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

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

RM-8643

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**PROPOSAL FOR A PCS MICROWAVE RELOCATION
COST SHARING CLEARINGHOUSE**

The Personal Communications Industry Association (PCIA) hereby submits additional comments to supplement its microwave relocation cost sharing proposal and, in particular, to advise the Federal Communications Commission (FCC) that PCIA is willing to serve as the Communications Act Section 332 clearinghouse for cost sharing administration recommended in the industry consensus plan.¹

I. INTRODUCTION

In July 1994, PCIA proposed that the FCC endorse an industry cost sharing plan to ensure that microwave relocation costs are fairly allocated among benefitting entities.² Because of the lack of sufficient detail, the FCC declined to take action on

¹ See Petition for Rulemaking of Pacific Bell Mobile Services, RM-8643 (filed May 5, 1995); Comments of the Personal Communications Industry Association, RM-8643 (filed June 15, 1995)(hereinafter "PCIA Comments"); Reply Comments of the Personal Communications Industry Association, RM-8643 (filed June 30, 1995)(hereinafter "PCIA Reply Comments").

² Amendment of the Commission's Rules to Establish New Personal Communications Services, PCIA Petition for Partial Reconsideration, GEN Docket No. 90-314 (filed July 25, 1994); Amendment of the Commission's Rules to Establish New Personal Communications Services, PCIA Comments on Petition, GEN Docket No. 90-314 (filed Aug. 30, 1994); Amendment of the Commission's Rules to Establish New Personal Communications Services, Reply Comments, GEN Docket No. 90-314 (filed Sept. 9, 1994).

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the proposal.³ PCIA, through its Broadband PCS Membership Section and its Microwave Relocation Task Force, continued to develop its cost sharing proposal. Interest in that proposal was renewed by a Pacific Telesis Mobile Services Petition for Rulemaking advocating a similar plan.⁴ As a result of the industry's increased interest, PCIA helped crystallize the development of a mature, reasonable and broad based consensus proposal.

In a plan supported by companies holding a majority of the PCS licenses, including American Personal Communications, Ameritech, BellSouth Wireless, Inc., Cox Enterprises, Inc., Omnipoint Communications, Pacific Telesis Mobile Services, Sprint Telecommunications, and Western PCS Corporation, PCIA explained the PCS industry's need for a cost sharing mechanism which would allocate microwave relocation costs equitably among affected PCS providers and limit existing disincentives for prompt relocation of microwave incumbents from the PCS bands. A critical element of the industry plan is the authorization of a clearinghouse under Section 332 of the Communications Act to manage the cost sharing process, facilitate coordination of cost sharing among the PCS providers, and ensure that all opportunities for efficiency are utilized. Such a clearinghouse would privatize the cost sharing process,

³ Amendment of the Commission's Rules to Establish New Personal Communications Services, Third Memorandum Opinion and Order, 9 FCC Rcd 6908, 6915 ¶¶ 39-40 (1994).

⁴ Petition for Rulemaking of Pacific Bell Mobile Services, RM-8643 (filed May 5, 1995) (hereinafter "Pacific Bell Petition").

allowing the industry to administer the program with only a minimal burden on the FCC.

After consultations with its members, PCIA is pleased to announce its willingness to serve as the not-for-profit clearinghouse. In addition, PCIA and its members are in the process of developing a detailed plan for implementation of the clearinghouse, the functions it will perform, and the resources necessary to establish and maintain such an entity. Because of its well-recognized experience in both PCS and frequency coordination, PCIA is well prepared to step into the clearinghouse role and manage the cost sharing mechanism on a non-profit basis. PCIA believes that the designation of a Section 332 coordinator for cost sharing purposes will facilitate the transition of the allocated PCS spectrum to important new wireless services.

As the PCS licensees begin to deploy their networks and relocate microwave incumbents, the immediate need for a cost sharing mechanism has become compellingly clear. Already, PCS providers are reluctant or unable to relocate microwave networks spanning different MTAs and PCS license blocks. The attendant delays will only serve to impede the prompt delivery of PCS services to the public. Therefore, it is imperative that the FCC promptly issue a Notice of Proposed Rulemaking and adopt a cost sharing plan consistent with the principles in the PCIA industry consensus proposal.

II. THE CRITICAL ROLE OF THE CLEARINGHOUSE

In order to maximize the efficiencies and coordination benefits of cost sharing, a single industry entity will be necessary to administer the cost sharing process. By allowing an industry managed and supported entity to oversee the cost sharing mechanism, the PCS providers will be able to tailor the clearinghouse to best meet their needs. This will also ensure that the burdens of overseeing the cost sharing proposal are borne by the industry rather than the FCC.

A. Functions of the Clearinghouse

1. Database and Coordination

To ensure that all of the possible benefits are realized, the clearinghouse will need to perform several functions. One of the most important responsibilities of the clearinghouse will be establishing and maintaining an accurate database containing all of the relevant information regarding each relocated microwave link in the PCS spectrum and based on the cost sharing guidelines, identifying which PCS providers' operations may cause interference to each such link according to Bulletin 10F or another industry accepted standard. Because the information kept in the database will be highly confidential, the clearinghouse will be required to implement systems and policies to protect the commercially sensitive data.⁵

⁵ To promote efficient utilization of resources, PCS licensees may also wish to have the clearinghouse maintain a list of all ongoing relocation negotiations between microwave incumbents and PCS providers. PCS providers interested in relocating the same link will be able to coordinate their efforts and expedite the relocation. Such a list will also help PCS providers work together to coordinate
(continued...)

Specifically, the role of the clearinghouse in a relocation would be as follows:

- A PCS provider would notify the clearinghouse after it has relocated a link and supply information in a specified format on the compensation paid to the incumbent, including all agreements and other documentation supporting all payments. This information will be entered into the database.
- The clearinghouse will identify all PCS providers which may be liable for cost sharing for the relocated link based on the cost sharing plan guidelines.
- If another PCS provider may be liable for cost sharing, the clearinghouse will determine which of the expenses are appropriate for reimbursement subject to the established caps.
- All PCS providers will supply the clearinghouse with prior coordination notices (PCNs) upon deployment of their networks. The clearinghouse will use the PCNs to determine each PCS provider's cost sharing obligations.
- After receipt of a PCN that triggers a cost sharing obligation, the clearinghouse will notify the PCS provider incurring the obligation in a timely manner, including details on the relocated system and the compensation provided to the incumbent.
- PCS providers, with the exception of entrepreneur licensees and UTAM, will be required to make all cost sharing reimbursement payments within thirty days of receiving notice of liability. Entrepreneur licensees and UTAM will be entitled to make payments on a deferred schedule.
- All PCS providers will notify the clearinghouse upon receipt of payment.

⁵(...continued)

the relocation of microwave link networks, so as to facilitate the transition process for incumbents. This will minimize the possibility that an incumbent will be burdened with multiple PCS providers each trying to relocate its link.

2. Cost Sharing Calculations and Dispute Resolution

Based on rules to be established by the Commission, the clearinghouse would be responsible for prescribing guidelines for calculating actual relocation costs which are eligible for sharing and separating out premiums paid for early relocation and other non-reimbursable expenses.⁶ PCS providers would be required to submit their relocation expenditures in a specified format so that the clearinghouse could ensure that the costs proposed for sharing complied with the Commission's rules.

If any disputes arise regarding the costs eligible for sharing, payment obligations, or any other aspect of the cost sharing process, the clearinghouse will assist in resolving such disputes through negotiation and arbitration. PCS providers that question a cost sharing obligation would be required to notify the clearinghouse and the other affected PCS providers within thirty days of receiving the notice of liability that it would like to proceed to binding arbitration. Only as a last resort will parties be encouraged to submit their disputes to the Commission. The clearinghouse will also be responsible for making a public announcement each time a microwave link is relocated.

B. Structure and Funding for the Clearinghouse

For some time now, PCIA and its members have been exploring the structure necessary for a cost sharing clearinghouse and the resources that would be required. PCIA's Microwave Relocation Task Force, which has been studying the transition

⁶ PCIA Comments at 15-17; PCIA Reply Comments at 6-7.

process for over one year, is currently concentrating its efforts on the cost sharing plan and the associated clearinghouse. The PCIA clearinghouse would be a not-for-profit entity designated a Section 332 frequency coordinator for the purpose of administering the PCS cost sharing plan. PCIA is currently exploring potential methods for initial funding of the clearinghouse, including a proposal that these costs be borne by Block A and B license holders based on an agreed upon formula with reimbursement of these funds through credits which could be used by the licensees to offset processing fees charged by the clearinghouse. However, as PCIA and its members continue to further define the role of the clearinghouse, they will consider all suggestions to improve the funding mechanism. Whatever the formula ultimately implemented, to ensure that PCS providers observe the cost sharing rules and pay their reimbursement obligations, a failure to comply with the cost sharing rules should result in a monetary forfeiture or termination of the PCS providers' license. In addition to studying the funding necessary to begin and maintain the clearinghouse and the most equitable means of collecting that revenue, PCIA is also examining the staffing and resources that will be necessary to establish the clearinghouse and to manage it on an ongoing basis. Included in the resources would be software custom designed for the clearinghouse database and electronic data transfer capabilities for the delivery and receipt of cost sharing reports.

III. PCIA IS PREPARED TO SERVE AS THE CLEARINGHOUSE

PCIA is well suited to take on the responsibilities of the cost sharing clearinghouse. As an international trade association, PCIA has experience in all areas of wireless services and has virtually every major wireless communications carrier and manufacturer as a member, including the majority of PCS licensees. In addition, PCIA has the coordination experience, staff, and resources necessary to serve as a clearinghouse, and because of its participation in the PCS proceedings, PCIA is already familiar with the microwave relocation rules and is working with its members to address the many difficult issues arising out of that process. PCIA is particularly well versed in the cost sharing issues since it worked with the PCS licensees to develop the consensus proposal submitted in PCIA's initial comments.

Since the initiation of the PCS proceedings, PCIA has been an active participant in both the FCC docket establishing the PCS allocations and rules and the docket determining the microwave relocation procedures. As a result of its merger with the National Association of Business and Education Radio (NABER), PCIA is now the largest FCC-designated frequency coordinator in the Business Radio Service, processing over 40,000 applications for frequency assignments annually. PCIA also has a record of fair and impartial administration and a long history of working with many differing wireless industry sectors to achieve consensus across a wide range of issues.

In addition to experience, PCIA has a highly trained staff already familiar with coordination procedures and confidentiality restrictions. Currently, PCIA employs twenty full-time coordinators who are supported by ten management information systems specialists. Because of its coordination activities, PCIA has an advanced electronic delivery system allowing PCS providers to file and receive their reports electronically.

PCIA's vast coordination experience combined with its demonstrated ability to develop industry consensus on difficult issues, illustrates its suitability to take on the clearinghouse responsibilities and make the transition process easier and more efficient for both the PCS and microwave industries. As PCS licensees relocate microwave incumbents, the need for a cost sharing plan becomes even clearer. PCIA urges the Commission to swiftly adopt a cost sharing plan based on the principles recommended by PCIA and the majority of PCS licensees and designate PCIA as the clearinghouse to facilitate this process pursuant to Section 332 of the Communications Act.

IV. CONCLUSION

The majority of the PCS providers support the industry cost sharing plan developed by PCIA and recognize its critical importance to the expeditious deployment of PCS. PCIA and industry members are ready and have the resources to administer a cost sharing program. As the relocation process gets underway, it is imperative that a cost sharing mechanism be established quickly so that PCS providers can coordinate

their efforts and efficiently relocate both individual links and whole networks. The longer the relocation process takes, the more delay PCS providers will need to deploy their systems and bring service to the public. Therefore, PCIA urgently requests that the Commission issue a Notice of Proposed Rulemaking, and then final rules, as soon as practicable.

Respectfully submitted,

THE PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION

By: Mark Golden
Mark Golden
Vice President -- Industry Affairs
1019 19th Street, N.W.
Suite 1100
Washington, D.C. 20036
(202) 467-4770

WILEY, REIN & FIELDING

By: R. Michael Senkowski
R. Michael Senkowski
Robert J. Butler
Suzanne Yeler
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000
Its Attorneys

September 6, 1995