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**Building The  
Wireless Future™**

September 20, 1995

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**CTIA**

Cellular  
Telecommunications  
Industry Association  
1250 Connecticut  
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202-785-0721 Fax

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, DC 20554

**Re: Ex Parte Presentation - Petition for Rule Making  
Regarding a Plan for Sharing the Costs for  
Microwave Relocation (RM-8643)**

Dear Mr. Caton:

On Wednesday, September 20, 1995, Mr. Randall S. Coleman, Vice President of Regulatory Policy and Law, the Cellular Telecommunications Industry Association ("CTIA") sent the attached correspondence to the Chairman, the Commissioners, the General Counsel, various Bureau Chiefs and other Commission staff members as addressed in the correspondence. The letter concerns issues raised in the above referenced Petition for Rule Making.

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter and the attachments are being filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

Andrea D. Williams  
Staff Counsel

Attachments

No. of Copies rec'd 0+1  
List ABCDE



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September 20, 1995

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

## **CTIA**

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Dear Chairman Hundt:

**Randall S. Coleman**  
Vice President for  
Regulatory Policy and Law

On Tuesday, September 19, 1995, Mr. Thomas Wheeler, President and CEO of the Cellular Telecommunications Industry Association ("CTIA"), sent the attached letter to Senator Larry Pressler concerning critical issues with regard to the relocation of microwave incumbents to accommodate broadband Personal Communications Services ("PCS").

I also have enclosed information concerning CIBERNET's role in assisting new broadband PCS carriers with intercarrier roaming and billing activities. CIBERNET is a wholly owned subsidiary of CTIA.

Sincerely,

**Randall S. Coleman**

**Attachments**



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## **CTIA**

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**Thomas E. Wheeler**  
President / CEO

September 19 1995

**The Honorable Larry Pressler**  
Chairman, Commerce, Science and Transportation Committee  
United States Senate  
243 Russell Senate Office Building  
Washington, D.C. 20510-4101

Dear Chairman Pressler:

Six months ago the FCC concluded the auction of 99 broadband personal communications services(PCS) licenses to entities which paid the U.S. Treasury \$7.7 billion - the largest auction of public resources in U.S. history.

The spectrum to be utilized by these new wireless services is currently occupied, in part, by microwave licensees who must be relocated before the new services can be deployed. When the FCC adopted rules governing the relocation of these microwave incumbents it was assured of their cooperation in making an orderly transition. In return, the Commission rules provide that all costs of relocation are to be borne by the new licensees. To facilitate the transition, the Commission rules also provide for a 2 year "voluntary" negotiation period during which the parties are to work out the terms and conditions of relocation. If there is no voluntary resolution, then the rules provide for a one year period of involuntary negotiation, with any unresolved disputes referred to the Commission for final disposition.

Congress and the FCC imposed these safeguards to promote timely and efficient deployment of emerging technologies and to ensure that microwave incumbents would be held harmless in the relocation process. Ironically, these same safeguards are now being used by a small, but organized and growing segment of microwave incumbents to leverage windfall profits for themselves to the detriment of the new wireless licensees, consumers and the federal treasury.

While the FCC sought to encourage, and expected, good faith, independent negotiation during the voluntary period, nothing in the FCC order compels negotiation during this time. The FCC did not foresee that enterprising law firms and consultants, through "seminars" and direct solicitation,

September 19, 1995

Page Two

would recruit microwave incumbents to assert a "right" not to negotiate during the voluntary period unless the PCS licensees are willing to pay excessive and unreasonable relocation costs - which exceed actual costs by a factor of 4 or 5 times, and which, of course, have huge legal and consulting commissions built in!

You must be made aware that, left unchallenged, the end result of these tactics will have a direct and significant negative impact on revenue that will be generated for the Treasury from future auctions, decreasing such revenue by up to \$2 billion. The attached study by world-renowned auction expert Paul Milgrom, of Stanford University, documents how the next round of PCS spectrum bidders will factor into their bids the exorbitant relocation costs successfully being extracted from current auction winners, and the impact of delay getting to market. The result, as Professor Milgrom demonstrates, will be the involuntary transfer of billions of dollars from taxpayers to the pockets of microwave profiteers.

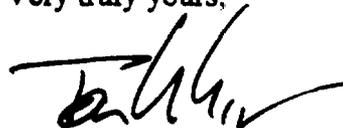
The average American loses - not only as a taxpayer, but also as a consumer - as a result of this outrageous behavior by microwave licensees. The deliberate delay in concluding negotiations by microwave incumbents can only serve to dramatically retard the benefits more wireless competition can bring to consumers.

Much of the leverage that is being inappropriately applied by incumbent microwave licensees and their consultants can be alleviated by timely Congressional action. Simply by reducing the time allotted in the FCC rules for "voluntary" negotiations from two years to one, and requiring that mandatory negotiations employ binding arbitration, will provide ample incentive for all parties to begin negotiating in good faith, as the FCC and Congress intended. It will also remove the FCC from having to act as arbitrator to resolve disputes on appeal, saving significant costs for the federal government and time to market for PCS licensees.

We believe that this is a fair and reasonable solution to this issue. We urge you to adopt, as the House Commerce Committee has done, an appropriate provision to address the issue. In support of this request we have attached the economic study previously cited, as well as factual descriptions of "negotiations" that have been occurring.

Thank you for your consideration. We are available to answer any questions you may have.

Very truly yours,



Thomas E. Wheeler



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### **CTIA Calls on Federal Agencies & Congress To Shut Down "Extortion" By Incumbents Involved in PCS Radio Frequency Relocation**

WASHINGTON, D.C.— CTIA, representing the successful bidders in the recent PCS auction, today called upon various Federal Agencies and the Congress to shut down the "extortion" being practiced against them by the incumbent airwave users, mostly city governments and utilities.

"It is clear that, instead of good faith negotiations to relocate as required by law, many microwave incumbents are leveraging off the public trust of their license to profiteer," said CTIA President Thomas E. Wheeler.

In separate communications, CTIA asked three Federal Agencies and the Congress to take specific actions:

- **Federal Communications Commission** – Revoke the licenses of those incumbents who are abusing the FCC's microwave relocation rules.

"The FCC has the capability to rectify this situation now. Title III of the Communications Act provides procedures for the suspension or revocation of radio licenses for violation of FCC rules and procedures. Specifically, sections 303(m)(1)(A) and (E) authorize the FCC to suspend a radio operator's license for violation of Commission rules and procedures. In addition, section 312(a)(4) authorizes the Commission to revoke any license or construction permit for willful or repeated violations of the Communications Act, and section 312(b) permits the FCC to issue cease and desist orders to licensees for, among other things, failure to operate their facilities as set forth in a license or failure to observe the provisions of the Communications Act."

- **Department of Justice** – Open an investigation into potential Sherman Act violations, whereby microwave incumbents are collectively refusing to deal.

"I am advised that a concerted refusal to negotiate, or a joint negotiation by sellers, particularly when undertaken in an effort to raise price, is per se violation of the Sherman Act and could be remedied by the Department of Justice. I know that the Antitrust Division has many important priorities. I believe that investigating and prosecuting outrageous anticompetitive conduct depriving the public of current and future cutting-edge technologies is exactly the type of conduct that should trigger the Antitrust Division's enforcement mandate."

- **Congress** – Adopt into law the language of the House Commerce Committee to reduce the “voluntary” negotiation time of microwave incumbents.

“Much of the leverage that is being inappropriately applied by incumbent microwave licensees and their consultants can be alleviated by timely Congressional action. Simply reducing the time allotted in the FCC rules for “voluntary “ negotiations from two years to one, and requiring that mandatory negotiations employ binding arbitration, will provide ample incentive for all parties to begin negotiating in good faith, as the FCC and Congress intended. It will also remove the FCC from having to act as arbitrator to resolve disputes on appeal, saving significant costs for the federal government and time to market for PCS licensees.”

- **Office of Management & Budget** – Avoid the resulting \$2 Billion shortfall in the upcoming PCS auctions through support of legislation and FCC action.

“The message is urgent. As the attached study by a world renowned expert in auction theory proves, the U.S. Treasury stands to lose two billion dollars, in future Personal Communications Services (PCS) auctions. The value of this spectrum is diminished due to the unforeseen and irresponsible actions of incumbent microwave licensees who are manipulating Federal policy designed to provide for their post - auction relocation. Fortunately, these circumstances can be corrected by appropriate governmental action, which we urge OMB to advocate in the budget reconciliation legislation and at the FCC ”

CTIA, formed in 1984, is the leading national organization of the wireless communications industry, both wireless carriers and manufacturers. The membership of the association has been expanded to cover all Commercial Mobile Radio Service providers, including cellular, personal communications services, enhanced specialized mobile radio, and mobile satellite services.

FOR ADDITIONAL INFORMATION CONTACT: Mike Houghton (202) 736-3207

**For Immediate Release  
September 19, 1995**



**Building The  
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## **CTIA**

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### **CTIA Issues Comprehensive List of System Identification (SID) Codes For A & B Block PCS Licenses**

WASHINGTON, D.C.— CIBERNET Corporation, a wholly owned subsidiary of CTIA, today distributed a comprehensive list of the System Identification (SID) codes for A and B Block licenses to broadband Personal Communications Services (PCS) carriers. SID codes will be assigned to the C, D, E, and F Block licenses as they are auctioned. Billing Identification (BID) codes are available upon request.

In July, the CTIA subsidiary began administering and assigning these codes, so that new broadband PCS carriers can proceed with crucial negotiations for intercarrier roaming and billing agreements with other wireless telecommunications providers. In addition, CIBERNET has assumed the assignment of equipment manufacturer codes for reference and identification in the Electronic Serial Number and/or International Mobile Equipment Identifier (IMEI) of PCS terminals.

"The first IMEI has been assigned to Ericsson for their GSM digital phones," CTIA President Thomas E. Wheeler said. "Given CIBERNET's role as BID code administrator for both cellular and PCS, along with the established CIBER Record publication, the forthcoming CORD, and extensive billing standards activities, CIBERNET is uniquely positioned and qualified to assume these administrative roles for the wireless industry."

In an letter accompanying the list of A & B Block PCS SID codes, CIBERNET Vice President and Managing Director Eileen Gatens Mercilliott explained that CIBERNET currently assigns cellular BID codes, and publishes a list of cellular SID and BID codes as a necessary element of its provision of services to the wireless industry. CIBERNET includes SID codes, BID codes, and cellular equipment manufacturer codes as a part of the CIBER Record, and revisions are released monthly.

- more -

Mercillott said CIBERNET will be introducing the CIBERNET On-line Roaming Database (CORD) that will offer dial-up electronic access to the SID and BID (and other) information for all CMRS systems.

SID, BID and equipment manufacturer codes will also be published in the CIBER Record and in the forthcoming CORD, and are available upon request. PCS' SID, BID and equipment manufacturer code information and assignments are available on the same terms and conditions to all parties, regardless of their membership in CTIA or participation in CIBERNET's other activities.

In addition to supporting Broadband PCS carriers' requirements by administering SID, BID and equipment manufacturer codes, CIBERNET has been actively working with PCS carriers to define billing data exchange requirements.

To this end, CIBERNET hosted an open meeting of interested wireless industry carriers and vendors on August 29, 1995, to discuss billing solutions for roamer services across and among frequencies (1800 MHz and 800 MHz). Carriers who will use GSM, CDMA, and TDMA standards discussed their requirements for exchange of intercarrier billing information. CIBERNET continues to work aggressively with the industry to define, develop, and provide billing standards to support intercarrier billing across and among frequencies.

"To support the interests of carriers internationally, CIBERNET has recently become a member of the International GSM MoU TADIG committee," said Mercillott. (The TADIG committee is responsible for defining roamer billing standards between GSM operators in Europe, Asia, etc.) "CIBERNET's participation is part of a liaison relationship established to promote harmonization between the Eastern and Western Hemisphere, supporting development of solutions that will facilitate and promote global roaming."

CTIA, formed in 1984, is the leading national organization of the wireless communications industry, both wireless carriers and manufacturers. The membership of the association has been expanded to cover all Commercial Mobile Radio Service providers, including cellular, personal communications services, enhanced specialized mobile radio, and mobile satellite services.

FOR ADDITIONAL INFORMATION CONTACT: Mike Houghton (202) 736-3207



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September 20, 1995

**The Honorable James H. Quello  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Room 802  
Washington, D.C. 20554**

## **CTIA**

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Dear Commissioner Quello:

**Randall S. Coleman**  
Vice President for  
Regulatory Policy and Law

On Tuesday, September 19, 1995, Mr. Thomas Wheeler, President and CEO of the Cellular Telecommunications Industry Association ("CTIA"), sent the attached letter to Chairman Reed Hundt. The letter addresses critical issues with regard to the relocation of microwave incumbents to accommodate broadband Personal Communications Services ("PCS").

I also have enclosed information concerning CIBERNET's role in assisting new broadband PCS carriers with intercarrier roaming and billing activities. CIBERNET is a wholly owned subsidiary of CTIA.

If you should have any questions concerning these documents, please contact me at (202) 736-3256.

Sincerely,

Randall S. Coleman

### Attachments

cc: Lauren Belvin  
Rudolfo Baca



**Building The  
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September 20, 1995

**CTIA**

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**The Honorable Andrew C. Barrett  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Room 826  
Washington, D.C. 20554**

**Randall S. Coleman**  
Vice President for  
Regulatory Policy and Law

Dear Commissioner Barrett:

On Tuesday, September 19, 1995, Mr. Thomas Wheeler, President and CEO of the Cellular Telecommunications Industry Association ("CTIA"), sent the attached letter to Chairman Reed Hundt. The letter addresses critical issues with regard to the relocation of microwave incumbents to accommodate broadband Personal Communications Services ("PCS").

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If you should have any questions concerning these documents, please contact me at (202) 736-3256.

Sincerely,

Randall S. Coleman

**Attachments**

cc: Lisa Smith  
James Coltharp



**Building The  
Wireless Future.**

September 20, 1995

**The Honorable Rachelle B. Chong  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Room 844  
Washington, D.C. 20554**

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Dear Commissioner Chong:

**Randall S. Coleman**  
Vice President for  
Regulatory Policy and Law

On Tuesday, September 19, 1995, Mr. Thomas Wheeler, President and CEO of the Cellular Telecommunications Industry Association ("CTIA"), sent the attached letter to Chairman Reed Hundt. The letter addresses critical issues with regard to the relocation of microwave incumbents to accommodate broadband Personal Communications Services ("PCS").

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Sincerely,

Randall S. Coleman

**Attachments**

cc: **Jane Mago  
Richard Welch  
David Furth**



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September 20, 1995

**CTIA**

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**The Honorable Susan Ness  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Room 832  
Washington, D.C. 20554**

**Randall S. Coleman**  
Vice President for  
Regulatory Policy and Law

Dear Commissioner Ness:

On Tuesday, September 19, 1995, Mr. Thomas Wheeler, President and CEO of the Cellular Telecommunications Industry Association ("CTIA"), sent the attached letter to Chairman Reed Hundt. The letter addresses critical issues with regard to the relocation of microwave incumbents to accommodate broadband Personal Communications Services ("PCS").

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If you should have any questions concerning these documents, please contact me at (202) 736-3256

Sincerely,

Randall S. Coleman

**Attachments**

cc: **James Casserly  
David Siddall  
Mary McManus**



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September 20, 1995

**Mr. Blair Levin  
Chief of Staff  
Office of the Chairman  
Federal Communications Commission  
1919 M Street, NW, Room 814  
Washington, D.C. 20554**

**CTIA**

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**Randall S. Coleman**  
Vice President for  
Regulatory Policy and Law

Dear Blair:

On Tuesday, September 19, 1995, Mr. Thomas Wheeler, President and CEO of the Cellular Telecommunications Industry Association ("CTIA"), sent the attached letter to Chairman Reed Hundt. The letter addresses critical issues with regard to the relocation of microwave incumbents to accommodate broadband Personal Communications Services ("PCS").

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Sincerely,

Randall S. Coleman

**Attachments**

cc: Julius Genachowski  
Ruth Milkman  
John Nakahata



**Building The  
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September 20, 1995

**CTIA**

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**Dr. Robert M. Pepper**  
Chief, Office of Plans and Policy  
Federal Communications Commission  
1919 M Street, NW, Room 822  
Washington, D.C. 20554

**Randall S. Coleman**  
Vice President for  
Regulatory Policy and Law

Dear Bob:

On Tuesday, September 19, 1995, Mr. Thomas Wheeler, President and CEO of the Cellular Telecommunications Industry Association ("CTIA"), sent the attached letter to Chairman Reed Hundt. The letter addresses critical issues with regard to the relocation of microwave incumbents to accommodate broadband Personal Communications Services ("PCS").

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If you should have any questions concerning these documents, please contact me at (202) 736-3256.

Sincerely,

Randall S. Coleman

**Attachments**

cc: Donald Gips  
Michael Katz  
Thomas Stanley  
Gregory Rosston  
Jonathan Cohen  
Andrew Sinwell



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September 20, 1995

**Mr. William Kennard  
General Counsel  
Federal Communications Commission  
1919 M Street, NW, Room 614  
Washington, D.C. 20554**

**CTIA**

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Dear Bill:

**Randall S. Coleman**  
Vice President for  
Regulatory Policy and Law

On Tuesday, September 19, 1995, Mr. Thomas Wheeler, President and CEO of the Cellular Telecommunications Industry Association ("CTIA"), sent the attached letter to Chairman Reed Hundt. The letter addresses critical issues with regard to the relocation of microwave incumbents to accommodate broadband Personal Communications Services ("PCS").

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Sincerely,

Randall S. Coleman

**Attachments**

cc: **David Solomon  
Christopher Wright  
Peter Tenhula**



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September 20, 1995

**CTIA**

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**Mr. Richard M. Smith**  
**Chief, Office of Engineering and Technology**  
**Federal Communications Commission**  
**2000 M Street, NW, Room 408**  
**Washington, D.C. 20554**

**Randall S. Coleman**  
Vice President for  
Regulatory Policy and Law

Dear Dick:

On Tuesday, September 19, 1995, Mr. Thomas Wheeler, President and CEO of the Cellular Telecommunications Industry Association ("CTIA"), sent the attached letter to Chairman Reed Hundt. The letter addresses critical issues with regard to the relocation of microwave incumbents to accommodate broadband Personal Communications Services ("PCS").

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Sincerely,

Randall S. Coleman

**Attachments**

cc: **Bruce Franca**



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September 20, 1995

**CTIA**

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**Ms. Kathleen M.H. Wallman  
Chief, Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 500  
Washington, D.C. 20554**

**Randall S. Coleman**  
Vice President for  
Regulatory Policy and Law

Dear Kathy:

On Tuesday, September 19, 1995, Mr. Thomas Wheeler, President and CEO of the Cellular Telecommunications Industry Association ("CTIA"), sent the attached letter to Chairman Reed Hundt. The letter addresses critical issues with regard to the relocation of microwave incumbents to accommodate broadband Personal Communications Services ("PCS").

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Sincerely,

Randall S. Coleman

**Attachments**

cc: Richard Metzger  
Kathleen Levitz



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**Ms. Beverly Baker**  
Chief, Compliance and Information Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 734  
Washington, D.C. 20554

**Randall S. Coleman**  
Vice President for  
Regulatory Policy and Law

Dear Beverly:

On Tuesday, September 19, 1995, Mr. Thomas Wheeler, President and CEO of the Cellular Telecommunications Industry Association ("CTIA"), sent the attached letter to Chairman Reed Hundt. The letter addresses critical issues with regard to the relocation of microwave incumbents to accommodate broadband Personal Communications Services ("PCS").

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

**Randall S. Coleman**  
Vice President for  
Regulatory Policy and Law

Dear Gina:

On Tuesday, September 19, 1995, Mr. Thomas Wheeler, President and CEO of the Cellular Telecommunications Industry Association ("CTIA"), sent the attached letter to Chairman Reed Hundt. The letter addresses critical issues with regard to the relocation of microwave incumbents to accommodate broadband Personal Communications Services ("PCS").

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Sincerely,

Randall S. Coleman

Attachments

cc: Office of the Bureau Chief:

Ralph Haller  
Gerald Vaughan  
Laurence Atlas  
Daniel Phythyon  
Jackie Chorney  
Jay Markley

Auctions Division:  
Kathleen Ham-O'Brien

Commercial Wireless Division:  
Rosalind Allen  
Stephen Markendorff  
Sally Novak

Enforcement Division:  
Howard Davenport  
Myron Peck

Policy Division:  
John Cimko  
Michael Wack  
Stanley Wiggins



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**Thomas E. Wheeler**  
President / CEO

**The Honorable Reed E. Hundt**  
**Chairman**  
**Federal Communications Commission**  
**1919 M Street, NW**  
**Room 814**  
**Washington, DC 20554**

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

**Dear Mr. Chairman:**

It has been six months since the conclusion of the FCC's auction of the first 99 broadband personal communications services (PCS) licenses. In the intervening time, the entities who paid \$7.7 billion in the largest auction of public resources in U.S. history have been hard at work to speedily deliver on your vision of additional wireless competition, billions of dollars of new investment in mobile technologies and services, and the creation of tens of thousands of new jobs.

Unfortunately, I am writing to you today regarding a disturbing trend which may thwart the timely realization of the many benefits expected to flow from the licensing these new mobile services. Simply put, many incumbent microwave licensees in the 2 gigahertz (GHz) band are using the public trust of their license to make unconscionable demands of the new PCS licensees as a pre-condition to relocating their facilities.

When the FCC adopted rules governing the relocation of microwave incumbents to accommodate broadband PCS services, the Commission envisioned an entirely different world from the one which now exists. At that time, microwave incumbents assured the Commission of their cooperation toward an orderly transition process. The FCC did not foresee that a well-organized group of microwave incumbents would make excessive and unreasonable demands and leverage these demands with the specious claim that they are under no obligation to negotiate with the new PCS licensees. As you know, the impetus behind the PCS microwave relocation rules was to balance the needs of microwave incumbents with those of

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PCS licensees, not to promote a platform for extortion which, in fact, makes the microwave licensees superior to the new technology providers.

The Commission provided the microwave incumbents with many incentives to fairly negotiate their costs. For instance, all of the costs for relocation, whether negotiated during the two-year voluntary period or the one-year mandatory period, are to be borne by PCS licensees; and the incumbent must be given new equipment and hardware that are equal to or better than their existing facilities. These safeguards were intended to hold harmless those incumbent microwave users having to move to another part of the radio spectrum band. However, these protections have been used by a well-organized segment of microwave incumbents to thwart the Commission's goals and, if left unchecked, will have a negative impact on the timely introduction of the new generation of wireless services. In some cases, incumbents are entering into negotiations and holding the PCS licensee hostage to demands representing four to five times the actual cost of relocation.<sup>1</sup> Clearly, the Commission did not contemplated such blatant, bad faith actions.

The actions of the microwave incumbents have all the hallmarks of a concerted refusal to deal and a joint negotiation to raise the price of microwave relocation. As such, we are, today, asking the Department of Justice to investigate these activities for potential violations of the Sherman Act.<sup>2</sup>

Additionally, we have today submitted documentation to the Office of Management and Budget that the wrongful actions by the microwave licensees will reduce the value of the remaining PCS spectrum by \$2 billion.<sup>3</sup>

The FCC has the capability to rectify this situation now. Title III of the Communications Act provides procedures for the suspension or revocation of radio licenses for violation of FCC rules and procedures. Specifically, sections 303(m)(1)(A) and (E) authorize the FCC to suspend a radio operator's license for violation of Commission rules and procedures. In addition, section 312(a)(4) authorizes the Commission to revoke any license or construction permit for willful or repeated violations of the Communications Act, and section 312(b) permits the FCC to issue cease and desist orders to licensees for, among other things,

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<sup>1</sup> See attachment hereto entitled "Perverting a Public Trust for Private Gain."

<sup>2</sup> See attached letter from Thomas E. Wheeler, President/CEO, CTIA, to Hon. Anne Bingaman, Assistant Attorney General, Antitrust Division, Department of Justice, dated September 19, 1995.

<sup>3</sup> See attached letter from Thomas E. Wheeler, President/CEO, CTIA, to Hon. Alice M. Rivlin, Director, Office of Management and Budget, dated September 19, 1995

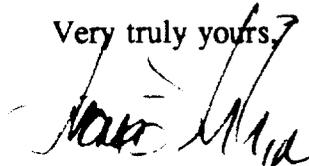
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failure to operate their facilities as set forth in a license or failure to observe the provisions of the Communications Act.

We urge you to publicly reinforce with incumbent microwave operators the fact that the FCC is willing to avail itself of license-related remedies should the unconscionable practices of the incumbents persist.

Mr. Chairman, the time is now to inform those microwave licensees who are abusing their public trust for private gain that the FCC will not tolerate their actions and that their actions place their licenses in jeopardy. Your prompt attention to this matter will discourage the spread of this unfortunate misuse of FCC rules and procedures and safeguard the new wireless competition.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tom Wheeler", written over a horizontal line.

Thomas E. Wheeler

Attachments (3)

## **Perverting a Public Trust for Private Gain**



### **How Microwave Licensees are Thwarting New Wireless Services by Abusing Spectrum Relocation Rules**

#### **Background**

In the six months since the FCC concluded auctioning broadband personal communications services (PCS) licenses the companies which paid \$7.7 billion for those licenses have been working to deliver additional wireless competition, create thousands of new jobs, and invest billions of dollars in new investment in mobile technologies and services.

But those efforts are threatened by a well-organized group of incumbent microwave licensees who are abusing the public trust by using their licenses to make extreme demands of the new PCS licensees as a pre-condition for relocating their facilities.

#### **What Should it Cost to Relocate a Microwave Link?**

Earlier this year, Columbia Spectrum Management estimated that the cost per link of relocating microwave incumbents would be between \$250,000 and \$500,000. This cost reportedly reflected "financ[ing] engineering, hardware and negotiation incentives." Paul Kagan Associates *Wireless Market Stats*, April 21, 1995, at 16. With some 5,000 to 5,100 microwave links estimated nationwide, the total cost of microwave incumbent relocation would be between \$1.2 billion and \$2.5 billion. *Id.*

#### **What is Actually Being Charged -- and Why**

"Comparable facilities is your worst case scenario," one law firm has written to the incumbent licensees. "If you relocate voluntarily, you are entitled to anything that is mutually agreeable."

Utilities and local governments are, thus, adopting a policy of delaying relocation in order to extort from the new wireless licensees a payment in excess of the cost of relocating with comparable facilities. The San Diego official responsible for negotiating relocation of the City's microwave links told the local newspaper that the PCS spectrum represented a "once in a lifetime opportunity" for a monetary windfall to cities across the country.

As a result of such strategies, microwave incumbents are demanding compensation far in excess of the relocation costs envisioned by the federal government's relocation rules, and by the bidders who paid \$7.7 billion for the spectrum in the recent auction.

- One incumbent's relocation cost -- estimated by independent analysts at \$225,000 per link -- was initially priced at \$400,000 per link before being raised to \$1.2 million per link.
- \$1 million per link is becoming a typical demand of utilities and municipalities.

### **Reprisal As a Negotiating Tool**

The wireless licensees are in a precarious position -- without the use of the spectrum they bought, their \$7.7 billion investment is producing no return. Thus, they cannot "go public" or seek administrative remedies for fear that the incumbents will, as reprisal, further delay negotiations or increase the price.

The intimidation factor is even worse when the microwave licensee is a local government -- for that government must also grant zoning permits for construction of the wireless antennas. To antagonize these municipalities in one forum would be damaging in another.

### **"Ski Mask" Examples of Abuse**

As a result of the intimidation factor, wireless carriers can only speak generically and anonymously about microwave abuses, similar to the witness who must wear a ski mask to keep from being identified. Below are examples of such abuses:

- An incumbent has demanded relocation of microwave links in another, non-interfering band, as well as microwave links in the PCS band.
- An incumbent is seeking payment for relocation of multiple microwave links, including non-interfering links and links in another non-interfering band. The incumbent has stated that a premium will be required for relocation before the lapse of the three year negotiation period.
- An incumbent originally demanded 178 % of the cost of microwave relocation (and upgrading), before increasing its demand to 578 % of the cost of microwave relocation.
- An incumbent demanded \$ 1 million per link, without reference to actual system costs.
- An incumbent has requested a premium of \$1 million above the cost of relocating.
- An incumbent that has already relocated is demanding payment of a premium to release the PCS band.