

Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of)
)
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

BellSouth Corporation, on behalf of itself, BellSouth Personal Communications, Inc., and BellSouth Cellular Corp. (collectively "BellSouth"), by its attorneys, respectfully submits these reply comments in response to other parties' comments concerning 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"). This reply addresses only other parties' arguments concerning the Commission's proposal to permit microwave incumbents to participate in the recently adopted cost-sharing plan. BellSouth continues to oppose that notion.

The following discussion is 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, "commenters argue that each service should have a service-specific rule

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making proceeding to take into account the unique technical, financial, and other considerations presented in each service.”¹ BellSouth was one of those commenters and continues to hold to that belief.²

THE COMMISSION SHOULD NOT PERMIT MICROWAVE INCUMBENTS TO PARTICIPATE IN THE COST-SHARING PLAN

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.”³ A number of microwave incumbents and others encourage the

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). See also “Comments of Hughes Space and Communications International, Celsat America, Comsat Corporation, ICO Global Communications, and Personal Communications Satellite Corporation” filed May 28, 1996, in this proceeding.

³ *FNPRM, supra*, at 46 (¶99).

Commission to adopt this proposal.⁴ Like BellSouth, other PCS licensees oppose adoption of the approach.⁵

AT&T and CTIA argue that the reimbursement caps included in the proposed cost-sharing rules are adequate limitations on incumbents to prevent potential abuses which otherwise might arise from allowing an incumbent to self-relocate.⁶ AT&T asserts self-relocation will speed PCS deployment by facilitating early relocation of incumbents' links. Some microwave incumbents echo that sentiment.⁷ Other incumbents argue, *inter alia*, that the "risk of unreimbursed self-relocation" disincentivizes abuse⁸ as does the heavy regulation imposed on utility and pipeline incumbents.⁹ One incumbent wants the Commission to reward self-relocators in some unspecified fashion¹⁰ and a number of them argue that there is no incentive for the self-relocators to inflate the costs of migrating to other facilities.¹¹ Other modifications advanced include lifting the two percent limit on reimbursement for transaction costs¹² and elimination of "the installment payment plan for PCS licensees classified as designated entities."¹³

⁴ See, e.g., Comments of the American Petroleum Institute ("API Comments"), at 9-15; Comments of AT&T Wireless Services, Inc. ("AT&T Comments"), at 5-6; Comments of Basin Electric Power Cooperative, at 3-4 ("Basin Electric"); Comments of the Cellular Telecommunications Industry Association ("CTIA Comments"), at 7-8; Comments of the Comments of East River Electric Power Cooperative ("East River Comments"), at 8-9; Comments of Tenneco Energy ("Tenneco Comments"), at 4-6; Comments of UTC on Further Notice of Proposed Rulemaking ("UTC Comments"), at 5-9; and Comments of Williams Wireless, Inc. ("WWI Comments"), at 7-11.

⁵ See, e.g., Comments of PrimeCo Personal Communications, L.P. to Further Notice of Proposed Rule Making, at 5-6; Comments of Sprint Spectrum, L.P., at 3-4; and Comments (Western Wireless Corporation), at 5-8.

⁶ See AT&T Comments, at 6; and CTIA Comments, at 7-8. See also WWI Comments, at 11.

⁷ See East River Comments, at 9; UTC Comments, at 8; and WWI Comments, at 10-11;

⁸ See API Comments, at 13; see also UTC Comments, at 7.

⁹ See UTC Comments, at 8.

¹⁰ See Basin Electric Comments at 4.

¹¹ See, e.g., Basin Electric Comments at 4; East River Comments, at 9.

¹² See API Comments, at 14-15.

¹³ See Tenneco Comments, at 6.

These arguments are fundamentally flawed. An incumbent's unilateral decision to relocate would be constrained merely by the reimbursement caps, which are an inadequate limitation. These very caps were adopted by the Commission because "a cap protects future PCS licensees, who have no opportunity to participate in the negotiations, from being required to contribute to excessive relocation expenses."¹⁴ This underlying purpose will be obviated by allowing unilateral decisions to relocate without the benefit of bilateral negotiations which would insure that minimum expenses are incurred. As Western Wireless noted, "[t]he current two party negotiation process inherently protects the incumbent while minimizing relocation costs."¹⁵ To achieve these dual goals, the Commission should not permit reimbursement for self-relocation.

Western Wireless properly argues for "arms' length negotiation."¹⁶ Sprint Spectrum correctly points out that "[c]ombining an incumbent's unfettered discretion to choose its own replacement facilities with the prospect of reimbursement is analogous to handing the incumbent a blank check."¹⁷ BellSouth supports these views and encourages the Commission to set aside its proposal.

¹⁴ See *First R&O*, *supra*, at Appendix A, at A-13.

¹⁵ See Western Wireless Comments, at 6.

¹⁶ *Id.*

¹⁷ See Sprint Spectrum Comments, at 3.

CONCLUSION

For the reasons stated herein and in BellSouth's Comments, BellSouth respectfully submits that the Commission should not allow incumbents to relocate their own facilities and obtain reimbursement under the cost-sharing plan.

Respectfully submitted,

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I hereby certify that I have this 7th day of June, 1996, served a copy of the foregoing "Reply Comments" on the following persons by first-class mail, postage prepaid or by hand-delivery.

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