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April 6, 1998

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Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington D.C. 20554

Via Hand Delivery

Re: **Ex Parte Presentation, WT Docket No. 96-6 and DA 97-1155**

Dear Ms. Salas:

In accordance with Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, notice is hereby given of an *ex parte* presentation regarding the above-captioned proceedings. On Monday, April 6, 1998, Mark Golden of the Personal Communications Industry Association ("PCIA"), Angela Watkins of our firm, and I held meetings with Karen Gulick of Commissioner Tristani's office. The purpose of the meetings was to discuss PCIA's position on the Commission's Further Notice of Proposed Rule Making in WT Docket No. 96-6, *Amendment of the Commission's Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, and to discuss the Petition for Forbearance filed by PCIA last May on behalf of its Broadband Personal Communications Services Alliance.

The issues addressed at the meetings in connection with WT Docket No. 96-6 are the same as the viewpoints reflected in PCIA's written comments filed previously in that proceeding; no new arguments or data were presented. A copy of the attached summary relating to WT Docket No. 96-6 was, however, left with Ms. Gulick. With regard to DA 97-1155, PCIA's Petition for Forbearance, the topics discussed included (1) the written *ex parte* letter filed by PCIA on March 11, 1998, responding to the February 10, 1998, *ex parte* letter and survey submitted by the Telecommunications Resellers Association, and (2) the points listed in the attached summary of that proceeding, a copy of which was left with Ms. Gulick.

In accordance with the Commission's rules, two copies of this letter and of the written materials left behind in connection with both proceedings are being provided for inclusion in the

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Commission's docket files. If you have any questions or need any additional information, please feel free to call me at the number listed above.

Respectfully submitted,



R. Michael Senkowski  
Wiley, Rein & Fielding  
Counsel for the Personal Communications  
Industry Association

Enclosures

cc: Karen Gulick

**PCIA**  
**PETITION FOR FORBEARANCE FOR BROADBAND PCS**

- **On May 22, 1997, PCIA Filed A Petition For Forbearance Asking The FCC, Pursuant To Its Section 10 Authority, To Forbear From Imposing The Following Obligations On Broadband PCS Carriers:**
  1. Sections 201 and 202
  2. Mandatory Resale
  3. Section 226 (TOCSIA)
  4. International Section 214 (*Facilities Authorization and Tariffing*)
  5. Section 310(d): On Feb. 4, 1998, the FCC granted the FCBA and PCIA requests to eliminate the Section 310(d) prior application and approval requirements for non-substantial transactions.
  
- **The Pleading Cycle Closed on June 17, 1997.**
  
- **The FCC Is Under Statutory Obligation To Act On PCIA's Petition Within One Year Of Receipt Of The Petition (i.e., May 22, 1998).**
  
- **The Time Is Ripe For Forbearance For Broadband PCS.**
  1. The mobile services market is robustly competitive
  2. PCS entry is causing downward pressure on prices
  3. The entry of PCS has led to more innovative and attractive marketing strategies and offerings
  4. The introduction of new technologies, new spectrum, and new services will continue to increase competition

**THE TIME HAS COME FOR THE ELIMINATION OF UNNECESSARY REGULATORY BURDENS. THE EXISTING AND GROWING COMPETITIVE FORCES IN THE CMRS INDUSTRY WILL ENSURE THAT THE PUBLIC INTEREST IS SERVED WITHOUT HARMING CONSUMERS**

## CMRS FLEXIBILITY PROCEEDING

### ◆ **Background on CMRS Flexibility R&O and Further Notice**

- ⇒ In the R&O, the FCC generally amended its rules to allow broadband and narrowband CMRS providers (including SMR and for-profit interconnected business radio providers) to offer fixed wireless services other than broadcast services on their assigned spectrum on a co-primary basis with mobile services;
- ⇒ Further Notice generally sought comment on the appropriate regulatory treatment of licensees providing non-ancillary fixed services. The FCC proposed to adopt a presumption that licensees offering fixed services over CMRS spectrum should be regulated as CMRS and sought comment on a proposal to regulate fixed offerings as CMRS until that service becomes a substitute for landline service in a substantial portion of the state. PCIA filed comments on Nov. 25, 1996 and reply comments on Dec. 24, 1996.

### ◆ **PCIA's Positions**

- ⇒ *Consistent Federal Regulatory Scheme*: Rather than establishing a rebuttable presumption, the FCC should declare that both interstate and intrastate fixed and hybrid services offered by CMRS providers are subject to the same federal regulatory treatment as mobile offerings. The FCC has broad jurisdiction to make such a declaration under Sections 332(c) and 2(b), the "inseparability doctrine," and the 1996 Act. A rebuttable presumption would create substantial uncertainty for service providers and would result in costly and protracted litigation, thereby likely discouraging the provision of new, fixed wireless applications.
- ⇒ *Alternatively, Defer Action on the Classification of Fixed Services*: If the FCC declines to make such a declaration, it should defer any decision to alter the regulation of fixed wireless services until these applications serve as a substitute for landline telephone exchange service for a substantial portion of the communications within a state.
- ⇒ *Opposed Local Regulation of Fixed Services*: Local regulation of fixed services supported by a few state commenters cannot be reconciled with the Act and the FCC's goal of encouraging the deployment of new, fixed wireless applications.
- ⇒ *Receiving USF Subsidy Should Not Determine Regulatory Classification*: Neither Sections 254 nor 214 supports some commenters' suggestion that any services for which a CMRS carrier receives federal or state USF subsidies should be regulated as local exchange carriage.