BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

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In the Matter of	)	
	)	
Amendment to the Commission's	)	WT Docket No. 95-157
Rules Regarding a Plan for Sharing	)	
The Costs of Microwave Relocation	)	

To: The Commission

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COMMENTS OF VALERO TRANSMISSION, L.P.

Valero Transmission, L.P. ("Valero") respectfully submits these Comments in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rule Making ("Notice") published at 60 Fed. Reg. 55529 on November 1, 1995, concerning the Petition for Rule Making filed by Pacific Bell Mobil Services ("PacBell").

I. PRELIMINARY STATEMENT

1. Valero operates an 8,000-mile network of natural gas transmission and gathering lines throughout Texas; purchases natural gas for resale to distribution companies, electric utilities, other pipelines and industrial customers throughout the United States and Mexico; and provides gas transportation services to third parties. An affiliate of Valero owns eight natural gas processing plants and is one of the nation's largest producers and marketers of natural gas liquids.

2. Valero is authorized by the Commission to operate 119 point to point microwave facilities in the Private Operational-Fixed Microwave Service, the majority of which have

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assignments in frequency band 1850-1990 MHz ("2 GHz"). The private microwave network is used for day to day operations supporting voice, mobile, data and SCADA communications for its natural gas pipeline transmission and gathering system and natural gas liquids processing plants. The microwave system is utilized for real time, 24 hour remote control and monitoring of the pipelines and plant facilities, which directly and indirectly service approximately 12 million people throughout the State of Texas, including hospitals, schools, homes and electric power generating plants.

3. Valero's microwave system extends, in an almost circular shape, throughout Texas and traverses the Major Trading Areas ("MTAs") and Basic Trading Areas ("BTAs") of Dallas, Houston, and San Antonio. Because its microwave system is also located in natural gas producing areas which are primarily rural (South and West Texas), and in order to avoid disruption of its vital communication links, it is extremely important to Valero to relocate its entire system, or large portions thereof, simultaneously rather than to relocate separate links in piecemeal fashion.

II. COMMENTS

A. The Cost-Sharing Plan

4. Valero supports the Commission's proposal to create "reimbursement rights" so that, once a relocation agreement is reached between a microwave incumbent and initial PCS licensees, the relocation costs can be shared. This procedure should decrease the number of entities involved in the relocation process, as viewed by microwave incumbents, and will potentially allow initial PCS licensees to recover their costs of systemwide relocations which in many instances would be beneficial for microwave incumbents, such as Valero, who have microwave systems in MTAs, BTAs, and rural areas. Valero believes that the implementation of the cost-sharing plan will help to facilitate relocations.

5. In Paragraph 43 of the Notice the Commission has proposed to place a limit or cap on the amount of a payment that would be subject to reimbursement. The amount which a subsequent PCS licensee would be required to pay a relocator PCS licensee pursuant to the cost-sharing formula would be set at $250,000 per link, with an additional $150,000 per link if a tower needs to be constructed. Valero believes that such a low cap may prevent reimbursement for all relocation costs, especially if additional repeater towers are required to provide the microwave incumbent with comparable facilities in the 6 GHz band. Valero believes that an inadequate reimbursement limit will severely restrict negotiations between a PCS relocator and a microwave incumbent. For example, in many instances a ceiling of $250,000 (plus the $150,000 for a new tower) could constrain the ability of a PCS relocator to negotiate freely with the knowledge that it will be permitted to recoup an appropriate portion of a reasonable payment for relocation. Valero believes that the reimbursement cap should be at least $600,000 per link as originally proposed by PacBell.

B. Relocation Guidelines

6. The Commission, at Paragraph 69, has proposed that during the mandatory negotiation period, an offer by a PCS licensee to replace an incumbent's system with "comparable facilities", constitutes a "good faith offer", and that an incumbent's rejection of such an offer creates a rebuttable presumption that the incumbent is not acting in good faith. The Commission proposes that "comparable facilities" costs are limited to actual costs associated with a replacement system, to not include expenses such as consultant fees, and only "bare essentials" should be required.

7. Valero asserts that <u>all</u> costs and fees incurred by a microwave incumbent, including consulting fees and legal fees, associated with a relocation required by the Commission's reallocation

of the 2 GHz band to accommodate PCS licensees, should be paid by a PCS licensee. Even at this time during voluntary negotiations, Valero is incurring costs for monitoring UTAM PCNs and performing interference analysis whenever a UTAM PCN is received. A forced relocation should not constitute a bare essentials relocation, whether undertaken during the voluntary negotiation period, or the involuntary negotiation period.

8. The Commission, in Paragraph 73, also proposes factors to determine whether a facility is comparable. These are: (1) communications throughput, defined as the amount of information transferred within the system for a given amount of time; (2) system reliability; and (3) operating cost.

9. The communications throughput portion of the proposed definition should be clarified to include the total capacity of an incumbent's microwave system, rather than those in use, since most incumbents have some spare capacity for future expansion and growth of their system, and alternate routing capability. Capacity should be defined in terms of licensed capacity, without regard to the number of voice and/or data channels. Otherwise, a microwave incumbent could be forced to accept a lower capacity system than the one being replaced, and could force an incumbent into expensive equipment upgrades or modifications when the throughput of a lower capacity system is exceeded in a relatively short period.

10. Depreciation of equipment should not be a factor in determining costs; PCS licensees should be required to compensate an incumbent for the cost of replacing its existing system, not merely for the depreciated value of that equipment. Valero urges the Commission to recognize that depreciated value would not permit the replacement of comparable facilities without imposing costs on microwave incumbents.

11. Valero urges the Commission to refrain from requiring parties to obtain independent cost estimates during the voluntary negotiation period, since the concept negates the "voluntary" aspect of the negotiations. If the Commission decides to mandate the use of these cost estimates, then that requirement should only apply during the involuntary negotiation period. Fees for obtaining such cost estimates should be reimbursed to a microwave incumbent by a PCS licensee.

12. Valero supports the Commission's proposal that the 12-month trial period should not commence until the date on which the relocated licensee commences operations on the new system. Notice at Paragraph 87.

13. The Notice clarifies that primary status will be granted to microwave incumbents in the 2 GHz band only for minor modifications that do not increase the costs to PCS licensees. Valero submits that where no additional cost is added to PCS licensee's costs, <u>any</u> modification should be permitted. If the ultimate measure is whether the change increases the relocation costs to PCS licensees, there is no reason to limit or restrict the kinds of minor modifications allowed.

14. The Commission has announced plans to impose a time limit on a PCS licensee's obligation to provide comparable facilities; all microwave incumbents remaining in the 2 GHz band would become secondary on and after April 4, 2005. Valero strongly opposes this time limit, since it imposes no obligations on PCS licensees to relocate microwave incumbents in subsequent years, and it completely ignores portions of Valero's microwave system which are now being operated in rural areas that may ultimately be forced from service with no compensation. Just because some systems are operated in rural areas where PCS buildout may not occur until after 2005, that fact should not disqualify them from the economic protections available to urban systems. Such a result could constitute an unlawful taking of property without just compensation. In light of the

Commission's decision to adhere to its existing rules for voluntary negotiations that enable microwave incumbents to bargain for the best possible result during the voluntary negotiation period, forcing an incumbent into secondary status prematurely directly conflicts with the purpose of the Commission's overriding policy and existing rules.

15. Finally, the Commission solicited comment on whether to clarify or modify "certain other aspects of the microwave relocation rules adopted in our *Emerging Technologies* docket, ET Docket No. 92-9". Notice at Paragraph 91. Valero strongly opposes any further modification of the established rules. Since negotiations are ongoing with PCS licensees and C Block auctions are imminent, Commission changes in the existing rules create uncertainty in those negotiations for both microwave incumbents and PCS licensees, and may actually contribute to delays associated with relocation negotiations.

WHEREFORE, THE PREMISES CONSIDERED, Valero Transmission, L.P. respectfully submits the foregoing Comments and urges the Federal Communications Commission to act in a manner fully consistent with the views expressed herein.

Respectfully submitted,

VALERO TRANSMISSION, L.P.

By James V. Cantrell

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Dated: November 29, 1995

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