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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of	)	
	)	
Amendment of the Commission's Rules to Establish New Personal Communications Services	)	GEN Docket No. 90-314 ET Docket No. 92-100

To: The Commission

SUPPLEMENTAL COMMENTS ON "EMERGENCY PETITION"

The Utilities Telecommunications Council (UTC) hereby supplements its September 15, 1993, comments responsive to the "Emergency Petition" filed on September 13, 1993, by Apple Computer, Inc. (Apple) in the above-referenced proceeding. By Public Notice, DA 93-1278, released October 22, 1993, the Commission invited the filing of comments on the "Emergency Petition," which the Commission indicated it would treat as a petition for reconsideration of the Second Report and Order in GEN Docket No. 90-314, FCC 93-451, released October 22, 1993 (Second R&O).

Initially, UTC objects to the Commission's decision to treat the "Emergency Petition" as a petition for reconsideration of the Second R&O. Because the Emergency Petition was filed before the Commission adopted the Second R&O, and because the Commission admittedly "adopted rules

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that respond to and consider the issues raised by Apple in its petition,"[1] commenting parties are now left to wonder which issues are the subject of Apple's "petition for reconsideration." For example, it is possible that the rules adopted by the Commission adequately respond to Apple's concerns and that Apple no longer seeks reconsideration. On the other hand, there may be other issues with which Apple does not agree, and which will be the subject of yet a "formal" petition for reconsideration by Apple.[2] Nevertheless, UTC hereby supplements its September 15, 1993, Comments on Apple's Emergency Petition.[3]

Separate Allocations for "Non-Nomadic" Devices

In its September 15 Comments, UTC noted that there was no need for a separate allocation for "nomadic" PCS devices as opposed to "non-nomadic" devices since there did not appear to be a meaningful distinction between these two

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[1] Public Notice, DA 93-1278, released October 22, 1993, at p.1.

[2] The special treatment accorded Apple's Emergency Petition also raises the interesting predicament that comments on Apple's petition are due even before petitions for reconsideration of the Second R&O are required to be filed. See 47 C.F.R. §1.429(d).

[3] To the extent necessary, UTC hereby requests that its September 15, 1993, "Comments" be treated as comments on Apple's "petition for reconsideration."

terms. At that time, the only definitions which had been presented were those developed by the Unlicensed PCS Ad Hoc Committee for 2 GHz Microwave Transition and Management (UTAM).[4]

In the Second R&O, the Commission adopted definitions for "Coordinatable PCS Devices" and "Noncoordinatable PCS Devices." The Commission has also charged UTAM with primary responsibility for determining whether a given device is "coordinatable" or not.[5]

UTC is continuing to review the rules and policies adopted in the Second R&O to assess whether UTC should file a petition for reconsideration. In the meantime, UTC urges the Commission not to act on Apple's request for separate frequency allocations until the definitions of "coordinatable" and "noncoordinatable" devices are finally resolved.

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[4] See UTC's July 21, 1993, Comments on the "FCC Report and Recommendations of the Unlicensed PCS Ad Hoc Committee for 2 GHz Microwave Transition and Management."

[5] See 47 C.F.R. §15.307(c), as adopted in the Second R&O.

Reservation of PCS Channels for Microwave "Retuning"

In the Second R&O, the FCC reallocated the 1850-1970, 2130-2150 and 2180-2200 MHz bands to licensed and unlicensed PCS. The Commission did not reserve any spectrum as a temporary home for displaced 2 GHz microwave systems, as requested by Apple in its Emergency Petition.

UTC agrees with the Commission's decision not to reserve spectrum specifically for a temporary home for relocated microwave paths. Apple has yet to substantiate the practicality of its "retuning" idea, which would increase the overall costs of relocations for both incumbent microwave licensees as well as new service providers. UTC therefore urges the Commission to reject the notion that spectrum should be specifically reserved as a "spectrum purgatory" for displaced 2 GHz microwave licensees.[6/]

[6/] UTC is separately filing Comments on Apple's "Petition for Reconsideration" in ET Docket No. 92-9. UTC's Comments, which include further discussion of UTC's opposition to the Apple "retuning" idea are also filed under date of November 8, 1993, and are hereby incorporated by reference.

WHEREFORE, THE PREMISES CONSIDERED, the Utilities Telecommunications Council respectfully requests the Commission to deny Apple's "Emergency Petition."

Respectfully submitted,

UTILITIES TELECOMMUNICATIONS COUNCIL

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Dated: November 8, 1993

CERTIFICATE OF SERVICE

I, Kim B. Winborne, hereby certify that I have caused to be sent, this 8th day of November, 1993, by first class mail, postage prepaid, copies of the foregoing "Supplemental Comments on Emergency Petition," to each of the following:

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