

- Recommends that the decision of whether a licensee should surrender its 2 GHz license to the FCC prior to the conclusion of the test period should be left purely to the discretion of the incumbent. (28)

Secondary Status in 2005

- Opposes proposal to reclassify incumbents still operating in the band in April 2005 to secondary status. This is contrary to the established regulatory framework, good spectrum management, and equity. Operating at secondary status would mean that incumbents would have terminate operations at a moment's notice and pay for their own relocations. Incumbents in the C, D, E, and F blocks will suffer disproportionately since they will likely have less time for negotiations prior to being classified as secondary. (30-33)
- Alternatively, the FCC could require that all incumbents still operating in the band as of April 2005 be subject to involuntary relocation and be required to submit their relocation plans (including only actual relocation expenses) to the PCS clearinghouse. The clearinghouse would allocate the responsibility for relocation costs among PCS licensees and establish a program for the payment of these costs. (34)

Application of Rules to Other Spectrum

- Urges the FCC not to apply any proposed rule changes to the spectrum identified for other emerging technologies. The same rules may not be appropriate for mobile satellite service or for other unidentified emerging technology services to be introduced in the 2 GHz band. (5)

VALERO TRANSMISSION, L.P.

Interest: Natural gas pipeline operator/microwave licensee.

Cost Sharing

- Generally supports the Commission's cost sharing proposal except for the reimbursement cap. (2)

Reimbursement Cap:

- Believes that the proposed reimbursement limits may prevent reimbursement for all relocation costs and will restrict negotiations between a PCS relocater and a microwave incumbent. (3)
- The reimbursement cap should be at least \$600,000 per link as originally proposed by PacBell. (3)

Relocation Rule Modifications

Definition of Good Faith and Comparable Facilities

- The "communications throughput" aspect of the Commission's proposed definition of comparable facilities should include the total capacity of an incumbent's system since incumbents generally retain spare capacity for future growth and alternative routing. Total capacity should be defined in terms of licensed capacity without regard to the number of voice/data channels so that an incumbent is not forced to accept a lower capacity system. (4)
- A forced relocation should not constitute a "bare essentials" relocation, whether undertaken during the voluntary or involuntary negotiation period. (4)
- Equipment depreciation should not be a factor in determining comparable costs because it would not permit replacement of comparable facilities without imposing costs on microwave users. PCS licensees should be required to compensate an incumbent for the cost of replacing its existing system. (4)

Compensable Costs in Voluntary/Mandatory Periods

- A PCS licensee should pay all costs and fees incurred by a microwave incumbent, including consulting fees and legal fees, associated with a required relocation from the 2 GHz band. (3-4)

Twelve Month Test Period

- Supports the Commission's proposal that the 12-month trial period should commence on the date on which the relocated microwave licensee commences operation of its new system. (5)

Dispute Resolution

- The Commission should not require parties to obtain independent cost estimates during the voluntary negotiation period since such a requirement would detract from the "voluntary" nature of the transaction. (5)
- If the Commission supports the use of independent cost estimates, parties should be required to use these estimates only during the involuntary negotiation period. A PCS licensee should reimburse a microwave incumbent for the fees required to obtain an independent cost estimate. (5)

New Microwave Licensing in the PCS Band

- The Commission should permit any modification of existing 2 GHz microwave systems if that modification does not increase a PCS licensee's relocation costs. (5)

Secondary Status in 2005

- Strongly opposes the proposed time limit on a PCS licensee's obligation to provide comparable facilities to a microwave incumbent. Forcing an incumbent into secondary status prematurely might limit an incumbent's ability to bargain during the voluntary negotiation period and could ultimately require relocation of microwave facilities without compensation. (5-6)
- Microwave licensees operating in rural areas may have to relocate rural facilities without compensation because the PCS build out may not reach these areas before 2005. Rural facilities deserve the same protection as urban facilities, and to deny such protection could constitute an unlawful taking of property without just compensation. (5)

Application of Rules to other Spectrum

- The Commission should not modify the microwave relocation rules adopted in the *Emerging Technologies* docket since any rule changes might disrupt and delay ongoing negotiations between microwave incumbents and PCS licensees. (6)

WESTERN WIRELESS CORPORATION

Interest: Cellular licensee and new PCS entrant

Cost Sharing

- Supports the PCIA cost sharing plan, but believes the rules should require incumbents to negotiate in good faith from the outset. (2)

Use of Formula

- Believes date of initiating service that would have interfered is difficult to administer and suggested that the date payment is due, and the T_n in the formula, should be set at 10 days after the clearinghouse notifies the PCS licensee that a payment obligation exists. (9)
- Supports the use of a uniform fixed T_1 of April 5, 1995 to reduce confusion and complexity. (3)

Compensable Costs

- Suggests that premiums may be valuable to assist relocations in the voluntary period, and that such charges should be compensable to a degree -- it proposes a two tier cap (mandatory v. voluntary), and suggests that if the voluntary cap is not exceeded, all costs below the voluntary cap, whether premiums or not, should be compensable, and that if the voluntary cap is exceeded, only those verifiable non-premium costs above the cap should be compensable. (4-5)

Sunset Period

- Supports a ten year sunset period. (6)

Reimbursement Cap

- Supports tentative conclusions on the value of the cap, noting that unrealistically high caps would be detrimental to PCS licensees by raising the expectations of incumbents. The \$250,000 cap is realistic and should be adopted. (6)

Reimbursement Rights and Date of Obligation

- All qualified relocation costs after April 4, 1995 should be compensable to avoid penalizing those who expedite deployment of PCS. (4)

- Prefers transferring "reimbursement rights" rather than "interference rights," but ultimately states that regardless of which system is adopted, it must be effective in terms of administrative workability and enforcement. (7)

Interference Standard and Trigger for Obligations

- Supports the use of Bulletin 10-F for calculating triggering interference, but strongly disagrees with the FCC's tentative conclusion to limit the application of 10-F to the minimum coordination distance equations. Reimbursement should be paid by any licensees who would have caused actual interference. (8)
- Does not believe adjacent channel interference can be measured well enough to distribute costs among licensees, and suggests that doing so will cause confusion and contention. Believes such a scheme is unnecessary and unworkable. (9)
- Believes the relocater should receive full reimbursement (instead of just pro rata reimbursement) for links outside their frequency block even within their MTA, since there are considerable difficulties in determining "how much" interference is caused. Alternatively, suggests a fixed percentage for simplicity. (3-4)

Role of Clearinghouse

- The proposed clearinghouse funding mechanism disproportionately burdens early licensees; the compensation should be derived pro rata based on the number of owned MHz-POPs adjusted as new licenses are issued. (10)
- Believes it is manageable for the clearinghouse to administer strict confidentiality rules. (10)

Dispute Resolution

- Agrees that the clearinghouse should be initially responsible for disputes, but notes that the clearinghouse, at a minimum, must have the ability to influence the assignment/transfer of control and renewal processes to enforce payment obligations. (10)

Relocation Rule Modifications

Voluntary Negotiation Period

- Believes the definition should also be applicable in the voluntary negotiation phase; the lack of a good faith requirement in the voluntary negotiation period

gives incumbents too much leverage. Notes a system where its construction is being halted by an incumbent with unreasonable demands. (11-13)

Definition of Good Faith and Comparable Facilities

- Supports definition of "good faith." (11-13)
- Suggests limiting "comparability" to bandwidth and capacity that the incumbent can verify using over the past 12 months to avoid unnecessary costs and overstatement of demands by incumbents. (13-14)
- Notes that piecemeal replacement of facilities, especially when digital facilities are used, is a sensible and cost-effective solution; to promote blanket system replacement encourages overreaching. (14)
- Notes that artificially limiting the replacement cost to depreciated value of equipment for cases where replacement analog facilities are unavailable will doom many negotiations to failure. (15)

Compensable Costs in Voluntary/Mandatory Periods

- Agrees that third party/consultant fees should not be included in "comparable facilities" calculations. (14)

Public Safety Certification

- Supports giving PCS licensees the right to request verification of public safety status. (16)

Dispute Resolution

- Supports required submission of cost estimates by both sides during voluntary negotiation phase to discourage bad faith negotiations, but notes that an enforcement mechanism is needed. (15-16)

Twelve-Month Test Period

- Agrees that surrender of the license should not prejudice an incumbent's rights under the relocation rules, but requests clarification that the one-year test period only applies to mandatory relocations and that, to the extent the rule applies to voluntary relocations, it can be waived by the incumbent. (16)

Secondary Status in 2005

- Agrees that secondary status is a natural conclusion of decision to reallocate spectrum, but believes the period should be shortened in cases where agreement cannot be reached at the end of the mandatory negotiation period. (16-17).

Other

- Urges the FCC to expedite action on this item. (2)

WILLIAMS WIRELESS, INC. ("WWI")

Interest: Owner and operator of microwave system

Cost Sharing

- Generally supports the Commission's cost-sharing plan. (2)

Reimbursement Cap

- Notes that proposed cap of \$250,000 will suffice for purposes of establishing a "downstream limit" on reimbursement -- although the cap is low in terms of actual relocation costs. (3)

Relocation Rule Modifications

- Supports the Commission's proposals to clarify the negotiation rules. The Commission's cost-sharing plan will promote system-wide relocation by encouraging otherwise reluctant PCS licensees to relocate entire systems. (2-3)

Voluntary Negotiation Period

- Supports the Commission's reaffirmation that negotiations during the initial phase be voluntary. Voluntary negotiations will promote the introduction of PCS and protect the operations of critical microwave systems. (3)

Definition of Good Faith and Comparable Facilities

- Proposes that microwave incumbents, at a minimum, be made "whole" including being given technically comparable facilities.
- Supports the Commission's limitation of comparable facilities to the actual costs of providing a replacement system. Lost opportunity, lost business and other soft costs should be recognized in any offer of comparable facilities. Cost that are not "approved" by the PCS relocater should be excluded. (4)
- For large microwave systems, comparability must be determined on a system-wide basis. (4)
- Opposes PCS licensee reimbursement based on depreciated value of digital equipment where analog systems are not available. Microwave licensees should be reimbursed the full cost of state-of-the-art replacement equipment because they should not have to suffer adverse financial consequences as a result of the PCS reallocation. (5)

Compensable Costs in Voluntary/Mandatory Periods

- Proposes that microwave incumbents be reimbursed any out-of-pocket expenses during voluntary and mandatory negotiation phases. (3)

New Microwave Licensing in PCS Band

- Asserts that the Commission seeks to grant primary status based on overly stringent criteria. Administrative corrections of licensing errors and modifications that do not increase the cost to PCS licensees should be considered primary. (5)

Secondary Status in 2005

- PCS licensees should have a continuing obligation to relocate microwave incumbents because incumbents in rural locations (who may not readily receive offers) should not have to pay the price of PCS implementation. (6)

Other

- Communications failures will markedly increase under a piecemeal (link-by-link) replacement approach because there will be different frequency links, dissimilar vendor equipment and disparate testing devices in use. (3)
- Prolonged link-by-link relocation will jeopardize the integrity of the commenter's network, reduce its manageability, impair throughput and increase operational costs. (4)

The following summaries are not included in the Summary Document or listed in the Table of Contents because they were filed after the FCC's deadline.

CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION ("CTIA")

Interest: International organization of wireless communications industry

Cost Sharing

- Supports the FCC's cost sharing proposal. (5)

Role of Clearinghouse

- Supports use of a clearinghouse mechanism. (6)
- The FCC should take care to protect the confidentiality of commercially sensitive information. For example, both the dollar amount a PCS licensee has paid to clear spectrum in a market area, and the proposed location of a licensee's transmitters, are commercially sensitive and competitively valuable information that should not be disclosed to competitors. (7)

Private Agreements

- The FCC should be careful not to construct rules that preclude or penalize PCS licensees for clearing spectrum and voluntarily entering into market-based cost sharing arrangements. (7)

Relocation Rule Modifications

Voluntary Negotiation Period

- Incumbent licensees should be required to negotiate in good faith during the voluntary negotiation period. The current rules give incumbents an incentive to refuse to negotiate during this period in order to extract premiums from PCS relocators, which some are doing. (8)

Definition of Good Faith and Comparable Facilities

- The good faith standard should include the absence of malice and the absence of seeking unjust enrichment beyond actual relocation costs by taking unconscionable advantage of a PCS licensee's need to relocate the incumbent. (9)
- Parties that do not negotiate in good faith should have their license revoked and should have their relocation rights terminated. (9)

- Demands by incumbents that exceed twice its costs of relocation are prima facie unreasonable and are evidence of bad faith during the mandatory negotiation period. (9)
- The FCC should define comparable facilities as "facilities whose overall quality is equal within a reasonable range so that both voice and data users will perceive no qualitative difference between the original and replacement facilities." A similar definition is incorporated in the equal access provisions of the MFJ. (10-11)

Compensable Costs in Voluntary/Mandatory Periods

- Incumbents that have not reached agreement within the initial two-year voluntary negotiation period should be responsible for their relocation costs during the involuntary period. (9)
- Premium payments should not be recoverable, and recoverable relocation costs during the mandatory period should be limited to the undepreciated cost of an incumbent licensee's existing system. (11)

New Microwave Licensing in PCS Band

- The FCC should cease issuing new co-primary licenses in the 2 GHz band. Continued licensing is a breach of faith to PCS license winners. (14)

Twelve-Month Test Period

- Incumbents are not entitled to be returned to their original position if they are not satisfied with the relocated position. To allow this would jeopardize the deployment of PCS and gives incumbents additional leverage to further stall or thwart the relocation process. (13)

Secondary Status in 2005

- The rights of microwave incumbents should be tolled on April 4, 2005. (14)

Exhibit I -- Summary of Microwave Relocation "Bloody Shirts"

STATE OF KANSAS

Interest: Public safety incumbent

Cost Sharing

Compensable Costs

- Actual relocation costs should include equipment shelters to house the facilities listed in ¶ 37 of the NPRM. (2)

Relocation Rule Modifications

Definition of Good Faith and Comparable Facilities

- Supports Southwestern Bell's position that a comparable system should have the following components: the existing channel capacity of the relocated path, the same reliability as the relocated path, the same growth potential in terms of ability to expand the capacity of that path in the new spectrum, and the ability for backup if the existing facility already provides redundancy. (2)
- Opposes allowing the trading-off of system parameters as intolerable to the protection of life and property by a public safety incumbent. (2)
- Urges the FCC not to use depreciation of equipment and facilities as part of the comparable facility equation, as this would only increase conflicts and prolong negotiations. (2)

Public Safety Certification

- Public safety incumbents should be given the highest priority for the most reliable frequency in the relocated path. (2)

Twelve-Month Test Period

- Additional clarification is needed regarding the test period. Does the period continue to run if a problem is found and cured or does it begin again after a problem is cured to give the incumbent twelve months to determine that the problem no longer exists? If a problem is reported during the twelve month period, but not cured during that time, is the PCS licensee still obligated to remedy the problem after the twelve-month period? (2)

- PCS providers should be required to remedy a problem within 24 hours for a system-wide failure and within two weeks for minor problems. (2)
- The FCC should not require a public safety incumbent to surrender its license at any time until it has been successfully relocated. (2)