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VIA HAND DELIVERY

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Twelfth Street, Lobby, TW-A325
Washington, D.C. 20554

Re: Notification of *Ex Parte* Contact in IB Docket No. 98-172

Dear Ms. Salas:

The attached written *ex parte* presentation is submitted on behalf of our client, WinStar Communications, Inc., in the above-referenced proceeding. Copies are also being provided to each of the Commission officials listed below.

Pursuant to section 1.1206 of the Commission's rules, two copies of this letter have been filed with your office. Please feel free to contact me with any questions.

Sincerely,

Jack Richards

Enclosure

cc: Ari Fitzgerald
Adam Krinsky
Mark Schneider

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WinStar Communications, Inc.
18 GHz Proceeding (IB Docket No. 98-172)
February 17, 2000

Introduction

The principles adopted in the *Emerging Technologies* (ET Docket No. 92-9) and *Cost Sharing* (WT Docket No. 95-157) proceedings provide an appropriate model for any necessary 18 GHz relocation. These include voluntary/mandatory negotiation periods, and payment for all necessary and reasonable expenses for relocation to comparable facilities. The Commission should reject suggestions by many satellite companies that relocation payments be based on depreciated equipment costs plus 2% of hard costs for engineering and installation. **Commission precedent and the principle of fair treatment for incumbents requires that nothing less than full replacement cost, based on a "comparable facilities" standard, should be the basis for compensation.** In addition, the sunset period for relocation should not begin to run until unencumbered relocation spectrum is identified, and an equitable cost reimbursement scheme is developed.

The "Comparable Facilities" Relocation Program Works. Dire Predictions Do Not.

In comments and *ex parte* meetings, satellite companies are seeking to disrupt the Commission's well established relocation rules by claiming that they will be unable to deploy unless they are given even more leverage over incumbent licensees. This is a classic, but failed PCS relocation argument. As history has shown, the PCS relocation rules worked and the same claims being made by satellite companies proved to be false. The Commission should disregard the dire claims of the satellite industry, as it wisely did when similar claims were made by the PCS industry.

A review of what the PCS companies said and did in the mid-1990s is instructive. The PCS companies paid approximately $7 billion for 99 PCS licenses in auctions that ended in March 1994. In 1995, it was estimated that the cost to PCS providers for relocating incumbent microwave systems were between $200,000 and $500,000 per link, for approximately 13,000 links. *RCR News,* 10/9/95. This estimate yielded a total relocation cost range of $2.6 billion to $6.5 billion. PCS industry associations then relied on these figures to justify shorter relocation negotiation periods, and accused a handful of incumbent microwave licensees of abusing the relocation process in order to extract premiums above relocation costs. *RCR News,* 6/3/96. CTIA President Thomas Wheeler was quoted in 1995 as saying "It is clear that, instead of good faith negotiations to relocate as required by law, many microwave incumbents are leveraging off the public trust of the license to profiteer." *RCR News,* 2/10/97

Less than two years after this statement, and after the PCS relocation rules finally had been given a chance to work, PCS carriers in fact were reporting lower than projected

costs for relocation. Even CTIA's Wheeler appeared to back off his earlier dire predictions. *RCR News,* 2/10/97 (copy of article attached). Although the Commission slightly amended the length of the voluntary negotiation period, the relocation rules established in the *Emerging Technologies* proceeding remained largely intact. Relying in part on these relocation rules and notwithstanding earlier complaints by the PCS industry regarding the intransigence of incumbent licensees, AT&T Wireless and Sprint PCS have successfully deployed national PCS networks. Smaller regional PCS providers have thrived, as well.

The PCS relocation program clearly demonstrated that PCS companies were able to pay $7 billion for spectrum, pay for incumbent relocation and still able to deploy their PCS systems in a timely fashion.

Today, satellite providers are seeking to clear spectrum at 18 GHz, yet they continue to complain that relocation rules similar to those adopted in the PCS relocation proceeding will prevent them from deploying cost-effective systems. **It must be noted that satellite companies are not paying for any spectrum in the 18 GHz band, compared to the $7 billion paid by PCS providers. Free spectrum, however, does not appear to be enough.** In comments filed in the 18 GHz proceeding (IB Docket No. 98-172), Teledesic has recommended substantially reducing the compensation paid to incumbents for relocation by basing compensation on depreciated equipment value (rather than full replacement cost), reducing the grandfather period for incumbents, and other cost reduction schemes. However, Teledesic and others satellite companies fail to acknowledge that they are merely seeking to shift relocation costs from themselves to incumbents who obtained licenses and built businesses in good faith reliance on existing Commission rules.

The Commission should reject attempts by satellite companies to deploy their systems at the expense of incumbent licensees.

An Accident Waiting to Happen: The "Car Insurance" Analogy.

The satellite interests believe that reimbursement for relocation of incumbent microwave facilities should follow the "car insurance" model; that is, reimbursement costs should be based on depreciated value of the asset. Perhaps it can be argued that the model works for replacement of "totaled" vehicles (although most car owners might say otherwise), but that has nothing to do with this docket. It is much more germane to discuss the type of insurance that licensees use to protect their investment in 18 GHz fixed service radios. In the case of Winstar, should our radios be lost due to damage, Winstar would receive full replacement value from its insurer, plus costs associated with installation, manpower and resources needed to locate replacement equipment, and lost business income.

Further, the car analogy is inappropriate because used digital microwave systems are not available in any appreciable quantity, let alone at "bluebook" rates. Also, even if functionally equivalent used digital systems were available, unlike cars, they cannot just be "driven off the lot." **They must be retrograded, installed and made operational at considerable cost**. Comparing microwave equipment with automobiles is like comparing apples to oranges.

Finally, it may be useful to review automobile valuations and functions versus digital microwave equipment. The value of an automobile is based on market demand that depends on the age and condition of the automobile. Moreover, automobiles wear out because of moving parts and the wear rate is proportional to the mileage of the vehicle. To the contrary, microwave equipment has no moving parts and the performance of modern (*i.e.*, solid state, not vacuum tubes) electronic equipment does not appreciably degrade over time. The depreciation of electronic equipment is an accounting practice (*i.e.*, cost recovery) and has very little to do with its actual useful life. Fifteen years would likely be the *minimum* useful life of microwave equipment, with twenty years or longer not being uncommon.

However, for accounting purposes microwave equipment is often "lumped in" with computers and other "high technology" devices and depreciated over a much shorter time frame. But from an operational perspective, "a T1 is a T1" regardless of whether it is carried over a "new" digital radio or an "old" digital radio. No company would consider replacing a microwave link just because the equipment is fully depreciated. In fact, unless more capacity or different technology is needed, a company would likely *never* replace the equipment on a properly performing microwave link.

One of the reasons given by the satellite interests for using depreciated costs as a basis for reimbursement of relocation costs is that they seem to think that incumbents will use the "extra" money to "gold plate" the new installation. However, WinStar is non-plussed as to why the gold plating analogy is used for digital equipment. In the 2 GHz relocation, many incumbent analog links were replaced with digital links. *Perhaps*, this is what the satellite entities mean by gold plating. However, except for the CARS band, it is a safe assumption that essentially *all* 18 GHz equipment already is digital. Moreover, like most microwave licensees, WinStar routinely designs its systems for high performance (99.999% availability on customer links, 99.9999% availability for hub-to-hub links). High performance is a customer requirement and it is the foundation of our network. If this is considered gold plating, so be it. WinStar should not be expected to replace its "gold plated" equipment with cheap "bronze plated" substitutes which disrupt its network operations.

WinStar should not be placed in a position of having to tell its customers that their link performance is degraded because satellite interests considered the "older" microwave equipment no longer useful and would not fully compensate incumbents for comparable replacement equipment. Worse, WinStar should not have to disconnect customers

because the cost of replacing equipment (after reimbursement of depreciated value) exceeds the value of maintaining the customer.

The car insurance analogy is wrongheaded and is an accident waiting to happen. It would set an incredibly negative precedent for future spectrum reallocations. Licensees plan their businesses and build their systems based on the FCC's rules, with the expectation that installed equipment may continue to be used as long as it is serviceable. A good example of this principle is the Commission's refarming proceeding (PR Docket No. 92-239), in which the Commission's decisions *specifically* accommodate the continued use of "older" equipment. Like other 18 GHz licensees, WinStar would be perfectly content to continue using its existing microwave equipment and should not be forced to pay for replacing it based on depreciated book value. A decision supporting depreciated value would be tantamount to the Commission favoring the new entrant to the detriment of the incumbent and would be patently unfair.

If the car accident analogy is accepted by the Commission -- and 18 GHz microwave equipment is considered to be similar to the proverbial 1992 Honda -- the new entrant should be required to deliver another 1992 Honda or another "comparable" vehicle (*i.e.*, the 2 GHz relocation model).

In sum, if an insurance analogy is to be applied, it should be for the insurance that is used to cover fixed service equipment, and not cars or bananas or any other non-germane product. Licensees must not be given a check for a value which purports, but fails, to allow the licensee to acquire and operate a comparable system.

FSS Relocation Rules Need Not Be Tied to MSS Relocation Rules.

WinStar is aware that the 18 GHz proceeding is being considered in close time proximity to the 2.1 GHz Mobile Satellite Service (MSS) proceeding (ET Docket 95-18). WinStar supports the Commission's use of the *Emerging Technologies* model as a general principle in all bands where incumbent licensees are to be relocated as a result of new entrants. Yet, should the FCC decide that MSS systems present a different relocation and compensation mechanism, please note that such a precedent must not apply to 18GHz. MSS systems are unique in that their service relies on nearly ubiquitous coverage. Unlike MSS systems, however, Fixed Satellite Service (FSS) systems can discretely target relatively small geographical areas as service is rolled out. This "area by area" deployment can take place over a period of time, similar to PCS deployment, allowing for a manageable relocation process, including recovery of reimbursement costs commensurate with system build out.

* * *

RCR wireless news

archive

February 17, 2000

Cover story
February 10, 1997

PCS CARRIERS REPORT LOWER RELOCATION COSTS

Linda Kay Sakelaris

The cost to relocate microwave systems has met or been lower than projections for two personal communications services carriers, providing a positive mark on balance sheets otherwise heavy with loss due to network buildout.

"PCS is finding it can reach agreements with microwave incumbents, which is what we said all along," said Jack Richards, an attorney who represents microwave licensees. He said the Cellular Telecommunications Industry Association had been "blowing a lot of smoke about extortion and greed" that, in general, has not proven true.

Microwave systems operate within the 1900 MHz spectrum, which the federal government recently assigned to personal communications services. The government told microwave operators to move to another frequency, and required PCS license winners pay the cost.

CTIA predicted the worst, saying that microwave operators would be free to make outrageous relocation demands. "It is clear that, instead of good faith negotiations to relocate as required by law, many microwave incumbents are leveraging off the public trust of the license to profiteer," CTIA President Thomas Wheeler said in 1995.

In their fourth-quarter reports, PCS operators InterCel Inc. and Aerial Communications Inc. noted that the cost of moving microwave links was lower than expected.

"Our capital expenditures were offset by microwave relocation [costs] not as high as anticipated," said Ed Horner, chief operating officer of Powertel Inc., InterCel's PCS subsidiary. The company

has experienced some problems with microwave incumbents, and works around the microwave frequencies in order to launch a system.

Chicago-based Aerial reported it has cleared 150 microwave paths as of Dec. 31, and had commitments to clear 39 others. Costs incurred to date to clear those paths has been at or below projected levels and "will have a favorable impact on capital expenditures in 1997," Aerial said. A sufficient number of paths have been cleared to allow the company to launch service next month.

That doesn't mean problems don't exist, Wheeler said.

"What I've been hearing from CEOs is that microwave relocation has cost more and is taking them longer" than expected, Wheeler said. PCS executives are having to constantly adjust their budget and delay buildout to deal with the issue, he said.

While some bad apples have been encountered, some PCS carriers have made headway enough to launch systems in markets across the country.

"Our program has been successful," said Lori Baynton, vice president of spectrum management for the Personal Communications Industry Association.

PCIA began operating a microwave relocation clearinghouse last August. In the last five months, PCS operators have identified 1,927 specific microwave links; 80 of those situations will involve cost sharing between PCS operators. And PCS operators reported moving 7,590 base stations into former microwave paths.

Since the main role of the clearinghouse is to notify parties involved in each microwave situation-not to mediate disputes-sour negotiations are a closed-door matter.

"We get the two parties to talk to each other, and if a cost-sharing obligation has been identified, we send out notification. But we don't act in collections," Baynton said.

The clearinghouse is a nonprofit subsidiary of PCIA, although it receives a fee for notifying parties of cost-sharing obligations.

It has been estimated that a total of 10,000 to 18,000 links operate in the PCS frequency. If 2,000 links are handled a year, then the matter could be finished by 2005, close to the government's desired deadline.

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