

Before the
Federal Communications Commission
Washington, DC 20554

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MAY 28 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

WT Docket No. 95-157

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In the Matter of)
)
Amendment to the Commission's)
Rules Regarding a Plan for Sharing)
the Costs of Microwave Relocation)

To: The Commission

COMMENTS

BellSouth Corporation, on behalf of itself, BellSouth Personal Communications, Inc., and BellSouth Cellular Corp. (collectively "BellSouth"), by its attorneys, respectfully submits comments in response to the Further Notice of Proposed Rule Making in the captioned proceeding, FCC 96-196 released April 30, 1996, *summarized* 61 Fed. Reg. 24,470 (May 15, 1996) (the "FNPRM"). These comments support neither the proposal to shorten the voluntary negotiation period and lengthen the mandatory negotiation period for the Broadband Personal Communications Service ("PCS") C, D, E and F Blocks nor the proposal to permit microwave incumbents to participate in the recently adopted cost-sharing plan.

The following comments are intended to have application only to cost-sharing in the context of Broadband PCS. The Commission noted in the First Report and Order in this proceeding that, "[C]ommenters argue that each service should have a service-specific rule making proceeding to take into account the unique technical, financial, and other

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considerations presented in each service.”¹ BellSouth was one of those commenters and continues to hold to that belief.²

I. THE COMMISSION NEED NOT ADJUST THE VOLUNTARY AND MANDATORY NEGOTIATION PERIODS FOR THE D, E AND F BLOCKS OR THE C BLOCK

A. The Broadband PCS D, E and F Blocks

The *FNPRM* seeks comment on whether, for purposes of the Broadband PCS D, E and F Blocks, the specified lengths of time assigned to the voluntary and mandatory negotiation periods should be interchanged.³ Shortening the voluntary period to one year for non-public safety incumbents and to two years for public safety licensees, according to the *FNPRM*, “could potentially accelerate the development of PCS in the D, E and F blocks by speeding up the negotiation process and creating additional incentives for incumbents to enter into early agreements.”⁴ The *FNPRM* compensates for the earlier

¹ See *Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, First Report and Order and Further Notice of Proposed Rule Making* in WT Docket No. 95-157, FCC 96-196 released April 30, 1996, summarized 61 Fed. Reg. 24,470 (May 15, 1996) (the “*First R&O*”), at 43 (¶91) (footnote omitted).

² In its comments in response to the initial notice of proposed rule making in this proceeding, BellSouth stated:

A cost-sharing requirement should generally be applicable to all emerging technology providers, but specific cost-sharing requirements should be imposed for each new emerging technology service in separate NPRMs. Each new service and each new group of affected microwave incumbents present unique technical, financial, and other considerations. By establishing only the general conceptual framework for cost-sharing by other emerging technologies (*i.e.*, non-PCS), the Commission will put prospective licensees for these other services on notice that they will be subject to cost-sharing obligations while retaining the ability to adapt its general cost-sharing rules to the requirements of particular services.

Comments of BellSouth Corporation filed November 30, 1995, at 2-3 (footnotes omitted).

³ *FNPRM, supra*, at 44-45 (¶¶95 and 97).

⁴ *FNPRM, supra*, at 45 (¶96).

initiation of mandatory negotiations by retaining the same trigger event for the possibility of involuntary relocation.⁵

The Commission's allocation scheme for Broadband PCS, coupled with the characteristics of the incumbent microwave environment, and the different auction dates for the various blocks obviate the need to adjust the length of time for the voluntary and mandatory negotiation periods for the D, E and F blocks. By the time the D, E and F blocks are licensed, the PCS A and B block licensees should have relocated the vast majority of links which the D, E and F blocks otherwise would have needed to move.

Broadband PCS A and B block licensees and the members of Unlicensed PCS Ad Hoc Committee for 2 GHz Microwave Transition and Management ("UTAM") currently are relocating microwave incumbents. BellSouth's practical experience in dealing with hundreds of 2 GHz microwave interference cases in the Charlotte-Greensboro-Greenville-Raleigh and Knoxville Major Trading Areas ("MTAs"), as a PCS licensee, is that adjacent and co-channel interference will be caused absent relocation. Indeed, the Commission has found that "incumbents' receivers may be susceptible to adjacent or co-channel interference from PCS licensees in more than one PCS spectrum block."⁶

Adjacent channel interference is very real given the characteristics of the microwave receivers in the 1850 MHz to 1990 MHz band. Many of the receivers accept signals across a range of frequencies two to three times the width of the transmit frequency, *e.g.*, the receiver for a microwave channel which has a 10 MHz transmit bandwidth in many cases will be receiving over a 25 MHz to 30 MHz bandwidth. This

⁵ *FNRPM, supra*, at 45 (¶196).

⁶ *First R&O, supra*, at 5 (¶16).

means that the A and B block licensees are having to relocate microwave facilities which are as much as 10 MHz outside their blocks.

The Broadband PCS block and existing microwave allocation schemes are depicted in Exhibit A. Based on the foregoing, it is clear that a considerable majority of the microwave facilities which the D and E block licensees otherwise would have to relocate will be relocated by the A and B block licensees. The B block licensees, because of adjacent channel interference concerns, will relocate many of the incumbents the F block would have to move, *i.e.*, those authorized for the paired 1890-1900 MHz/1970-1980 MHz channels and the paired 1887.5-1892.5 MHz/1967.5-1972.5 MHz channels. The soon-to-be licensed C block entities will be negotiating agreements with and relocating the vast majority of the other microwave incumbents the F block winners might have to move, *i.e.*, the paired 1890-1900 MHz/1970-1980 MHz channels and the paired 1897.5-1902.5 MHz/1977.5-1982.5 MHz channels.⁷

As the Commission has noted and BellSouth's recent experience bears out, incumbents do not want to relocate systems one link at a time. Rather, they want their multi-link systems moved as a whole.⁸ Accordingly, in many cases, A and B block licensees, like BellSouth, are agreeing to compensate incumbents for the relocation of links which are neither co-channel nor adjacent to their blocks. Thus, in the main, D, E and F block licensees will be relocating only geographically remote facilities which are not impacted by any other PCS operator.

⁷ Effective May 22, 1996, the voluntary negotiation period began for the Broadband PCS C block. *See Wireless Telecommunications Bureau Announces Commencement of the Voluntary Negotiation Period for 2 GHz Microwave Incumbents Operating in the Broadband PCS "C" Block*, Public Notice DA 96-838 released May 24, 1996.

⁸ *First R&O*, *supra*, at 5(¶6) and 19-20 (¶¶36 & 37).

In sum, the D, E and F block licensees will have few links to relocate because the A and B block licensees will have agreed to relocate a high percentage of the links and the C block licensees and UTAM most likely will contract for many of the relatively small number of remaining links. Therefore, as a practical matter, there appears to be no reason to interchange the voluntary and mandatory negotiation time periods for the D, E and F block licensees.

B. The Broadband PCS C Block

A similar time period reversal was denied for A and B block licensees in the *First R&O*, but the *FNPRM* suggests that different treatment for the C block is warranted because no negotiations are in progress. Comment is sought on “whether shortening the voluntary period and lengthening the mandatory negotiation period for the C block would facilitate the development of PCS in this band and what effect it would have on negotiations between C block licensees and microwave incumbents.”⁹

In addition to the reasons summarized in the *FNPRM*, the *First R&O* rejected the requested time period reversal because the A and B block “licensees were on notice of the current rules when they bid for their licenses, and because negotiations between microwave incumbents and A and B block licensees are ongoing.”¹⁰ The *First R&O* also found that “the A and B block licensees . . . offered no persuasive justification to shorten the [voluntary] period . . .” and “altering the voluntary period could inadvertently delay the deployment of PCS, because negotiations are likely to be interrupted while parties assess their bargaining positions.”¹¹

⁹ *FNPRM, supra*, at 45 (¶97).

¹⁰ *FNPRM, supra*, at 44 (¶94).

¹¹ *First R&O, supra*, at 8 (¶13).

In this regard, BellSouth perceives the posture of the soon-to-be C block licensees to be no different from that of the A and B block licensees. If reversing the time periods will facilitate the development of PCS in the C block band, similarly, it would do that for the A and B blocks. A concern that the reversal would delay ongoing A and B block licensees' negotiations is unfounded. The reason commenters in the original notice wanted the time periods reversed was to speed up PCS deployment,¹² which is one of the primary goals of the Commission for this service.¹³ In the alternative, if time period reversal is inappropriate for the A and B blocks, it is equally inappropriate for the C block under the rationale of the *First R&O*.

II. MICROWAVE INCUMBENTS SHOULD NOT BE ALLOWED TO OBTAIN REIMBURSEMENT RIGHTS

The *FNPRM* tentatively concludes "that microwave incumbents that relocate themselves should be allowed to obtain reimbursement rights and collect reimbursement under the cost-sharing plan from later-entrant PCS licensees that would have interfered with the relocated link."¹⁴ Yet, comment is sought on what preventive measures should be adopted to ensure that the relocation costs of self-relocating incumbents are made in a good faith effort to approximate those costs resulting from a two-sided negotiation. If the Commission allows incumbent participation in cost-sharing, it asks if the incumbent should be considered the same as an initial PCS relocater

BellSouth disagrees with the *FNPRM's* tentative conclusion.

¹² *First R&O, supra*, at 7, n.24 (¶11).

¹³ *See Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order* in GEN Docket No. 90-314, 9 F.C.C.R. 4957, 4959 (1994).

¹⁴ *FNPRM, supra*, at 46 (¶99).

BellSouth has engaged a number of incumbents in microwave relocation negotiations, most of which have resulted in written agreements. There is every reason to believe the few unconcluded discussions also will reach mutually acceptable contracts. Each negotiation was at least two-sided; some involved three or more parties; none was one-sided.

The incumbents BellSouth encountered operate sophisticated microwave and other telecommunications systems. Yet, most negotiations benefited significantly from the direct or indirect participation of non-contracting parties, such as equipment vendors and consulting microwave engineers. The vendors and outside consultants (for both parties), in many instances, facilitated prompt and cost-effective resolution of complex technical issues which neither BellSouth nor the incumbent could have accomplished as quickly by itself.

The two-sided approach to relocation has worked for BellSouth and the incumbents with which it has dealt. BellSouth will be able to offer PCS in two MTAs very soon; the incumbents will be compensated fairly for relocating. Those PCS entities who will reimburse BellSouth or share costs with BellSouth for these relocations will do so protected by the Commission's Rules (*e.g.*, the reimbursement caps) and the facts that the relocation decision and its cost components were agreed upon mutually; they were not the product of one party's unilateral decision.

Permitting an incumbent to relocate its own facilities and participate in cost-sharing creates some perverse incentives for the incumbents. Given the self-relocation option, there is no incentive for an incumbent to reach a relocation agreement. Indeed, an

incumbent can enter into negotiations with a PCS relocater and thereby establish a benchmark for the reasonableness of a relocation package. The incumbent then can terminate the negotiations and grant itself a more generous package which is better than the PCS relocater offered but less than what the Commission might consider to be excessive. Presumably, the incumbent could relocate itself at its leisure because it could obtain reimbursement rights at any time. Such a scenario would not speed the deployment of PCS.

The cost associated with a unilateral decision to relocate would be constrained only by the reimbursement caps; there would be no party to perform a cost-containment function. Any surrogate mechanism devised to serve that role likely either would impose too little control in which case the cost-sharers would be overpaying or would be so constricting that no incumbent would avail itself of the opportunity.

BellSouth encourages the Commission to reject the tentative conclusion to allow incumbents to relocate their own facilities and to obtain reimbursement under the cost-sharing plan.

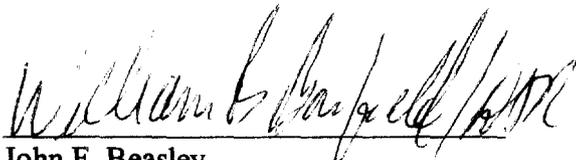
CONCLUSION

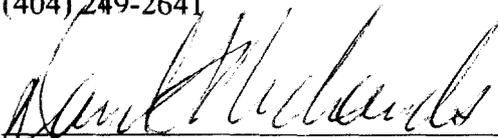
For the reasons stated, BellSouth respectfully submits that the Commission need not adjust the voluntary and mandatory negotiation periods for the C, D, E and F blocks and the Commission should not allow incumbents to relocate their own facilities and obtain reimbursement under the cost-sharing plan.

Again, these comments are intended to have application only to cost-sharing in the context of Broadband PCS. Their applicability to other emerging technology services would have to be considered in the light of the unique technical, financial, and other considerations presented by that service.

Respectfully submitted,

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May 28, 1996

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PCS ALLOCATION TABLE

1.9 GHz BAND

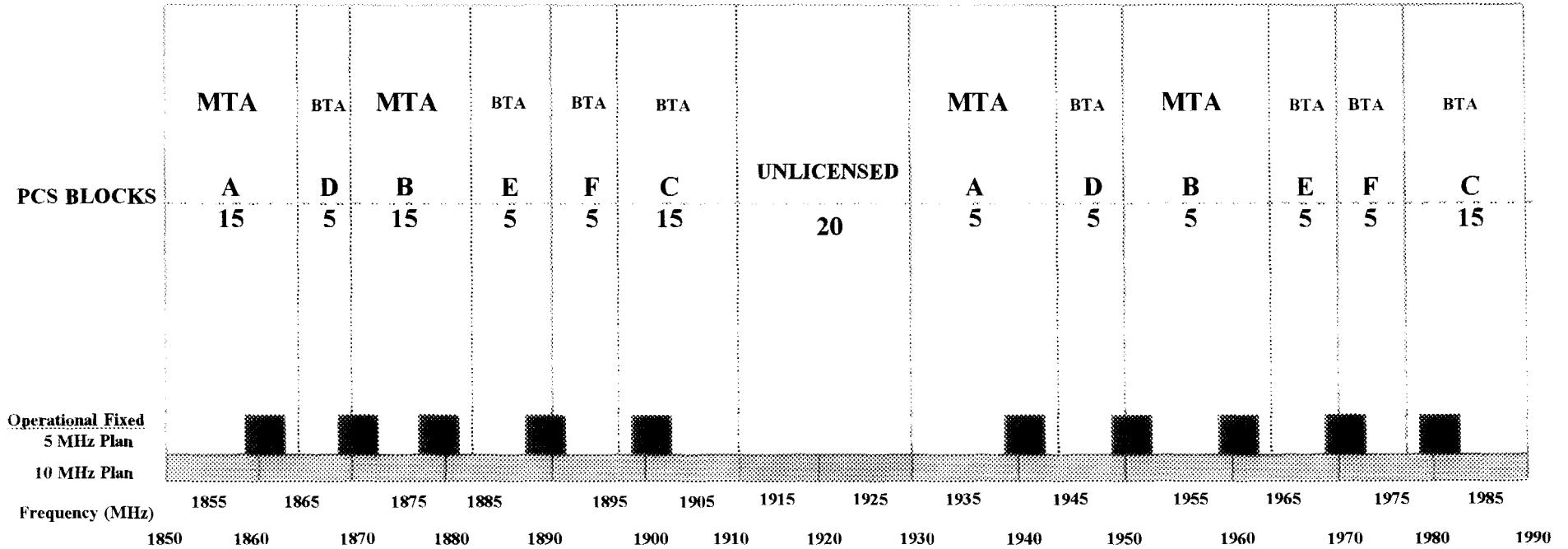


EXHIBIT A

CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of May, 1996 served a copy of the foregoing "Comments" on the following persons by hand delivery

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