

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Amendment of Part 2 of the Commission’s Rules) ET Docket No. 00-258
to Allocate Spectrum Below 3 GHz for Mobile)
and Fixed Services to Support the Introduction of)
New Advanced Wireless Services, including Third)
Generation Wireless Systems)

To: The Commission

PETITION FOR PARTIAL RECONSIDERATION
BY PCIA, THE WIRELESS INFRASTRUCTURE ASSOCIATION

PCIA, the Wireless Infrastructure Association (“PCIA”), by its attorneys and pursuant to Section 1.106 of the Commission’s Rules,¹ hereby petitions for partial reconsideration of the Second Report and Order (“Second R&O”), FCC 02-304, released November 15, 2002.² This petition seeks reconsideration of those aspects of the Second R&O concerning the manner in which new licensees are to share with each other the cost of relocation of incumbent licensees.³ PCIA proposes the establishment of a band-clearing cost-sharing clearinghouse for the 2110-2150 MHz band to (1) facilitate the relocation of point-to-point microwave incumbents, resulting in rapid deployment of Advance Wireless Services (“AWS”), (2) ensure systematic and equitable

¹ 47 C.F.R. § 1.106. All references to the Commission’s Rules are cited at 47 C.F.R. §§ 0.1 *et seq.*

² A notice summarizing the Second R&O was published at 68 Fed. Reg. 3455, Feb. 24, 2003.

³ On February 7, 2003, PCIA filed Comments in response to the Notice of Proposed Rulemaking issued in *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, FCC 02-305, released November 22, 2002. Those comments addressed the same issues discussed herein.

cost-sharing for the relocation of incumbent microwave licensees, and (3) minimize the Commission's burden of resolving cost-sharing disputes among new AWS licensees.

I. PCIA

Founded in 1949 in the spirit of creating new industries, PCIA has a distinguished history of helping build many key companies that comprise the wireless telecommunications sector. From its beginnings in land mobile radio to paging and messaging, and from personal communications services ("PCS") to tower and antenna siting, PCIA has been instrumental in facilitating the emergence and growth of core wireless services.

Since the inception of Commission procedures for relocating incumbent point-to-point microwave licensees in the frequency bands allocated for PCS, PCIA has operated a Microwave Clearinghouse to administer the Commission's relocation cost-sharing plan. The PCIA Microwave Clearinghouse maintains all of the cost and payment records related to the relocation of each incumbent microwave link and determines the cost-sharing obligations of subsequent PCS licensees. The procedures used by PCIA's Microwave Clearinghouse have worked extremely well, facilitating the rapid deployment of service by new PCS licensees.

II. Cost-Sharing Procedures for PCS

The cost-sharing procedures for relocation of microwave incumbents are found in Sections 24.239 through 24.253 of the Commission's Rules. Pursuant to these procedures, the PCS licensees who arrange and pay for the relocation of a microwave incumbent are entitled to reimbursement from all of the other PCS licensees who later benefit from the relocation of the microwave incumbent. The process is not as simple as one PCS licensee sharing costs 50-50 with the PCS licensee operating on the return path of the microwave link because a microwave path can cross multiple markets. Even where a microwave path does not cross multiple markets,

it could still be positioned in such a way that it could either receive interference from or cause interference to multiple markets. Therefore, it is often the case that there are more than two PCS licensees who benefit from the relocation of an incumbent two-way microwave path, and there can even be two or more PCS licensees who benefit from the relocation of a one-way microwave path.

In addition, the Commission's rules provide for a monthly reduction, over a 120 month period, in the reimbursement amount owed to the PCS licensees who pay for clearance of the microwave path. This reduction accounts for the concept that those PCS licensees who go into service earlier receive a greater benefit from the path clearance than those who go into service later. There is no cost-sharing after ten years (120 months) because there is no obligation to reimburse microwave incumbents for relocation costs after ten years.

III. Cost-Sharing Procedures for AWS

In the Second R&O, the Commission modified Section 101.99(a) of the Rules to state:

(a) Whenever an ET licensee (including Mobile-Satellite Service licensees) in the 2110-2150 or 2160-2200 MHz bands relocates an incumbent paired microwave link with one path in the 2110-2150 MHz band and the paired path in the 2160-2200 MHz band, the ET licensee is entitled to reimbursement of 50% of its relocation costs from any subsequently entering ET licensee which would have been required to relocate the same fixed microwave link.

As it now stands, Section 101.99(a) does not account for the fact that several AWS licensees can benefit from the same path clearance. The 2160-2200 MHz band will be licensed to satellite users who will have nationwide service areas.⁴ However, the 2110-2150 MHz band

⁴ In the Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order, FCC 03-16, released February 10, 2003, the Commission proposed to reallocate the frequencies 2160-2180 MHz (as well as other frequencies) to AWS. The following discussion concerning the 2110-2150 MHz band would also apply to any band ultimately reallocated to AWS.

will be licensed to AWS users. Each AWS user will be licensed for a particular geographic service area within its frequency block. As a result, like the situation in PCS, there can be multiple AWS licensees that could cause interference to or receive interference from a single microwave path.

Therefore, PCIA proposes that Section 101.99 be modified such that (1) the cost of relocation of a two-way microwave path be shared 50 percent by the affected 2160-2200 MHz licensee (or licensees collectively) and 50 percent by the affected 2110-2150 MHz licensees collectively, and (2) that the 2110-2150 MHz licensees (and if applicable, the 2160-2200 MHz licensees) share their collective 50 percent of the cost in a manner similar to the cost-sharing procedures established by the Commission for PCS that are found in Sections 24.239 through 24.253 of the Commission's Rules.

In this regard, just as the Commission saw the benefits and need to establish a clearinghouse to administer a complicated (but fair and necessary) cost-sharing formula used for PCS licensees, the benefits and need for a clearinghouse are equally applicable here. The PCIA Microwave Clearinghouse fairly administered the cost sharing formula for PCS licensees, and there were very few disputes among licensees caused by the cost-sharing procedures. As a result, the PCS industry was able to initiate service on a timely basis and provide much needed competition and new innovation for consumers of mobile wireless services.

