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December 19, 1997

The Honorable Joel I. Klein
Assistant Attorney General
Antitrust Division
Room 3107
U.S. Department of Justice
Tenth Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

BY HAND

Re: PCIA Site Search Clearinghouse - Request
for Expedited Business Review Clearance

Dear Mr. Klein:

On behalf of the Personal Communications Industry Association ("PCIA"), we hereby request a statement of the present enforcement intentions of the Department of Justice with respect to a proposed information exchange regarding potential antenna sites for use by wireless telecommunications carriers. This request is made pursuant to the procedure for the issuance of business review letters set forth in 28 C.F.R. § 50.6.

PCIA's proposal is to create an information exchange, the Site Search Clearinghouse ("SSC"), to facilitate and encourage identification of meaningful opportunities for wireless carriers to negotiate collocation arrangements for the joint acquisition, construction and/or operation of specific antenna sites. Local zoning and land-use authorities are increasingly requiring carriers to prove that they have exhausted all such collocation opportunities before the construction of any new facilities will be approved. In addition, site collocation provides significant public benefits, including substantial cost savings for the carriers, reduction in the number of unnecessary and/or

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duplicative antenna towers, amelioration of aesthetic, property value and environmental concerns of local citizens, reduced regulatory delays in bringing new and better wireless services to the public, and increased competition in the wireless communications marketplace. The facts upon which this request is based and the specifics of the proposed program are set forth below.

Because of the public importance and urgency of implementing the proposed SSC system, we request that the processing of this business review determination be expedited in accordance with the procedure announced by the Department of Justice on December 1, 1992. All of the information and documents called for by the expedition procedure, to the extent available and applicable, are being furnished with this letter.¹

FACTUAL BACKGROUND

A. PCIA

PCIA is the international trade association created to represent the interest of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, and the Mobile Wireless Communications Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging

¹ The pertinent information is set forth in this letter and in the accompanying "Information Summary." The relevant documents are reproduced as exhibits in the accompanying "Documentary Submission."

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frequencies, PCIA represents and serves the interests of tens of thousands of licensed wireless telecommunications carriers.

B. Wireless Network Development and Site Acquisition.

There are a variety of systems currently authorized to provide wireless and mobile communications services in the U.S., including cellular, PCS, paging and two-way dispatch. Most of these systems utilize an integrated network of antenna sites, telephone lines and switching stations to provide telecommunications service to the public.

The process of network development and site acquisition is critical to the wireless telecommunications industry. PCS carriers, as the newest set of licensees, must rapidly build out their wireless networks to introduce new and innovative services in competition with incumbent cellular systems. Other existing carriers, such as paging and specialized mobile radio licensees, also face pressures to install new facilities in order to respond to competition, implement new technologies, and meet the ever growing public demand for wireless services. Consequently, wireless carriers in many areas of the country either are now, or else soon will be, actively engaged in ongoing efforts to acquire antenna sites that provide the best coverage at the most reasonable cost, and to construct necessary facilities at those sites according to critical time deadlines.

The typical network development/site acquisition process has both long-range and near-term planning horizons. The long-range plan includes the development of a system map, based on radio engineering considerations and the carrier's coverage objectives. This entails identifying the general location of antennas within the entire system, as well as developing an overall schedule for building out the system over a period of two to four years. When the carrier is ready to begin actual site acquisition and construction activities in a particular area, however, the planning cycle is shorter, typically one to two years. The initial steps of this active acquisition/construction phase are as follows:

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1. Identify general search areas for the new antenna sites to be constructed.

2. Identify specific search "rings" for these sites. Each ring is typically designated by a search "dot," which is the latitude and longitude of the optimal location, together with a search "radius" (e.g., 1/2 mile), reflecting the amount of flexibility available for locating the facility "off dot."

3. Prepare site evaluation packages for likely sites within a search ring. The specific coordinates of each sites are used in radio engineering coverage studies to verify their acceptability. The site evaluation package will also include information about existing towers or structures (if any), the types of towers that could be constructed, and other pertinent factors such as site access, availability of telephone switches and power, and any potential coverage or interference problems.

4. Identify one or more of the proposed sites for possible acquisition.

5. Begin negotiations with property owners.

6. Prepare environmental studies.

7. Prepare a detailed site plan.

8. Initiate discussions with local zoning officials.

9. File zoning application.

The typical time period for completing these initial steps is generally somewhere between one and four months.²

² See Partnership Forum, September 10, 1996, Joint Meeting Between Local Government and the Personal Communications Industry Association, reproduced as Exhibit A in the Documentary Submissions.

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In recent years, the time delay between the public filing of a zoning application and receipt of zoning approval has become the real "wild card" in the process. Various local jurisdictions have imposed tower siting moratoria of an unlimited or unreasonable duration. Still others have enacted de facto moratoria, e.g., zoning regulations that effectively prohibit the construction of communications towers based on an area's topography, or prescribe setback and tower separation requirements that effectively prohibit new tower construction based on an area's lot size, and moratoria that are based on unwritten policies.³

Even in the absence of a de jure or de facto moratorium, public hearings regarding issues of aesthetics, electro-magnetic radiation levels, and other environmental considerations have become an expensive and time consuming undertaking in many instances. What once was a relatively simple process that took only six to eight weeks has now become a tortuous regulatory battle that can delay actual site construction for months on end.

In this connection, numerous localities are increasingly requiring carriers to prove that they have exhausted all opportunities to collocate their antennas on existing structures or at sites to be constructed by other carriers before the locality will approve construction of any new facilities. Such efforts to explore possible collocation opportunities create still further delay, and often prove fruitless because necessary information about where other carriers may be seeking sites in a particular area is simply not available.

The impact of the delays caused by zoning and land-use approval procedures falls most heavily on the newer entrants to

³ See PCIA Supplemental Comments, filed September 11, 1997 in FCC proceeding DA96-2140 (Documentary Submission Exhibit B); PCIA Comments, filed October 9, 1997 in FCC proceeding WT Docket No. 97-197 (Documentary Submission Exhibit C).

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the marketplace. A new carrier's "time-to-market" is critically important and may well determine whether it can ultimately hope to compete successfully with the established carriers and other new entrants. Consequently, systemic hurdles such as zoning moratoria and restrictive ordinances have a distinctly anticompetitive bias in favor of incumbent carriers and against new entrant competitors.

Once zoning approvals are obtained, the remaining steps for facilities construction are relatively straightforward: orders are placed for necessary equipment; RFQ's are issued to general contractors; new facilities are constructed and equipment installed; necessary connections are made to all required utilities; and service begins. These final steps can often be completed in four to twelve weeks.

C. Site Collocation.

Site collocation is the sharing or joint use of a telecommunications facility by more than one wireless service provider or operator. Such collocation can occur when a particular site is suitable for accommodating equipment and antennas of more than one carrier or more than one type of service (*e.g.*, cellular, PCS, paging, two-way dispatch). Such multi-use and multi-tenant sites help reduce the number of sites that will be necessary for a full-scale development of a national wireless infrastructure.

The benefits of site collocation are substantial for all concerned.⁴ The cost to each participating carrier for site acquisition, construction, and maintenance can be significantly reduced. Local citizen concerns regarding aesthetic impacts, property values, and environmental considerations are ameliorated. Time delays, especially from the zoning approval

⁴ See C. Jones, "Shared Cell Sites" (Documentary Submission Exhibit D).

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process, can be shortened. As a result, consumers can expect to receive new and better wireless service sooner and at a lower cost.

In many cases, however, site collocation is not possible due to a variety of technical constraints. For example, tower structures that currently exist or are already under construction may be located too far "off dot" to be integrated into a carrier's overall system plan. Even if such a facility is located within the allowable search ring, it may still be unusable for a number of other reasons, such as: insufficient height; frequency-based or power-based interference problems; poor structural condition; legal issues concerning access and rental terms; insufficient space for equipment; unavailability of utility connections and backup power supply; etc.

There are also a number of practical impediments to carrier collocation efforts. When a carrier begins the active site acquisition/construction process in a particular area, it can, with some effort, identify existing structures in the search area on which additional antennas could be mounted. There is, however, no reliable mechanism by which a carrier can ascertain whether any other companies may be planning to construct antenna sites in the same area. Although the fact that another company is proposing the construction of a new tower facility becomes public knowledge when a zoning application is filed, by that time it may well be too late for other interested carriers to work out a suitable collocation arrangement, because the specific tower type, height and location of the proposed structure has become reasonably well fixed and may not be suitable for the other carriers' purposes.

To facilitate collocation efforts, carriers need to know well before a zoning application is filed that another carrier is actively looking for an antenna site in the same search area. At that time, the interested carriers can enter negotiations for the joint acquisition and construction of a single facility that will meet their respective needs. As part of this process, they can attempt to negotiate adjustments to the specific location and

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physical characteristics of the proposed facility so that it can be readily integrated into each carrier's overall network.

Antitrust concerns currently limit the ability of competing wireless carriers to pursue potential collocation opportunities. The carriers are advised by legal counsel that, although they can negotiate an individual collocation arrangement with a competitor concerning a specific search area with minimal antitrust risk, any exchange of a long-range network development or buildout plans would be dangerous and could lead to subsequent allegations that the exchange of planning information was part of an illegal market division conspiracy. Moreover, each carrier's long-range plan for system implementation and enhancement is sensitive proprietary information that most carriers would be reluctant to share with a direct competitor. By contrast, the fact that a carrier has entered the active site acquisition/construction phase in a particular geographic region within its licensed market is not particularly sensitive information. Such information will soon be public knowledge when a zoning application is filed, if not well before through the "country grapevine."

Because of these conflicting considerations, there is a Catch-22 problem that prevents full exploitation of potential collocation opportunities. Competing carriers can legitimately undertake negotiations regarding individual site collocations in specific areas of joint interest. However, any attempt by the carriers to exchange information needed to identify such areas would necessarily reveal sensitive information about each carrier's long-range buildout strategy. The PCIA Site Search Clearinghouse is specifically designed to address this problem, and to increase the opportunity for successful collocation of wireless communications facilities.

D. The PCIA Site Search Clearinghouse.

The PCIA Site Search Clearinghouse ("SSC") will be a secure computerized database containing information regarding potential wireless communications antenna sites. When a carrier begins

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site acquisition/construction activity in a particular geographic area within its licensed market, it can submit search ring information for its proposed sites to PCIA for entry into the SSC database. The search ring information will be in the form of the latitude and longitude of the optimal site location, together with one of several specified search radii (e.g., 1/4 mile, 1/2 mile, 3/4 mile, etc.).⁵

The SSC system will identify any instances in which one of the proposed search rings submitted by the carrier overlaps with a search ring previously entered into the database by another carrier within the last six months.⁶ In such situations, the SSC system will notify both carriers of the potential collocation opportunity. The notification will be limited solely to the following information: (a) the identity of the specific search ring submitted by the notified carrier that may present a collocation opportunity; (b) the identity of the other carrier

⁵ The search ring information may also include identification of the local zoning authority or authorities that potentially exercise jurisdiction over the proposed site. This information would not be exchanged between carriers, but would be used by PCIA to monitor how the system is being used. In appropriate circumstances, PCIA may provide carriers and/or local zoning authorities with aggregated data concerning the total number of search rings submitted affecting a particular jurisdiction.

⁶ The six month limitation is intended to ensure that carriers only submit search data when they are actively engaged in site acquisition/construction efforts in a particular area and are therefore a legitimate collocation opportunity. By the end of six months, the carrier would likely have made a public zoning filing concerning its proposed antenna site. In order to accommodate special circumstances, such as a local zoning moratorium that has halted the processing of new applications, a carrier could obtain a one time, six month renewal of a specific search ring submission for an additional listing fee.

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which is also seeking an antenna site in the same area; and (c) the name, address and phone number of the individual at the other carrier who has been designated to handle SSC notifications and inquiries.

Once both carriers have been notified, the SSC will play no further role in any subsequent collocation efforts. It will be up to each individual carrier to determine whether to pursue a possible bilateral collocation arrangement with the other carrier. Should the carriers decide to pursue bilateral negotiations, they will do so independently and neither SSC nor PCIA will have any involvement in those discussions.⁷

The SSC database may also include the capability to accept information regarding existing structures that could be used for mounting wireless communications antennas. The owner of an existing tower or building would submit the latitude and longitude of its facility, together with the name, address and telephone number of a contact individual, for entry into the database. If the structure falls within a search ring previously submitted by a licensed carrier, the carrier will be notified of the new site listing. Similarly, when a carrier submits its proposed search ring data, the SSC system will provide that carrier with a list of any existing structures contained in the database that fall within each such ring.

⁷ In some cases, multiple overlaps may be identified. For example, carrier A may be notified that one of its search rings overlaps with data submitted by carrier B (and vice versa). Shortly thereafter, carrier C may submit a search ring that overlaps with each of the rings submitted by A and B, and all three carriers will receive appropriate notification from the SSC system. At that time, each individual carrier would independently decide whether to pursue a possible two-way, or perhaps even a three-way, collocation arrangement with the other carriers.

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Companies that submit data for entry in the SSC database will be charged a fee that will allow PCIA to recover its operating costs, initial investment in setting up the SSC, and a reasonable return on that investment. All licensed wireless carriers will be permitted to participate in the SSC system, whether or not they are members of PCIA, on fair and reasonable terms.⁸ To the extent the system also includes data concerning existing sites, all owners of potential sites will be encouraged to submit data and charged only a nominal fee.

ANALYSIS

The SSC system is similar to other information exchange programs that have been approved by the Department of Justice in recent years. E.g., Automated Interchange Matching System, Inc. ("AIMS"), 1996-02-22; Halon Recycling Corp., ("HRC"), 1993-07-27 and 1995-09-29. Like these other programs, the SSC system is designed simply to match carriers that may have a common interest in negotiating a specific collocation arrangement. It is then up to the individual carriers to decide whether to pursue such negotiations and, if they do so, to reach agreement on the specific terms and conditions for the joint acquisition, construction and/or operation of a new antenna site. SSC will have no role in the establishment of these individual collocation agreements.

The type of information exchanged through the SSC system should have no adverse competitive effects. The fact that a carrier has entered the active site acquisition/construction phase in a particular geographic area within its licensed market is not particularly sensitive information and generally becomes public knowledge within a relatively short period of time. The

⁸ Because the SSC is being established primarily as a service to PCIA members, and PCIA will bear the initial financial risk in setting up the system, the listing fee to non-members will likely include a small surcharge.

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SSC system will only notify carriers about the existence of individual search ring overlaps, and cannot be used to exchange long-range plans for system implementation and enhancement. In particular, the fact that search ring data normally remains accessible for only six months, coupled with the standard listing fee, provide a strong economic incentive for carriers to enter search ring data only at the start of the active site acquisition/construction phase and solely for the purpose of identifying meaningful collocation opportunities.⁹

The SSC will not be involved in any specific discussions or negotiations between carriers regarding individual collocation opportunities. It will not issue any substantive guidelines or recommendations regarding specific terms and conditions to be included in collocation agreements. Instead, it will simply provide participating carriers with a set of recommended procedures for conducting collocation negotiations that are designed to ensure that the discussions are properly focused and confined to the legitimate business objective of a specific collocation arrangement.¹⁰

To the extent carriers are able to reach agreement concerning the joint acquisition, construction, and/or operation of individual antenna sites, such agreements will likewise have no adverse competitive effects. The costs associated with building and operating any individual site represent only a small fraction of each carrier's total system costs, and are well below

⁹ To the extent the SSC system also incorporates data regarding existing sites, such data is already public knowledge and is simply collected in the SSC database to reduce the carriers' search costs for locating existing structures. The exchange of such publicly available information through the SSC system can have no anticompetitive impact.

¹⁰ See Draft "Recommended Procedures For Carrier Collocation Negotiations" (Documentary Submission Exhibit E).

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the 20% safeharbor threshold for joint purchasing arrangements which the Department has employed in other contexts.¹¹

Similarly, the antenna site "market" in any given area would consist of a large number of pieces of real estate, each with its own unique characteristics and available for many different commercial uses. The participants in this market would therefore include all types of entities that are potential purchasers or lessees of real estate. The fact that two wireless telecommunications carriers have combined their site acquisition efforts in a particular area would have only a deminimus effect. Indeed, in many areas, carriers are affirmatively required to coordinate their site acquisition activities by the local zoning authorities.

There are no competitively significant restrictions on access to the SSC system. All carriers, whether or not members of PCIA, can use the SSC system on fair and reasonable terms. Moreover, each carrier remains free to use or not use the SSC system as it sees fit, and can pursue potential collocation opportunities independently of the SSC.

By contrast, the SSC system will have significant procompetitive effects and real public benefits. It will address an existing market deficiency that currently impedes carrier collocation efforts. Through the SSC, carriers will be able to identify potential collocation opportunities early enough in the process when there is still substantial design flexibility. As a result, the number of successful collocation arrangements should increase significantly.

The SSC system will also help expedite the zoning review process by assuring local authorities that wireless carriers have

¹¹ See, e.g., Department of Justice and FTC, Antitrust Enforcement Policy Statements On The Health Care Area (September 15, 1993), Part 5.

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fully explored potential collocation opportunities before seeking approval for construction of new facilities. This will reduce the regulatory delays that are currently frustrating the introduction of new wireless service competition in many areas.

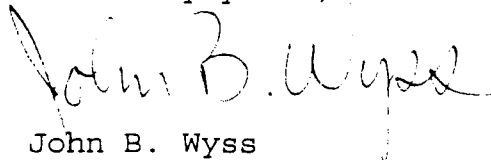
Successful collocation arrangements will also create substantial cost savings for the carriers involved from the joint acquisition, construction and operation of a collocated antenna site. Given the increasingly fierce level of competition in the wireless telecommunications industry, these cost savings will inevitably be passed on to consumers in the form of lower prices.

Finally, the SSC will help reduce the number of unnecessary and/or duplicative antenna towers constructed during the current rapid buildout of the nation's wireless infrastructure. This, in turn, will help assuage public concerns regarding aesthetic, property value and environmental impacts.

CONCLUSION

PCIA's proposed Site Search Clearinghouse should raise no significant antitrust concerns. Because of the urgent public interest in implementing the proposed SSC system promptly, we respectfully request that this business review request be given expedited considerations in accordance with the Department of Justice procedures announced on December 1, 1992.

Sincerely yours,



John B. Wyss

cc: Barry B. Grossman
Mark J. Golden