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June 26, 1996

VIA FEDERAL EXPRESS

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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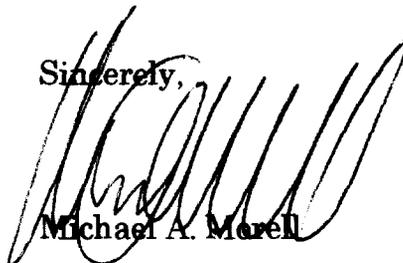
Re: WT Docket No. 94-148, CC Docket No. 93-2; In the Matter of
Reorganization and Revision of Parts 1, 2, 21, and 94 of the
Rules to Establish a New Part 101 Governing Terrestrial
Microwave Fixed Radio Services

Dear Mr. Caton:

Please find enclosed an original and twelve (12) copies of Cox & Smith Incorporated's Petition for Clarification and/or reconsideration in connection with the above-referenced matter. Please file-stamp one (1) copy and return it to me in the self-addressed envelope which is also enclosed.

Should you have any questions, I can be contacted at 210-554-5239.

Sincerely,



Michael A. Morell

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Enclosures

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COX & SMITH
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Mr. William F. Caton
June 26, 1996
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cc: Ms. Michele Farquar (w/ encl. - via Federal Express)
Chief of the Wireless Telecommunications Bureau
FCC Wireless Telecommunications Bureau
2025 M Street, N.W.
Room 5002
Washington, D.C. 20554

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)	WT Docket No. 94-148
)	CC Docket No. 93-2
Reorganization and)	RM-7861
Revision of Parts 1, 2, 21, and 94 of)	
the Rules to Establish a New Part 101)	
Governing Terrestrial Microwave)	
Fixed Radio Services)	

To: The Commission

**PETITION FOR CLARIFICATION AND/OR RECONSIDERATION
OF COX & SMITH INCORPORATED**

Pursuant to Section 1.429 of the Federal Communications Commission's Rules, Cox & Smith Incorporated ("Petitioner") respectfully requests reconsideration of the Commission's decision in the *Report and Order* adopted in the above-captioned proceeding on February 8, 1996.¹ Petitioner submits this Petition for the specific and limited purpose of addressing the license forfeiture provisions in Section 101.65 of the rules adopted in said *Report and Order*.

I. INTRODUCTION

Petitioner represents several microwave incumbents who are in the process of relocating their microwave communications systems, or who are in the process of negotiating agreements for such microwave relocations, to make spectrum available for personal communications services ("PCS") licensees pursuant to Section 94.59 of the Commission's Rules.² In some microwave relocations, it is necessary for the microwave incumbent's existing microwave communications system operating in

¹ *See* 61 *Fed. Reg.* 26670 (May 28, 1996)

² *See* 47 *C.F.R.* §94.59.

the 1850 to 1990 MHz ("1.9 GHz") frequency band to be turned off, and perhaps even removed, before the new replacement system has been accepted by the microwave incumbent and before the microwave incumbent is prepared to relinquish its 1.9 GHz licenses. This is because (i) certain paths in the incumbent's microwave communication system are often first relocated to the 6 GHz band (or some other band) using temporary equipment, or to some other medium, on an interim basis pending a final relocation of the microwave incumbent's system, and (ii) for the final relocation, there may be a test period for the new equipment during which the incumbent is allowed to resume using the 1.9 GHz microwave equipment if the new equipment does not operate properly.

In this regard, a license forfeiture issue has arisen in connection with such microwave relocations. The issue involves the possible applicability of Section 101.65 of the Commission's Rules ³ ("Forfeiture and Termination of Station Authorization") to relocating microwave incumbents' licensees. Subsection (a) of Section 101.65 states in relevant part that "[a] license will be automatically forfeited in whole or in part without further notice to the licensee upon . . . [t]he voluntary removal or alteration of the facilities, so as to render the station not operational for a period of thirty (30) days or more." Subsection (d) of Section 101.65 further provides that "[i]f a station licensed under this part discontinues operation on a permanent basis, the licensee must forward the station license to the Federal Communications Commission . . . for cancellation" and that "any station which has not operated for one year or more is considered to have been permanently discontinued."

³ See 47 C.F.R. §101.65 (effective August 1, 1996)

II. DISCUSSION

It is important that microwave incumbents relocating pursuant to Section 94.59 not risk the forfeiture of their licenses as a result of the possible applicability of Section 101.65. In this regard, Petitioner believes that the FCC did not intend that Section 101.65 apply to make interim microwave relocation arrangements, or equipment testing periods in connection with final microwave relocations, the basis for the forfeiture and termination of microwave license authorizations.

Accordingly, we believe that it would be appropriate for the Commission to amend Section 101.65 to clarify and confirm that Section 101.65 does not apply to result in the forfeiture of a microwave incumbent's license where the microwave incumbent has altered and/or removed its microwave communications equipment operating at the 1850 to 1990 MHz frequencies and has discontinued operations at such frequencies pursuant to interim or other ongoing microwave relocation efforts being implemented pursuant to Section 94.59 (Section 101.69 et seq., effective August 1, 1996). Such a clarification is necessary to enable microwave incumbents to safely proceed with microwave relocations without fear of premature termination of their authorizations, and will promote the public interest by facilitating microwave relocations that will allow prompt deployment of personal communications services systems.

In order to effectuate such clarification, we suggest that the following subsection (e) (or a similar provision) be added to §101.65:

- (e) The time periods set forth in paragraphs (a) (3) and (d) of this section shall not commence to run by reason of the alteration or removal by a licensee of its microwave communications equipment, or the discontinuation of operations by a licensee, pursuant to such

licensee's ongoing microwave relocation efforts being implemented pursuant to section 101.69.

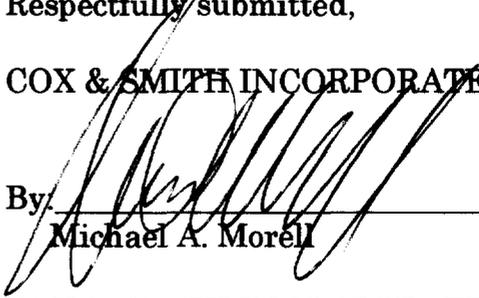
III. CONCLUSION

Petitioner respectfully requests that the Commission act in accordance with these requests and to reconsider its Report and Order in this proceeding as described above.

Respectfully submitted,

COX & SMITH INCORPORATED

By


Michael A. Morell

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Dated: June 26, 1996