



April 1, 1996

The Honorable Reed E. Hundt, Chairman
Federal Communications Commission
1919 M Street N.W., Room 814
Washington, D.C. 20554-0001

Re: 2 GHz Microwave Relocations
WT Docket No. 95-157

Dear Mr. Chairman:

Puget Sound Power & Light Company ("Puget Power") is an electric utility providing electric service to 840,000 customers in the State of Washington. Pursuant to the Commission's rules and procedures adopted in the Emerging Technologies docket (ET Docket No. 92-9), Puget Power and Sprint Spectrum (including its affiliates, agents and representatives, "Sprint") are engaged in voluntary negotiations for the relocation of Puget Power's 2 GHz microwave facilities. Puget Power was recently named in a letter to you dated March 1, 1996 from Mr. Wheeler on behalf of the Cellular Telecommunications Industry Association ("CTIA").

We were truly shocked and surprised by the revelations and tone of CTIA's letter, particularly as it relates to Puget Power. Until we independently discovered CTIA's letter (e.g., it was not disclosed or provided to us by CTIA or Sprint), Puget Power had absolutely no reason to believe that its proposal to Sprint was not acceptable. Indeed, while CTIA was preparing and delivering its letter, Puget Power was responding to Sprint's requests for additional information to support Puget Power's proposal. Puget Power has at all times negotiated in good faith with the objective of reaching a mutually acceptable agreement, all in accordance with and as contemplated by the Commission's voluntary negotiation rules and procedures. The Commission's rules and procedures were guiding the parties to the desired result.

And then came CTIA's letter, which totally mischaracterizes the negotiations between Sprint and Puget Power. CTIA's attempts to brand Puget Power as a "Bad Actor" or "extortionist" are offensive and totally without foundation. In the context of the negotiations between Sprint and Puget Power, CTIA's letter smells of bad faith and ulterior purpose (e.g., to threaten and bully incumbents into accepting

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unreasonable terms dictated by PCS licensees). Upon examination, CTIA's letter is revealed as a brash attempt to undermine or circumvent the Commission's rules and procedures for the equitable and orderly relocation of 2 GHz microwave facilities.

Puget Power cannot speak for the other incumbents named in CTIA's letter. However, the letter contains a number of statements that are blatantly false and misleading as to Puget Power. Although it would not serve any useful purpose to identify and discuss each and every false or misleading statement in detail, we ask that the Commission consider the following:

Brief History of Negotiations

Within a month after the Commission issued PCS licenses to Sprint and/or GTE MobileNet (including its affiliates, agents and representatives, "GTE") for certain microwave frequencies previously licensed to Puget Power, Puget Power initiated contact with Sprint and GTE to commence voluntary negotiations under the Commission's rules and procedures. Puget did not receive any response until almost six months later when it was contacted by Vento Communications, Inc. ("VCI"), representing itself as authorized to negotiate on behalf of Sprint and GTE.

On October 25, Puget Power and VCI met to commence negotiations. Following this meeting, Puget Power provided a plethora of information and materials requested by VCI and permitted GTE to conduct a field audit of Puget Power's microwave facilities. On February 7, 1996, VCI presented Puget Power with a joint proposal by Sprint and GTE.

Puget Power carefully reviewed and analyzed the Sprint/GTE proposal and determined that it was not acceptable. Among other things, the consideration offered by Sprint/GTE would not cover Puget Power's costs of the relocation, and the proposal required Puget Power to (i) pay substantial penalties if certain conditions were not satisfied on schedule, (ii) assume the entire risk of the replacement system, and (iii) waive its right to a one-year post-construction test period.

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Puget Power then prepared and submitted a counter-proposal on February 23, 1996. VCI requested additional information relating to Puget Power's counter-proposal and promised a response on or about March 8, 1996.

CTIA sent its letter to you on or about March 1 (i.e., at which time VCI had not yet received all of the information in support of Puget Power's counter-proposal, and Puget Power had not received any comment or other response to its counter-proposal). As of March 1, Sprint/GTE had not given Puget Power any indication whatsoever that Puget Power's counter-proposal was not acceptable.

When Puget Power contacted VCI to inquire about CTIA's March 1 letter, VCI would indicate only that it was no longer involved in the project and that Puget Power would hear from Sprint Spectrum directly. Puget Power was then contacted by Sprint Spectrum whose representative indicated that Sprint Spectrum did not agree with CTIA's characterization of the negotiations with Puget Power and that the "letter from CTIA was in no way authorized by Sprint Spectrum."

On or about March 11, 1996, Sprint, on behalf of itself and GTE, submitted a response to Puget Power's counter-proposal. Sprint's response did not contain any indication whatsoever that Puget Power's counter-proposal was an "unconscionable demand" and, instead, included a counter to Puget Power's proposal and indicated a desire to continue the negotiations.

Puget Power is currently reviewing Sprint's March 11 counter-proposal and desires to continue the voluntary negotiation process with the objective of reaching a mutually acceptable agreement in the near future, well within the voluntary negotiation period established by the Commission. We believe that this objective is very attainable and mutually beneficial to both parties.

Comments to CTIA Letter

In light of the foregoing, the Commission should note the following with regard to CTIA's March 1 letter:

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1. CTIA indicates that the "estimated fair cost" of the Puget Power relocation is \$3,000,000. This estimate is based upon the \$250,000 per link reimbursement cap under the Commission's proposed plan for cost-sharing among PCS licensees. This cap was proposed to protect future PCS licensees "who have no opportunity to participate in the negotiations" and is not relevant to the voluntary negotiations between Sprint and Puget Power or to Puget Power's actual costs of the relocation.

2. CTIA's "estimated fair cost" (i.e., \$250,000 per link) is substantially greater than the amount offered by Sprint to Puget Power (i.e., only \$184,000 per link).

3. CTIA's letter indicates that Puget Power's "requested cost" is \$7,600,000. There is no basis for this statement. The cost of Puget Power's initial proposal, based upon Sprint's own estimates, should not exceed \$5,900,000.

4. As previously noted by the Commission, the 2 GHz microwave bands support important communications providing vital services to the public. Puget Power's microwave system is an integral part of its electric operations. The system is used to transmit information which is critical in controlling the stability and reliability of Puget Power's electric system, which is tightly interconnected with other electric systems throughout the Western United States. A failure of the microwave system could disrupt or otherwise adversely affect service to Puget Power's customers (including health and welfare organizations, federal defense facilities, etc.) and have a cascading effect through other electric systems with which Puget Power's system is interconnected. The two-year voluntary negotiation period is an important aspect of the Commission's procedures which were designed to protect the public against disruption of such vital services.

5. In its letter, CTIA urged the Commission to shorten the voluntary negotiation period to one year. This would, in effect, eliminate the voluntary negotiation period for the Sprint/GTE/Puget Power negotiations (i.e., the one-year period requested by CTIA would end on or about April 5, 1996). In this regard, it should not be overlooked that Sprint did not respond to Puget Power's request to commence negotiations until nearly six months after Puget Power's request. Puget Power should not be penalized for Sprint's delay.

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6. CTIA also ignores the financial interests of Puget Power's customers. The Sprint/GTE proposal does not provide for the recovery of all of Puget Power's costs related to the relocation. Puget Power should be allowed to negotiate for a full cost recovery and not be limited by an arbitrary "cap" or other restriction. In its notice of the proposed rulemaking regarding the cost-sharing proposal, the Commission noted that the supporters of the cap emphasized "that the cap would not limit the amount that PCS licensees may pay to microwave incumbents to relocate their facilities."

7. CTIA's letter urges the Commission to limit an incumbent's recoverable costs to the undepreciated cost of the incumbent licensee's existing system. The incumbent's undepreciated cost has no bearing upon the incumbent's actual costs of the relocation. If the incumbent's actual costs are not recovered, the balance would have to be borne by the incumbent or, as in Puget's case, its customers. This would not be fair or equitable. In addition, this change would greatly disadvantage the incumbents during the voluntary negotiation period.

8. The other actions urged by CTIA in its letter would prejudice those who, like Puget Power, have negotiated in good faith in reliance on the Commission's existing rules and procedures and otherwise disadvantage incumbents in the voluntary negotiation period. In addition, such actions would embroil interested parties and the Commission in disputes as to whether negotiations have been carried on in "good faith" and otherwise undermine the Commission's established rules and procedures for the orderly and equitable relocation of 2 GHz facilities.

9. At Sprint's request, Puget Power and Sprint entered into a Reciprocal Confidentiality Agreement which covers these negotiations. Sprint appears to have intentionally violated, or at least ignored, its obligations under the very agreement that it imposed upon Puget Power.

10. CTIA's letter was submitted in connection with the proposed rules regarding a plan for sharing the costs of microwave relocation among PCS licensees (WT Docket No. 95-157). Contrary to the Commission's direction, CTIA's letter attempts to reopen the existing relocation procedures for microwave incumbents adopted in the Emerging Technologies docket (ET Docket No. 92-9). As noted in the Commission's Notice, these procedures were the product of extensive comment and

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deliberation prior to the initial licensing of PCS. Consequently, CTIA's letter should not be considered in the current proceeding.

11. Puget Power believes that it has been wrongly accused of being a "Bad Actor", making "unconscionable demands", behaving in an "outlandish" and "irresponsible" manner, refusing to "bargain in earnest", making "financial demands having no relation to the actual cost of relocation", etc. To the contrary, Mr. Wheeler's letter suggests that it is CTIA (and perhaps Sprint) whose behavior has been outrageous and irresponsible.

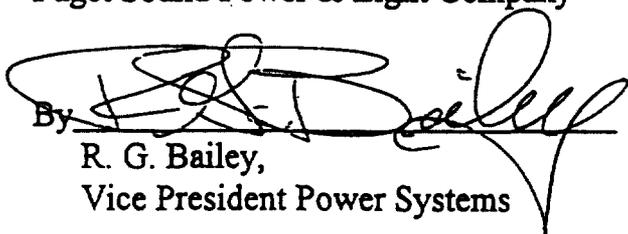
Conclusion

We respectfully request the Commission to deny CTIA's request for changes in the microwave relocation rules. If the Commission is inclined to consider CTIA's request, the Commission should carefully investigate and scrutinize CTIA's allegations which, if the allegations as to Puget Power are any indication, cannot be relied upon as true or accurate.

If you have any questions or if we can be of any further assistance in the Commission's deliberations, please let me know.

Yours truly,

Puget Sound Power & Light Company

By 

R. G. Bailey,
Vice President Power Systems

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cc: Commissioner James H. Quello
Commissioner Andrew C. Barrett
Commissioner Rachelle B. Chong
Commissioner Susan Ness
Michele Farquhar, Chief,
Wireless Telecommunications Bureau
Ralph Haller, Deputy Chief,
Wireless Telecommunications Bureau
Rosalind K. Allen, Associate Deputy Chief,
Wireless Telecommunications Bureau
Gerald P. Vaughn, Deputy Chief,
Wireless Telecommunications Bureau

IP

APR 16 '96

14:45 No.010 P.02

F: Doc 95-157

GVEC

Guadalupe Valley Electric Cooperative, Inc.

HEADQUARTERS OFFICE
P.O. Box 118 — 825 E. Sarah DeWitt Dr.
Gonzales, Texas 78829-0118
210-672-2871 — FAX 210-672-9841

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

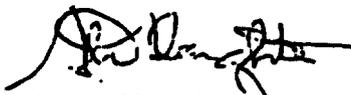
Re: Microwave Relocation Cost-Sharing WT Docket No. 95-157

Dear Mr. Caton:

Pursuant to Section 1.1206(a)(2) of the Commission Rules, this is to notify you that the attached letter was sent today. The attached letter responds to certain assertions involving Guadalupe Valley Electric Cooperative, Inc. made by the Cellular Telecommunications Industry Association (CTIA) in its March 1, 1996 letter to the Chairman.

An original and one copy of this notice are being filed for inclusion in the above referenced docket.

Sincerely,


Steve Slaughter

Attachment

GVEC

IP
APR 16 '96 14:45 No.010 P.03
Guadalupe Valley Electric Cooperative, Inc.

HEADQUARTERS OFFICE
P.O. Box 116 — 886 E. Sarah DeWitt Dr.
Gonzales, Texas 78629-0116
210-672-2871 — FAX 210-672-2841

April 15, 1996

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554-0001

Re: Assertions concerning Guadalupe Valley Electric
Cooperative, Inc. in connection with microwave
relocation

Dear Mr. Chairman:

The purpose of this letter is to address certain statements made by Mr. Thomas E. Wheeler of the Cellular Telecommunications Industry Association ("CTIA") regarding Guadalupe Valley Electric Cooperative, Inc. ("GVEC") in his March 1, 1996 letter to you. That letter was concerning what Mr. Wheeler described as unconscionable demands by certain incumbent microwave operators in the 2 GHz band in connection with microwave relocation. In his letter, Mr. Wheeler included GVEC in his list of representative transgressive incumbents. We feel compelled to address what we believe are misleading assertions involving GVEC in Mr. Wheeler's letter.

In various parts of Mr. Wheeler's letter, GVEC (along with certain other incumbents) is characterized as "outlandish," "irresponsible," "greedy" and "mercenary." Also, in an attachment to Mr. Wheeler's letter, GVEC is likened to "a used car salesman." GVEC is a well-respected organization that has provided electric power service to the communities it serves for 57 years, and we take great offense to these characterizations.

In support of his derogatory characterizations, Mr. Wheeler included with his letter a number of attachments outlining some of the demands to which Mr. Wheeler claims Sprint Spectrum ("Sprint") has been subjected, which he summarized on page 2 of his letter. The key assertions by Mr. Wheeler concerning GVEC are contained in that summary. With respect to GVEC, the summary indicates that (1) two (2) links are involved in GVEC's

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relocation, (ii) GVEC's "Requested Cost" of relocation is \$1,304,416, (iii) the "Estimated Fair Cost" of relocation for GVEC is \$500,000, and (iv) the "Extortion Delta" for GVEC is \$804,416 (i.e., the "Requested Cost" minus the "Estimated Fair Cost").

The information regarding GVEC in the summary on page 2 of Mr. Wheeler's letter is seriously misleading primarily because the summary compares "apples to oranges" by listing an "Estimated Fair Cost" of \$500,000 that only covers the two (2) GVEC paths implicated in Sprint's frequency block, and comparing that cost to a "Requested Cost" that covers all four (4) paths in GVEC's system in order to arrive at what Mr. Wheeler calls the "Extortion Delta." Although it is true that GVEC only has two (2) duplex paths that lie in Sprint's frequency block, GVEC in fact has four (4) duplex paths in the affected spectrum (i.e., 1.85 to 1.99 GHz). Mr. Wheeler's summary fails to make this clear.¹ If the basis for listing the number of links for GVEC as two (2) is that only two (2) links are implicated in Sprint's frequency block, the information in the summary is misleading because it fails to take into account the fact that Sprint would not bear the entire relocation cost alone. Part of the cost would be borne by other PCS licensees, either through existing private cost-sharing agreements or through possible FCC mandated cost-sharing.

Another reason that the information regarding GVEC in the summary on page 2 of Mr. Wheeler's letter is inaccurate is that the "Requested Cost" for GVEC listed in the summary is based on cost figures that do not include price discounts that are available to the PCS licensees from the microwave equipment manufacturers, which discounts we understand are substantial. Because of those discounts, the true cost to the PCS licensees will be far less than the \$1,304,416 listed in the summary.² As the result of a lack of

¹ Listing the number of paths as two (2) in the summary would have been appropriate if the "Requested Cost" entry for GVEC applied only to the Sprint paths. Instead, the "Requested Cost" entry for GVEC relates to all four (4) of GVEC's paths.

² In this regard, we believe that the true cost to the PCS licensees for relocating all four (4) of GVEC's paths will be considerably less than the \$250,000 per path figure that has been discussed generally in connection with proposals for cost-sharing among the PCS licensees. The \$1,304,416 figure set forth in Mr. Wheeler's letter is based on the list price of

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effective communications between the PCS licensees involved in the GVEC relocation, Sprint apparently thought that the true cost to the PCS licensees for the GVEC relocation would be the full \$1,304,416. The breakdown in communications resulted from the fact that there was a "single-point-of-contact" PCS licensee for GVEC's microwave relocation (namely, PrimeCo Personal Communications). Unfortunately, GVEC erroneously assumed that Sprint was obtaining information from PrimeCo concerning the GVEC relocation. This was not, however, the case. As a result, Sprint simply had inaccurate information, and this inaccurate information was obtained by CTIA.³ We have no reason to believe that Sprint did not act in good faith in this matter, and we do not blame Sprint or PrimeCo for the misunderstanding with respect to the actual cost of the GVEC relocation. It should, nevertheless, be noted that the \$1,304,416 figure used in Mr. Wheeler's letter overstates the true cost to the PCS licensees of the GVEC relocation, and we feel that CTIA should have taken better care to confirm the accuracy of such cost figure before using it in a letter to the Chairman of the Commission.

To summarize, the "bottom line" regarding the information in Mr. Wheeler's summary is that GVEC in fact has four (4) duplex paths in the affected spectrum, and the total actual costs to the PCS licensees to relocate such paths will almost certainly be less (probably substantially less) than \$250,000 per path (assuming that we do not encounter unexpected problems with tower costs).

In addition to the misleading nature of Mr. Wheeler's summary on page 2 of his letter, the letter and its attachments contain a number of other assertions and characterizations that we feel we must specifically address. In this regard, the "Microwave Relocation - Bad Actor Form" for GVEC

the proposed replacement equipment. In reality, equipment purchasers (PCS licensees or otherwise) do not generally pay the full list price. Also in this regard, one of the attachments to the letter entitled "Microwave Relocation - Bad Actor Form" indicates an estimated comparable cost per path of \$152,958.00, but no supporting data is provided.

³ Sprint has since been informed that the true cost of the GVEC relocation will be substantially less than the \$1,304,416 figure.

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attached to Mr. Wheeler's letter states that GVEC was playing a waiting game in an attempt to force the licensees into a time crunch.⁴ This is simply not true. GVEC was not and is not playing a game at all in this matter. GVEC's communications system is an indispensable tool in providing a vital service to thousands of customers who depend on GVEC every minute of every day. GVEC takes this matter very seriously. GVEC has not in any way attempted to delay the process to try to gain some sort of advantage in the negotiations. Unfortunately, GVEC is not a wealthy organization, and has limited personnel resources. Those resources are constantly being taxed by other needs. For example, during the course of negotiations with the PCS licensees, GVEC experienced a significant, unrelated emergency which required virtually all of our personnel's attention for several weeks. GVEC has, within reason, tried to accommodate the PCS licensees' scheduling. I cannot, however, overemphasize how critical GVEC communications system is to us, and how careful GVEC feels it must be in replacing that system.⁵ Understandably, CTIA does not necessarily share those concerns. After all, it is not CTIA's system, and CTIA will not have to live with it. CTIA should, however, appreciate and understand our concerns and our need to progress carefully, rather than submitting inflammatory materials to the FCC falsely accusing GVEC of intentionally delaying the relocation process.

In Mr. Wheeler's letter, he states that the information contained in his summary provides clear evidence of bad faith on the part of the named incumbents (including GVEC). Even though the FCC rules do not at this point impose any duty to negotiate in good faith, GVEC in fact acted in good faith in negotiating the relocation agreement that it entered into with PrimeCo. For that matter, we believe that so far PrimeCo and Sprint have also acted in good faith in the GVEC relocation. GVEC's only complaint at this point is with Mr. Wheeler's letter.

⁴ It should be noted in this regard that GVEC has in fact recently completed negotiations for its microwave relocation, and has entered into a Microwave Relocation Agreement with PrimeCo covering all four (4) of GVEC's microwave communications paths.

⁵ If GVEC was replacing its microwave communication system without the pressure of trying to accommodate the PCS licensees, we would probably spend nine (9) to twelve (12) months just on studying how to go about doing so before taking any action.

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As with all negotiations, there has been some give and take on both sides of the bargaining table in GVEC's microwave relocation. GVEC is not going to get everything that it wants in the process, and the PCS licensees will probably provide more to GVEC than they would like. That is the way it is supposed to work.

I should point out that GVEC's relationship with the personnel with the PCS licensees with whom we have had direct contact in the microwave relocation process (primarily PrimeCo, and to a lesser extent, Sprint) has been very good. The people with the PCS licensees with whom GVEC has dealt (i.e. the personnel of the PCS licensees as opposed to their consultants) have all been firm, but fair, in the negotiation process. In fact, GVEC feels that, except for Sprint not receiving accurate information during part of the process, the relocation negotiations have worked the way that they are supposed to in the GVEC relocation. This has made the attack against GVEC set forth in Mr. Wheeler's letter especially surprising and disappointing. We suspect that GVEC was simply a pawn in an attempt by CTIA to mischaracterize the current state of microwave relocation negotiations to persuade the Commission to change the rules to make them more favorable to the PCS licensees.

GVEC cannot, of course, comment on the accuracy of Mr. Wheeler's assertions with respect to the other incumbents named in Mr. Wheeler's letter.⁶ In light of the information concerning GVEC in Mr. Wheeler's letter which we view as very misleading, it does, however, make us question the accuracy of the information in Mr. Wheeler's letter concerning other incumbents. Accordingly, I would hope that the Commission would investigate claims such as those set forth in Mr. Wheeler's letter before basing any action on those claims. In this regard, we would be happy to

⁶ It may very well be that some microwave incumbents are disregarding the spirit and intent of the relocation rules. We do not attempt here to defend the actions of any such microwave incumbents. In this regard, CTIA may have legitimate complaints about some microwave incumbents. This does not, however, justify CTIA's dissemination of misleading information concerning GVEC or any other microwave incumbent.

The Honorable Reed E. Hundt
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discuss this matter further with members of your staff, or provide additional information to your office, if you would like us to do so.

Sincerely,


Steve Slaughter

SS/ylm/0121776.01

cc: Commissioner James Quello
Commissioner Susan Ness
Commissioner Rachelle Chong
Michele Farquhar, Chief, Wireless Telecommunications Bureau

EX PARTE OR LATE FILED

Sprint Spectrum
RECEIVED

4121 W. 83rd Street, Suite 158, Prairie Village, Kansas 66208

APR 4 1996

April 2, 1996

FCC RECEPTION ROOM

DOCKET FILE COPY ORIGINAL

William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554-0001

Re: Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation (WT Docket No. 95-157, RM 8642) *RM-8643*

Dear Sir:

I am writing in regard to a recent letter filed by CTIA in the above referenced docket, which identified Detroit Edison as a "bad actor" in the microwave relocation process. This letter also used the term "Extortion Delta" when referring to the amount of compensation requested by Detroit Edison. In the case of Detroit Edison, Sprint Spectrum does not feel that these descriptions accurately reflect the spirit of our discussions.

This is to inform the Commission that Sprint Spectrum has not found Detroit Edison to be a "bad actor" in the microwave relocation process, our negotiations with Detroit Edison relating to the replacement of their existing 2 GHz microwave facilities have been in full compliance with the Commission's rules. Furthermore, the use of the term "Extortion Delta" for the compensation requested by Detroit Edison is not a proper characterization of their negotiation.

Sprint Spectrum has encountered a significant number of microwave incumbents who have not negotiated in good faith, but Detroit Edison's efforts have shown that they should not be associated with this group.

Sincerely,



Michael Hennigan
AVP - Engineering

cc: Don Brett - Detroit Edison

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D. MCDE _____

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Sprint Spectrum

4121 W. 83rd Street, Suite 158, Prairie Village, Kansas 66208

April 17, 1996

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554-0001

Re: Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation (WT Docket No.95-157, RM 8642)

Dear Mr. Chairman:

I am writing in regard to a letter dated March 1, 1996 filed by CTIA in the above referenced docket, which identified Western Resources as a "bad actor" in the microwave relocation process. This letter also used the term "Extortion Delta" when referring to the amount of compensation requested by Western Resources. In the case of Western Resources, Sprint Spectrum states that these descriptions do not reflect the spirit of our discussions with Western Resources.

This is to inform the Commission that Sprint Spectrum has not found Western Resources to be a "bad actor" in the microwave relocation process. Our negotiations with Western Resources relating to the replacement of their existing 2 GHz microwave facilities have been in full compliance with the Commission's rules. Furthermore, the use of the term "Extortion Delta" for the compensation requested by Western Resources is not a proper characterization of their negotiation. Western Resources has at all times negotiated in good faith with Sprint Spectrum during the microwave relocation process, and Sprint Spectrum apologizes to Western Resources for any harm that CTIA's letter has caused Western Resources.

Sincerely,



Mike Hennigan
AVP - Engineering

**cc: Commissioner James H. Ouello
Commissioner Andrew C. Berrett
Commissioner Rachelle B. Chong
Commissioner Susan Ness
Michelle Farquhar
Roseand Allen
William F. Canton
Ray Hilderbrand - Western Resources**