

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

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
)  
Reorganization and Revision )  
of Parts 1, 2, 21, and 94 )  
of the Rules to Establish a )  
New Part 101 Governing )  
Terrestrial Microwave Fixed )  
Radio Services )  
)

WT Docket No. 94-148

To: The Commission

COMMENTS OF UTC

Jeffrey L. Sheldon  
General Counsel

UTC  
1140 Connecticut Ave., N.W.  
Suite 1140  
Washington, D.C. 20036  
(202) 872-0030

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## SUMMARY

UTC strongly supports the FCC's goal of consolidating the rules relating to the licensing and operation of common carrier and private microwave systems, and suggests further revisions that are consistent with this goal. In particular, UTC recommends that matters such as frequency bands, bandwidth, and power limitations be consolidated in Subpart C and removed from Subparts H and I to eliminate any confusion among applicants and licensees. UTC also urges the Commission to implement consistent application, construction deadline and "commencing operation" rules for common carrier and private microwave licenses. UTC also urges the FCC to require prior coordination in all bands, while protecting against the potential for abuse in the prior coordination process.

UTC strongly urges the Commission to clarify the permissible uses of both private and common carrier microwave facilities in terms of the licensee's principal use of the facility, and to eliminate the restriction on use of common carrier transmitters for non-common carrier purposes.

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To: The Commission

**COMMENTS OF UTC**

Pursuant to Section 1.415 of the Commission's Rules, UTC<sup>1/</sup> hereby submits its comments on the Notice of Proposed Rulemaking, FCC 94-314, released December 28, 1994, in the above-captioned matter. As explained herein, UTC strongly supports the FCC's goal of consolidating the rules relating to the licensing and operation of common carrier and private microwave systems, and suggests further revisions that are consistent with this goal.

**I. Introduction**

UTC is the national representative on communications matters for the nation's electric, gas, and water utilities and natural gas pipelines. Approximately 2,000 utilities

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<sup>1/</sup> UTC, The Telecommunications Association, was formerly known as the Utilities Telecommunications Council.

and pipelines are members of UTC, ranging in size from large combination electric-gas-water utilities serving millions of customers to small rural electric cooperatives and water districts serving only a few thousand customers each. All utilities and pipelines depend on reliable and secure communications systems to carry out their public service obligations, and many operate private microwave systems, both point-to-point and point-to-multipoint, to meet these critical communications requirements. UTC is therefore pleased to have this opportunity to comment on the FCC's forward-looking proposal to streamline the microwave service rules.

UTC has been an active participant in the various proceedings to revise the Part 94 Private Operational Fixed Microwave Service Rules. Most recently, UTC worked closely with the FCC in developing rules under which Personal Communications Services (PCS) and other emerging technologies will have access to bands currently used for fixed microwave operations, and in requesting allocation of additional microwave bands that could be used by private microwave licensees due to the reallocation of the 2 GHz microwave bands to emerging technology services.

In this proceeding, the FCC proposes to restructure the fixed microwave rules "so that they are easier for the

public to understand and use, to conform similar rule provisions to the maximum extent possible, to eliminate redundancy, and to remove obsolete language."<sup>2/</sup> UTC supports these objectives, and offers the following comments on several of the FCC's specific proposals as well as additional recommendations that are consistent with these objectives.<sup>3/</sup>

## II. The Rules Can and Should Be Further Consolidated

As proposed, Part 101 would retain separate provisions relating to various technical parameters for the Private Operational Fixed Microwave Service (POFS)<sup>4/</sup> and the common carrier Point-to-Point Microwave Radio Service (CC).<sup>5/</sup> Now that most fixed microwave bands above 3.7 GHz

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<sup>2/</sup> NPRM, para. 1.

<sup>3/</sup> UTC understands that the Fixed Point-to-Point Communications Section, Network Equipment Division of the Telecommunications Industry Association (TIA) and the National Spectrum Managers Association, Inc. (NSMA) intend to file comprehensive comments in this docket. Based on drafts of the TIA/NSMA comments, which were provided to UTC by TIA/NSMA, UTC recommends careful Commission consideration of the many technical recommendations raised by TIA and NSMA, which are well-qualified to address these issues.

<sup>4/</sup> UTC understands that TIA/NSMA will recommend that the private microwave service be renamed the "Private Operational Fixed Point-to-Point Microwave Service." However, because this service is not limited to point-to-point operations but includes provisions for the licensing and operation of point-to-multipoint systems (multiple address systems), UTC sees no need to rename this service.

<sup>5/</sup> Compare, e.g., proposed \$101.605 (POFS frequencies) and \$101.703 (CC frequencies).

are available to both POFS and CC users, the Rules should be further consolidated to eliminate, to the extent practicable, any redundancies in the Rules. UTC joins TIA/NSMA is recommending that matters such as frequency bands, bandwidth, and power limitations be consolidated in Subpart C and removed from Subparts H and I. This consolidation will help to eliminate any confusion among applicants and licensees, and will minimize the possibility for inadvertent and unintentional discrepancies in the Rules.

### **III. Application Procedures Should Be Made Consistent**

As proposed, Part 101 would retain the use of separate application forms for use by CC and POFS applicants. With the proposed elimination of many of the showings currently required of CC applicants, UTC recommends adoption of a unified application form for both microwave services. Now that POFS and CC applications are processed by the same staff in the Commission's Licensing Division, and with the convergence of most of the technical rules relating to fixed microwave, there is little reason to require the use of separate application forms. Use of a common form should also facilitate the maintenance of a common licensing database and should ease the transition to electronic filing. In addition, a common application form should

reduce application errors by shortening the "learning curve" for applicants and engineering consultants who prepare both POFS and CC applications.

To the extent there are application requirements that are unique to either POFS or CC applicants, UTC recommends that the unified application form specifically identify on the form which questions pertain to each service. In its newly-adopted application form (Form 600) for all mobile radio services, many questions appear to govern all applicants and it is only upon careful review of the accompanying instructions that the applicant can determine which questions must be answered or can be ignored. Due to the relatively minor differences between CC and POFS application requirements, it should not be difficult to segregate any unique application requirements within the context of the form itself.

To the extent application forms are unified, UTC recommends that related provisions be made consistent as well. For example, UTC notes that the FCC is proposing to extend to 360 days the time period for consummation of an assignment or transfer of control of a license.<sup>6/</sup> In addition to agreeing that this time period should be extended, UTC urges the FCC to adopt similar provisions

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<sup>6/</sup> NPRM, para. 12.

governing private microwave assignments of license and transfers of control.

**IV. Prior Frequency Coordination Should Be Required in All Bands**

At present, only frequencies in bands above 3.7 GHz are subject to the prior coordination requirements of Section 21.100(d). UTC supports the FCC's proposal to require prior coordination in all POFS and CC fixed microwave bands, including bands used for point-to-multipoint operations. Although the prior coordination process can add to the time required to prepare and file an application, it removes uncertainty as to the availability of a requested frequency. Several members of UTC have reported significant delays in securing MAS channels because they unknowingly proposed frequencies that were previously requested by other applicants. Because these conflicts are usually discovered long after the applications are filed, the second-filed applicant is forced to conduct a new engineering study and file a new application -- again, with no assurance that the selected frequency will be available.

UTC's support of prior coordination in all POFS and CC bands is subject to one caveat: that applicants not be permitted to use the prior coordination notice process to

hoard channels or to block other applicants from reasonably requesting the same channel when there are no other channels available. The potential for abuse is particularly acute in the case of MAS channels subject to FCC "take-back" procedures.<sup>1/</sup> In the case of take-back channels, for example, one applicant could try to block other applicants from applying for a take-back channel on the first day of availability by claiming it was the first applicant to issue a prior coordination notice for the channel.

Another complicating factor in prior-coordinating point-to-multipoint applications is the use of fixed-mileage separations for co-channel systems. If applicants are only required to notify other licensees or applicants whose facilities could affect or be affected by the proposed operation, the only time a prior coordination notice would be issued would be if the applicant is requesting a waiver of the geographic separation requirement. In all other cases in which the applicant determines that its proposed facility will meet the geographic separation requirements with all known facilities, it may file without any prior coordination

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<sup>1/</sup> Under the channel take-back procedures, the FCC makes available, on a date certain, MAS channels that have been taken back from licensees due to failure to construct during the 12-month construction period or for other reasons.

because, by definition, its facility will not affect any previously applied for or licensed facility.

To address these issues, UTC recommends that, in the case of point-to-multipoint operations, where the potential for inadvertent mutual-exclusivity is the greatest, the FCC should require the exchange of application data among all entities known to coordinate such systems.<sup>2/</sup> Requiring such data to be exchanged within even one week of the date an application is filed with the Commission would minimize the potential for another applicant to inadvertently request the same channel.

In the alternative, or in addition to such a requirement, UTC recommends that the Commission establish a system for the electronic exchange of prior coordination data, such as by means of a dial-in electronic bulletin board system or a listserver accessible via Internet. Once such a system is established, ongoing maintenance of the system would require only minimal Commission involvement. Parties could be instructed to upload to the system relevant application data within seven days of filing an application with the Commission. Other interested parties

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<sup>2/</sup> To facilitate the identification of coordination groups, the Commission could maintain a list of such entities that could be updated and made available upon request.

would then have the opportunity to view or download information concerning recently-filed applications, and thus minimize the potential for inadvertent frequency conflicts. Such a system would further reduce applicants' paperwork burdens by eliminating the need to issue paper notices to all other potentially interested frequency coordinators.

V. POFS Construction Periods Should Be Extended to 18 Months

CC licensees are currently permitted up to 18 months in which to place a station in operation. UTC urges the Commission to conform the construction period for POFS licensees to 18 months as well. There are no significant differences between CC and POFS microwave facilities that would justify a different construction period. Moreover, given the significant system change-outs that will be faced by the POFS licensees in the 2 GHz band as a result of the Emerging Technologies docket (ET Docket No. 92-9), additional time for routine system construction will minimize the burden on the Commission staff in processing extension requests.

UTC also recommends that the Commission adopt a rule authorizing extended construction schedules for large systems that demonstrably could not be completed within a

normal 18-month construction period.<sup>2/</sup> Extended implementation schedules would be particularly appropriate in the case of existing system change-outs or system upgrades where there is no question of spectrum "warehousing." Extended implementation would also be appropriate in the case of new systems where the applicant can demonstrate a compelling need to authorize a large system at one time even though construction may take longer than 18 months.

**VI. POFS Licensees Should Be Permitted to Implement Minor Modifications at an Early Date**

Section 101.59, as proposed, would permit the automatic grant of many applications for minor modification of facilities on the twenty-first day after the date of public notice. However, as presently worded, this procedure would not be available to POFS applicants. Because there are no significant differences between CC and POFS facilities, and because the list of conditions relating to this authority is not unique to CC licensees, UTC urges amendment of Section 101.59(b)(1) to include POFS as one of the services eligible for this procedure.

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<sup>2/</sup> See, e.g., 47 C.F.R. §90.629 (extended implementation periods available for large mobile radio systems).

**VII. Permissible Use of POFS and CC Facilities Should be Liberalized**

At present, facilities licensed in the POFS may not be used to render a common carrier communications service, and generally may only be used by the licensee or affiliated entities to carry communications signals relating to the licensee's underlying business.<sup>10/</sup> Part 94 facilities may also be shared, on a for-profit or not-for-profit basis, with other entities eligible under Part 94 for the transmission of otherwise permissible communications.<sup>11/</sup> Thus, for example, it is not permissible under the current rules, absent rule waiver, for a POFS system to be used to transmit the customer traffic of a communications common carrier, although it would be permissible to transmit the carrier's administrative or operational communications.

Conversely, common carrier microwave facilities are to be used in the rendition of a common carrier communications service. Section 21.119 of the FCC's Rules further provides that transmitters licensed in common carrier services may not be concurrently licensed or used for non-common carrier communications purposes, except in the Multipoint Distribution Service. UTC understands that the

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<sup>10/</sup> 47 C.F.R. §94.9.

<sup>11/</sup> 47 C.F.R. §94.17.

FCC staff currently takes the position that this provision would prohibit, for example, a common carrier licensee from using its common carrier microwave facilities to carry its own, internal communications.

UTC urges modification of the corresponding provisions in Part 101 in order to conform these provisions with: (1) the overall consolidation of the common carrier and private microwave radio rules; (2) the actual practices of communications common carriers; and (3) other recent rule changes that will affect the ability of mobile radio service licensees effectively reclassified as "common carriers" to continue using POFS facilities to control their mobile radio facilities.

When the private and common carrier microwave services were completely independent, it was appropriate for the Commission to limit encroachment on the frequencies available to one service by entities eligible in the other. Now, however, with most microwave bands available on nearly equal terms to entities in either service, there is less concern that a licensee should restrict its operations to either a purely "private" or a purely "common carrier" communications service. The nature of the licensee's operation, and the nature of the regulatory regime affecting that licensee, are no longer dependent on the

particular frequency band in which the licensee operates. Rather, the type of regulation is dependent simply on the type of service or use made of the facilities.

Despite recent interpretations of Section 21.119 as prohibiting a common carrier licensee from using a Part 21 transmitter to carry its own, internal communications, there is no historical support for this interpretation. UTC understands, for example, that the major communications carriers do not establish parallel Part 94 microwave facilities in order to carry administrative or operational communications, but use their in-place microwave facilities licensed under Part 21.

Likewise, when the Commission established the Community Antenna Relay Service (CARS) for cable television operators to deliver signals to cable system headends, it acknowledged that many cable operators had been using common carrier microwave systems to deliver signals to their affiliated cable systems. First Report and Order and Further Notice of Proposed Rule Making in Docket No. 15586, 6 RR2d 1549 (1965). At that time, the Commission adopted a rule that common carrier microwave facilities could be used to deliver signals to the applicant's own cable television systems provided at least 50% of the customers of the applicant (on the microwave system) are either unrelated or

unaffiliated with the applicant and that at least 50% of the proposed usage by unrelated or unaffiliated customers constitutes at least 50% of the usage of the microwave system. Significantly, the Commission did not per se object to the use of common carrier microwave facilities to meet the licensee's or its affiliates' internal communications requirements. Rather, the "50% test" was adopted because "any use of those [common carrier] frequencies principally to serve customers who are interrelated with the carrier is inconsistent with the purpose of the allocation."<sup>12/</sup> Noting that private microwave frequencies are available for entities principally intending to use the facilities for internal communications, the Commission stated:

In view of the availability of microwave frequencies for private business use and the intended public purpose of the common carrier microwave allocations, it is not unreasonable to require a common carrier applicant to make a threshold showing that at least 50 per cent of the proposed usage of frequencies in the "Public Point-to-Point" service will be to serve members of the public who are not related to the applicant.<sup>13/</sup>

Moreover, the Commission's recent decisions in connection with Commercial Mobile Radio Services (CMRS) could place many licensees in the dilemma of having to relicense their facilities as "common carrier" microwave

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<sup>12/</sup> 6 RR2d at 1553.

<sup>13/</sup> 6 RR2d at 1555.

systems, or of requesting a rule waiver to use a single microwave system for both "private" and "common carrier" purposes.<sup>14/</sup> For example, licensees of Specialized Mobile Radio (SMR) facilities under Part 90 are also eligible for licensing in the Part 94 microwave service, and many use Part 94 microwave to control their base station facilities. However, any SMR operation that is reclassified as a Commercial Mobile Radio Service (CMRS) will no longer be eligible to use a "private" microwave facility because CMRS is defined by rule as a "common carrier" service. A similar dilemma faces an SMR licensee that merely leases or shares capacity with another Part 94 microwave licensee.

To reconcile these issues, UTC strongly urges the Commission to clarify the permissible uses of both private and common carrier microwave facilities in terms of the licensee's principal use of the facility, and to eliminate the restriction on use of common carrier transmitters for non-common carrier purposes.<sup>15/</sup> That is, where the principal use of a microwave facility involves or is likely to involve the transmission of common carrier communications, the facility should be licensed as a "common carrier" microwave system. On the other hand,

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<sup>14/</sup> See Second Report and Order in GN Docket No. 93-252, 9 FCC Rcd 1411 (1994).

<sup>15/</sup> Current Section 21.119; proposed Section 101.133(a).

where the principal use of the system involves or is likely to involve the transmission of the licensee's own communications or the proprietary (non-common carrier) communications of other entities, the system would be classified as a "private" microwave system. Such changes will also promote more efficient use of the spectrum by avoiding the construction of duplicate facilities by entities that use microwave facilities for both "common carrier" and "private" communications.

**VIII. Part 94 License Posting Requirements Should Be Retained**

UTC recommends that the Commission retain the existing requirements of Part 94 (Section 94.107) on the retention and posting of station authorizations. This is a minimally burdensome requirement that helps to ensure that all licensees maintain adequate station records and that facilities are maintained in compliance with Commission authorizations.

**IX. "Commencing Operation" Rules Should Be Consistent for Both POPS and CC Licensees**

UTC supports the FCC's proposal to define when a station is "in operation" for purposes of the construction limits by reference to the transmission of "operational signals" and not merely color bars or similar test signals.

UTC also urges the FCC to apply this requirement uniformly to both POFS and CC licensees. A fundamental tenet of this proceeding is that all covered licensees should be treated uniformly to the extent possible, and there is no legitimate reason why CC licensees should be permitted to delay the commencement of operation through the transmission of mere test signals.

X. Automatic Transmitter Power Control Should Be Authorized in the Rules

While acknowledging the benefits of automatic transmitter power control (ATPC), the FCC questions whether ATPC should be specifically covered in the rules or whether its use can simply be permitted under guidelines established in TIA Bulletin 10-F. UTC recommends adoption of explicit rule provisions authorizing use of ATPC, because it otherwise may not be apparent to applicants/licensees how ATPC is to be coordinated or used. As to how ATPC could be licensed or authorized, UTC suggests that the system be coordinated and licensed with the higher power.

**XI. Conclusion**

UTC supports the Commission's efforts to consolidate and streamline the common carrier and private microwave service rules. This proceeding offers an excellent opportunity to remove some outdated provisions, to expedite the licensing process, and to conform operational rules with the other regulatory and marketplace changes.

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

Respectfully submitted,

UTC

By:

  
Jeffrey L. Sheldon  
General Counsel

UTC  
1140 Connecticut Ave., N.W.  
Suite 1140  
Washington, D.C. 20036  
(202) 872-0030

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