

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

Amendment to the Commission's Rules) WT Docket No. 95-157
Regarding a Plan for Sharing) RM-8643
the Costs of Microwave Relocation)

To: The Commission

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Federal Communications Commission
Office of Secretary

**PETITION FOR RECONSIDERATION OR, IN
THE ALTERNATIVE, FOR RULEMAKING**

AT&T Wireless Services, Inc., GTE Mobilnet, PCS PrimeCo, L.P., Pocket
Communications, Inc., Western PCS Corporation, and the Cellular Telecommunications
Industry Association (collectively "Petitioners"), by their attorneys and pursuant to 47 C.F.R.
§§ 1.429 and 1.401, hereby petition for reconsideration of the Commission's Order^{1/} in the
above-captioned proceeding or, in the alternative, for rulemaking clarifying the
Commission's procedures governing involuntary relocation. For the reasons specified herein,
the Commission should either require microwave incumbents to vacate their 2 GHz
frequencies by the end of the mandatory negotiation period or automatically convert their
licenses to secondary status immediately upon expiration of the mandatory negotiation period.

INTRODUCTION AND SUMMARY

The Commission established voluntary and mandatory periods for negotiations
between PCS licensees and microwave incumbents to facilitate the relocation process and to

^{1/} 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 Rulemaking,
WT Docket No. 95-157, RM-8643 (released April 30, 1996) ("Order").

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clear spectrum for the transition to emerging technology use of the 2 GHz band.^{2/} If negotiations during the voluntary and mandatory periods are unsuccessful, PCS licensees may compel the involuntary relocation of microwave incumbents.^{3/} Upon involuntary relocation emerging technology providers need only: (1) guarantee payment of all costs of relocating the incumbent to a comparable facility; (2) complete all activities necessary for placing the new facilities into operation, including engineering and frequency coordination; and build and test the new microwave (or alternative) system.^{4/} Once the new facilities are available and comparability has been determined, the Commission will amend the operation license of the fixed microwave operator to secondary status.^{5/}

On April 15, 1996, AT&T Wireless Services, Inc., BellSouth Personal Mobile Communications, GTE Mobilnet, PCS PrimeCo, L.P., Western Wireless Corp., DCR Communications, and Pacific Bell Mobile Services filed an ex parte letter with the Commission urging it to clarify its rules regarding the procedures to be followed at the end of the mandatory negotiation period.^{6/} The April 15 Letter pointed out that the lack of specific procedures for involuntary negotiation may create incentives for microwave

^{2/} See Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589, 6595 (1993).

^{3/} Id. at 6591.

^{4/} Id.

^{5/} See 47 C.F.R. § 94.59(c).

^{6/} See Letter from AT&T Wireless Services, Inc., BellSouth Personal Mobile Communications, GTE Mobilnet, PCS Primeco, L.P., Western Wireless Corp., DCR Communications, and Pacific Bell Mobile Services to Michele Farquhar, Chief, Wireless Telecommunications Bureau, April 15, 1996 ("April 15 Letter").

incumbents to prolong negotiations beyond the end of the mandatory period.^{7/} Although the Commission found that the signatories to the April 15 Letter had raised legitimate concerns, it declined to address these issues on the ground that they were not raised in the Notice or the regularly filed comments or reply comments in this proceeding.^{8/}

As explained below, the public was given sufficient notice of this issue and had an adequate opportunity to comment. Petitioners therefore seek reconsideration of the Commission's decision not to clarify its involuntary relocation procedures as requested. If the Commission decides not to address this issue on reconsideration, however, it should initiate a rulemaking proceeding for the purpose of amending its involuntary relocation regulations.

I. The Commission Should Reconsider Its Decision Not To Clarify Its Involuntary Relocation Procedures

Parties may petition for reconsideration of any issues raised in notices of proposed rulemaking or by commenting parties.^{9/} In this regard, ex parte communications are properly considered part of the record on which the Commission must rely.^{10/} In addition, the Commission may address requests to reconsider issues not previously raised when it would be in the public interest^{11/}

^{7/} Id. at 2.

^{8/} Order at ¶ 52.

^{9/} 47 C.F.R. § 1.429(a).

^{10/} See Amendment of Subpart H, Part 1 of the Commission's Rules and Regulations Concerning Ex Parte Communications and Presentations in Commission Proceedings, Report and Order, 2 FCC Rcd 3011, 3012 (1987).

^{11/} 17 C.F.R. § 1.429(b).

In the Notice, the Commission raised several issues related to the involuntary relocation period and the status of incumbents. In particular, it noted that existing rules provide for conversion of fixed microwave licensees to secondary status after involuntary relocation takes place and it asked for comment on its proposal to make secondary any other incumbents still operating in the 1850-1900 MHz band on April 4, 2005.^{12/} Moreover, the general nature of the Notice and the scope of comment sought provided parties with ample notice that the involuntary relocation procedures might be altered in the manner suggested by the April 15 Letter. While no party proposed these specific changes until the April 15 Letter was filed, this does not mean that the opportunity for comment was not provided and that the Commission must provide the opportunity again.

Even if the Commission determines that issues related to the status of incumbents following the mandatory period were not adequately raised, grant of Petitioners' request for reconsideration would be in the public interest because the current relocation procedures are vague and create incentives for microwave incumbents to delay the relocation process and refuse to negotiate in good faith. As detailed in the April 15 Letter, the failure of the Commission to set specific time limits on the involuntary period will allow incumbents to draw out the process far beyond the period anticipated by the Commission or PCS licensees when they were bidding at auction. While emerging technology licensees clearly were aware of, and took into account, the need for spectrum clearing when placing their bids, they did not expect that the Commission would condone, in effect, the establishment of a third negotiation period after the process was supposed to have terminated.

^{12/} Notice at ¶ 90.

Because of the indeterminate nature of the Commission's current involuntary relocation rules and the potential they hold for abuse, the Commission should clarify that incumbent microwave licensees are required to complete the relocation process and vacate the 2 GHz frequencies by the end of the mandatory period. In the alternative, the Commission should automatically convert incumbent microwave licenses to secondary status immediately upon expiration of the mandatory negotiation period. Not only will this encourage incumbents to relocate during the periods established for this purpose, it will provide PCS licensees with a date certain on which they will be able to deploy their systems in order to satisfy the Commission's aggressive build-out rules.

II. In The Alternative, The Commission Should Initiate A Rulemaking To Clarify Its Involuntary Relocation Procedures

If the Commission determines that reconsideration is not warranted without further public comment, it should promptly open a rulemaking proceeding to reexamine and clarify the procedures to be followed at the end of the mandatory relocation period.^{13/} To provide both PCS licensees and incumbents with certainty regarding these matters, Petitioners respectfully request that a notice be issued expeditiously with abbreviated comment and reply periods.^{14/} Given that parties have had a number of months to review the Commission's Order and the April 15 Letter, there is little need for a long, drawn-out proceeding on this issue.

^{13/} In the Order, the Commission suggested that parties to the April 15 Letter file a petition for rulemaking to address these involuntary relocation procedures. Order at ¶ 52.

^{14/} In particular, Petitioners request that the Commission clarify that Section 94.59(c) requires incumbents to either clear the 2 GHz band by the end of the mandatory negotiation period or be automatically converted to secondary status at that time.

CONCLUSION

For the foregoing reasons, the Commission should grant Petitioners' petition for reconsideration or, in the alternative, their petition for rulemaking to clarify the Commission's procedures following the mandatory relocation period.

Respectfully submitted,

AT&T Wireless Services, Inc.

By: Cathleen A. Massey
Cathleen A. Massey
Vice President - External Affairs

Pocket Communications, Inc.

By: Janis A. Riker ^{KAP}
Janis A. Riker
President

Western Wireless Corporation

By: Gene DeJordy ^{KAP}
Gene DeJordy
Director of Regulatory Affairs

GTE Mobilnet

By: Andre Lachance ^{KAP}
Andre J. Lachance

PCS PrimeCo, L.P.

By: William L. Roughton ^{KAP}
William L. Roughton
Associate General Counsel

Cellular Telecommunications Industry Association

By: Michael F. Altschul ^{KAP}
Michael F. Altschul
Vice President - General Counsel

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