

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

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
)  
Amendment of Section 2.106 of the ) ET Docket No. 95-18  
Commission's Rules to Allocate )  
Spectrum at 2 GHz for Use ) RM-7927  
by the Mobile-Satellite Service )

To: The Commission

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COMMENTS OF UTC

UTC<sup>1/</sup> hereby submits its comments on the Federal Communications Commission's (FCC) Notice of Proposed Rulemaking (NPRM), released January 31, 1995, in which the FCC proposes to allocate the 1990-2025 MHz and 2165-2200 MHz bands for use by the mobile-satellite service (MSS). While UTC takes no position on the allocation of this spectrum for MSS, UTC supports the FCC's proposal to apply the previously-adopted transition rules for the 2 GHz band to the introduction of MSS. Specifically, UTC supports the payment of all costs relating to the relocation of incumbent 2 GHz microwave system to comparable facilities by the new MSS licensees.

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

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

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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. UTC is also the Federal Communications Commission's (FCC) certified frequency coordinator for the Power Radio Service. All utilities and pipelines depend upon reliable and secure communications facilities in carrying out their public service obligations. Many utilities operate microwave systems which would be directly affected by the licensing of MSS in the 2110-2145 and 2165-2200 MHz bands.

UTC supports the imposition of the previously-adopted transition rules for emerging technology access to 2 GHz spectrum to MSS licensees in the 2 GHz band. In ET Docket 92-9, the FCC sought to balance the desire to introduce emerging technologies into the 2 GHz band with the need "to prevent disruption of existing 2 GHz services and minimize the economic impact on the licensees of those services."<sup>2/</sup> These rules were to apply to all emerging technology services licensed in the 1850-1990, 2110-2150 and 2160-2200 MHz bands, and as such should apply to 2 GHz MSS.

UTC supports the FCC's proposal to apply the well-crafted transition rules to the introduction of 2 GHz MSS. In

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<sup>2/</sup> First Report and Order and Third Notice of Proposed Rulemaking, ET Docket No. 92-9, 7 FCC Rcd 6886 (1992).

particular, UTC supports: (1) the payment of all relocation expenses by the new commercial providers; and (2) the transition of incumbent operations only to tested, comparable facilities.

It is only fair that the costs relating to the relocation of incumbent users be borne by those commercial providers who are benefitting directly from the clearing of the 2 GHz band. The providers of MSS service will consider the cost of the relocation in their decision to enter the marketplace and in setting user rates. Any costs that a utility microwave licensee would incur as a result of the licensing of MSS would be passed on to utility ratepayers in the form of higher utility prices. It is fairer to have these costs passed to the consumers of the MSS services, as these consumers can better choose whether to bear the cost or seek alternative communications media.

As the Commission correctly noted in adopting the general transition rules, the 2 GHz fixed microwave operations affected by the introduction of emerging technology services serve "important and essential functions, such as public safety and utility management communications..."<sup>3/</sup> Because the systems serve vital functions, any replacement facilities must be "comparable" to the existing 2 GHz microwave system. The transition rules provide that comparability and other terms of the relocation are to be determined by negotiations between the

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<sup>3/</sup> Id. at 6889.

parties. UTC supports the use of market-based negotiations to determine these issues between incumbents and MSS licensees.<sup>4/</sup>

**WHEREFORE, THE PREMISES CONSIDERED,** UTC requests the Federal Communications Commission to take action in accordance with the views expressed herein.

Respectfully submitted,

UTC

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<sup>4/</sup> The Commission must not be confused by the claims of emerging technology licensees that incumbents will use their bargaining position to "extort" money from them. Market-based negotiations are the only way in which the rights of incumbents can be fully protected. An emerging technology licensee's rights to deploy its system around and "involuntarily relocate" incumbents are well-defined and adequately protect against any attempts by incumbents to abuse the transition rules. Furthermore, the Commission has already specified that it has number of means to discourage abuse, including requiring payment of less than full relocation costs by emerging technology licensees in specific, egregious cases. Memorandum Opinion and Order, ET Docket No. 92-9, 9 FCC Rcd 1943 (1994).