.4 of the Commission's Rules Hearing Aid-Compatible Telephones*

On June 21, 1995, James P. Tuthill, Vice President, External Affairs, Pacific Bell Mobile Services, and I met with Rosalind K. Allen, Chief, Commercial Wireless Division, and David Furth, Deputy Chief, Commercial Wireless Division to discuss issues summarized in Attachments 1, 2, and 3. We met with Lisa B. Smith, Senior Legal Advisor to Commissioner Andrew C. Barrett, and Patrick Hogan, an intern in Commissioner Barrett's office to discuss issues summarized in Attachments 1, 2, 3, and 4. We met with Barbara Esbin, Senior Attorney, Policy Division, Wireless Bureau to discuss issues summarized in Attachment 3. We met with Laurence D. Atlas, Associate Bureau Chief, Wireless Bureau to discuss issues summarized in Attachments 1, 2, and 3. Also, we met with Michael Buas, Physical Scientist, Office of Engineering and Technology, to discuss issues summarized in Attachment 4. Lastly, James P. Tuthill, Alan Ciamporcero, Executive Director, Pacific Telesis, and I, met with Ruth Milkman, Senior Legal Advisor to Chairman Hundt, and Pamela Bell, Intern to Chairman Hundt, to discuss issues summarized in Attachments 1, 2, 3, and 4.

On June 22, 1995, James Tuthill and Alan Ciamporcero also met with Rudolpho Baca of Commissioner Quello's office, David Siddal and Christine Enemark of Commissioner Ness' office, Robert Pepper of the Office of Plans and Policy, and Jill Lockett of Commissioner Chong's office to discuss issues summarized in Attachments 1, 2, and 3. Please associate these materials with the above-referenced proceedings

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*OH*

William F. Caton  
June 22, 1995  
Page 2

We are submitting two copies of this notice in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

A handwritten signature in black ink that reads "GINA HARRISON / AFC". The signature is written in a cursive, slightly slanted style.

Regina M. Harrison

cc: Rosalind K. Allen  
Laurence D. Atlas  
Rudy Baca  
Pamela Bell  
Michael Buas  
Christine Enemark  
Barbara Esbin  
David Furth  
Patrick Hogan  
Jill Lockett  
Ruth Milkman  
Robert Pepper  
David Siddal  
Lisa B. Smith

***GIN RULEMAKING ON MICROWAVE  
RELOCATION COST SHARING***

***WE MODIFIED OUR POSITION AND SUPPORT PCIA  
PROPOSAL***

# *WE COMPROMISED FOR INDUSTRY CONSENSUS*

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*OUR PROPOSAL CONSISTS OF 1)INTERFERENCE RIGHTS,  
2)ADJACENT CHANNEL COST SHARING, AND 3)A PER-  
LINK CAP OF \$600K.*

*PCIA PROPOSAL CONSISTS OF 1)INTERFERENCE RIGHTS,  
2)CO-CHANNEL COST SHARING, AND 3)A PER- LINK CAP  
OF \$250K AND \$150K IF THE TOWER HAS TO BE  
REPLACED.*

- *WE SUPPORT THE PCIA PROPOSAL AND RECOMMEND  
THE COMMISSION IMMEDIATELY OPEN A RULEMAKING.*

# *THERE IS BROAD SUPPORT FOR THE PCIA PROPOSAL*

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*AMERITECH, AMERICAN PERSONAL COMMUNICATIONS, BELLSOUTH WIRELESS, INC., OMNIPOINT COMMUNICATIONS, WESTERN PCS CORPORATION, AND WE SIGNED ONTO THE PCIA PROPOSAL.*

*CTIA SUPPORTS RULES FOR MICROWAVE RELOCATION COST SHARING.*

- *SPRINT/WIRELESS CO., SUPPORT PCIA PROPOSAL OF \$250K PLUS ADDITIONAL \$150K IF TOWER HAS TO BE REPLACED.*
- *SWB SUPPORTS OPENING A RULEMAKING.*
- *COX SUPPORTS COMMISSION ACTION TO DEVELOP AN OBJECTIVE STANDARD OF "INTERFERENCE."*

# *UTC GENERALLY SUPPORTS OUR PROPOSAL*

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*“ THE PBMS PROPOSAL PROVIDES A SOLID FRAMEWORK FOR THE DEVELOPMENT OF WORKABLE COST-SHARING PROCEDURES.”*

*SOME INCUMBENTS MISUNDERSTOOD OUR PROPOSAL; WE ARE NOT PROPOSING A PAYMENT CAP, ONLY A SHARING CAP.*

# TELECOMMUNICATIONS

Attachment 2

Volume IV, Spring/Summer 1995

## KELLER AND HECKMAN

LAW OFFICES

### Opportunity Knocks for 2 GHz Incumbents

## FCC Announces Commencement of Voluntary Negotiations

by Raymond A. Kowalski

Now that the auctions for Block A and B PCS licenses are closed, the next step toward the creation of PCS systems in the United States is the relocation of point-to-point microwave systems that presently occupy the 2 GHz band earmarked for PCS systems. PCS licensees ultimately can force the microwave incumbents to leave the band by providing them with "comparable facilities." However, before the two sides resort to such involuntary relocations, the Federal Communications Commission (FCC) is hoping that they will be able to come to mutually agreeable terms for early and voluntary microwave system relocation.

On April 18, 1995, the FCC officially announced that the period of voluntary negotiations between microwave incumbents and the winners of the A and B block PCS auctions had begun as of April 5, 1995. Under the FCC's rules, this voluntary negotiation period will run for two years, except for incumbent public safety microwave systems, which will have three years for voluntary negotiations.

Microwave incumbents now are beginning to receive overtures from agents for the PCS auction winners. As the negotiations commence, it is vital for microwave incumbents to understand what is being negotiated during this period. Although the PCS auction winners might indicate otherwise, these negotiations are not about "comparable facilities." Rather, they are about the early and voluntary

departure of the microwave incumbents from the 2 GHz band.

The issue of "comparable facilities" has almost nothing to do with this phase of the negotiations. The requirement for the PCS licensee to provide the microwave incumbent with "comparable facilities" comes into play only when an incumbent microwave licensee is being "involuntarily" relocated under the FCC's "mandatory" relocation rules. Involuntary relocation, however, may not be reached for three to five years.

Keller and Heckman is counselling its clients that this initial voluntary negotia-

tion period is not about engineering or "comparable facilities." It is about the marketplace.

The FCC's mandatory relocation rules preserve the microwave incumbents' rights, but there is no magic formula to accomplish that goal. During the voluntary relocation period, microwave incumbents are free to negotiate whatever terms and conditions they believe are appropriate under the circumstances.

The questions and answers on page 3 may help incumbent microwave licensees understand the nature of the voluntary negotiation period. ♦

### Keller and Heckman Takes on PCIA

Ten days after the FCC announced that the voluntary negotiation period had begun, PCIA, the trade association for the PCS industry, wrote a letter to FCC Chairman Hundt, seeking to change the ground rules.

PCIA decried the possibility that incumbent microwave licensees might try to extract "excessive payments" from PCS auction winners during the voluntary negotiations. Therefore, it asked the Chairman to eliminate the voluntary negotiation period, cap the allowable compensation and do away with the microwave licensee's right to restoration of its 2 GHz system if its replacement system turns out to be inadequate.

Learning of this letter, Keller and Heckman wrote to Chairman Hundt, defending the incumbents' rights to negotiate the best terms possible for their early and voluntary departure from the 2 GHz band.

This attempt to intimidate microwave incumbents and to contaminate the negotiation process is ample evidence of the tactics that will be employed against unwary microwave licensees.

More 2 GHz Relocations**FCC Proposes Reallocation of Spectrum for Mobile Satellite Service***by John Reardon*

**D**espite previous indications that use of the bands in the 2 GHz range would not be changed for the foreseeable future, the Federal Communications Commission (FCC) has adopted a Notice of Proposed Rule Making in ET Docket 95-18 (Notice) that looks toward reallocating the bands 1990-2025 MHz and 2165-2200 MHz for use by the Mobile Satellite Services (MSS).

Incumbent licensees currently operate a significant number of stations in these bands. Like the incumbent licensees who must move in order to make room for Personal Communications Services (PCS), these licensees also will be required to relocate their facilities if the FCC's proposal becomes final.

The 1990-2025 MHz band is part of a band that is currently allocated for the Broadcast Auxiliary Services (BAS). The FCC proposes to relocate BAS incumbents to the band 2110-2145 MHz and to force MSS licensees to pay the costs of this relocation.

The 2110-2145 MHz band, however, is currently used by common carrier fixed microwave services and private operational-fixed microwave services. In its Notice, the FCC stated that it believes that sharing between BAS and these fixed microwave services is not feasible. Therefore, before the BAS licensees can be moved into this band, the incumbent fixed microwave service licensees must be moved out.

Like the 2110-2145 MHz band, the 2165-2200 MHz band also is currently used by common carrier and private operational-fixed microwave services. They also must be moved before the band can be used by MSS providers.

The MSS providers would be required to pay the incumbents' relocation expenses, build new facilities for the incumbents, and demonstrate that these new facilities are "comparable" to the incumbents' former facilities. The new facilities would be built and tested by the MSS provider before relocation would occur. Should the new facilities prove within one year not to be equivalent in every respect to the former facilities, the MSS provider would have to pay to return the incumbent to its former facilities until full equivalency is attained.

Note that MSS providers would be forced to finance the relocations of both incumbent BAS licensees and fixed microwave licensees. The Notice is not clear on the time frame, but sources at the FCC indicate that there would be a three

year negotiation period similar to that provided licensees in the band 1850-1990 MHz.

In a footnote, the FCC proposed to eliminate primary license status after January 1, 1997, for licensees in the Private Operational-Fixed Microwave Service that are notified of a request for mandatory relocation. This is a significant departure from the policy that now governs the relocation of microwave incumbents to make room for PCS. Those licensees will not lose their primary status until their comparable facilities have been built and tested.

The FCC proposes to award the new MSS licenses through competitive auctions, utilizing simultaneous multiple round bidding. ♦

For further information contact the editor:

Raymond A. Kowalski, Law Offices of Keller and Heckman, Washington Center, Suite 500 West, 1001 G Street, N.W., Washington, D.C. 20001, Tel. (202) 434-4230, Fax (202) 434-4646. (This newsletter may be copied or quoted, so long as proper attribution is given. Articles are on topics of general interest and do not constitute legal advice for particularized facts.)

**KELLER AND HECKMAN PRACTICE AREAS:**

ANTITRUST ♦ ENVIRONMENTAL ♦ FOOD AND DRUG ♦ LITIGATION  
TELECOMMUNICATIONS ♦ OCCUPATIONAL SAFETY AND HEALTH  
LABOR AND EMPLOYMENT ♦ TRADE ASSOCIATIONS  
TRANSPORTATION ♦ GENERAL CORPORATE AND BUSINESS  
INTERNATIONAL TRADE

## Understanding Voluntary Negotiations

**Q.** If "comparable facilities" are not being negotiated during this voluntary negotiation period, what is?

**A.** Among other things, the price for the incumbent's early and voluntary departure from the 2 GHz band.

**Q.** Do I have to negotiate with the agent of the PCS auction winner if I am contacted?

**A.** No. Negotiations are not required during the voluntary negotiation period. A mandatory negotiation period will follow the voluntary negotiation period.

**Q.** If I choose to negotiate, do I still have the right to comparable facilities?

**A.** Comparable facilities is your worst-case scenario. Even if you are eventually relocated involuntarily, you are always entitled to comparable facilities. If you relocate voluntarily, you are entitled to anything that is mutually agreeable.

**Q.** Does that include upgraded, digital facilities?

**A.** It can include upgraded, digital facilities, dedicated wire-line facilities, fiber-optic facilities, or no facilities, that is, a cash payment — whatever you both agree to.

**Q.** Why would a PCS licensee agree to give us more than "comparable facilities" when they don't have to?

**A.** Some PCS licensees, especially those in major markets, may be willing to give you an incentive in return for your agreement to vacate the 2 GHz band early.

**Q.** Can I demand to be relocated early?

**A.** No. The PCS auction winner is in control of the timing of the negotiations. In fact, PCS auction winners may never initiate negotiations if they believe that their systems can be engineered in such a way as to not cause interference to your microwave system. However, they would be required to send you "prior coordination notices" if they are going to try to engineer around your microwave system.

**Q.** If we don't agree to relocate early, don't we risk the unavailability of microwave channels in the 6 GHz band to accommodate our new system?

**A.** Yes, but it is not your problem; it is the PCS licensee's problem. The PCS licensee will always have the burden to provide you with comparable facilities if you are required to relocate. If they cannot do so, you do not have to move. You cannot be accused of failing to bargain in good faith if you do not negotiate during the voluntary period.

**Q.** If we strike a deal for early and voluntary departure from the 2 GHz band, do we still have the right to be relocated back to the 2 GHz band within a year if our new system is not satisfactory?

**A.** Not necessarily. The right to be relocated back to the 2 GHz band applies only to an involuntary relocation. In the voluntary negotiations, you do not have the right to be relocated back to the 2 GHz band unless you negotiate it.

**Q.** So giving up the relocation right is another reason why the PCS licensee might be willing to give us more than "comparable facilities?"

**A.** Precisely.

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*"...this initial voluntary negotiation period is not about engineering or 'comparable facilities.' It is about the marketplace."*

- Lead Story

**Congress Enacts Last Minute Tax Measures**

# 2 GHz Microwave Incumbents Could Benefit From Tax Break

by Tamara Y. Davis

As part of a package of last minute tax measures, Congress has authorized the Federal Communications Commission (FCC) to issue Tax Certificates to 2 GHz microwave incumbent licensees who enter into voluntary negotiations for the relocation of their microwave facilities. The authority for issuance of Tax Certificates to 2 GHz microwave incumbents is now contained in Section 1033 of the Tax Code.

This action permits tax-free treatment for transactions between PCS licensees and incumbent microwave operators who voluntarily move from the 2 GHz band. Since relocation to different frequency bands (or other media) is necessary to clear the band for PCS technology,

Congress classified such transactions as "involuntary conversions" within the meaning of Section 1033 of the Tax Code.

Section 1033 permits a taxpayer to defer any gain on property sold or exchanged as a result of an involuntary conversion. To defer the gain, the transaction between a microwave incumbent and an A or B Block PCS auction winner must occur before March 13, 1998. The taxpayer must: (1) reinvest the proceeds of the transaction in property which is similar to or related in service or use to the property which was converted; (2) obtain a certificate from the FCC, clearly identifying the property, and showing that the transaction was necessary or appropriate to

effectuate the FCC's microwave relocation policy; and (3) file a statement electing this tax treatment in the year the sale or exchange occurred. The election must be filed at the time of the sale and cannot be filed as part of an amended return.

Depending on the age of a company's 2 GHz microwave facilities and its treatment of depreciable property, its 2 GHz facilities may already be fully depreciated. Without this relief, any value received for the system would be treated and taxed as a capital gain. ♦

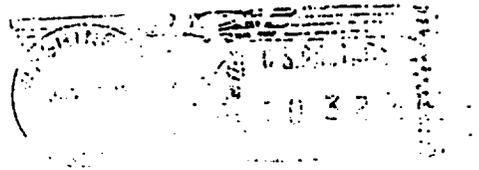
## TELECOMMUNICATIONS

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[REDACTED]



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THE COMMISSION SHOULD ADOPT A  
ROAMING RULE

COMMISSION HELP WILL BE NECESSARY TO  
ASSIST PCS's LAUNCH

# THE INDUSTRY MAY NOT VOLUNTARILY PROMOTE ROAMING

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LARGE CELLULAR AND PCS COMPANIES PLAN TO  
CREATE NATIONAL NETWORKS:

- AT&T/McCAW
  - AIRTOUCH/BELL ATLANTIC/NYNEX/US WEST
  - WIRELESS CO.
- CUSTOMERS OF REGIONAL AND DE PROVIDERS MAY BE  
UNABLE TO ACCESS THESE NETWORKS FOR  
COMPETITIVE REASONS.

# A BROAD ROAMING POLICY SHOULD BE ADOPTED

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THE EXISTING PART 22 RULE, 22.901 SHOULD BE EXTENDED TO ALL CMRS PROVIDERS.

THIS WOULD ALLOW ROAMING ON CELLULAR ANALOG SYSTEMS AND OTHER PCS SYSTEMS.

ADDITIONALLY, THE RULE SHOULD PROVIDE THAT ROAMING IS AVAILABLE ON FAIR AND NONDISCRIMINATORY TERMS AND CONDITIONS.

- THIS PROMOTES SECTIONS 201 AND 202.

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ATTACKS ON GSM ARE  
ANTICOMPETITIVELY MOTIVATED

COMMISSION SHOULD ALLOW INDUSTRY TO  
RESOLVE ANY PROBLEMS

# CENTER FOR ELECTROMAGNETIC COMPATIBILITY, UNIVERSITY OF OK

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CTIA HAS FUNDED INDEPENDENT STUDY BY THE CENTER FOR ELECTROMAGNETIC COMPATIBILITY AT THE UNIVERSITY OF OKLAHOMA.

CENTER WILL STUDY EFFECTS OF WIRELESS HANDSETS ON HEARING AIDS, AMONG OTHER THINGS.

- REPORTS OF PROBLEMS WITH HEARING AIDS IN EUROPE ARE WITH SYSTEMS WHICH OPERATE AT FOUR TIMES THE POWER OF OUR GSM SYSTEM.
- ISSUE IS ONE OF INTERFERENCE MANAGEMENT.
- ATTACKS ARE ANTICOMPETITIVELY MOTIVATED.