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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
Allocation of Spectrum Below) ET Docket No. 94-32
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To: The Commission

REPLY COMMENTS OF UTC

Pursuant to Section 1.415 of the Commission's Rules, UTC hereby submits its Reply to several of the Comments filed in response to the Notice of Proposed Rule Making, FCC 94-272, released November 8, 1994, in the above-captioned matter.^{1/}

In its Comments, UTC opposed the Commission's initial proposal to broadly allocate the three bands in question (2390-2400 MHz, 2402-2417 MHz, and 4660-4685 MHz) for Fixed and Mobile services, rather than specifying particular uses for these bands. UTC also opposed the Commission's corresponding proposal to subject all applications for this spectrum to competitive bidding, since, in the Commission's view, most applicants would probably choose to offer commercial services in these bands under such a broad allocation concept.

^{1/} By Order, DA 94-1591, released December 28, 1994, the deadline for filing reply comments was extended to January 6, 1995.

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I. A Broad Allocation to Fixed and Mobile Services Should Not be Adopted

A. Broad Allocations Are Inconsistent With the Commission's Responsibilities to Allocate Spectrum Using the Public Interest Standard

Not surprisingly, the preponderance of the commenters joined UTC in opposing its proposal to broadly allocate this spectrum to Fixed and Mobile services. Others pointed out that such an allocation would represent a virtual abdication of the Commission's statutory responsibility to allocate spectrum in the "public interest."^{2/} Under this standard, the Commission must make a comparative assessment, from a policy standpoint, which services should receive allocations.^{3/}

Pacific Bell Mobile Services supported the Commission's block allocation proposal, but provided no particular reasons for its support. Instead, Pacific Bell only requested clarification that two specific services could be provided under a block allocation approach.^{4/}

Other commenters agreed with UTC that the block allocation proposal is not comparable to the approach used by the Commission in establishing the 2 GHz "emerging technologies"

^{2/} Industrial Telecommunications Association (ITA), p. 6; Association of Public-Safety Communications Officials-International, Inc. (APCO), pp. 2-3.

^{3/} ITA, p. 6; Metricom, pp. 10-12.

^{4/} Pacific Bell Mobile Services, pp.1-2.

band in ET Docket No. 92-9.^{5/} As noted by the commenters, Docket 92-9 only involved the designation of certain bands for "emerging technologies," leaving to future rulemakings (e.g., Docket 90-314) the allocation of these bands to specific services.

Both TIA and Bell Atlantic point out that block allocations could have a detrimental impact on the equipment market for these bands.^{6/} Without even a general indication as to the types of operations that would likely develop in these bands, equipment manufacturers will be understandably reluctant to spend much on research and development. The block allocation approach would thus be counter-productive to the Commission's expressed desire to foster innovation and new services.

B. Auctions Cannot Be Used to Allocate Spectrum Among Competing Uses

Commenters were generally uniform in rejecting the Commission's suggestion that use of competitive bidding would effectively allocate this spectrum to its highest and best use by placing it in the hands of those willing to pay the most.

^{5/} APCO, pp. 4-5; Metricom, pp. 12-13; Mobile and Personal Communications Division and Fixed Point-to-Point Microwave Section of the Telecommunications Industry Association (TIA), p. 3, n.5.

^{6/} TIA, pp. 8-10; Bell Atlantic, p. 6.

As noted by ITA, the proposal to let the "marketplace" make frequency allocations is overly simplistic and unrealistic.^{1/}

Moreover, and as a number of commenters correctly noted, Congress specifically provided in the 1993 Budget Act that auctions should not be used as an allocation mechanism.^{2/} The block allocation proposal elevates auctions from an assignment mechanism to an allocation mechanism, through the self-fulfilling prophesy that most services would be commercial services under block allocations.^{2/}

In addition, the block allocation proposal ignores the separate requirement in the Budget Act that the Commission continue to use "engineering solutions, negotiations, threshold qualifications, service regulations, and other means to avoid mutual exclusivity in application and licensing proceedings."^{10/} As noted by TIA, these "tools" are service-specific and cannot be implemented if the blocks are simply made available for whatever fixed or mobile service the high bidder chooses to provide.

^{1/} Industrial Telecommunications Association (ITA), p. 3.

^{2/} ITA, p. 5; TIA, pp. 4-5; Association of American Railroads (AAR), p. 7; APCO, p. 2.

^{2/} ITA, p. 6; TIA, pp. 8; APCO, p.5.

^{10/} Section 309(j)(6)(E).

II. The 2390-2400 MHz Band Should Be Allocated for Private Use

Although several suggestions were raised as to possible services that could be accommodated in the 2390-2400 MHz band, none were as compelling as the recommendation of UTC and others that this band be allocated for use in private communications systems.^{11/} UTC therefore renews its request that this band be allocated for advanced private communications systems as described in the petition for rulemaking of the Coalition of Private Users of Emerging Multimedia Technologies (COPE), of which UTC is a member.

Many commenters took issue with the Commission's tentative conclusion that the needs of private users could be met either by purchasing service from commercial providers or participating in spectrum auctions.^{12/} It was noted, for example, that private users have unique operating areas (e.g., utilities/pipelines), including some site-specific applications, or must provide service to specific jurisdictions (e.g., public safety) that will not match the service areas of commercial service providers.^{13/}

^{11/} API, for example, noted the need and potential use of this band, in conjunction with the 2300-2310 MHz band, for meeting private voice and supervisory control and data acquisition (SCADA) applications. UTC concurs in this assessment.

^{12/} ITA, pp. 11-12; TIA, pp. 6-8; API, pp. 13-16; AAR, pp. 4-6; APCO, p. 7

^{13/} API, pp. 14-15; APCO, p. 8.

Examples were also given of various industries and specific companies whose needs have not been accommodated by commercial service providers.^{14/} Most telling was FedEx's experiences internationally in attempting to adapt its communications needs to fit the limited types of service available from commercial providers.^{15/} By contrast, users in the United States have historically been able to develop customized private communications systems to meet any unique operational requirements. By effectively limiting the availability of new spectrum to commercial carriers, the Commission would be taking a tremendous step backwards toward a one-size-fits-all, take-it-or-leave-it communications marketplace.

The only significant counterproposal for this band was Southwestern Bell Telephone Company's suggestion that this band, paired with the 2300-2310 MHz band, could be used for "wireless local loop" service. However, by its own admission, this type of service would be an inefficient use of the spectrum. First, this type of service would be using scarce radio spectrum to replace wire communications facilities. Second, SWBT admits that build-out of such facilities would only occur at a rate to cover roughly three percent of a

^{14/} Personal Communications Industry Association (PCIA), pp. 5-18.

^{15/} PCIA, pp. 10-11.

particular service area per year.^{16/} This hardly represents a significant use of the spectrum.

III. The 2402-2417 MHz Band Should Be Retained for Unlicensed Use

Most parties agree that the 2402-2417 MHz band should be retained for unlicensed use under Part 15.^{17/} Metricom suggests that allocation of this band to a licensed service would violate Section 706 of the Administrative Procedures Act (APA) due to the Commission's recent findings as to the importance of Part 15 uses in this band and the likelihood that licensed services would jeopardize "the significant private sector investment already made in developing new technologies operating under Part 15."^{18/}

^{16/} Loral/Qualcomm Partnership, L.P. (LQP) made a shotgun request that all of the initial 50 MHz of federal spectrum should be allocated to the non-geostationary mobile satellite service (MSS). Despite LQP's optimistic projections (which are based on global subscribership, not just U.S. subscribership), LQP has not demonstrated a need for this amount of bandwidth to supplement a service that has not even commenced. LQP also provided scant information on the ability of its proposed operations to co-exist with Part 15 devices in the 2402-2417 MHz band.

^{17/} API, pp. 7-8; Part 15 Coalition, pp. 4-6; Metricom, p. 2; International Business Machines (IBM), pp. 15-18.

^{18/} Metricom, pp. 4-10, quoting the Commission's August 9, 1994 Report to the Secretary of Commerce Regarding the Preliminary Spectrum Reallocation Report.

Aside from the legalities of now proposing to allocate this band for licensed services, there are the unavoidable practical considerations of the multitude of Part 15 devices currently operating in the band as well as the millions of microwave ovens also operating in this band.^{19/}

In view of the significant Part 15 uses in this band, UTC concurs with Metricom's call for some form of allocation protection for Part 15 devices.^{20/}

IV. Conclusion

The comments in this docket demonstrate that the proposed block allocation approach, when combined with spectrum auctioning, will result in the de facto allocation of this spectrum through competitive bidding, in violation of Section 309(j). The Commission cannot delegate to the marketplace its obligation to allocate spectrum through a comparative assessment of public interest factors.

The 2390-2400 MHz band should be allocated for use in advanced private communications systems as described in COPE's petition for rulemaking. The 2402-2417 MHz band should be

^{19/} See, e.g., API, p. 8.

^{20/} Metricom, pp. 13-14.

retained for Part 15 use, and should be protected from any future allocations of licensed services in this band.

WHEREFORE, THE PREMISES CONSIDERED, UTC respectfully requests the Commission to take action in this docket consistent with the views expressed herein.

Respectfully submitted,

UTC

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