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Federal Communications Commission
Office of Secretary

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

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

To: The Commission

REPLY OF SANTEE COOPER
TO OPPOSITIONS TO PETITION FOR RECONSIDERATION AND/OR
CLARIFICATION

The South Carolina Public Service Authority ("Santee Cooper"), by its attorneys, hereby submits the following Reply to Oppositions filed in response to its Petition for Reconsideration and/or Clarification of the Commission's Second Report and Order, FCC 97-48, (released February 27, 1997), 62 Fed. Reg. 12752 (March 18, 1997) (hereinafter "Second Report and Order"), in the above-captioned proceeding.

On April 17, 1997, Santee Cooper filed a Petition for Reconsideration and/or Clarification urging that the Commission clarify that, under its cost-sharing rules adopted in this proceeding, an incumbent microwave licensee may obtain reimbursement for voluntary self-relocation of 2 GHz microwave paths that occurred anytime after April 5, 1995.¹ Such reimbursement would be particularly appropriate where the self-relocated paths were part of a microwave network that also contained paths being cleared pursuant

¹ Incumbents should be permitted until at least thirty days after the effective date of an order resolving the pending petitions for reconsideration to seek reimbursement for prior relocation expenses.

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to a negotiated relocation agreement with an early PCS licensee. An incumbent's self-relocation of the remaining paths in those instances promoted a system-wide clearing of 2 GHz frequencies, thus allowing for rapid implementation of competitive PCS service to the public.

UTC, The Telecommunications Association ("UTC") and the American Petroleum Institute ("API"), also filed petitions for reconsideration urging that incumbents should be allowed reimbursement for prior self-relocation, and subsequently filed comments in support of Santee Cooper's Petition. Supporting comments were also filed by the Southern Company. The Personal Communications Industry Association ("PCIA"), UTAM, Inc. ("UTAM"), and Pacific Bell Mobile Services ("PBMS") filed Oppositions to the Santee Cooper, UTC, and API petitions.

PCIA's principal concern appears to be not with the subject of Santee Cooper's petition but rather with the entire concept of permitting incumbents to participate in cost-sharing. See PCIA Opposition at 2-4. However, neither PCIA nor any other party sought reconsideration of those rules, and their objections at this late date are irrelevant. Indeed, none of PCIA's claims, or those of UTAM and PBMS, provide a valid argument as to why the cost-sharing rules, once applied to incumbents, should not permit reimbursement of expenses incurred since April 5, 1995.

PCIA, UTAM, and PBMS suggest that an incumbent that self-relocated prior to the Second Report and Order did so "because it received reasonable compensation from a PCS entity or because it chose to do so for independent business reasons." PCIA Opposition at 5. Even if true, how is that different than self-relocation that may occur

after the Second Report and Order? PCIA, UTAM, and PBMS are arguing against the rule, not its equitable application.

Moreover, they ignore the scenario described in Santee Cooper's petition, i.e., where self-relocation was compelled by an early PCS licensee's refusal to clear all of the links on an incumbent's microwave system. Early in the negotiation process (before the cost-sharing rules were adopted), some PCS licensees were steadfastly opposed to paying for system-wide microwave relocation if they needed to clear only a few of the paths on the system for their own operations. Some incumbents refused to deal under those circumstances, delaying any PCS deployment and leaving hurdles in place for all future PCS licensees entering the market. A few incumbents, however, agreed to move the remaining paths on their systems at their own expense to move the process forward and to protect the integrity of their microwave network. Such relocation occurred not "for independent business reasons" as suggested by PCIA, but rather as a direct result of the reallocation of the 2 GHz band and the need to accommodate PCS licensees.

Some early PCS entrants did agree to pay for system-wide relocation notwithstanding the absence of final cost-sharing rules.² Now those "PCS relocators" are eligible for reimbursement, thus preventing late-entrant PCS licensees from receiving a "free-ride." There is no valid reason why the result should be any different because the incumbent, rather than the early PCS licensee, paid for the system-replacement. In both instances, the reimbursement serves the public interest and the goals of the cost-sharing rules as

² While the cost-sharing rules may have been proposed, the rules were far from final and PCS licensees relocated systems without assurances of being reimbursed.

(1) it distributes relocation costs equitably among PCS licensees, and (2) it promotes the expeditious relocation of multi-link systems, which benefits microwave incumbents as well as PCS licensees.

Second Report and Order at ¶ 22.

PCIA, UTAM and PBMS also complain that extending reimbursement rights for incumbents back to April 5, 1995, would somehow increase the risk of abuse by incumbents. For example, they suggest that it would be difficult to verify the bona fide expenses incurred by incumbents because “self relocations prior to the rules would likely not have required third-party assessment, and the equipment will have been long ago removed.” PCIA Opposition at 5. This is a red herring. Incumbents seeking reimbursement for such prior relocation would still have detailed invoices and engineering data regarding the new system, and more than adequate information regarding the system that had been replaced.³ All that would be necessary is a technical description of the replaced equipment, which is readily ascertainable from the incumbent’s records and subject to third-party verification by the equipment vendor or the engineering firm that recently performed the relocation.

The Commission has already fully addressed the potential for abuse from those seeking reimbursement under the cost-sharing rules. In addition to the special third-party assessments required of incumbents, the Commission imposed caps on reimbursement and directed the clearinghouses to provide dispute resolution in the event that an late-entrant PCS licensee challenges the validity of an incumbent’s (or PCS relocater’s) right to reimbursement.⁴ Those protections will be no more or less effective for incumbents who

³ In some instances, the relocation may still be in process with the old system not yet fully dismantled.

⁴ 47 C.F.R. §24.251.

relocate in the future than for incumbents who seek reimbursement for relocation expenses incurred since April 5, 1995. Arguments to the contrary are belated attacks on incumbent participation in cost-sharing in general, and do not address the narrow question raised in the petitions for reconsideration.

UTAM also complains that “expanding the class of microwave licensees entitled to reimbursement” will somehow increase relocation costs beyond its prior estimates. UTAM Opposition at 3. Yet, UTAM had to have assumed for planning purposes that it would be responsible for its share of the cost of relocating all paths in the unlicensed PCS band (1910-1930 MHz), and that such reimbursement could be as high as the maximum allowed under the cost-sharing rules. UTAM’s cost estimates, therefore, would be unaffected by the fact that some small portion of those reimbursements are ultimately sought by microwave incumbents rather than PCS licensees. In any event, it is unlikely that more than a handful of the microwave paths in the 1910-1930 MHz band (which has relatively few microwave paths to start with) have been self-relocated and would be subject to reimbursement.⁵

Finally, PCIA, UTAM, and PBMS argue that the Commission should apply its depreciation formula to microwave incumbents seeking cost-sharing reimbursement. However, as explained in Santee Cooper’s petition, as well as the petitions filed by UTC and API, fairness requires that incumbents receive full reimbursement (up to the caps that apply to all cost-sharing).

⁵ E.g., none of Santee Cooper’s 51 microwave paths are in the unlicensed PCS band.

CONCLUSION

Therefore, for the reasons discussed above and in its Petition for Reconsideration and/or Clarification, the Commission should clarify that microwave incumbents may seek reimbursement for self-relocation expenses incurred since April 5, 1995, at least where the relocation was necessary to complete the relocation of a microwave network containing paths relocated by a PCS licensee pursuant a negotiated agreement. The Commission should also eliminate the application of the depreciation factor to incumbents.

Respectfully submitted,

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June 4, 1997

CERTIFICATE OF SERVICE

I, Jane Nauman, hereby certify that a copy of the foregoing "Reply of Santee Cooper" was served this fourth day of June, 1997, by first-class mail, postage prepaid, to the following individuals at the addresses listed below:

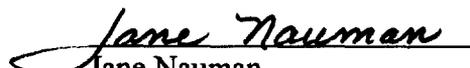
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