

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

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In the Matter of)
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Allocation of Spectrum Below) ET Docket No. 94-32
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TO: The Commission

**COMMENTS OF UTC
ON SECOND NOTICE OF PROPOSED RULE MAKING**

Pursuant to Section 1.415 of the Commission's Rules, UTC^{1/} hereby submits its Comments on the First Report and Order and Second Notice of Proposed Rule Making (First R&O/Second NPRM), FCC 95-47, released February 17, 1995, in the above-captioned matter. By the Second NPRM, the FCC has requested additional comments on the rules and policies for use of the initial 50 MHz of spectrum transferred to the private sector as a result of the Omnibus Budget Reconciliation Act of 1993.

UTC filed Comments and Reply Comments in response to the initial Notice of Inquiry (NOI), 9 FCC Rcd 2175 (1994), and filed Comments in response to the Notice of Proposed Rule Making (NPRM), 9 FCC Rcd 6779 (1994). UTC pointed out the need for additional spectrum allocations for private wireless

^{1/} UTC, The Telecommunications Association, was formerly known as the Utilities Telecommunications Council.

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services, and supported the petition for rulemaking and comments of the Coalition of Private Users of Emerging Multimedia Technologies (COPE). UTC noted that the 2390-2400 MHz band could meet some of the spectrum requirements identified by COPE, and urged its allocation to the private wireless services. UTC opposed the FCC's proposed "flexible allocation" approach as being inconsistent with the FCC's responsibilities to allocate spectrum among competing services in the public interest, and at variance with the FCC's limited authority to use competitive bidding. UTC supported the continued allocation of the 2402-2417 MHz band for unlicensed use, and expressed no opinion with respect to allocation of the 4660-4685 MHz band.^{2/}

In the First R&O/Second NPRM, the FCC allocated the 2390-2400 MHz band for use in unlicensed asynchronous personal communications service (PCS) devices; provided for the continued use of the 2402-2417 MHz band by unlicensed devices under Part 15 of the Rules; and allocated the 4660-4685 MHz band for Fixed and Mobile services under a flexible allocation approach. The FCC has also requested additional comment on these allocations, primarily with respect to licensing and use of the 4660-4685 MHz band in a "General Wireless Communications Service" available for any Fixed or Mobile application.

^{2/}See Comments of UTC, filed December 19, 1994.

2390-2400 MHz

UTC disagrees with the FCC's assessment that allocations for unlicensed devices (or for commercial radio operations) will satisfy the needs of private wireless users as described in UTC's Comments and the COPE petition. Many of the systems needed by utilities and pipelines would represent significant capital expenditures, and would not be appropriate for Part 15 operations that are not subject to any interference protection.^{3/} Conversely, spectrum licensed for commercial use is likely to be used by the licensee to offer service reaching the largest mass of consumers, and will not provide the specialized service with the reliability required by public service/public safety entities.

While it has been suggested that commercial licensees might be willing to lease or sell spectrum rights to private users, this thesis has not been tested in the marketplace. UTC doubts, for example, that new spectrum licensees will be willing to lease part of their newly acquired spectrum blocks on a long-term (15-20 year) basis before the full parameters of their own systems and market potential are fully understood.

^{3/} It was for this reason that UTC recommended creation of a new "Part 16" that would, at a minimum, provide allocation protection for certain unlicensed devices.

UTC raises these comments merely to point out that the underlying needs expressed in the COPE petition and supported by numerous commenters in this proceeding have not diminished nor are they likely to be satisfied by these allocations. UTC therefore urges the Commission to allocate suitable spectrum for private wireless services.

2402-2417 MHz

UTC supported continued allocation of the 2402-2417 MHz band for unlicensed devices under Part 15 primarily due to the prevalence of millions of unlicensed devices in this band and the severe disruption that would occur to users of these devices if it were allocated to a new licensed radio service on a primary basis.

UTC is gratified that the Commission has retained the 2402-2417 MHz band for use under Part 15, but takes exception to the Commission's characterization of UTC's support for Part 15 use of this band. In the First R&O/Second NPRM, the Commission stated that UTC and others "that are generally strong proponents of allocating spectrum for private radio services" supported use of the 2402-2417 MHz band by Part 15 devices because of the "broad utility of Part 15 equipment, including for private users."^{4/} By supporting continued use

^{4/} First R&O/Second NPRM, at para. 31.

of the 2402-2417 MHz band by Part 15 devices, UTC was in no way retreating from its basic position that additional spectrum below 3 GHz must be allocated for use in licensed private wireless systems. Given the millions of unlicensed devices already operating this band -- many used by utilities and pipelines -- it would have been irresponsible for the Commission to allocate this spectrum to a new licensed radio service, whether private or commercial.

4660-4685 MHz

The bulk of the Second NPRM is devoted to the FCC's proposal to allocate the 4660-4685 MHz band to a new General Wireless Communications Service (GWCS), that would be available for any licensee to provide any Fixed or Mobile Service. Initially, UTC is surprised the Commission is moving forward with this proposal given its own assessment that "most of the commenting parties oppose [this] proposal, based on a number of legal, technical, economic and public interest arguments."^{5/}

Despite the weight of the record which supports the FCC continuing its responsibilities under the Communications Act to allocate spectrum to discrete classes of service under the public interest standard, the FCC is now requesting further comment because it "remain[s] convinced that the public will

^{5/} First R&O/Second NPRM, at para. 5.

receive the greatest benefit by allocating the 4660-4685 MHz band to the Fixed and Mobile services, regardless of whether the ultimate use of this spectrum is for private services, non-subscriber services, or subscriber-based services."^{5/} The Commission further proposes to use auctions to assign licenses in the GWCS, stating its belief that the principal use of this spectrum under the GWCS will be for subscriber based services.

In its Comments on the NPRM in this docket, UTC expressed no specific opinion as to the potential allocation of the 4660-4685 MHz band, other than to note its objections to a "flexible" allocation approach. Although UTC again expresses no opinion as to the ultimate allocation of the 4660-4685 MHz band, UTC wishes to be on record as opposing the allocation-by-auction approach proposed in this docket.

Several assumptions underlying the FCC's proposal are either unsupported or are contrary to the evidence. First, there is little to no support for the FCC's assumption that the principal use of this spectrum will be for subscriber-based services. The only evidence in the record for this hypothesis is derived from the comments of a handful of entities that expressed interest in using this spectrum for interactive video or "wireless cable" purposes.

^{5/} First R&O/Second NPRM, at para. 41.

Second, it is not clear that "auctions will, more quickly than other licensing schemes, lead to the development and rapid deployment of new technologies, products and services."^{2/} Even though the FCC cites its experience in using auctions to award narrowband and broadband PCS licenses, it cannot use this experience to declare that auctions will lead to more rapid deployment of service or technology since none of these systems are operational yet! It should be apparent from the FCC's experience in auctioning licenses for the Interactive Video Data Service (IVDS) that auction winners do not necessarily have an incentive to rapidly deploy service or new technology.

Third, the fact that the FCC is now proposing to allocate spectrum by auction is apparent by its attempt to encourage the filing of mutually exclusive applications. Section 309(j)(6)(E) of the Communications Act, as amended, requires the FCC "to continue to use engineering solutions, negotiations, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings." Rather than propose any such solutions, the FCC proposes to open this band to the widest possible universe of applicants for the widest possible range of services during a 30-day filing window or other

^{2/} First R&O/Second NPRM, at para. 69.

application cut-off method "to allow competing initial applications."^{2/}

Conclusion

UTC supports the FCC's proposal to retain the 2402-2417 MHz band for Part 15 unlicensed devices due to the multitude of devices already operating in this band, including many used by its utility and pipeline members. UTC disagrees with the FCC's assessment that the needs of private wireless users can be accommodated with unlicensed devices or through the lease of commercial communications services or spectrum rights. As was amply demonstrated in the COPE petition, there is a growing need for additional spectrum in the private radio services, and it is by no means clear that commercial carriers will have the ability or incentive to provide the customized services used by utilities, pipelines and other public service/public safety entities. Nor does it seem feasible for private radio users to be able to compete against commercial carriers in spectrum auctions or to lease spectrum rights from these auction winners. UTC therefore urges the Commission to allocate suitable spectrum below 3 GHz for private wireless services as described in the COPE petition.

^{2/} First R&O/Second NPRM, at para. 76.

UTC takes no position with respect to the 4660-4685 MHz band other than to note its continuing objection to the FCC's proposal to allocate spectrum through auctions. This proposal is contrary to the record already established in this docket and is inconsistent with the FCC's statutory authority to allocate spectrum in the public interest.

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

Respectfully submitted,

UTC

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Dated: March 20, 1995