

EX PARTE OR LATE FILED



**Building The
Wireless Future.**

July 11, 1993

CTIA

Cellular
Telecommunications
Industry Association
1250 Connecticut
Avenue, N.W.
Suite 200
Washington, D.C. 20036
202-785-0081 Telephone
202-785-0721 Fax
202-736-3256 Direct Dial

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

RECEIVED

JUL 11 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Randall S. Coleman
Vice President for
Regulatory Policy and Law

RE: RM-8643

Dear Mr. Caton:

On Monday, July 10, 1993, the Cellular Telecommunications Industry Association (CTIA) sent the attached letter from Brian Fontes, Senior Vice President for Policy and Administration, to Ms. Regina Keeney, Chief, Wireless Telecommunications Bureau of the Federal Communications Commission.

Pursuant to Section 1.1206(a)(1) of the Commission's rules, 47 C.F.R. § 1.1206(a)(1), 2 copies of this letter and its attachments are being filed with the Secretary's office.

If you have any questions in this regard, please contact the undersigned.

Sincerely,

Randall S. Coleman

Attachment

No. of Copies rec'd 002
List A B C D E



202-785-0081
202-785-0721

July 10, 1995

HAND DELIVERED

Ms. Gina Keeney
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Suite 5002
Washington, DC 20554

**Re: Petition for Rulemaking Regarding a Plan for
Sharing the Costs for Microwave Relocation
(RM 8643)**

CTIA

Cellular
Telecommunications
Industry Association
1250 Connecticut
Avenue, N.W.
Suite 200
Washington, D.C. 20036
202-785-0081 Telephone
202-785-0721 Fax
202-736-3216 Direct Dial

Brian F. Fontes
Senior Vice President for
Policy and Administration

Dear Gina:

As you know, Pacific Bell Mobile Systems (Pacific Bell) recently asked the Commission to establish a rulemaking to address the mechanism by which the costs for relocating the incumbent 2 GHz microwave users are to be apportioned among PCS providers and submitted its own plan for the sharing of those costs by PCS licensees.¹ CTIA strongly supports the speedy development and deployment of new wireless technologies, including PCS, and recognizes that the orderly relocation of current incumbent microwave users is of paramount importance to achieving that goal. In comments supporting Pacific Bell's request for a rulemaking on this important matter, CTIA stated that it would provide more substantive information to assist the Commission in adopting rules for the most rapid and equitable mechanisms for relocating microwave incumbents.²

Last week, CTIA's Public Policy Council reviewed this issue. While the details of our position will be refined over the next few weeks, I can now provide an outline of our position. As you will note, CTIA believes that the Commission can best facilitate the prompt and equitable relocation of microwave users by rules that establish appropriate incentives among the affected parties.

¹ See Petition for Rulemaking of Pacific Bell Mobile Systems Regarding a Plan for Sharing the Costs of Microwave Relocation, RM 8643, filed May 5, 1995.

² See Comments of the Cellular Telecommunications Industry Association in RM 8643, filed June 15, 1995.

CTIA estimates that PCS licensees will have to relocate approximately 5,100 microwave links, operated by approximately 1,200 incumbent microwave users, which presently occupy the broadband PCS spectrum (2 GHz band). To "facilitate rapid implementation of new services in the emerging technology bands," the FCC established a two-year voluntary negotiation period and a one-year mandatory negotiation period.³ During the voluntary period, the PCS licensees and microwave incumbents are encouraged to negotiate "in good faith" the terms of relocation. If agreement has not been reached during the voluntary period, then negotiation must take place during the mandatory period. If negotiations are not completed at the end of the mandatory period, a PCS licensee may evict the incumbent. However, at all times the PCS licensee is required to pay for all relocation costs to "comparable" facilities.⁴

The current two-step process for relocation negotiations was arrived at by compromise. It was believed that microwave users in the 2 GHz band should be given some flexibility regarding the timing of their relocation and that their reasonable relocation costs should be borne by the PCS providers that would replace them. It was also intended that PCS providers would be able to relocate the incumbent microwave operations expeditiously and at a reasonable cost. Unfortunately, it appears that the current process does not provide adequate incentives for the microwave users to move earlier rather than later. As a result, PCS providers are confronted with two unacceptable alternatives: exorbitant demands from incumbent microwave licensees or a three-year waiting period, accompanied by the obligation to still provide comparable facilities to the microwave incumbent. Unfortunately, the "cap" proposed by Pacific Bell and others does not address the critical problem: incumbent users have no incentive to relocate during the "voluntary" period since they will be fully compensated if they decide to relocate during the final year.

This situation is a prescription for disputatious negotiations and delayed deployment of new, competitive wireless services to the consumer. For these reasons, CTIA will ask the Commission to:

1. Clarify and vigorously enforce its requirement that incumbent 2 GHz microwave licensees negotiate their relocation in good faith or forfeit their license; and

³ Third Report and Order and Memorandum Opinion and Order, ET Docket No. 92-9 (Emerging Technologies), 8 FCC Rcd 6589 (1993). Public safety facilities fall into an extended plan of three years voluntary plus two years mandatory relocation.

⁴ FCC definition of "comparable cost" is vague, but would include engineering, equipment, site, licensing, acquisition, and testing costs.

2. Modify its current relocation negotiation plan (two-year voluntary negotiation period, followed by a one-year mandatory negotiation period) to provide incumbent microwave licensees with an incentive to relocate during the voluntary negotiation period by requiring microwave licensees to relocate at their own expense during the mandatory negotiation period.

These proposals are discussed below.

The FCC Must Strengthen Incentives to Relocate During the Voluntary Period

Under the FCC's current relocation negotiation plan, incumbent microwave users have no incentive to negotiate in earnest during the two-year voluntary period. Even if a microwave operator receives a reasonable offer during the voluntary period, the offer may be rejected without significant financial consequence since the PCS operator must still provide comparable facilities at the end of the mandatory period. If the PCS and microwave industries are to enter into reasonable and expeditious relocation negotiations, the microwave incumbents must have an incentive to move during the two-year voluntary negotiation period.

In Canada, this problem has been avoided by the creation of rational incentives. Pursuant to the Spectrum Policy Framework developed by the Canadian government for managing the allocation of spectrum resources and the reassignment of fixed microwave systems in the 2 GHz bands, the PCS and fixed service operators are encouraged to negotiate mutually acceptable terms and conditions relative to the relocation of the fixed microwave incumbents. A two-year period has been set for the negotiation process. At the conclusion of the two year negotiation period, the microwave incumbents that have not successfully agreed to move assume the costs of their relocation. See attachment.

CTIA believes that the FCC, too, can create real incentives for microwave licensees to relocate early in the negotiation process by incorporating the main thrust of the Canadian plan, without wholly discarding its own two-year, plus one-year negotiation approach. This can be accomplished by retaining the current requirement that the incoming PCS provider cover the costs of microwave relocation during the two-year voluntary period. However, if the parties have not reached agreement within the two-year voluntary period, the microwave user must still vacate the 2 GHz band, but must do so at its own expense. This approach equalizes the parties' bargaining power, as well as their desire to negotiate earnestly and in good faith during the two-year "voluntary" period.

The FCC Must Clarify "Good Faith" Negotiations

Several PCS companies have found that incumbent microwave licensees are making excessive demands in negotiating relocation terms and conditions. For example, the FCC has mandated that PCS providers relocate incumbents to "comparable" facilities. However, the negotiations are hampered by unreasonable demands. The Commission must clarify and vigorously enforce the requirement that throughout the negotiation period incumbent microwave users must negotiate in "good faith" with PCS providers. To that end, the Commission should develop procedures for PCS providers to seek prompt FCC intervention if microwave incumbents fail to adhere to this principle. Moreover, in the event that the incumbent microwave users do not negotiate in "good faith," the licensee's are subject to forfeit their licenses pursuant to §§ 303(m)(A), 312(a)(4), and 312(b) of the Communications Act. These sections generally grant the Commission the authority to suspend the license of any operator who fails to adhere to or otherwise violates the Commission's rules. Falling short of license forfeiture, the Commission can reduce the status of the incumbents' license from co-primary to secondary.⁵

I look forward to discussing these matters with you in greater detail.

Sincerely,



Brian F. Fontes

cc: Lawrence Atlas

Attachment: Transition Policy for PCS Implementation
(Excerpted from The Spectrum Policy Framework for Canada)

⁵ The FCC also should take this opportunity to clarify the primary rights of the PCS licensee vis-à-vis secondary rights holders. No procedures exist to permit primary PCS licensees to require secondary licensees cease operations that interfere with PCS operations.

7. Transition Policy

7.1 General principles

The *Spectrum Policy Framework for Canada* issued in 1992 outlines, among other things, the policy guidelines dealing with the allocation of spectrum resources and the displacement of radio systems. The policy states that:

The radio frequency spectrum, as a national public resource, will be allocated and planned to advance public policy objectives, while ensuring a balance between public and private radiocommunication use to benefit the Canadian public. The allocation of and access to the spectrum will be adapted to meet changing user requirements, to provide spectrum that best meets the needs of the user, and to facilitate new and innovative services.

As a guideline for radio system or services displacement, the policy states that:

As a radio licence does not confer ownership nor a continued right to a particular radio frequency, the Department will continue to provide reasonable notice to inform users of any conditions or circumstances which could result in the displacement of their services or systems to other bands.

Moreover, the policy reconfirms that there is no liability or responsibility or intent by the Department to financially compensate spectrum users being displaced. Furthermore, as new services have been introduced, it has not been the practice of Industry Canada to ask new radio users to compensate existing users being displaced. Of course, private arrangements may be made between new radio users and existing users on a voluntary basis, within the provisions of the spectrum transition policy.

The terms of the policy are reinforced by section 20 of the General Radio Regulations, Part II, which provides that the assignment of a radio frequency does not confer a monopoly on the use of the frequency or any right of continued tenure.

7.2 Policy provisions for PCS

As established by public consultation, there is strong support and interest for the implementation of PCS in the 2 GHz range. Also, the public comments received on DGTP-008-94 support, with some variations of certain aspects, the general direction and rules proposed for a transition mechanism to take into

account the specific fixed stations that need to be displaced to make frequency spectrum available, where necessary, for the implementation of PCS.

Industry Canada has taken the following policy actions as a first step to accommodate the spectrum requirements of PCS and fixed services.

The *Revision to the Canadian Table of Frequency Allocations (1994)*, announced in Gazette Notice DGTP-005-94 dated October 29, 1994, makes frequency allocations for the implementation of mobile service such as PCS. The new footnote C35³ in the Canadian Table establishes the inter-service provisions for the fixed and mobile allocations in the band 1850-1990 MHz.

Industry Canada adopted a full *Revision of the Microwave Spectrum Utilization Policies in the Range of 1-20 GHz* with the publication of Gazette Notice DGTP-002-95 on January 21, 1995. These policies include the re-arrangement of fixed microwave bands at 2 GHz to enable the implementation of PCS service. Also, effective January 21, 1995, a moratorium has been placed in effect on any further licensing of new fixed microwave stations in the bands 1890-2010 MHz and 2110-2200 MHz, in order to facilitate, in due course, the introduction of emerging wireless communications, including future generations of personal communications. The microwave spectrum policies will assist existing microwave users to take advantage of the availability of frequencies in the modified fixed service bands at 2 GHz (outside the frequency spectrum designated for PCS and the bands identified in the above-mentioned moratorium) and in other suitable bands above 3 GHz.

As announced in Gazette Notice DGTP-006-94, Industry Canada has put a moratorium on the licensing of new fixed microwave applications in the band 1850-1990 MHz effective November 5, 1994.

7.3 Transition policy for PCS Implementation

A *Spectrum Transition Policy* and the provisions being adopted in this section will provide for the release of frequency spectrum for PCS systems and the orderly displacement of fixed stations.

The following provisions of the *Spectrum Transition Policy* recognize the need to provide a reasonable period of notification for displacement of fixed

³ C35 (CAN 94) Existing fixed stations operating in the band 1850-1990 MHz will have priority over the mobile service until 1 July 1997. After this date, specific fixed stations will need to be displaced where necessary to enable the implementation of new mobile systems such as personal communications. The displacement of fixed stations as well as the implementation of new mobile systems will be governed by spectrum utilization policies.

stations and the need to introduce PCS in the marketplace in the earliest time frame. Moreover, the provisions outline a "where necessary" displacement approach which links the relocation of fixed stations to the PCS service implementation and spectrum requirements.

7.4 Transition provisions for licensed PCS

The following provisions apply to the displacement of fixed stations to provide spectrum for licensed PCS systems:

- a) Notification for displacement of specific frequency assignments of fixed stations to make spectrum, where necessary, available in certain geographical areas will begin to be served after PCS licences have been awarded. Industry Canada will issue a set of operating guidelines, in the near future, outlining the displacement process and the related spectrum sharing criteria for coordination.
- b) The displacement of frequency assignments of fixed stations and the date indicated in the notification will be based on the frequency spectrum necessary for the implementation of PCS. PCS operators will ensure that such displacements, including dates, are critical to meet the PCS service dates and that reasonable frequency spectrum alternatives do not exist.
- c) For any fixed frequency assignment subject to displacement, the notification period will be a minimum of 4 years for microwave equipment that has been licensed for 10 years or less at the time of the notification, with the exception of frequency assignments authorized to PCS licensees and their affiliates (as referred to earlier in this document), and the cellular carriers, in which case a minimum notification period of 2 years will apply. Frequency assignments for which the microwave equipment has been licensed for more than 10 years at the time of notification will be given a minimum notification period of 2 years. Earlier displacement may be achieved through mutual agreements between PCS operator(s) and the affected fixed station operator(s).
- d) The fixed station operator will cease the operation of the identified frequency assignment(s) on or before the displacement date indicated in the served notification. In accordance with footnote C35 in the Canadian Table of Frequency Allocations, a fixed station licensee will not be required to displace frequency assignments before July 1, 1997.
- e) In the event a PCS operator identifies a need to defer a notified displacement date, an amendment to the notice of displacement should be issued at least 1 year prior to the displacement date in effect.

f) The PCS and fixed service operators are encouraged to negotiate mutually acceptable displacement dates within the provisions of section c) above. Industry Canada will retain oversight of the displacement process and will assist, where appropriate, affected fixed operators in identifying new replacement frequency assignments.

Some PCS licensees may also be operators of fixed stations with frequency assignments in the band 1850-1990 MHz. Industry Canada may take certain necessary action, including the incorporation of specific PCS licence conditions addressing the displacement of such frequency assignments, in order to foster a level playing field amongst the licensed PCS operators and to make available the necessary spectrum. As an example, prior to providing service in a specific area, a PCS licensee may be required to cease operation of those of its fixed station frequency assignments that would prevent the timely introduction of the service in that area by other licensees. Also, it would be expected that existing fixed station operators will act in good faith to accommodate PCS.

It should be noted that a significant delay in the use of released frequency spectrum by PCS licensees, after the displacement date, will be viewed by Industry Canada as a serious breach of service commitment, particularly if fixed stations were displaced prematurely.

Industry Canada will monitor the effectiveness of the spectrum policy provisions related to the displacement of fixed systems. Changes to these provisions may be made to ensure that the continued availability of spectrum for PCS services is accomplished in the most efficient manner.

7.5 Development of transition provisions for licence exempt PCS devices

The implementation of licence exempt PCS devices can provide an opportunity to develop and implement new innovative services. The willingness of Canadian industry to actively develop an approach to encourage the release of frequency spectrum will be a strong indicator of the interest of Canadian industry to be more than importers but also manufacturers of PCS devices.

Initially there may be sufficient frequency spectrum unused in certain geographical areas in the frequency band 1910-1930 MHz to introduce non-nomadic licence exempt devices. ("Non-nomadic" refers to a device whose spectrum usage can be identified and controlled in a given area.) In some areas, it may be possible to coordinate the introduction of such devices with existing fixed stations.

The operation of nomadic licence exempt PCS devices may not be feasible until contiguous sub-bands of spectrum are made available country-wide.

Industry Canada believes that an industry organization should be established with a mandate to facilitate the orderly introduction of licence exempt PCS devices in Canada. Such an organization would be responsible for most aspects of the transition process including the following:

- The development of recommendations to Industry Canada regarding the displacement of frequency assignments of fixed stations, across Canada or in specific areas, in accordance with a business plan and a set of transition rules. (The transition rules for licence exempt PCS will be established by Industry Canada).
- The identification of specific sub-bands, and operating conditions, in populated areas where non-nomadic devices could operate without causing interference to fixed stations.

Industry Canada is currently seeking the view of industry on the structure and operating mandate of such an industry organization.

B. Interconnection Between Telecommunications Networks

It is expected that many services authorized pursuant to this policy will require interconnection to the public switched telephone network. The CRTC, and in Saskatchewan, the relevant provincial authority, are responsible for approving the terms and conditions of interconnection for access to the public switched telephone network.

Interconnection standards similar to IS-01 (interconnection of cellular radio systems and common carrier systems) will be required to facilitate the interconnection with public switched networks. The Terminal Attachment Program Advisory Committee (TAPAC) will be required to develop these standards.

There are also likely to be opportunities for interconnection between the facilities constructed for PCS and networks other than the public switched telephone network. Proposals which enhance communications capabilities while rationalizing infrastructure investment will be encouraged. As noted above, one means of effecting such rationalization may be through the use of resale, by either offering to resell capacity on the PCS facilities to be constructed or by arranging for the use of (some part of) existing facilities.