It follows that all PCS interests benefit from rapid clearing of microwave operations from the PCS band and, accordingly, a cost sharing proposal which facilitates this process should be welcomed by all such parties.

VI. CONCLUSION

PCIA's cost sharing proposal combines the best elements of its original plan and that submitted by Pacific Bell. A cost sharing mechanism based on the principles put forth by PCIA will benefit all facets of the PCS industry and the microwave incumbents. It will also reduce overall administrative costs, minimize the FCC's oversight role, and encourage PCS providers to move quickly to relocate microwave licensees and deploy their PCS systems, thus bringing new and exciting services to the public in the shortest possible time.

For all of these reasons, the PCS industry has coalesced in broad support for the establishment of sound cost sharing requirements. Accordingly, PCIA and the numerous signatories below urge the Commission to initiate a rulemaking and adopt cost sharing requirements as detailed herein.

Respectfully submitted,

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By: /s/ Doug Forbes
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June 15, 1995

APPENDIX

AMENDMENT TO PART 24

Microwave Relocation Cost Sharing Plan. Broadband PCS licensees and UTAM, Inc. (hereinafter "PCS providers) are required to participate in an industry plan to equitably share the costs of microwave relocation. A PCS provider that relocates a microwave link is entitled to reimbursement from any other PCS provider(s) that benefits from the relocation of the link. Whether a PCS provider benefits from a particular microwave link relocation will be determined in the following manner:

(a) Section 94.63 states the interference criteria for private fixed microwave licensees. The PCS provider relocating the microwave link acquires the interference right for that link and is registered as such in the FCC database.

(b) Whenever another PCS provider determines as part of the prior coordination process required by Section 24.237 or by another industry accepted standard that it would have interfered with the link had it not been relocated, it must reimburse the holder of the interference rights and any other PCS providers that have provided reimbursement to the holder of the interference rights in equal shares. Cost sharing will be required only for co-channel microwave links having endpoints within a PCS entity's authorized operating territory. Co-channel links are defined as those with an overlap of licensed occupied bandwidth. PCS providers are not required to make reimbursement payments for interference that may have been caused to links licensed to operate on frequencies adjacent to the PCS provider's licensed spectrum.

(c) The amount of reimbursement required can be mutually agreed upon by the parties or determined by the following formula:

$$R_N = \frac{C}{N} \times \frac{120 - (T_N - T_1)}{120}$$

where R_N is the amount of reimbursement; C equals the total amount to relocate system or $250,000 (or $400,000 if the replacement system requires a new tower), whichever is less; N is the number of interfering PCS providers; T_N equals the number of the month (1 - 120) that a PCS provider places his system in service; and T_1 is the month that the first PCS provider placed his system in service.

(d) If the holder of the interference rights to a link will never initiate service that would have interfered with the link (e.g., an entire microwave network is relocated but the holder of the interference rights does not have a license for the territory or frequencies corresponding with some links in that network), the PCS provider who first provides service will interfere with the link must reimburse the provider that relocated the system for 100% of the cost paid to relocate the link or $250,000 (or $400,000 if the replacement system requires a new tower), whichever is less. The reimbursing PCS provider then acquires the interference rights to that link and is entitled to all subsequent reimbursement as described in (b).

(e) Designated entity PCS providers (as defined in Section 24.709) and UTAM, Inc. (as defined in Section 15.307) are entitled to make their reimbursement payments in installments.

(f) A designated clearinghouse will require periodic interference analyses from PCS providers and maintain the microwave relocation cost records. Responses to interference inquiries must be received by the clearinghouse within 30 days of issue. Access to all records is limited to PCS providers that determine as part of the prior coordination process that they would have interfered with a microwave link but for its prior relocation. The clearinghouse will attempt to resolve any disputes arising among PCS providers.

(g) PCS providers are encouraged to use Alternative Dispute Resolution pursuant to Section 1.18 of the Commission's Rules to settle any disputes not resolved by the clearinghouse. The FCC will consider any unresolved complaints regarding reimbursement claims by PCS providers as part of the license renewal process.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 1995, I caused copies of the foregoing "Comments of the Personal Communications Industry Association" to be served upon the following:

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

Petition for Rulemaking	)	
of Pacific Bell Mobile Services	)	RM-8643
Regarding a Plan for Sharing	)	
the Costs of Microwave Relocation	)	

REPLY COMMENTS OF
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association (PCIA) hereby submits its reply to comments on the Petition for Rulemaking filed by Pacific Bell Mobile Services (Pacific Bell).[1] The record demonstrates overwhelming support among both PCS providers and the microwave industry for the establishment of a cost sharing mechanism which would facilitate the transition of the 2 GHz band from fixed microwave use to PCS. In fact, many major PCS providers commenting on the petition support the consensus proposal submitted by PCIA, Pacific Bell, and others in their joint opening comments.[2] Accordingly, PCIA urges the Commission to promptly initiate a rulemaking and adopt a cost sharing plan based on the principles recommended by PCIA.

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[1] Petition for Rulemaking of Pacific Bell Mobile Services, RM-8643 (filed May 5, 1995) [hereinafter "Pacific Bell Petition"].

[2] Comments of the Personal Communications Industry Association, RM-8643 (filed June 15, 1995) [hereinafter "PCIA Comments"].

I. INTRODUCTION AND SUMMARY

In their comments on the Pacific Bell Petition, representatives of both the PCS and microwave industries urged adoption of a microwave relocation cost sharing plan. Commenters noted that such a proposal will ensure an equitable allocation of relocation costs as well as improving the efficiency of the transition process. Importantly, most major PCS providers support cost sharing in general and PCIA's consensus proposal in particular. Those supporting the PCIA proposal include: American Personal Communications; Ameritech; BellSouth Wireless, Inc.; Cox Enterprises, Inc.; Omnipoint Communications; Pacific Bell Mobile Services; Sprint Telecommunications; and Western PCS Corporation. These providers recognize that the PCIA plan strikes the correct balance between fairly allocating microwave relocation costs and taking advantage of the efficiencies a mandatory cost sharing program will produce.

As PCS licensees move closer to the deployment of their systems and the need to begin microwave relocations grows, it is of critical importance that the Commission adopt a mandatory cost sharing plan. This will remove disincentives for PCS providers to relocate promptly the incumbents in their own service areas to negotiate the relocation of microwave system links outside those areas. Allowing such disincentives to remain will only slow the deployment of PCS systems and make the transition process more difficult for microwave incumbents. The Commission must act quickly to ensure the success of a cost sharing plan in facilitating the delivery of PCS services to the public.

Although all commenters supported the adoption of a cost sharing plan, several parties demonstrated an apparent misunderstanding of the PCIA proposal. In particular, a number of commenters expressed concern that PCIA's proposed cost sharing cap was a limit on the costs that could be paid to incumbents. However, the cap is only a limit on costs eligible for sharing. Others incorrectly suggested that the premiums paid in addition to the actual costs of relocation would be eligible for reimbursement. In fact, only the actual relocation costs of a comparable system as authorized by the FCC in the transition rules are to be included in the cost sharing calculation. Any premium paid to the incumbent for an early relocation must be absorbed by the relocating PCS provider.

II. PCIA HAS NOT PROPOSED TO CAP RELOCATION COST COMPENSATION OR TO REQUIRE THE SHARING OF ANY PREMIUM PAYMENTS

Notwithstanding the overwhelming support expressed for a cost sharing plan, several of the comments filed with the Commission reveal a misunderstanding of the proposal. PCIA believes that a clear understanding of its plan will alleviate the few substantive reservations expressed by microwave incumbents and PCS providers.

A. The Cost Sharing Cap Proposed by PCIA Is a Limit on the Costs That are Eligible To Be Shared among Relocating PCS Providers, Not a Limit on the Payments to Microwave Licensees

Several microwave incumbents who filed comments on Pacific Bell's Petition expressed concern that the cap on the costs subject to sharing among PCS providers would also cap the amount that could be paid to a microwave licensee for the replacement of its link. To the contrary, the cap is only a limit on the costs on which a PCS provider can seek reimbursement, absent an agreement to the contrary, not on the amount which a PCS provider may have to pay to relocate a particular microwave incumbent. Under the Commission's transition rules, microwave licensees remain entitled under the rules to full cost compensation for their system and comparable alternative facilities.[3] PCIA's proposed cost sharing plan does not affect these requirements. Consequently, no ratepayers will be required to bear "'uncompensated' costs,"[4] and incumbents will not be denied any necessary multiple hops or other comparable facilities[5] as a result of the cap.

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[3] Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589, 6603 ¶ 36 (1993).

[4] Comments of Metropolitan Water District of Southern California, RM-8643 at 2-6 (filed June 15, 1995) (expressing concern that the costs of relocating microwave systems in rural desert terrain and highly-sensitive environmental areas may be higher than the cap).

[5] See Comments of the Association of American Railroads, RM-8643 at 6-8 (filed June 15, 1995)(stating that relocation of microwave links may cost more than the cap because a larger number of hops are often required at higher frequencies and other more expensive mediums, such as fiber optic lines, may be necessary).

The $250,000 cap (plus an additional $150,000 if a new tower is required) on reimbursable costs is not arbitrary, but was intentionally set at a level well above with the record evidence of the average costs of relocating microwave systems. At the same time, it is designed to protect PCS providers who enter the market later and who have no opportunity to participate in the relocation negotiations. This cap and the right to deferred payments are particularly important to ensure that designated entity PCS licensees and UTAM, Inc. (the unlicensed PCS frequency coordinator) are not forced to pay excessive relocation costs since they will likely have limited funds available.

PCIA fully understands that, in some cases, a PCS provider may have to pay more than $250,000 (plus $150,000 if a new tower is required) to relocate a specific link. However, the number of times this is likely to occur is small since the $250,000 (plus $150,000 if a new tower is required) cap suggested by PCIA is well above the FCC's own estimate of 2 GHz relocation costs and, in any event, total aggregate costs for relocation will be offset by a similar number of instances of below cap relocations. In addition, PCS providers remain free and are encouraged to negotiate a sharing arrangement tailored to the individual circumstances of a particular link or system prior to a relocation. But some situations may still remain in which a PCS provider will be responsible for actual relocation costs above the amount of the cap for the relocation of a particular link. PCIA nonetheless believes that this "rough justice" is required to protect later market entrants.

B. Any Premiums Over the Actual Costs of Relocation Are Not Appropriate for Inclusion in Mandatory Cost Sharing

PCIA has proposed sharing of only actual microwave relocation costs.[6] It follows that any amount paid by a PCS provider to a microwave licensee above the actual costs of a comparable system must be absorbed by the relocating entity. For example, a PCS provider may require the early relocation of a microwave link and agree to pay the licensee an additional sum in excess of actual relocation costs so that the licensee will relocate on an expedited schedule. This premium over cost should be absorbed by the relocating entity because it will be the principal beneficiary of the early relocation. Later market entrants will only be required to share the actual costs required to relocate the link.

PCIA remains concerned that some microwave industry incumbents do not fully understand the 2 GHz transition rules established by the FCC. Those transition rules were adopted to ensure that existing incumbents in the band do not suffer adverse consequences from the reallocation of the spectrum to PCS. After careful study, the Commission set up detailed rules which state that microwave incumbents are entitled to "comparable facilities [that] must be equal to or superior to existing facilities."[7] PCIA strongly supports these requirements.

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[6] PCIA Comments at 15-16.

[7] Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd at 6603 ¶ 36.

Nonetheless, some microwave licensees have asserted in their comments that they are entitled to the "fair market value" of their licenses.[8] However, there is no relevant, competitive market for these microwave facilities in which such "fair market value" can be determined. Instead, there are the FCC transition rules, which are intended to substitute for such a market. It would frustrate this clear FCC policy to permit incumbents themselves to take advantage of these protections by extracting unreasonable concessions from PCS licensees over and above the costs of comparable replacement facilities.

III. PROMPT FCC ACTION TO PROMULGATE COST SHARING REQUIREMENTS

Given the importance of cost sharing to the successful transition of the 2 GHz band to PCS and the broad support for the PCIA proposal, the Commission should move expeditiously to open and complete a proceeding to adopt cost sharing rules. All of the substantive concerns of the commenting parties herein have now been appropriately resolved. The initial PCS licensees have already invested enormous sums and must move quickly to construct their systems. The public as well should not be denied the early implementation of these important new services. Accordingly, the existing disincentives to the efficient conduct of the microwave relocation process should be removed by the establishment of cost sharing requirements and parties should

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[8] See Comments of City of San Diego, RM-8653 at 5-8 (filed June 15, 1995); Comments of UTC, RM-8643 at 6 (filed June 15, 1995).

be encouraged to focus their efforts on the earliest possible delivery of service in the public interest.

IV. CONCLUSION

PCIA believes that its cost sharing proposal is the best mechanism for fairly allocating the costs of microwave relocation while protecting the interests of both microwave incumbents and PCS providers. The FCC should act swiftly to initiate a rulemaking and adopt regulations which will speed the delivery of PCS to the public.

Respectfully submitted,

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June 30, 1995

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BUILDING THE WIRELESS INFRASTRUCTURE

The emerging personal communications industry promises to create, conservatively, 300,000 new jobs for Americans, to generate $30 to $50 billion in investment in building out new networks, to bring more choice and lower costs to American consumers, and to significantly advance the principle of competition in the local telecommunications marketplace. If this rich potential is to be realized, however, network infrastructure must be deployed expeditiously. Existing wireless licensees need to expand their networks: new services must build their competing networks.

A. Responsible policies governing siting of wireless telecommunications facilities

The current patchwork of inconsistent and sometime even hostile local restrictions on operation and construction of transmission facilities could undermine that vision. State and local interests and concerns regarding the impact of network deployment must be addressed in a uniform, reasoned manner.

For this reason, PCIA secured the sponsorship by Representatives Scott Klug (R-Wisconsin) and Tom Manton (D-New York) for the introduction of language in the House telecommunications bill (HR 1555) that addresses siting policies (Section 107)

This language requires Federal, state and local governments, along with affected industry, to sit down and work out, together, consistent, reasonable and effective regulations governing the siting of facilities for the provision of commercial mobile radio services. It would ensure that this was done in a timely manner.

That language is <u>not</u> about taking power away from localities. It is about ensuring that localities' legitimate interests are addressed in siting policies. It is about ensuring that those local interests are coordinated, rather than in conflict with the equally compelling national interest in seeing that ubiquitous, low cost, and competitive wireless services are available to our citizens.

4 "(7) FACILITIES SITING POLICIES.—(A) Within
5 180 days after enactment of this paragraph, the
6 Commission shall prescribe and make effective a pol-
7 icy to reconcile State and local regulation of the
8 siting of facilities for the provision of commercial
9 mobile services or unlicensed services with the public
10 interest in fostering competition through the rapid,

1 efficient, and nationwide deployment of commercial
2 mobile services or unlicensed services.
3 "(B) Pursuant to subchapter III of chapter 5,
4 title 5, United States Code, the Commission shall es-
5 tablish a negotiated rulemaking committee to nego-
6 tiate and develop a proposed policy to comply with
7 the requirements of this paragraph. Such committee
8 shall include representatives from State and local
9 governments, affected industries, and public safety
10 agencies.
11 "(C) The policy prescribed pursuant to this
12 subparagraph shall take into account—
13 "(i) the need to enhance the coverage and
14 quality of commercial mobile services and unli-
15 censed services and foster competition in the
16 provision of commercial mobile services and un-
17 licensed services on a timely basis;
18 "(ii) the legitimate interests of State and
19 local governments in matters of exclusively local
20 concern, and the need to provide State and
21 local government with maximum flexibility to
22 address such local concerns, while ensuring that
23 such interests do not prohibit or have the effect
24 of precluding any commercial mobile service or
25 unlicensed service;

1 "(iii) the effect of State and local regula-
2 tion of facilities siting on interstate commerce;
3 "(iv) the administrative costs to State and
4 local governments of reviewing requests for au-
5 thorization to locate facilities for the provision
6 of commercial mobile services or unlicensed
7 services; and
8 "(v) the need to provide due process in
9 making any decision by a State or local govern-
10 ment or instrumentality thereof to grant or
11 deny a request for authorization to locate, con-
12 struct, modify, or operate facilities for the pro-
13 vision of commercial mobile services or unli-
14 censed services.
15 "(D) The policy prescribed pursuant to this
16 paragraph shall provide that no State or local gov-
17 ernment or any instrumentality thereof may regulate
18 the placement, construction, modification, or oper-
19 ation of such facilities on the basis of the environ-
20 mental effects of radio frequency emissions, to the
21 extent that such facilities comply with the Commis-
22 sion's regulations concerning such emissions.
23 "(E) The proceeding to prescribe such policy
24 pursuant to this paragraph shall supercede any pro-
25 ceeding pending on the date of enactment of this

1 paragraph relating to preemption of State and local
2 regulation of tower siting for commercial mobile
3 services, unlicensed services, and providers thereof.
4 In accordance with subchapter III of chapter 5, title
5 5, United States Code, the Commission shall periodi-
6 cally establish a negotiated rulemaking committee to
7 review the policy prescribed by the Commission
8 under this paragraph and to recommend revisions to
9 such policy.

10 "(F) For purposes of this paragraph, the term
11 'unlicensed service' means the offering of tele-
12 communications using duly authorized devices which
13 do not require individual licenses.".

(b) RADIO FREQUENCY EMISSIONS.—Within 180 days after the enactment of this Act, the Commission shall complete action in ET Docket 93–62 to prescribe and make effective rules regarding the environmental effects of radio frequency emissions.

(c) AVAILABILITY OF PROPERTY.—Within 180 days of the enactment of this Act, the Commission shall prescribe procedures by which Federal departments and agencies may make available on a fair, reasonable, and nondiscriminatory basis, property, rights-of-way, and easements under their control for the placement of new telecommunications facilities by duly licensed providers of telecommunications services that are dependent, in whole or in part, upon the utilization of Federal spectrum rights for the transmission or reception of such services. These procedures may establish a presumption that requests for the use of property, rights-of-way, and easements by duly authorized providers should be granted absent unavoidable direct conflict with the department or agency's mission, or the current or planned use of the property, rights-of-way, and easements in question. Reasonable cost-based fees may be charged to providers of such telecommunications services for use of property, rights-of-way, and easements. The Commission shall provide technical support to States to encourage them to make property, rights-of-way, and easements under their jurisdiction available for such purposes.

Section 107. Facilities Siting; Radio Frequency Emission Standards

Section 107 provides that within 180 days of enactment, the Commission is to prescribe a national policy for the siting of commercial mobile radio services facilities. Representatives of affected industries, State and local governments and public safety agencies are to be included in the negotiation committee. It is the Committee's intent that the Commission establish a negotiated rulemaking committee authorized by the Negotiated Rulemaking Act of 1990 (subchapter III of chapter 5, Title 5 of the U.S. Code) comprised of representatives of State and local governments, public safety agencies and affected wireless telecommunications (Commercial Mobile Radio Service) industries. The committee is to develop a uniform national policy for the siting of Commercial Mobile Radio Service (CMRS) facilities for antennas, cell sites and other infrastructure-related equipment necessary to provide efficient wireless telecommunications services to the public.

The committee's recommendations must ensure that (1) State and local regulation is reasonable, nondiscriminatory, and the minimum necessary and does not have the effect of precluding any commercial mobile service; (2) siting requests are acted upon within a reasonable period of time; and (3) denials of requests are issued in writing and supported by substantial evidence. The siting of facilities cannot be denied on the basis of Radio Frequency (RF) emission levels which are in compliance with Commission RF emission regulated levels. The Commission is to complete within 180 days its action on RF emission standards. The Federal Government, within 180 days after enactment, is to prescribe procedures to make available to wireless telecommunications providers property and rights-of-way under its control on a fair, reasonable and nondiscriminatory basis.

The Committee finds that current State and local requirements, siting and zoning decisions by non-federal units of government, have created an inconsistent and, at times, conflicting patchwork of requirements which will inhibit the deployment of Personal Communications Services (PCS) as well as the rebuilding of a digital technology-based cellular telecommunications network. The Committee believes it is in the national interest that uniform, consistent requirements, with adequate safeguards of the public health and safety, be established as soon as possible. Such requirements will ensure an appropriate balance in policy and will speed deployment and the availability of competitive wireless telecommunications services which ultimately will provide consumers with lower costs as well as with a greater range and options for such services.

The Committee recognizes that there are legitimate State and local concerns involved in regulating the siting of such facilities and believes the negotiated rulemaking committee should address

those matters, such as aesthetic values and the costs associated with the use and maintenance of public rights-of-way. The intent of the Committee is that requirements resulting from the negotiated rulemaking committee's work and subsequent Commission rulemaking will allow construction of a CMRS network at a lower cost for siting and construction compatible with legitimate public health, safety and property protections while fully addressing the legitimate concerns of all affected parties and providing certainty for planning and building.

The Committee has received substantial evidence that local zoning decisions, while responsive to local concern about the potential effects of radio frequency emission levels, are at times not supported by scientific and medical evidence. A high quality national wireless telecommunications network cannot exist if each of its component must meet different RF standards in each community. The Committee believes the Commission rulemaking on this issue (ET Docket 93–62) should contain adequate, appropriate and necessary levels of protection to the public, and needs to be completed expeditiously. No State or local government, solely on the basis of RF emissions, should block the construction of sites and facilities or installation of equipment which comply with the Commission RF standards.

The Commission is directed to develop and issue procedures to make available to the maximum extent possible the use of Federal Government property, rights-of-ways, easements and any other physical instruments and appropriate assets that could be used as CMRS facilities sites that do not conflict with the intent of other Federal laws and regulations. The Committee recognizes, for example, that use of the Washington Monument, Yellowstone National Park or a pristine wildlife sanctuary, while perhaps prime sites for an antenna and other facilities, are not appropriate and use of them would be contrary to environmental, conservation, and public safety laws.

BUILDING THE WIRELESS INFRASTRUCTURE

B. Access to government lands and facilities for siting purposes

Federal property could, in many situations, provide prime locations for wireless facilities. PCIA formally requested assistance from the White House in October in realizing this potential. The association has been aggressively pursuing these interests. As a result, the United States Postal Service recently announced its intentions to make post office buildings available for this purpose. A Presidential memorandum was circulated to certain Federal agencies in August, directing they make their facilities available for siting purposes.

PCIA, through its Site Owners and Managers Alliance (SOMA), has been actively working since 1992 on another issue of vital importance to the wireless industry: ensuring access to public lands at fair rates. Working with Congress, the Bureau of Land Management (BLM) and Forest Service, PCIA has worked to establish true "fair market rates" for wireless facilities using public lands. This effort has included funding independent appraisals of key public land sites to establish a clear, straightforward valuation and appropriate fee structure/mechanism.

E