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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Part 90)
of the Commission's Rules)
Governing Extended)
Implementation Periods)

PR Docket No. 92-210

To: The Commission

COMMENTS OF
UTILITIES TELECOMMUNICATIONS COUNCIL

The Utilities Telecommunications Council (UTC), pursuant to Section 1.415 of the Commission's Rules, respectfully submits its Comments in response to the Notice of Proposed Rule Making (NPRM) in PR Docket 92-120, FCC 92-429, released October 13, 1992, ___ FCC Rcd ___ (1992). The NPRM proposes to alter Sections 90.629 and 90.631 of its rules regarding extended implementation schedules for 800 and 900 MHz land mobile systems.

UTC is the national representative on communications matters for the nation's electric, gas, water and steam utilities (utilities). Approximately 2,000 utilities are members of UTC, ranging in size from large, combined electric-gas-water utilities which serve millions of customers, to small rural electric cooperatives and water districts serving only a few thousand customers each. All

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utilities depend on reliable communications facilities to maintain and restore essential electric, gas and water services to the public. Almost all utilities use land mobile systems. Many are constructing larger, intricate systems employing trunking technology over wide areas.

Background

Currently, Section 90.629 of the FCC's rules provides that public safety, industrial/land transportation, business and general radio users applying for trunked or conventional mobile frequencies may request up to three years to implement their stations. To justify a three year implementation schedule, an applicant must show:

- (1) its proposed system would serve at least two hundred mobile units and it would need more than one year to plan, purchase and construct the system;
- (2) the proposed system will require more than eight months to implement due to its purpose, size or complexity;
- (3) the proposed system is part of a coordinated wide area system which would require more than a year to plan, obtain approvals and to finance and construct; or
- (4) the applicant is a local government agency and is required by law to follow a multi-year process to plan, fund and purchase the proposed system.

UTC Petition

On March 20, 1992, UTC filed a Petition For Rule Making (Petition) to modify Section 90.629 of the FCC's rules to eliminate the fixed three-year time limitation for extended implementation and to allow applicants to request authorization for the amount of time necessary to place stations in operation. UTC also requested in its Petition that the FCC modify the permitted justifications for requesting extended implementation and to specifically permit extended implementation when existing conventional systems are converted to trunked operations.

UTC also requested the FCC to clarify application of finder's preference rules to extended implementation schedules and to change the expected loading rate for systems constructing on an extended implementation schedule to 70 mobiles per channel instead of 100 mobiles per channel. The FCC incorporated certain of UTC's proposals into the NPRM in this proceeding.

FCC Proposals

The FCC proposes to change the maximum permitted extended implementation period from three to five years. The FCC also proposes to permit Specialized Mobile Radio (SMR) licensees to request extended implementation authority because they are increasingly expressing an

interest in operating complex wide-area systems that require more than a year to construct. In addition, the FCC proposes to eliminate the requirement that a system serve a fleet of at least 200 mobile units where extended implementation is requested due to the purpose, size, or complexity of a system.

Under the FCC's proposal, applicants may continue to submit justifications showing the proposed system is to be part of a coordinated or integrated wide-area system which will require additional time to plan, approve, fund, purchase, construct and place in operation, or that the applicant is required by law to follow a multi-year cycle for planning, approval, funding and purchasing the proposed system. The FCC also clarifies that all trunked systems, whether constructed on a regular or an extended implementation schedule, must load systems to 70 mobiles per channel within five years of authorization. At the end of five years, if all channels in the licensee's category are assigned in the geographic area, the licensee's authorization cancels automatically for trunked channels not loaded to 70 mobiles, at a rate allowing retention of one channel for every 100 mobiles loaded, plus one additional channel.

UTC supports the FCC's proposal to change the permitted extended implementation period from three to five years. However, UTC renews its request that the FCC allow non-commercial applicants to request the amount of time necessary to manage the logistics of constructing and operating a large system, up to a cap of ten years. Utilities generally require a long period of time to plan, budget and construct wide area systems, and often operate under strict budget controls which require a long notice period for certain types of expenditures. Also, utilities must spread large expenditures over a number of years to avoid increased costs to consumers. In addition, radio systems operated by utilities tend to be very large due to their generally expansive service territories.

If SMR applicants are permitted to request extended implementation schedules, UTC urges the FCC to scrutinize carefully the requests. If the FCC adopts a ten-year cap for extended implementation authorizations, the FCC should adopt a separate five-year cap for SMR licensees. Non-commercial users have an incentive to construct full systems throughout a requested service area as soon as is feasible because the systems are used for internal communications purposes and ultimately improve overall company performance. SMR licensees, in contrast, might be inclined to request large service territories, numerous

channels and extended implementation authorization, speculating that a market for services will develop, effectively warehousing spectrum. To reduce the likelihood and length of possible spectrum warehousing, SMR licensees should be limited to a five-year period for extended implementation. Non-commercial users should be permitted to request more than five years because, given their internally beneficial uses for radio systems, they would not be likely to request more time than is absolutely necessary to implement a system.

UTC supports the FCC's proposal to eliminate the 200-mobile fleet requirement as part of the justification based on the purpose, size or complexity of a system. The number of mobiles operating on a system, standing alone, is not indicative of a system's construction requirements. However, UTC supports the FCC's determination that the conversion of a conventional radio system to trunked operations is an example of a situation where the justification regarding purpose, size or complexity of a system may be used. UTC requests that the FCC specifically outline this example in any order it issues with regard to changes in the extended implementation rules. UTC also supports the FCC's decision to allow extended implementation for all entities -- not just local government agencies -- which are required by law to follow

a multi-year cycle for the planning, approval, funding and purchase of a proposed system. Any eligible entity required by law to follow a multi-year cycle should be permitted to justify extended implementation on that basis. UTC requests the FCC to clarify, however, that applicants which are not required by law to do so, but which as a practical matter require a multi-year cycle for planning, approval, funding and purchase of a system, are able to request extended implementation for any type of system, not necessarily a wide-area system, pursuant to Section 90.629(a)(2) of the rules.

The FCC should streamline its justifications for extended implementation authority to outline general requirements which may be met in any number of specific ways, one of which could be the development of a wide-area system. UTC suggests the FCC reword its proposed Section 90.629(a)(2) so that extended implementation is not contingent on an applicant's request of a wide-area system.^{1/} This more general language would be consistent

^{1/} Proposed Section 90.629(a)(2) should read:

The proposed system is to be part of a coordinated or integrated system, such as a wide-area system, which will require more than eight months (if a conventional system) or one year (if a trunked system) to plan, approve, fund, purchase, construct, and place in operation; (emphasis added)

with the remaining two proposed justifications for extended implementation, neither of which specifies a wide area system as a precondition to the need for extended implementation.

UTC supports the FCC's proposed clarification regarding mobile loading in Section 90.629(b) to provide that trunked systems authorized on an extended implementation schedule are to be loaded to 70 mobiles per channel, the same level required of licensees of trunked systems not authorized on an extended implementation schedule, as set forth in Section 90.631(b) of the FCC's rules. There is no rational basis for treating similar types of systems in a disparate manner.

UTC also supports the FCC's proposal to eliminate annual reporting requirements for licensees constructing on an extended implementation schedule. In addition, UTC favors the FCC's proposal to condition an extended implementation license on the construction and operation of the system within the total authorized timeframe, with loss of channels not constructed and in operation at base station locations and the retention only of base stations constructed and placed in operation in accordance with the implementation schedule. These changes appear to shift the emphasis to the proper period -- the ultimate completion of

system construction by the final date of the implementation period. Since the FCC's proposals are somewhat ambiguous, however, UTC requests that the FCC clarify that it will not issue partial license cancellations if a licensee misses a benchmark.^{2/}

UTC agrees that the FCC should have the right to request, at any time prior to the end of the implementation period, evidence that a licensee has met the construction benchmarks identified in its implementation schedule. This would enable the FCC to retain oversight over potential abuses of the FCC's extended implementation rules. Since the licensee's goal is to complete construction by the final implementation date, subject to loss of rights to the channels, there is no need to file annual reports on construction progress.

^{2/} Should the FCC intend to take back channels in the event a licensee misses a construction benchmark, the FCC should permit extended implementation licensees to request modification of their construction schedules when it becomes apparent that meeting a construction benchmark could be a problem.

WHEREFORE, the premises considered, the Utilities Telecommunications Council respectfully requests the Federal Communications Commission to take action consistent with the views expressed herein.

Respectfully submitted,

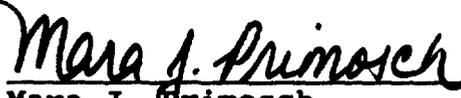
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