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BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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Federal Communications Commission  
Office of Secretary

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

WT Docket No. 95-157

To: The Commission

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REPLY COMMENTS  
OF THE  
AMERICAN PETROLEUM INSTITUTE

THE AMERICAN PETROLEUM INSTITUTE

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Date Due: June 7, 1996

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The American Petroleum Institute ("API"), by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission"), respectfully submits these Reply Comments in response to the Further Notice of Proposed Rule Making ("Further Notice") adopted by the Commission on April 25, 1996 concerning the plan for sharing the costs of 2 GHz microwave relocation.

REPLY COMMENTS

A. The Cost-Sharing Plan Should Apply to Microwave Incumbents

1. API agrees with the Commission and the many participants in this proceeding who support extension of the cost-sharing plan to include those incumbents who choose to self-relocate one or more of their microwave links.<sup>1/</sup> Self-relocation places the incumbent in a precarious situation because there is no guarantee that a PCS licensee will subsequently trigger reimbursement rights for the microwave incumbent. By permitting incumbents to retain their reimbursement rights, the cost-sharing mechanism would allow microwave incumbents to take the significant risk involved with self-relocation. The favorable effects of such incumbent risk-taking would be early PCS rollout and systemwide relocations.

2. The desirable effects of incumbent self-relocation, however, will not be realized if incumbents are unnecessarily restricted in the manner suggested by a few PCS participants. For example, BellSouth contended that if self-relocating microwave incumbents receive reimbursement

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<sup>1/</sup> APCO at 2 n.3; PCIA at 4; South Carolina Public Service Authority at 2; Williams Wireless, Inc. at 2; UTC at 5.

rights, then those incumbents would choose not to enter into relocation agreements with PCS licensees.<sup>2/</sup> API submits that, contrary to BellSouth's assertion, the majority of incumbents presented with an opportunity to be reimbursed by PCS licensees would readily accept such direct PCS reimbursement rather than bear the cost of financing the relocation or risk unreimbursed self-relocation. This preference for current PCS reimbursement is understandable in light of the fact that a self-relocating incumbent receives no assurance of subsequent PCS reimbursement, whereas an incumbent that concludes a relocation agreement with a PCS licensee receives a guarantee of reimbursement of its relocation costs.

3. BellSouth also argued that those incumbents who self-relocate would be tempted to grant themselves overly generous relocation packages.<sup>3/</sup> Similarly, PCIA asserted that, in the absence of a PCS licensee on the other side of the negotiating table, there would be no assurance that an incumbent will minimize relocation costs.<sup>4/</sup> API reiterates that an incumbent will keep its self-relocation

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<sup>2/</sup> BellSouth at 7.

<sup>3/</sup> BellSouth at 8.

<sup>4/</sup> PCIA at 6.

costs low in light of: (1) the risk of no subsequent PCS licensee triggering reimbursement rights; (2) the existing reimbursement cap of \$250,000 per link; and (3) the need to document relocation costs for submission to the clearinghouse.

4. PCIA also asserts that, by the time a later-entrant PCS relocater is responsible for cost-sharing, the original system will have been dismantled, and the PCS entrant will be unable to examine the original system to determine if the replacement system is comparable.<sup>5/</sup> API reminds PCIA that the guarantee of comparable facilities applies only to involuntary relocations. Provided that costs are reasonable, well-documented with the clearinghouse, and do not exceed the \$250,000 cap, PCS licensees need not be concerned that the original system is no longer in operation. In fact, PCS licensees will benefit from application of the reimbursement cap of \$250,000 to microwave incumbent self-relocations because: (1) many incumbent links are worth more \$250,000; (2) the PCS licensee will be spared the considerable cost of negotiation; (3) the PCS licensee will avoid the many months (or even years) which may otherwise be required to negotiate

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<sup>5/</sup> PCIA at 6.

and relocate an incumbent; (4) PCS licensees will be able to quickly commence operations; and (5) the risks involved with paying for relocation will be transferred from the PCS licensee to the incumbent until such time as an interfering PCS licensee is identified, if ever.

5. PCIA also cautions that if incumbents are to participate in cost-sharing, the Commission must ensure that they cannot use the proximity threshold standard to obtain compensation that they would not otherwise be entitled to under the relocation rules.<sup>6/</sup> API believes that this policy should cut both ways; if a microwave incumbent participates in cost-sharing, the PCS licensee should not be permitted to utilize the proximity threshold test to avoid compensation that it would be required to pay under the relocation rules. When a PCS licensee seeks to commence operations which would have interfered with the self-relocated link under TIA Bulletin 10-F, then that PCS licensee should reimburse the microwave incumbent for the reasonable cost of the self-relocation.

6. In its comments, API pointed out that, like the PCS cost-sharing plan, -- where depreciation is not applied

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<sup>6/</sup> PCIA at 7-8.

to PCS relocators who relocate a link outside their service area or frequency band -- depreciation should not be applied to incumbents that self-relocate. As illustrated in comments filed by South Carolina Public Service Authority, a microwave incumbent who relocates voluntarily does not receive any "market" benefit from the relocation; thus, there is no basis for depreciating an incumbent's reimbursement under the cost-sharing rules.<sup>7/</sup> Similarly, an incumbent should not be treated under the cost-sharing formula as a PCS relocator, but should instead be entitled to full reimbursement by a subsequent PCS licensee. It is this initial PCS licensee that should be treated as the PCS relocator under the cost-sharing formula.

7. In Comments filed by the MSS Coalition, the assertion is made that the Commission should not apply its incumbent self-relocation proposal to the MSS proceeding, ET Docket No. 95-18.<sup>8/</sup> While the issue of sharing spectrum between MSS and FS is beyond the scope of the instant

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<sup>7/</sup> SCPSA at 5.

<sup>8/</sup> Specifically, the MSS Coalition asserts that it has demonstrated that "sharing between MSS and FS can occur" and therefore FS should be forced to fully pay its own relocation costs. In ET Docket No. 95-18, API, Motorola, AAR and other FS representatives have fully refuted the unfounded assertions of the MSS Coalition that sharing has in some way been "demonstrated" to be feasible.

proceeding, API is compelled to respond to the MSS Coalition's contention that incumbents would receive a "windfall" by self-relocating from the 2.1 GHz band. Self-relocation only delays the eventual payment of relocation costs from the interfering licensee to the relocated incumbent. If, as the MSS Coalition asserts, MSS genuinely will not interfere with incumbents, then no reimbursement would be due to incumbents, regardless of the cost-sharing plan. Accordingly, there would be no "windfall" as a result of self-relocation.

8. What the MSS Coalition is really concerned about is the proposed requirement in ET Docket No. 95-18 that MSS licensees pay the costs of relocation when they interfere with FS incumbents. The MSS Coalition seeks to have their cake (spectrum) and eat it too (avoid all relocation costs) by forcing incumbents to relocate and pay for the new systems, with no reimbursement from MSS. This MSS Coalition proposal ignores the fact that a working system will be forcibly replaced at the cost of a new system. Where incumbents are forced to relocate due to Emerging Technologies, such as the MSS industry, the Emerging Technologies licensees should pay the reasonable relocation costs, regardless of the presence or absence of a cost-sharing mechanism.

**B. The Voluntary Negotiation Period Should Not Be Changed**

9. The Commission should maintain its existing rules for the voluntary and involuntary negotiation periods. Some PCS entities favor shortening the voluntary negotiation period for licensees in the C, D, E and F blocks.<sup>9/</sup> In particular, CTIA repeats its unfounded allegations that a shortened voluntary period would prevent "bad actors" from abusing the relocation process.<sup>10/</sup> On the other hand, incumbents opposed any reduction of the voluntary negotiation period.<sup>11/</sup> Similarly, BellSouth opposed shortening the voluntary period.<sup>12/</sup>

10. Based upon its' members experience, API believes that a one year voluntary negotiation period would provide some parties with insufficient time in which to negotiate for relocation of incumbents. Other incumbents, such as Williams Wireless, Inc. agree that one year will not provide the parties with adequate time to negotiate complex agreements for the relocation of extensive microwave

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<sup>9/</sup> See, e.g., APC at 1; CTIA at 2.

<sup>10/</sup> CTIA at 4.

<sup>11/</sup> See, e.g., APCO at 4; Williams Wireless, Inc. at 14.

<sup>12/</sup> BellSouth at 1, 3.

networks.<sup>13/</sup> Faced with such an unrealistically short voluntary negotiation deadline, most incumbents would simply be forced to wait until the commencement of the mandatory period. Thus, the Commission's desire to hasten negotiations by altering the negotiation framework may actually delay the majority of potential negotiations until the commencement of the mandatory period.

11. AT&T Wireless Co. complained that the Commission should eliminate the voluntary negotiation period altogether.<sup>14/</sup> In fact, AT&T Wireless Co. referred to voluntary negotiations as a regulatory "barrier to wireless competition."<sup>15/</sup>

12. API is disappointed with AT&T Wireless' myopic opinion of both the purpose and the effect of the voluntary negotiation period. The voluntary negotiation period is not a regulatory barrier; it is a protection for incumbents which was included in the FCC's rules in order to permit incumbents -- who are being forced to relocate after a short, three year period -- sufficient time in which to examine the impact of relocation, develop appropriate

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<sup>13/</sup> Williams Wireless, Inc. at 14.

<sup>14/</sup> AT&T Wireless Co. at 2.

<sup>15/</sup> AT&T Wireless Co. at 4.

replacement strategies, and begin to implement those goals. The voluntary period is not a mere regulatory hurdle to competition; it is a well-planned and useful element of the reallocation process.

13. In ET Docket No. 92-9, the Commission developed its relocation rules after a lengthy public debate which involved both the PCS industry and incumbent licensees. During that debate, the Commission, and the participants, fully explored the advantages and disadvantages of many aspects of the relocation process, including the voluntary negotiation period. The two year voluntary negotiation phase is a product of that extensive debate and the Commission's response to it. The two year voluntary period may be a minor commercial impediment for PCS, but it is certainly not a regulatory impediment: it is a compromise forged from the collective input of both the incumbent and PCS industries. If AT&T Wireless feels inconvenienced by the two year "barrier", it should envision the inconvenience suffered by incumbents who are forced to relocate their entire microwave systems and should consider itself lucky.

**CONCLUSION**

14. With a few minor modifications, the Commission's cost-sharing plan should be applied to microwave incumbents. The minor modifications are necessary because incumbents do not benefit from a market presence when they self-relocate; thus, they should not be penalized through depreciation nor treated as if they were the PCS relocater in the cost-sharing plan. Instead, a self-relocating incumbent should be entitled to receive full reimbursement, up to the \$250,000 cap (plus \$150,000 for towers, where applicable), for the reasonable, documented cost of its self-relocation. Incumbents will have little or no reason to replace an existing system with a "gold-plated" system because a PCS licensee may never trigger reimbursement obligations vis-a-vis the incumbent.

15. The Commission's decision in this proceeding not to alter the voluntary negotiation period for the A and B block licensees should also apply to the C, D, E and F block PCS licensees. The two year voluntary negotiation period is working. A one year period would provide insufficient time in which to commence, conduct and conclude negotiations of such a complex nature.

**WHEREFORE, THE PREMISES CONSIDERED,** the American Petroleum Institute respectfully submits the foregoing Reply Comments and urges the Federal Communications Commission to act in a manner fully consistent with the views expressed herein.

Respectfully submitted,

**THE AMERICAN PETROLEUM INSTITUTE**

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