

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

To: The Commission

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OPPOSITION TO PETITIONS FOR RECONSIDERATION

The Association of Public-Safety Communications Officials-International, Inc. ("APCO"), by its attorneys, hereby submits the following Opposition to Petitions for Reconsideration of AT&T Wireless, et al.,¹ and Omnipoint Communications, Inc. of the Commission's First Report and Order, FCC 96-196 (released April 30, 1996) (hereinafter "First Report and Order"), in the above-captioned proceeding.²

APCO is the nation's oldest and largest public safety communications organization, with over 12,000 worldwide members involved in the management and operation of police, fire, emergency medical, forestry-conservation, highway maintenance, disaster relief, and other public safety communications facilities. Many of these facilities are 2 GHz microwave systems licensed to state and local governments that provide the backbone for

¹ AT&T Wireless, Inc., PCS PrimeCo, L.P., Pocket Communications, Inc., Western PCS Corporation, and the Cellular Telecommunications Association (hereinafter AT&T, et al.).

² APCO supports the Petitions for Reconsideration of the American Petroleum Institute, the Association of American Railroads, and UTC

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critical public safety mobile radio communications systems. APCO has participated in all stages of this and other related proceedings regarding the 2 GHz microwave bands.

AT&T, et al. have asked the FCC to re-write the microwave relocation rules by providing that incumbents can be forced to accept secondary status immediately upon the cessation of the mandatory negotiation period. This would effectively eliminate the mandatory negotiation period altogether and could cause serious harm to public safety and other microwave incumbents. By holding out the threat of immediate conversion to secondary status (which would lead to destructive interference to vital public safety communications links),³ PCS licensees could force incumbents during the mandatory period to accept inferior replacement facilities. Indeed, a PCS licensee could refuse to offer any replacement facilities at all, a complete reversal of the FCC's microwave relocation policies. It is the PCS licenses who would then be negotiating in bad faith.

The Commission should maintain the mandatory negotiation period as a time for genuine "good faith" negotiation towards mutually-beneficial agreements that clear the 2 GHz spectrum as quickly as possible, while protecting the interests of public safety and other microwave incumbents. Incumbents must not be subject to secondary status (and, thus, forced to relocate) unless, and until, fully comparable replacement facilities are provided at no cost, either as (1) a result of good faith negotiations or (2) "involuntary relocation" that occurs after the failure of mandatory negotiations and after the FCC confirms that the replacement facilities meet the comparability requirements contained in its

³ Public safety microwave systems carry critical police, fire, emergency medical and other communications that have zero tolerance for interference or disruption. Therefore, faced with conversion to secondary status, incumbents would either have to accept inferior replacements or expend scarce taxpayer resources to build their own replacement.

rules. Anything less would reverse the FCC's commitment to incumbents, and to Congress, that no public safety licensee will be forced to relocate to inferior facilities, or to pay for the cost of the relocation.

Omnipoint Communications, Inc. also seeks to redefine the mandatory period, by urging the FCC to declare that any demand by an incumbent during the mandatory period for cash payment above the cost of relocation is per se bad faith. Such a rule would be both unwise, and counterproductive. The Commission has recognized that it may be mutually beneficial, even in the mandatory period, for relocation agreements to include a "premium" to encourage more rapid band clearing. Furthermore, the Commission has already established procedures for judging whether demands for such payments during the mandatory negotiation period are in "good faith." First Report and Order, at ¶21. There is no need at this time, especially before the mandatory period has even begun, to adopt more rigid guidelines such as those proposed by Omnipoint.

The Commission should reject the further rule changes proposed by AT&T, et al. and Omnipoint. These are little more than efforts by some PCS licensees to shift the balance of the negotiations even further, to the detriment of the current users of the band. The relocation process has been working remarkably well to date, with many areas of the country already clear or nearly clear of microwave paths. This is all the more impressive considering the fact that all of the negotiations have been "voluntary." There is no need to add to the PCS licensee's bargaining position through the rule changes proposed by AT&T, et al. and Omnipoint.

CONCLUSION

Therefore, for the reasons discussed above, the Commission should reject the AT&T, et al. and Omnipoint petitions for reconsideration.

Respectfully submitted,

ASSOCIATION OF PUBLIC-SAFETY
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August 8, 1996

CERTIFICATE OF SERVICE

I, Jane Nauman, hereby certify that a copy of the foregoing "Opposition to Petitions for Reconsideration" was sent this 8th day of August, 1996, by first-class mail, postage prepaid, to the following individuals at the addresses listed below:

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