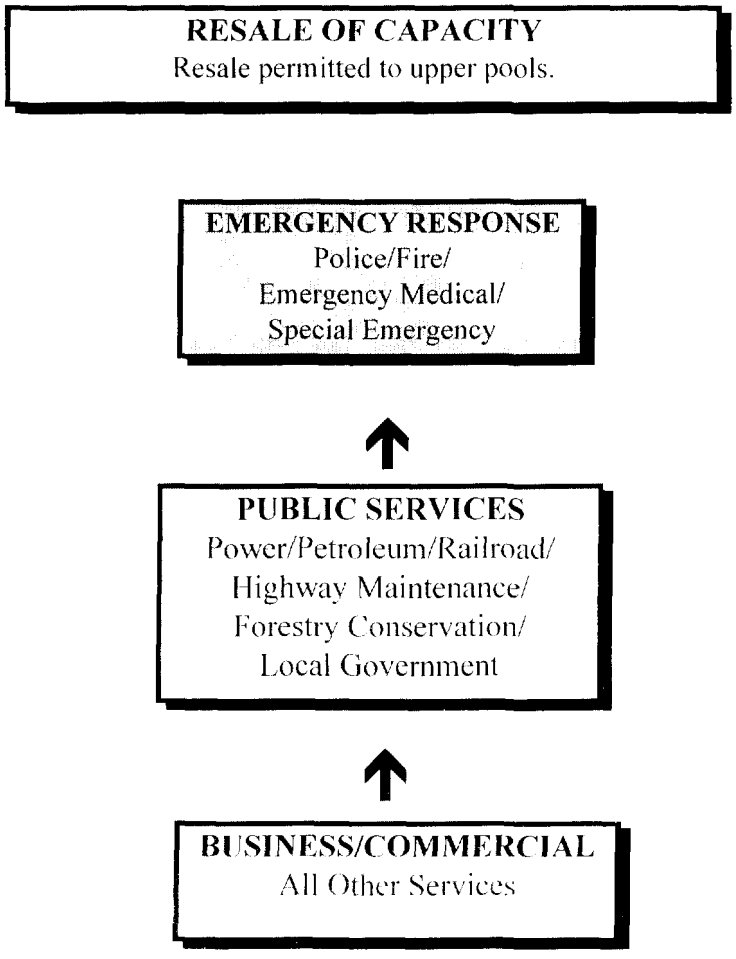
would be available for resale on a priority-interuptible basis to third-parties during normal operating conditions. In order to ensure that the leased capacity is truly "reserve" and to discourage speculators, the Commission should require that private land mobile radio licensees satisfy all channel loading requirements on the basis of their internal systems.

UTC's support of allowing private system licensees to lease reserve capacity should not be construed as support for the direct licensing of third-party entrepreneurs to provide commercial services to eligible end-users in the private land mobile radio bands. As stated above, UTC's support for resale is limited to reserve capacity of entities that are themselves eligible for licensing in the bands below 512 MHz. To further preserve the private internal-use nature of these frequencies, and to ensure that frequencies are available for essential services, UTC recommends that resale be expressly limited to users eligible in the licensee's same pool or to eligible users in any of the "upper pools" as described in UTC's plan for consolidating the various service pools.



Business/Commercial Category

Licensees in the Business/Commercial Pool that satisfy the FCC's loading requirements through internal use could lease reserve capacity to any other entity that is eligible for licensing in the Business/Commercial Category. In addition, these licensees could sell reserve capacity to eligible users in the Public Service and Emergency Response Pools. Based on the Commission's earlier decision regarding the regulation of commercial mobile radio services (CMRS), entities in the Business/Commercial Pool that sell reserve capacity and provide interconnected service may be required to be regulated

as CMRS.[15] UTC would urge that CMRS status only apply to those aspects of the licensee's system that are leased commercially.

Public Service Category

Licensees in the Public Service Pool that satisfy the FCC's loading requirements through internal use could lease reserve capacity to any other entity that is eligible for licensing in the Public Service Category. In addition, these licensees may sell reserve capacity to eligible users in the Emergency Response Category. Such a limitation on resale is justified by the fact that eligibility for the Public Service Category is premised on the licensee's provision of essential services, and the need for clear, reliable channels. It would make little sense to allow these channels to become occupied by entities that themselves do not have such requirements. Based on the Commission's CMRS decision, entities in the Public Service Pool that sell reserve capacity would not be considered CMRS as they are not "effectively available to a substantial portion of the public."[16]

Emergency Response Category

Licensees in the Emergency Response Pool that satisfy the FCC's loading requirements through internal use may only lease reserve capacity to other entities that are themselves eligible for licensing in the Emergency Response Category. Again, such a limitation is warranted given the nature of the Emergency Response Pool. As with the Public Service Pool, entities in the Emergency Response Pool that sell reserve capacity

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[15] GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411 (1994).

[16] GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1440 (1994).

would not be considered CMRS as they are not "effectively available to a substantial portion of the public."[17]

C. Auctions Are Inappropriate For Private Radio Bands

UTC opposes the FCC's proposal to introduce competitive bidding in the private land mobile bands below 800 MHz. Competitive bidding in these bands is inconsistent with current and pending FCC auction authority and is impractical for these heavily-used bands.

Current FCC auction authority permits the use of auctions only when two conditions are met: (1) there are mutually exclusive applications; and (2) the principal use of the spectrum will involve, or is likely to involve, for-profit service to subscribers.[18] As the FCC itself notes, the private land mobile bands below 800 MHz meet neither of these conditions:

> [C]urrent auction authority does not permit the use of competitive bidding to assign private licenses because these licenses are not mutually exclusive and the principal use of the spectrum does not involve the provision of service to subscribers for a fee.[19]

There will be no mutually-exclusive applications in the private services even under the Commission's proposals regarding exclusivity.[20] Mutually exclusive

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[17] GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1440 (1994).

[18] Sec. 309 (j)(2) of the Communications Act.

[19] *FNPRM*, para 116.

[20] *FNPRM*, paras. 129-135.

applications are possible only when competing applications for the same license may be accepted. However, the Commission's "shared exclusivity" proposal does not envision exclusive applications, but rather individual agreements between neighboring co-channel licensees. Competing applications for the same geographic area would not occur, and hence exclusive applications could not exist, because contractual agreements with neighboring licensees would be a pre-requisite to a shared exclusivity request. Shared exclusivity would not therefore change the "shared" nature of the private land mobile bands.

Auctions would also be inappropriate for the private bands because they are unlikely to involve for-profit service to subscribers. These bands are currently used to met a number of critical, internal radio needs among private licensees. For instance, utilities and pipelines use these bands:

- for electric nuclear plant security and emergency response communications, hydraulic dam flood warning sirens and alarms, emergency response to gas leaks and electrical outages and security and safety for transmission line crews and meter readers;

- to dispatch emergency crews for service restoration and removal of hazards to persons or property (such as downed power lines or ruptured gas mains), and to issue orders in connection with system failures, disaster recovery or overloads requiring immediate attention; and

- as vital back-up communications between substations, power plants, gas compressor stations and utility operations centers if the public switched telephone network fails or is overwhelmed during a disaster or civil emergency.

Spectrum used for these vital communications services does not involve for-profit services to subscribers. It is essential that the Commission preserve these bands for primarily internal purposes.

The Commission's proposal to permit the resale of excess capacity in these bands also would not alter the nature of the PLMR bands. The fact that some licensees may be able to resell capacity does not mean that the "likely" use of the band involves for-profit service from subscribers. The potential for resale is available only in limited situations where exclusivity and conversion to narrowband technologies have been attained. Similarly, permitting the resale of capacity does not mean that the "principal" use of the band is to provide for-profit services. These bands will still be primarily used to meet internal needs, with resale permitted only of excess/reserve capacity. In fact, the Commission's resale proposal is premised on the fact that the principal ("non-excess") capacity of the system will not involve for-profit services to subscribers.

Even under the provisions expanding the FCC's current auctioning authority in the budget reconciliation bill pending before Congress, auctions would not be permitted for the Emergency Response or Public Service Pools. This bill authorizes the FCC to grant licenses through competitive bidding for mutually-exclusive applications which involve exclusive uses of the spectrum. However, the FCC would not have the authority to use competitive bidding:

> [F]or public safety radio services, including non-Government uses the sole or principal purpose of which is to protect the safety of life, health, and property and that are not made commercially available to the public...[21]

Report language from the House and Senate budget committees further explains that this provision includes not only police, fire and other emergency response services, but also spectrum used by utilities, pipelines and railroads to protect life, health and property. As noted by the Senate Committee on the Budget, "[t]he reference to non-government uses recognizes that utilities, railroads, pipelines and other industries use radio spectrum for public safety purposes."[22] The report of the House Committee on the Budget is similar:

> The committee intends that this exemption includes spectrum available for internal, noncommercial radio services used by State or local governmental entities or by nongovernmental entities such as utility, pipeline, petroleum, railroad services under Federal, State, or local laws or regulations, or other codes or standards relating to public health, safety, or security.[23]

Therefore, even under the auction authority pending in Congress, it is clear that services in the proposed Emergency Response and Public Services Pools would not be subject to auctions.

Finally, the heavily used nature of the bands below 800 MHz make the introduction of auctions impractical. The FCC's proposal to auction overlay licenses

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[21] H.R. 2491, Balanced Budget Act of 1995.

[22] S. Prt. 104-36, *Committee Recommendations As Submitted To The Budget Committee On The Budget Pursuant To H. Con. Res. 67.*

[23] Report 104-280, *Report Of The Committee On The Budget, House of Representatives.*

seems to ignore the extremely large number of licensees that currently occupy these bands. UTC agrees with LMCC's comment that, when the legal, administrative and equitable rights of the millions of existing licensees are taken into account, overlay licensees may emerge from auctions with operating rights of no legal or practical significance..[24]

D. User Fees Are Not Permitted Under Current or Pending Legislation

The FCC proposes to impose user fees on the licensees in the private land mobile bands to encourage spectrum efficiency by causing "users to realize the opportunity cost of their spectrum users."[25] The FCC recognizes that it does not have the ability to impose such fees under its current statutory authority,[26] but is seeking comments on the implementation of such fees in the event that this authority is granted.

UTC does not oppose the imposition of a reasonable user fee for spectrum usage. The fee should be based on factors such as bandwidth, geographic area of the license, population density and the "nature" of the use of the spectrum. Services which meet vital public needs, such as those generally found in the proposed Emergency Response and Public Services Pools, should be exempt from user fees or subject to reduced fees which take into account the vital public service provided by these licensees.

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[24] See LMCC comments.

[25] *FNPRM,* para. 62,

[26] It should also be noted that there is no legislation pending before Congress that would provide the FCC with this authority.

It is important that the Commission carefully evaluate user fees to ensure that they are set at proper levels. For example, basing user fees on auction prices may be inappropriate because the prices paid for the initial licenses are generally believed to be over-inflated. As more spectrum is auctioned, it is likely that the price of spectrum will decline. Furthermore, basing user fees for private spectrum on the results of commercial spectrum auctions is inappropriate because private users, which are utilizing the spectrum for non-commercial internal use, do not place the same market value on spectrum as commercial carriers.

E. Preferred Marketplace Incentive

Financial forces such as auctions and user fees are an inappropriate means of effecting market changes for the vast majority of users in the private land mobile community. Rather than relying on the use of auctions or fees, UTC's preferred marketplace incentive is a change in an incumbent's licensing status. UTC continues to believe that the most appropriate and effective means of encouraging licensees to transition to narrowband or more efficient technology is to relegate wideband licensees to secondary status on a date certain if they do not meet the adopted efficiency standard by that date.

Specifically, UTC supports an overlay of the FCC's type acceptance deadlines for narrowband equipment and the previously-filed Industry Consensus plan (as modified to reflect a 20-year plan), which would require existing licensees in "urban areas" to meet

the 12.5 kHz efficiency standard no later than 10-years after adoption of the final rules in the refarming docket (i.e., 2005) and would require all licensees (urban and rural) to meet the 6.25 kHz efficiency standard within 20 years (i.e., by 2015). The distinction between urban and rural areas is necessary to recognize that in many areas of the country there is no spectrum congestion and it is unnecessary to require a shift to narrowband technologies by a date certain. The type acceptance requirements will ensure that the rural areas convert to narrowband technology as part of the natural equipment purchase/replacement process. Under this plan "urban areas" would be defined as anywhere within 100 miles of the top 60 urban areas listed in Sec.90.741.[27] Licensees of "new" systems (i.e., systems not functionally integrated with an existing system) would have to meet the then-current efficiency standard.

The combination of the type acceptance requirements and a mandatory change in licensing status should facilitate a smooth transition to more efficient technologies while at the same time ensuring all licensees with continued access to spectrum to meet their private internal communications requirement.

[27] 47 C.F.R Section 90.741. UTC would recommend that other areas of the country could become classified as "urban" upon a petition by an interested party (e.g., a frequency coordinator) that an area has become congested.

III. Conclusion

UTC believes that the most rational basis for service consolidation is to look at the relative criticality of the functions served by users in each of the various services. UTC recommends that the current radio services be divided into three service categories, which are ranked according to the relative criticality of these services in accordance with the FCC's mandate to provide radio service "for the purpose of promoting safety of life and property." Specifically, UTC recommends the consolidation of the existing services and the creation of three new categories: "Emergency Response," "Public Service" and "Business/Commercial."

The Emergency Response Pool would consist of police, fire and emergency medical services. The Public Service Pool includes those services that provide critical logistical functions in support of the general population, including public utility services (such as electric, water and gas services). Users in this category are typically state or local government entities, or private entities that provide essential public services in compliance with Federal, State or local requirements. The "Business/Commercial" category would be available to all other private radio users.

To the extent channels cannot be secured within an applicant's consolidated service pool, UTC recommends that interservice sharing be permitted from a higher-ranked service to a lower ranked service, but not *vice versa*. That is, Emergency Response eligibles could secure access to channels in the Public Service or Business/Commercial category; and Public Service eligibles could secure access to

channels in the Business/Commercial category. By precluding interservice sharing from lower-priority services into higher-priority services, the channels needed for these services will be preserved.

With respect to frequency coordination, UTC is confident that the coordinators in each pool will be able to devise means of exchanging data either real-time, using a shared database. UTC has serious concerns about the prospect of "coordinator shopping" in a competitive coordination environment; that is, an applicant securing coordination simply based on price, with no consideration of quality. standards for coordination. UTC therefore recommends that the FCC adopt sufficiently narrow standards for frequency coordination, and limit coordination of channels in a pool to only those coordinators that have been certified to coordinate eligibles in that pool.

UTC sees a benefit in affording private land mobile radio licensees the option to obtain a form of exclusivity. Access to spectrum in which the licensee is assured interference protection from additional licensees will allow for the introduction of trunking and other technologies that require the availability of dedicated frequencies. Accordingly, UTC supports the creation of a "shared-exclusivity" licensing option for the Public Service Pool, under which a licensee may "earn" protection for a specific service area. Specifically, existing licensees would have the option to enter into contractual agreements with neighboring co-channel licensees to establish areas of exclusive assignment, thereby precluding new co-channel licensees from being licensed within the area, except by mutual agreement of all parties to the exclusivity plan. To earn the shared-exclusivity protection cap on new assignments, all licensees on the channel must

agree to convert to narrowband technology, or meet an equivalent efficiency standard within a specified time period. internal communications requirements.

UTC supports the concept of allowing a "non-commercial" private land mobile radio licensee to lease **"reserve"** capacity on its system. "Reserve" capacity is capacity for which the licensee has a legitimate system requirement but at times may not be utilized. In order to ensure that the leased capacity is truly "reserve" and to discourage speculators, the Commission should require that private land mobile radio licensees satisfy all channel loading requirements on the basis of their internal systems. UTC's support of allowing private system licensees to lease reserve capacity should not be construed as support for the direct licensing of third-party entrepreneurs to provide commercial services to eligible end-users in the private land mobile radio bands.

UTC opposes the FCC's proposal to introduce competitive bidding in the private land mobile bands below 800 MHz. Competitive bidding in these bands is inconsistent with current and pending FCC auction authority and is impractical for these heavily-used bands.

Financial forces such as auctions and user fees are an inappropriate means of effecting market changes for the vast majority of users in the private land mobile community. Rather than relying on the use of auctions or fees, UTC's preferred marketplace incentive is a change in an incumbent's licensing status. UTC continues to believe that the most appropriate and effective means of encouraging licensees to transition to narrowband or more efficient technology is to relegate wideband licensees to

secondary status on a date certain if they do not meet the adopted efficiency standard by that date

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

Respectfully submitted,

UTC

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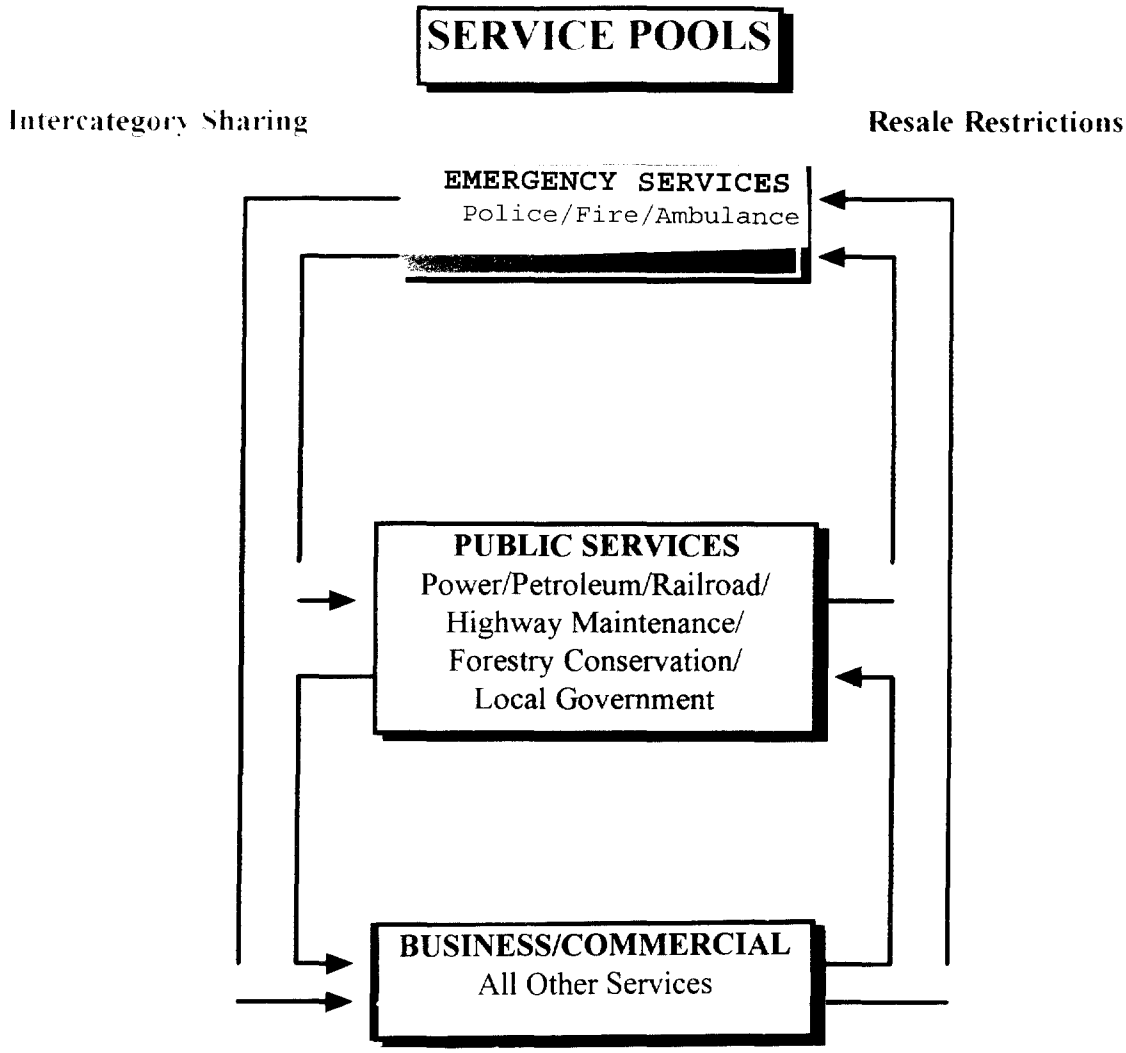
Dated: November 20, 1995

UTC SERVICE CONSOLIDATION PROPOSAL



CERTIFICATE OF SERVICE

I, Kim B. Winborne a secretary of UTC, The Telecommunications Association, hereby certify that I have caused to be sent, by hand-delivery, on this 20th day of November 1995, a copy of the foregoing to each of the following:

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20036

The Honorable James H. Quello
Commissioner
Federal Communications Commission
1919 M Street, NW, Room 802
Washington, DC 20036

The Honorable Andrew C. Barrett
Commissioner
Federal Communications Commission
1919 M Street, NW, Room 826
Washington, DC 20036

The Honorable Rachelle B. Chong
Commissioner
Federal Communications Commission
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The Honorable Susan Ness
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