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Federal Communications Commission  
Office of Secretary

*Hand Delivery*

June 3, 1998

Magalie Roman Salas, Esq.  
Secretary, Federal Communications Commission  
1919 M Street, NW Room 200  
Washington DC 20554

Re: *Ex Parte Notification*  
*Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio*  
*Services, CC Docket No. 94-54*

Dear Ms. Salas:

Attached is a letter that the Broadband Personal Communications Services Alliance of the Personal Communications Industry Association is submitting today to Mr. Daniel K. Phythyon, Chief, Wireless Telecommunications Bureau ("WTB"), Rosalind K. Allen, Deputy Chief, WTB, Jeannine Poltronieri, Associate Chief, WTB, John Cimko, Chief, Policy Division, WTB, Nancy Boocker, Deputy Chief, Policy Division, WTB, and Peter G. Wolfe and Daniel F. Grosh, Attorneys, Policy Division, WTB, regarding the captioned docket. The letter requests that the Commission issue the Public Notice required to commence the five-year period for mandatory resale obligations under Section 20.12(b) of the Commission's rules. C.F.R. § 20.12(b) (1997).

Pursuant to section 1.1206(b) of the Commission's rules, two copies of this letter are being provided for inclusion in the public record. *Id.* § 1.1206(b). If you have any questions with regard to this matter, please call me at 703-739-0300.

Sincerely,

A handwritten signature in cursive script that reads "Mary McDermott".

Mary McDermott  
Senior Vice President & Chief of Staff, Government Relations

cc: Daniel K. Phythyon, Rosalind K. Allen, Jeannine Poltronieri, John Cimko, Nancy Boocker, Peter G. Wolfe, and Daniel F. Grosh

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JUN - 3 1998

Federal Communications Commission  
Office of Secretary

June 3, 1998

Mr. Daniel B. Phythyon  
Chief, Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, NW Room 5002  
Washington DC 20554

Re: *Ex Parte Communication*  
*Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio*  
*Services, CC Docket No. 94-54*

Dear Mr. Phythyon:

The Broadband Personal Communications Services Alliance ("BPA") of the Personal Communications Industry Association respectfully submits this letter requesting that the Commission issue the Public Notice required to begin the five-year period for the mandatory Commercial Mobile Radio Services ("CMRS") resale obligations under Section 20.12(b) of the Commission's rules.<sup>1</sup>

Section 20.12(b) requires Personal Communications Services ("PCS"), cellular, and Specialized Mobile Radio Services ("SMR") providers to permit unrestricted resale of their services, effective for five years "after the last group of initial licenses for broadband PCS spectrum in the 1850-1910 and 1930-1990 MHz bands is awarded."<sup>2</sup> In the Resale Order adopting this rule, the Commission acknowledged that the rule should automatically terminate in five years because "the competitive development of broadband PCS service will obviate the need for a resale rule" and "within five years after the D, E, and F block broadband PCS licenses are awarded, it is reasonable to anticipate that there will be up to six facilities-based broadband PCS carriers, as well as potentially one or more covered SMR providers, competing with two cellular licensees in every geographic area."<sup>3</sup> However, the Commission determined that the five-year clock would only begin upon the issuance of a Public Notice.<sup>4</sup>

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<sup>1</sup> 47 C.F.R. § 20.12(b) (1997).

<sup>2</sup> *Id.*

<sup>3</sup> *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, 11 FCC Rcd 18455, 18469, ¶ 24 (1996) ("*Resale Order*").

<sup>4</sup> *Id.*

BPA submits that the Commission awarded the last group of initial broadband PCS licenses several months ago and urges the Commission to release the Public Notice that would begin the five-year period. Specifically, the Commission clearly considers the D, E, and F block licenses to be the last group of licenses for broadband PCS spectrum for purposes of the resale rule.<sup>5</sup> The Commission started the D, E, and F block auctions over 21 months ago on August 26, 1996, completed the auctions almost 17 months ago on January 14, 1997,<sup>6</sup> and awarded the last group of initial D, E, and F block licenses over six (6) months ago in November 1997.<sup>7</sup> The Commission has already delayed releasing the Public Notice for over six months.

Two years ago, when adopting the Resale Order, the Commission reasoned that broadband PCS and SMR should be governed by the same resale obligations as cellular carriers, in part, to lower the competitive hurdles for new PCS and SMR entrants to compete against incumbent wireless carriers.<sup>8</sup> In both the Resale Order and more recently, the Commission has recognized that competition exists and is rapidly increasing in the CMRS industry.<sup>9</sup> Mandatory rules imposed on the competitive CMRS industry create unnecessary regulatory burdens on CMRS providers and are inconsistent with the competitive marketplace. The longer the Commission delays release of the Public Notice, the more anachronistic becomes its reasoning for the rule in the first place.

While BPA notes that eight of the 1,472 D, E, and F block licenses have yet to be issued, BPA submits that the requirements of Section 20.12(b) are met as long as virtually all of

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<sup>5</sup> See *id.* (recognizing that it is reasonable to anticipate highly developed competition among cellular, PCS, and SMR providers within five years after the D, E, and F block broadband PCS licenses are awarded).

<sup>6</sup> *Wireless Telecommunications Bureau Broadband PCS Fact Sheet* available at “<http://www.fcc.gov/wtb/pcs>.”

<sup>7</sup> See *In the Matter of Applications of High Plains Wireless, L.P. For Authority to Construct and Operate Broadband PCS Systems on Frequency Blocks D, E, and F*, FCC File Nos. 00093CWL-97 & 01319CWL-97, DA 97-2451 (Nov. 25, 1997) (granting D and F block licenses); see also *Wireless Telecommunications Bureau Broadband PCS Fact Sheet* available at “<http://www.fcc.gov/wtb/pcs>” (stating that “[a]s of November 25, 1997, 1,464 licenses have been granted out of 1,472 auctioned off”).

<sup>8</sup> *Resale Order* at ¶ 18.

<sup>9</sup> For example, Chairman William Kennard recently stated that “[t]hanks to our wireless auctions, duopoly in wireless telephony is now a thing of the past in many markets, and some markets have five or more operating providers.” *FCC Adopts Third Annual Report to Congress on State of CMRS Competition*, Report No. ST 98-13, *Public Notice* (May 14, 1998) (Separate Statement of Chairman William E. Kennard).

the licenses from the last group -- D, E, and F block -- have been awarded. In fact, the Commission has awarded over 99% of this last group of broadband PCS licenses. The eight remaining licenses represent approximately one-half of one percent (0.5%) of the entire group of D, E, and F block licenses, and only three applicants are seeking those eight licenses.<sup>10</sup> Certainly under any reasonable interpretation of the requirement, "the last group" of initial licenses "have been awarded."<sup>11</sup> Finally, nowhere in the rule's language is there a requirement that remedies for challenges to license grants be exhausted before the Commission can issue the Public Notice commencing the five-year period.

Thus, BPA submits that the Commission met Section 20.12(b)'s requirement of awarding the last group of initial broadband PCS licenses several months ago. Pursuant to its own rule, BPA respectfully requests that the Commission delay no longer and urges it immediately to issue the Public Notice commencing the five-year period. If you have any questions or need any additional information on this matter, please call me at 703-739-0300.

Sincerely yours,



Jay Kitchen  
President

cc: Rosalind K. Allen, Deputy Chief, WTB  
Jeannine Poltronieri, Associate Chief, WTB  
John Cimko, Chief, Policy Division, WTB  
Nancy Boocker, Deputy Chief, Policy Division, WTB  
Peter G. Wolfe, Attorney, Policy Division, WTB  
Daniel G. Wolfe, Attorney, Policy Division, WTB

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<sup>10</sup> Those applicants are Westel, L.P., TOTOT Communications Inc., and Saipan Communications Inc. *Wireless Telecommunications Bureau List of Pending Applicants for Broadband PCS, D, E, and F Blocks (Auction 11)* available at "<http://www.fcc.gov/wtb/pcs>."

<sup>11</sup> BPA acknowledges that these same three applicants have the same number of C-block licenses pending for the same markets as their applications for the D, E, and F block spectrum. *Wireless Telecommunications Bureau List of Pending Applicants for Broadband PCS, C Block (Auction 5 and Auction 10)* available at "<http://www.fcc.gov/wtb/pcs>." While the Resale Order adopting the mandatory resale rule recognizes D, E, and F block as the "last group of licenses," *Resale Order* at ¶ 24, even including the eight C-block licenses represents 0.8% of all C, D, E, and F-block licenses. BPA again submits that 0.8% of 1,965 licenses does not constitute a group for purposes of Section 20.12(b) of the Commission's rules.