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SEP 27 1995

Building The
Wireless Future™

September 27, 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CTIA

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

Cellular
Telecommunications
Industry Association
1250 Connecticut
Avenue, N.W.
Suite 200
Washington, D.C. 20036
202-785-0081 Telephone
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Re: *Ex Parte* Presentation - Petition for Rule Making
Regarding a Plan for Sharing the Costs for
Microwave Relocation (RM-8643)

Randall S. Coleman
Vice President for
Regulatory Policy and Law

Dear Mr. Caton:

On Wednesday, September 27, 1995, Mr. Thomas Wheeler, President and CEO of the Cellular Telecommunications Industry Association ("CTIA") sent the attached correspondence to the Chairman, with copies to the Commissioners, the General Counsel, various Bureau Chiefs and other Commission staff members as indicated in the attached 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,

Randall S. Coleman
Vice President,
Law & Regulatory Policy

Attachment

No. of Copies rec'd 07/
List A B C D E



September 27, 1995

CTIA

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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:

A week ago, I wrote to you on behalf of CTIA regarding a disturbing trend which threatens to thwart the timely realization of the benefits expected to flow from the licensing of new mobile services. Simply put, an organized group of 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 the relocation of their facilities which must occur prior to the offering of PCS services. In that letter I asked you to publicly and strongly announce to the microwave incumbents that the Commission is willing to assert its authority under Title III of the Communications Act to suspend or revoke the licenses of those who abuse their licenses in this manner.¹

Last Friday, I wrote to you again to propose additional actions which the Commission should take to facilitate the rapid introduction of PCS services.² Specifically, CTIA urged you to: (1) create an incentive for voluntary negotiations by adopting a key

¹ See Letter from Thomas E. Wheeler, President/CEO, CTIA, to Hon. Reed E. Hundt, Chairman, FCC, Re: Petition for Rulemaking Regarding a Plan for Sharing the Costs for Microwave Relocation (RM 8643), filed September 19, 1995 ("September 19 letter").

² See Letter from Thomas E. Wheeler, President/CEO, CTIA, to Hon. Reed E. Hundt, Chairman, FCC, Re: Petition for Rulemaking Regarding a Plan for Sharing the Costs for Microwave Relocation (RM 8643), filed September 22, 1995.

Honorable Reed Hundt
September 27, 1995
Page 2



cost-recovery principle established as part of the Canadian Spectrum Transition Policy, namely to require that all costs for relocation during the mandatory phase be paid by the microwave incumbents; or alternatively, (2) eliminate the incentive to “stonewall” and/or “goldplate” the replacement facility demands by limiting recoverable costs during the mandatory period to undepreciated book value; and (3) clarify the current transition rules by defining the term “comparable facilities” to mean lack of qualitative difference between the original and replacement facilities.

In response to these requests, the Commission staff has, appropriately, sought specific information relative to specific abuses. The problem this request precipitates, however, was noted in an attachment to my September 19 letter, to wit: many PCS licensees are reluctant to publicly identify the bad actors for fear of retribution. In many cases the incumbent microwave licensee is also a governmental entity from which PCS licensees must seek important zoning and other permits essential to their businesses; in other cases, the microwave incumbent will obtain revenge simply by further delaying any resolution.

In order to provide you with the information you require, CTIA is following a procedure used with reluctant witnesses at Congressional hearings – shielding them behind a ski mask to protect their identity and thus forestall retribution. The “ski mask” in this situation is an independent third party to verify the data submitted by the PCS licensees, while maintaining anonymity for the party concerned.

CTIA has engaged the accounting firm of Farren & Lanman to act as the clearinghouse for information provided by PCS licensees describing the unreasonable practices of microwave operators. This firm will collect abuse stories from the PCS licensees in confidence, sanitize them by removing all identifying references and file the information with the Commission, vouching for its validity.

We recognize the highly unusual nature of this undertaking. Hopefully, with your acceptance of the procedure, we will be able to eliminate the fear factor which has deterred PCS licensees from coming forward publicly.

Microwave relocation is the *sine qua non* of new wireless services. Absent actions of the kind proposed by CTIA, those companies that have invested \$7.7 billion in acquiring PCS spectrum (and will invest many times that amount for facilities and equipment), will be unreasonably hindered in delivering on the promise of new service

Honorable Reed Hundt
September 27, 1995
Page 3



offerings and new wireless competition. For these licensees, as well as those entrepreneurs hoping to win licenses in the C, D, E and F blocks, the Commission's rules must be clarified now to create appropriate incentives for early voluntary and good faith negotiations.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Wheeler". The signature is written in a cursive, somewhat stylized font. It is positioned above the printed name "Thomas E. Wheeler".

Thomas E. Wheeler

cc: Commissioner James Quello
Lauren Belvin
Rudolfo Baca

Commissioner Andrew Barrett
Lisa Smith

Commissioner Rachelle Chong
Jane Mago
Richard Welsh
David Furth

Commissioner Susan Ness
James Casserly
David Siddall
Mary McManus

Blair Levin
Julius Genachowski
Ruth Milkman
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Richard Smith
Bruce Franca