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

In the Matter of	)	
	)	
Amendment of Section 2.106 of the	)	
Commission's Rules to Allocate	)	ET Docket No. 95-18
Spectrum at 2 GHz for Use	)	
by the Mobile-Satellite Service	)	

To: The Commission

JOINT PETITION FOR CLARIFICATION AND RECONSIDERATION

FIXED WIRELESS COMMUNICATIONS COALITION
Leonard R. Raish
Mitchell Lazarus
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, VA 22209
(703) 812-0440

CRITICAL INFRASTRUCTURE COMMUNICATIONS COALITION
Brett Kilbourne
United Telecom Council
1140 Connecticut Avenue, N.W.
Suite 1140
Washington, D.C 20036
(202) 872-0030

UNITED TELECOM COUNCIL
Brett Kilbourne
United Telecom Council
1140 Connecticut Avenue, N.W.
Suite 1140
Washington, D.C. 20036
(202) 872-0030

ASSOCIATION OF AMERICAN RAILROADS
Thomas J. Keller
Verner, Liipfert, Bernhard, McPherson and Hand, Chartered
901 – 15th Street, N.W., Suite 700
Washington, D.C. 20005-2301
(202) 371-6060

ASSOCIATION OF PUBLIC SAFETY COMMUNICATIONS OFFICIALS INTERNATIONAL, INC.
Robert M. Gurss
Shook, Hardy & Bacon, L.L.P.
600 14th Street, N.W.
Suite 800
Washington, D.C. 20005
(202) 662-4856

AMERICAN PETROLEUM INSTITUTE
Wayne V. Black
Nicole Donath
Keller and Heckman LLP
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
(202) 434-4100

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SUMMARY

Petitioners, representing nearly every group of incumbent fixed service ("FS") licensees in the 2.1 GHz Emerging Technology bands, respectfully request clarification and/or reconsideration of the rules for the relocation of FS incumbent licensees by mobile satellite service ("MSS") providers, as adopted in the *Second Report and Order* in ET Docket No. 95-18, released July 3, 2000. First, Petitioners request that the Commission clarify that MSS providers are obligated to relocate incumbents when incumbents would cause interference to MSS operations, as well as when incumbents would receive interference from MSS operations. This clarification is necessary in order to avoid the creation of a double standard, whereby incumbents may be forced to relocate after the ten-year "sunset" period, but also would not be able to request compensation for relocation before then. Second, Petitioners request clarification that the mandatory negotiation period and the ten-year "sunset" period commence after notice is given by the FCC that the first MSS licensee has informed the first FS incumbent, in writing, of its desire to negotiate relocation. This clarification is necessary to eliminate any confusion that may exist concerning the triggering of the ten-year "sunset" period by MSS providers, and it will provide incumbents with effective notice of the commencement of the mandatory negotiation period, as well. Third, Petitioners request that the Commission permit voluntary self-relocating incumbents to participate in the cost-sharing plan. This will enable system-wide relocations that will clear the 2.1 GHz more quickly for the advent of MSS. Finally, Petitioners request clarification that an assignment or transfer of control will not result in a loss of primary status by an FS

incumbent licensee. This clarification is consistent with Commission policy and corrects an apparent oversight in the rules.

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The Critical Infrastructure Communications Coalition ("CICC"),[1] Fixed Wireless Communications Coalition ("FWCC"),[2] Association of Public Safety-Communications Officers, International ("APCO"), Association of American Railroads ("AAR"), American Petroleum Institute ("API"), and the United Telecom Council ("UTC")

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[1] The CICC represents industries that operate telecommunications systems to maintain and protect the nation's critical infrastructure, and includes representatives of the electric, gas, water, railroad and petroleum industries including: American Gas Association, American Petroleum Institute, American Public Power Association, American Water Works Association, Association of American Railroads, Association of Oil Pipe Lines, Edison Electric Institute, Interstate Natural Gas Association of America, National Association of Water Companies, National Rural Electric Cooperative Association, and United Telecom Council.

[2] The FWCC is a coalition of equipment manufacturers and users interested in terrestrial microwave communications. Its membership includes manufacturers of microwave equipment, licensees of terrestrial fixed microwave systems and their associations and communication service providers and their associations. Its membership also includes railroads, public utilities, petroleum and pipeline entities, public safety agencies, the broadcast industry, telecommunications carriers, and others. A list of members is attached as Appendix A.

(collectively "Petitioners") hereby submit pursuant to section 1.429 of the Rules[3] of the Federal Communications Commission ("Commission"), this Petition for Clarification and Reconsideration of the *Second Report and Order* in the above-captioned proceeding concerning the relocation of terrestrial fixed service ("FS") microwave licensees in the 2110-2150 MHz and 2165-2200 MHz bands.[4]

I. Introduction

The Petitioners applaud the Commission for adhering to the principal policy goals of the *Emerging Technologies Proceeding* by affirming the obligation of Mobile Satellite Services ("MSS") licensees to reimburse incumbent FS licensees for the costs associated with their relocation from the 2110-2150 MHz and 2165-2200 MHz bands. However, the Petitioners believe it is necessary for the Commission to clarify and/or reconsider the following aspects of the specific relocation procedures adopted for MSS services to ensure that the relocation process proceeds efficiently and equitably. First, the Commission must clarify that MSS licensees are obligated to relocate incumbents whenever MSS licensees would receive interference from or create interference to incumbent microwave operations in these bands. Second, the Commission must clarify that the two-year mandatory negotiation period and the ten-year "sunset" period commences with the initiation of relocation negotiations between MSS and FS licensees, and not at the earlier date of the initiation of negotiations between FS licensees and "the first emerging technology licensee." In addition, the Commission must formally

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[3] *See* 47 C.F.R. § 1.429.

[4] ET Docket No. 95-18, *Second Report and Order and Second Memorandum Opinion and Order*, FCC 00-233, 65 Fed. Reg. 48174 (Aug. 7, 2000)("*Second Report and Order*").

announce the commencement of the mandatory negotiation period by issuing a Public Notice. Third, the Commission must clarify that voluntarily self-relocating incumbents in the 2110-2150 MHz and 2165-2200 MHz bands participate in the cost-sharing plan. Finally, the Commission must clarify that incumbents will not lose primary status by assigning or transferring control of their licenses.

II. The Commission Must Clarify that FS Incumbents That Will Cause Interference to MSS Handsets are Entitled to Relocation Reimbursement.

The *Second Report and Order* adopts the Telecommunications Industry Association ("TIA") protocol TSB-86 as the standard for assessing potential interference from MSS licensees to FS licensees.[5] Using the criteria and methodologies of TSB-86, MSS licensees will be required to relocate any FS microwave licensees "with whom modeling indicates they cannot share spectrum."[6] New MSS licensees must relocate incumbent FS microwave licensees upon determination, based on the standards of TSB-86, that interference would be caused to the incumbent operations. In short, the Commission relies on the TSB-86 analyses to "reveal which FS microwave systems new MSS licensees will be able to co-exist with, and which FS microwave systems must be relocated by the new licensees."[7]

The FCC's reliance on TSB-86 does not fully address the potential for interference between FS and MSS. In this regard, Petitioners note that the Commission correctly identified the two-way nature of the interference between FS and MSS, stating that "the interference with which we are concerned is interference caused to FS

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5 *Second Report and Order* at ¶ 78.

6 *Id.*

7 *Id.*

microwave receivers by MSS satellites, and interference caused to MSS handsets on the ground by FS microwave transmitters."[8] Although TSB-86 provides a basis upon which to predict interference to incumbent FS operations from MSS, it does not address interference from FS to MSS, and is not intended to assess the potential for MSS and FS to "co-exist" in the same spectrum. This fact is explicitly acknowledged in the preface to TSB-86 which states:

> This TSB-86 is primarily intended to provide a methodology for evaluating MSS interference into FS receiving stations. In publishing this TSB, the JWG makes no claims or conclusions about the extent to which the 2165-2200 MHz band can be shared between MSS and FS users.[9]

Even though it may be possible to engineer MSS systems so that they do not interfere with incumbent FS systems, it is highly unlikely that MSS subscriber handsets will be able to tolerate interference from incumbent FS transmitters. This was confirmed recently in the international context at WRC-2000 by the modification and re-adoption of Resolution 716, which states that "in the long term, sharing [between MSS and the fixed services] will be complex and difficult . . . so that it would be advisable to transfer the fixed service stations operating in the bands in question to other segments of the spectrum."[10] Accordingly, the FCC should clarify that MSS licensees must reimburse the relocation expenses of any incumbent FS system that will interfere with MSS portable

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[8] *See Second Report and Order* at ¶ 75.

[9] TIA/EIA Telecommunications Systems Bulletin: *Criteria and Methodology to Assess Interference Between Systems in the Fixed Service and the Mobile-Satellite Service in the Band 2165-2200 MHz,* at iv. (October 1999)("TSB-86").

[10] Resolution 716 (Rev. WRC-2000), "considering d," addressing use of the frequency bands 1980-2010 MHz and 2170-2200 MHz in all three Regions and 2010-2025 MHz and 2160-2170 MHz in Region 2.

receivers. This clarification is critical when viewed in light of the *Second Report and Order's* treatment of the "sunsetting" of relocation reimbursement rights.

As the *Second Report and Order* currently reads, at the end of the sunset, FS microwave licensees will be required to relocate at their own expense within six months of the presentation of a written demand by a MSS licensee entitled to use the spectrum that "will receive harmful interference according to TIA TSB-86, or that has received actual harmful interference from the FS microwave licensee."[11] As noted above, TSB-86 does not predict interference from FS to MSS, but more importantly, during the first 10 years of the relocation process, MSS licensees are only obligated to relocate incumbents to which they cause interference. However, after the ten-year sunset period, MSS are entitled to demand the uncompensated relocation of incumbents from which they receive interference. In other words, the Commission has inexplicably adopted one relocation criterion for the pre-sunset period (interference from MSS to FS pursuant to TSB-86) and a completely different relocation criterion for the post-sunset period (interference from FS to MSS subscriber terminals). Under this scenario, MSS licensees could wait until after the ten-year sunset period to market and deploy subscriber links in rural areas (where many FS incumbent links are located). The MSS could then demand that all incumbent FS that will interfere with their subscribers relocate without reimbursement. Clearly this outcome is inequitable and inconsistent with the Commission's stated relocation policy objectives.

This undesirable outcome can be avoided if the Commission clarifies that relocation reimbursement rights attach to all FS incumbents with which MSS licensees

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[11] *Second Report and Order*, at ¶ 80.

cannot co-exist. This clarification would allow FS systems that reasonably expect to cause interference to MSS systems to identify themselves to the MSS licensees and request relocation during the two-year mandatory negotiation period.[12] If the MSS operators determine that a particular FS system does not present a threat of interference, they can decline to relocate the system. However, MSS operators who decline to relocate a FS system must be barred, irrespective of the sunset, from demanding uncompensated relocation should actual interference occur. This clarification will ensure that the Commission's stated objective of "identifying which FS systems new MSS licensees will be able to co-exist with" is met, while also ensuring that the equities of the Commission's relocation policies are preserved.

III. The Commission Must Clarify that the Ten-year Relocation "Sunset" Period Commences with the Initiation of Relocation Negotiations Between MSS and FS Licensees.

The *Second Report and Order* adopts the ten-year sunset period for relocation reimbursement rights established in the *Microwave Cost-Sharing Proceeding*,[13] and states that the Commission "will follow [its] current rules in adopting a sunset date of ten years after negotiations begin."[14] The sunset rules for FS services are found in Section 101.79 of the Commission rules and state in relevant part: "ET [Emerging Technology] licensees are not required to pay relocation costs after the relocation rules sunset (*i.e.* ten years

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12 *Id* at ¶ 86.

13 *See Microwave Cost-Sharing First Report and Order*, 11 FCC Rcd 8825.

14 *Second Report and Order* at ¶ 80.

after the voluntary period begins for the first ET licensees in the service."[15] The rules do not specify which services are considered the first ET licensees in the service.

Because the existing rules do not specify which ET licensee negotiations trigger the commencement of the ten-year sunset period, it is possible that some MSS licensees would interpret the sunset period to commence with the initiation of negotiations by the "first ET licensee" to mean the commencement of negotiations by PCS licensees (*i.e.* the first ET service to be licensed by the Commission). The possibility for confusion is increased by the fact that the rule refers to the voluntary negotiation period, when there is no voluntary negotiation period for MSS and FS licensees. The Commission can eliminate any unnecessary confusion and debate by clarifying that the ten-year sunset period for FS licensees subject to relocation by MSS licensees commences with the initiation of the mandatory negotiation period between MSS and FS licensees.

IV. The Commission Must Formally Announce the Commencement of the Mandatory Negotiation Period by Issuing a Public Notice and Requiring MSS Licensees to Notify Those FS Incumbents They Intend to Relocate.

The *Second Report and Order* states that the mandatory negotiation period will begin "when the first licensee in the new service (here, MSS) informs the first licensee in the incumbent service (FS microwave), in writing, of its desire to negotiate."[16] However, the *Second Report and Order* makes no provisions for any other incumbent FS licensees to be made aware of when the mandatory negotiation period commences. In addition, because the ten-year sunset period begins with the commencement of the mandatory negotiation period, incumbent FS will have no way of knowing precisely when their

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[15] 47 C.F.R. § 101.79(a).

[16] *Second Report and Order* at ¶ 86.

relocation rights sunset, because they will have no way of knowing when the ten-year period begins. The Commission can avoid this confusion and clarify the relocation negotiation and sunset processes by issuing a Public Notice noting the date when the first MSS licensee informs the first FS licensee of its desire to negotiate. By issuing this Public Notice, all affected MSS and FS licensees will be able to determine with certainty when the two-year mandatory negotiation period ends, when the involuntary relocation period commences, and when the relocation rules will sunset. In addition, the Commission should require MSS licensees to notify FS incumbents of their intention to relocate such incumbents within 90 days of the release of the Public Notice commencing the voluntary negotiation period. This process is similar to that found in Section 90.699 of the Commission's rules, which describes the process for the relocation of incumbent 800 MHz SMR licensees,[17] and will provide FS licensees with the information they need to make plans for potential relocation.

In adopting Section 90.699, the Commission determined that:

> For incumbents to be treated fairly under our relocation mechanism, they need information and certainty about the EA licensees' relocation plans, and must receive this information as soon as possible. Incumbents need to factor such relocation into their respective business plans.[18]

These policy determinations apply with equal force to FS incumbents as they do to 800 MHz SMR incumbents. In fact, the Commission must grant FS licensees similar notice,

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[17] *See* 47 C.F.R. §90.699(b).

[18] *See In the Matter of Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, PR Docket 93-144, *First Report and Order*, 11 FCC Rcd 1463, ¶ 78.

or specifically state why FS licensees should not receive similar notice. To do otherwise would amount to arbitrary and capricious rulemaking under the Administrative Procedure Act[19] and would be subject to reversal by an appellate court.[20] Accordingly, the Petitioners request clarification or reconsideration so that the Commission will accord FS licensees the same information and certainty regarding the relocation process as has been granted to other licensees subject to relocation.[21]

V. The Commission Should Clarify that Incumbent FS Licensees in the 2110-2150 MHz and 2165-2200 MHz Bands May Participate in the Cost-sharing Plan Adopted in the Second Report and Order.

The *Second Report and Order* establishes rules for cost-sharing among MSS and other new licensees that relocate incumbent FS licensees in the 2110-2150 MHz and 2165-2200 MHz bands.[22] These rules are based upon the framework that the Commission established for cost-sharing among PCS licensees that relocate incumbent microwave licensees from the 1850-1990 MHz bands. That framework permits incumbent licensees

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[19] *See* 5 U.S.C. § 706(2)(A).

[20] *See e.g., Greater Boston Television Corp. v. F.C.C.*, 444 F.2d 841, 852 (D.C. Cir. 1970)(An agency must supply reasoned analysis that prior policies and standards are being deliberately changed, not casually ignored.)

[21] In the alternative, the Commission can satisfy its obligations under the Administrative Procedure Act, by implementing the same "rolling" mandatory negotiation period that was granted to FS incumbents subject to relocation by PCS licensees whereby each incumbent enjoys a separate mandatory negotiation period triggered by the commencement of actual negotiations. *See* 47 C.F.R. §§ 101.69(b), 101.73(a).

[22] *Second Report and Order* at ¶¶ 95-102.

to participate in the cost-sharing plan by self-relocating and obtaining reimbursement from ET licensees that subsequently enter the market.[23]

Consistent with that framework, Petitioners request clarification that voluntary self-relocating incumbents in the 2110-2150 or 2165-2200 MHz bands may participate in the cost-sharing plan. Permitting incumbents that voluntarily self-relocate from the band to participate in the cost-sharing plan would likely speed the deployment of MSS service and potentially reduce overall relocation costs.

The Commission has acknowledged the public interest benefits of allowing self-relocation which, "will facilitate relocations, thereby expediting the deployment of [ET] services to the public."[24] Self-relocation speeds deployment of service to the public by "promoting system-wide relocations," and by giving "microwave incumbents the option of avoiding time-consuming negotiations."[25] It "may even reduce the overall cost of clearing the 2 GHz band."[26] Therefore, the public interest would be served by allowing incumbent licensees in both the 2110-2150 MHz and 2165-2200 MHz bands to self-relocate and obtain reimbursement from MSS or other new service licensees for all the independently verified costs of self-relocation, consistent with the framework established for cost-sharing in the PCS bands.

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23 *See Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, WT Docket No. 95-157, *Second Report and Order*, 12 FCC Rcd 2705, 2717 at ¶ 64-69 (1997).

24 *Id.* at 2705, ¶ 1.

25 *Id.* at 2717, ¶ 25.

26 *Id.*

The record supports allowing voluntary self-relocation in the 2110-2165 MHz and 2165-2200 MHz bands. UTC and API filed comments in this proceeding in support of allowing incumbents to self-relocate and obtain reimbursement for their relocation costs.[27] The Petitioners echo these comments on the record and respectfully requests clarification that incumbents that voluntarily self-relocate from the band may participate in the cost-sharing plan.

VI. The Commission Should Confirm That Incumbent License Assignments and Transfers of Control Do Not Result in a Loss of Primary Status

In the course of developing its general rules regarding the relocation of microwave incumbents from the 1850-1990 MHz and 2.1 GHz bands to make way for ET licensees, the Commission adopted certain rules and policies governing the types of modifications that an incumbent licensee may make to its system without forfeiting its primary status and, as a result, its right to seek relocation reimbursement. As shown below, it appears that the subsequent procedural rule consolidations stemming from the Commission's Universal Licensing System ("ULS") proceeding (WT Docket No. 98-20) -- when read in conjunction with the relocation rules in Part 101 -- could lead to the mistaken and unintended conclusion that assignments and transfers of control involving incumbent licensees should be granted only on a secondary basis. Because such a result would be patently unfair and also inconsistent with the Commission's clear policies and procedures adopted with proper notice and comment during the various microwave relocation proceedings, the Petitioners urge the Commission to clarify its rules to confirm that such assignments and transfers of control do not result in a loss of primary status.

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[27] Comments of API to the *Third NPRM*, ET Docket No. 95-18, at 14 (Feb. 3, 1999); and Comments of UTC to the *Third NPRM*, ET Docket No. 95-18, at 7-8 (Jan. 19,

In a Public Notice issued on May 14, 1992, the Commission stated that existing 2 GHz fixed facilities licensed before January 16, 1992 are permitted to make certain modifications and retain their primary status.[28] Among such permissible modifications specified by the Commission was "ownership of control."[29] The Commission subsequently reaffirmed this policy on several occasions.[30] In doing so, the Commission emphasized that this policy achieved a fair balance between two "divergent objectives": (1) minimizing the effect of relocation on existing microwave users; and (2) providing ET licensees with a stable environment in which to plan and implement new services.[31]

Approximately two years later, in the *Notice of Proposed Rule Making* in its microwave relocation cost-sharing proceeding (WT Docket No. 95-157), the Commission proposed to modify its policy somewhat to state that, in addition to allowing certain technical changes on a primary basis, it would "carefully scrutinize any applications for transfer of control or assignment to establish that our microwave relocation procedures are not being abused, and that the public interest would be served by the grant."[32] The

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1999).

28 *See* "2 GHz Licensing Policy Statement," *Public Notice*, Mimeo No. 23115, May 14, 1992.

29 *Id.*

30 *See Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies* ("*ET Proceeding*"), *Third Report and Order and Memorandum Opinion and Order*, ET Docket No. 92-9, 8 FCC Rcd 6589, at ¶¶ 53-55 and n.73 (Aug. 13, 1993); *ET Proceeding*, *First Report and Order and Third Notice of Proposed Rule Making* ("*First R&O*"), 7 FCC Rcd 6886, at ¶¶ 30-31 (Oct. 16, 1992).

31 *ET Proceeding*, *First R&O*, at ¶¶ 30-31.

32 *See Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, WT Docket No. 95-157, *Notice of Proposed Rule Making*, 11 FCC Rcd 1923, at ¶ 89 (Oct. 13, 1995) ("*Cost-Sharing Proceeding*").

Commission then proposed that all other modifications and extensions would be granted solely on a secondary basis. Accordingly, license assignments and transfers of control would still be authorized with primary status unless the Commission were to find that such a grant would be unwarranted in a particular circumstance.

In 1996, following the adoption of a *Report and Order* in the relocation cost-sharing proceeding,[33] the policies governing future licensing by 2 GHz microwave incumbents were codified in Part 101 of the Commission's rules. Specifically, the Commission adopted a new Section 101.81, which provides that:

> After April 25, 1996, all major modifications and extensions to existing [Fixed Microwave Service ("FMS")] systems in the 1850-1990 MHz, 2110-2150 MHz, and 2160-2200 MHz bands will be authorized on a secondary basis to ET systems. All other modifications will render the modified FMS license secondary to ET operations, unless the incumbent affirmatively justifies primary status and the incumbent FMS licensee establishes that the modification would [not] add to the relocation costs of ET licensees.[34]

This rule section then lists certain technical changes for which incumbent fixed service licensees will maintain primary status.[35]

Thus, under Section 101.81, there are essentially three categories of modifications to incumbent microwave licenses: (1) "major" modifications, which are granted with secondary status; (2) specified minor technical changes, which are granted with primary status; and (3) "[a]ll other modifications," which will be granted with secondary status unless primary status is justified and would not increase relocation costs. Significantly,

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33 *See Cost-Sharing Proceeding, First Report and Order and Further Notice of Proposed Rule Making*, 11 FCC Rcd 8825, at ¶¶ 86-88 (April 30, 1996).

34 *See* 47 C.F.R. § 101.81.

35 *Id.*

at the time that Section 101.81 was adopted, the Commission's rules did not specify that license assignments and transfers of control were to be considered major modifications. Further, the rule regarding amendments to pending applications stated that a substantial change in beneficial ownership or control "would not be considered major where the assignment or transfer of control is for legitimate business purposes other than the acquisition of applications."[36] As a result, such ownership changes presumably were intended to fall within the third category noted above — *i.e.*, modifications that could be granted with either primary or secondary status, depending on whether a grant of primary status was justified and would not increase relocation costs.

This interpretation of Section 101.81 is entirely consistent with the Commission's discussions and treatment of license assignments and transfers of control in the *Emerging Technolgies* and *Cost-Sharing* proceedings. As noted above, while the Commission did ultimately state that incumbents' applications involving a change in ownership would be "carefully scrutinize[d],"[37] such applications were never placed within the category of modifications that automatically would be granted with secondary status. Moreover, to the best of the Petitioners' knowledge, the Commission's actual practice -- both before and after the adoption of Section 101.81 -- always has been to grant applications for assignment or transfer of control involving 2 GHz incumbent microwave licenses with primary status. The Petitioners believe that this approach reflects the Commission's correct understanding that a mere change in the ownership of incumbent licenses,

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[36] *See* 47 C.F.R. § 101.29(c)(4) (1997).

[37] *Cost-Sharing Proceeding, Notice of Proposed Rule Making*, 11 FCC Rcd 1923, at ¶ 89. *See also Cost-Sharing Proceeding, First Report and Order and Further Notice of Proposed Rule Making*, 11 FCC Rcd 8825, at ¶¶ 86-88

resulting from the legitimate sale of a business, does not in any way increase the potential costs of relocation to ET licensees.

Further evidence of the Commission's understanding and interpretation of its existing rules and policies regarding incumbent license assignments and transfers of control can be found in the Commission's recent decision in its proceeding to redesignate portions of the 18 GHz band for Fixed Satellite Services. There, the Commission noted that terrestrial fixed services subject to relocation may, without losing their primary status, "perform the modifications approved in past Commission actions" involving the relocation of incumbent services.[38] The Commission then specified that such permissible modifications include various technical changes and changes in "ownership or control," provided that such modifications do not increase interference to satellite earth stations or result in a facility that would be more costly to relocate.[39]

While the Petitioners firmly support the Commission's practice of granting primary status to incumbent license assignments and transfers of control, it is concerned that a rule change implemented in the ULS proceeding inadvertently could lead to the improper conclusion that a grant of secondary status is warranted in such instances. In the ULS proceeding (initiated in 1998), the Commission consolidated its procedural rules for the various wireless services into uniform standards set forth in Part 1 of its Rules and Regulations. With regard to the classification of filings as major or minor, the Commission adopted a new Section 1.929 that, among other things, specifies certain actions as major for all stations in all wireless radio services. Included among such major

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38 *In the Matter of Redesignation of the 17.7-19.7 GHz Frequency Band*, IB Docket No. 98-172, *Report and Order*, (FCC 00-212), at ¶ 75 (June 22, 2000).

39 *Id.*

actions is "[a]ny substantial change in ownership or control."[40] Accordingly, a literal reading of Section 1.929(a)(2) in conjunction with Section 101.81 could lead to the conclusion that changes in the ownership or control of an incumbent microwave facility should result in a loss of primary status.

In adopting Section 1.929, the Commission emphasized that "[b]y creating a consolidated rule, it is not our intent to change the substance of our existing definitions of major and minor changes, or to impose new filing requirements on licensees and applicants."[41] Moreover, at no point in the ULS proceeding was there any indication that a change to the Commission's microwave relocation policies was being contemplated. Thus, Section 1.929 should not be employed by the Commission as a grounds for changing its policy with regard to assignments and transfers of control involving incumbent microwave licenses, as such a substantive rule change clearly was never intended by the Commission. Instead, the Commission should amend Section 101.81 to clarify its original intent and existing policy with regard to this matter -- *i.e.*, that changes of ownership or control are to be granted with primary status unless the Commission determines that relocation costs would be increased or that the transaction at issue involves an attempt to abuse the Commission's relocation policies.

Further, the Petitioners note that applications for renewal also are classified as major filings pursuant to Section 1.929.[42] Therefore, a literal application of the

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40 *See* 47 C.F.R. § 1.929(a)(2).

41 *Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97 and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, Report and Order*, 13 FCC Rcd 21027, at ¶ 61 (Oct. 21, 1998).

42 *See* 47 C.F.R. § 1.929(a)(3).

Commission's rules would result in the grant of all incumbent renewal applications with a secondary status condition. Yet, in this (2.1 GHz) proceeding, the Commission recently rejected a request by satellite interests that all fixed service microwave license renewals be conditioned to operate on a secondary status basis.[43] Accordingly, the Commission clearly did not intend that Section 1.929 would impact the manner in which incumbent license modifications are handled. Once again, the Commission should amend its rules to clarify and confirm that license renewals, like changes in ownership or control, do not result in a loss of primary status.

Finally, the Petitioners urge the Commission to recognize that its treatment of changes in ownership or control of incumbent licenses is hardly a matter of little import or significance to the critical infrastructure industries. As the Commission no doubt is aware, these industries rely heavily on private microwave facilities -- including many in the 2 GHz band -- to provide important safety-related functions such as the monitoring and control of pipelines, electric power facilities and railroad switches. In addition, like other areas of the economy, many of these industries presently have been experiencing a high level of mergers, acquisitions and other transactions in the normal course of business that may result in license assignments or transfers of control. If such transactions were to lead to a loss of the right to obtain relocation compensation for incumbent 2 GHz licenses, it could substantially impair the marketability and/or market value of critical infrastructure industry companies and, more importantly, impede the ability of these companies to continue maintaining the microwave facilities needed to conduct their operations in a safe and efficient manner. Given that the grant of incumbent license

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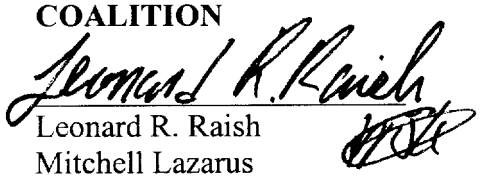
[43] *Second Report and Order*, at ¶¶ 126 and 132-134.

assignments and transfers of control on a primary basis in no way increases potential relocation costs, any change in this policy would serve only to provide ET licensees with a substantial windfall, thereby dramatically tipping the balance of equities in their favor.

WHEREFORE, THE PREMISES CONSIDERED, the Petitioners request the Federal Communications Commission to take action in accordance with the views expressed above.

Respectfully submitted,

FIXED WIRELESS COMMUNICATIONS COALITION



Leonard R. Raish
Mitchell Lazarus
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street
11th Floor
Arlington, VA 22209
(703) 812-0440

CRITICAL INFRASTRUCTURE COMMUNICATIONS COALITION

Brett Kilbourne
United Telecom Council
1140 Connecticut Avenue, N.W.
Suite 1140
Washington, D.C
(202) 872-0030

UNITED TELECOM COUNCIL

Brett Kilbourne
United Telecom Council
1140 Connecticut Avenue, N.W.
Suite 1140
Washington, D.C. 20554
(202) 872-0030

ASSOCIATION OF AMERICAN RAILROADS

Thomas J. Keller
Verner, Liipfert, Bernhard
McPherson and Hand, Chartered
901 – 15th Street, N.W.
Suite 700
Washington, D.C. 20005-2301
(202) 371-6060

ASSOCIATION OF PUBLIC SAFETY COMMUNICATIONS OFFICIALS INTERNATIONAL, INC.

Robert M. Gurss
Shook, Hardy & Bacon, L.L.P.
600 14th Street, N.W.
Suite 800
Washington, D.C. 20005
(202) 662-4856

AMERICAN PETROLEUM INSTITUTE

Wayne V. Black
Nicole Donath
Keller and Heckman LLP
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
(202) 434-4100

Dated: September 6, 2000

APPENDIX A

FIXED WIRELESS COMMUNICATIONS COALITION

MEMBERS

USERS

Association of Public-Safety Communications Officials
United Telecom Council (UTC)
National Association of Broadcasters
National Cable Television Association
Independent Cable Telecommunications Association
American Petroleum Institute
Wireless Communications Association
Personal Communications Industry Association
CBS Communications Services
Norfolk-Southern Railroad
Union Pacific Railroad
Burlington-Northern Railroad
BellSouth
Bell Atlantic
SBC Communications, Inc.
People's Choice TV
Association of American Railroads
WINSTAR Communications Inc.

MANUFACTURERS

Harris Corporation – Microwave Communications Division
Alcatel Network Systems Inc.
Digital Microwave Corporation
California Microwave, Microwave Data Systems
Tadiran Microwave Networks
Spectrapoint Wireless LLC
Nortel Networks
P-Com, Inc.
LUCENT Technologies

CERTIFICATE OF SERVICE

I, Deirdre A. Johnson, a secretary for the law firm of Verner,Liipfert, Bernhard, McPherson, and Hand, Chartered, hereby certify that I have this 6th day of September, 2000, caused a copy of the foregoing "Joint Petition for Clarification and Reconsideration" to be sent, via First Class, United States Mail, postage prepaid to each of the following:

Chairman William E. Kennard
Federal Communications Commission
445 12th Street, S.W. – Room 8-B201
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
445 12th Street, S.W. – Room 8-B115
Washington, D.C. 20554

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 12th Street, S.W. – Room 8-A302
Washington, D.C. 20554

Commissioner Michael K. Powell
Federal Communications Commission
445 12th Street, S.W. – Room 8-A204
Washington, D.C. 20554

Commissioner Gloria Tristani
Federal Communications Commission
445 12th Street, S.W. – Room 8-C302
Washington, D.C. 20554

Thomas Sugrue
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W. – Room 3-C252
Washington, D.C. 20554

D'wana R. Terry, Chief
Public Safety & Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W. – Room 4-C321
Washington, DC 20554

Dale Hatfield, Chief
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W. – Room 7-C155
Washington, D.C. 20554

Bruce Franca, Deputy Chief
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W. – Room 7-C153
Washington, D.C. 20554

Rebecca Dorch, Deputy Chief
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W. – Room 7-C161
Washington, D.C. 20554

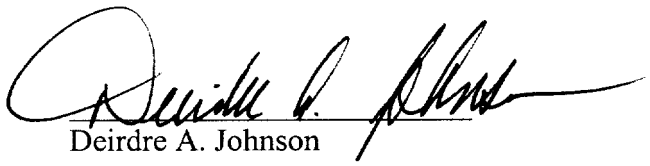
Julius P. Knapp, Chief
Office of Engineering and Technology
Policy and Rules Division
Federal Communications Commission
445 12th Street, S.W. – Room 7-B133
Washington, D.C. 20554

George Sean White
Office of Engineering and Technology
Federal Communications Commission 445
12th Street, S.W. – Room 7-A124
Washington, D.C. 20554

Donald Abelson, Chief
International Bureau
Federal Communications Commission
445 12th Street, S.W. – Room 6-C750
Washington, D.C. 20554

Thomas Tycz, Chief
International Bureau
Satellite and Radiocommunication Division
Federal Communications Commission
445 12th Street, S.W. – Room 6-A624
Washington, D.C. 20554

Karl Kensinger
International Bureau
Federal Communications Commission
445 12th Street, S.W. – Room 6-A663
Washington, D.C. 20554



Deirdre A. Johnson