

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 the Commission's Rules) WT Docket No. 95-157
Regarding a Plan for Sharing) RM-8643
the Costs of Microwave Relocation)

To: The Commission

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COMMENTS OF UTC

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Summary

As an active participant in the proceedings relating to the transition of microwave systems from the 2 GHz band and an architect of the current transition rules, UTC is pleased to have the opportunity to provide its comments on the cost-sharing proposals set forth in the *NPRM*. UTC reiterates its earlier-expressed concerns over the breadth of this proceeding and urges the Commission not to adopt rules beyond those necessary to the implementation of a cost-sharing proposal.

UTC supports the adoption of a cost-sharing mechanism in order to promote a more orderly transition of incumbent systems. UTC agrees with the Commission that such a mechanism will encourage the relocation of entire incumbent systems, and this will minimize the risk to incumbent systems and will reduce relocation-related costs. A cost-sharing mechanism may also result in a more equitable allocation of expenses among PCS licensees and increase the speed of PCS deployment. In turn, this will provide greater assurance to the incumbents that their relocation expenses will be paid and will help to move them quickly to new communications systems.

However, to ensure reliability of the incumbent systems, there cannot be numerous changes to the systems' engineering; each time a link is replaced there is the possibility of disrupting the system. This risk should be minimized through the adoption of rules which encourage whole-system changeouts. Whole-system changeouts will also permit the development of comprehensive relocation plans which can further limit the risk to incumbent services.

To help streamline negotiations and encourage whole-system relocations, PCS licensees should be permitted to seek full reimbursement from licensees operating outside their operating territories or licensed frequency bands. Reimbursement should also be permitted for the relocation of paths that would be affected by adjacent channel PCS licensees. Moreover, existing licensees should be eligible for cost-sharing.

UTC opposes the adoption of a mandatory formula for determining cost-sharing obligations. The inflexible cost-sharing formula proposed by the Commission may be inequitable and difficult to apply in certain situations. As an alternative to the adoption of a mandatory formula, UTC suggests that the clearinghouse determine, based on the appropriate interference standard, which licensees will benefit from the relocation of a particular link. These PCS licensees could then be required to negotiate with the relocating licensee over the allocation of relocation costs. The cost-sharing formula could be used as a guideline for determining an equitable allocation, but its use should not be mandated.

UTC urges the Commission to permit cost sharing for all relocation-related expenses which benefit subsequent licensees, including payments for early relocation from the band by the incumbent. In recognition of the lack of participation by subsequent licensees in the negotiation process over these additional costs, UTC recommends that the Commission adopt an accelerated depreciation schedule for these expenses.

UTC strongly disagrees with the imposition of a cap on the reimbursement of relocation expenses. UTC believes that the Commission is mistaken in its estimation that such a cap will not affect negotiations with incumbents or that it will not result in many

incumbents having to pay part of their own relocation expenses. A cap on reimbursable expenses will also unfairly impact those incumbents that are operating systems which are particularly complex or which are operating in unique locations, such as over protected wetlands or in large urban centers, where tower siting and/or other costs are high.

UTC supports the Commission's proposal to create "reimbursement rights" separate and apart from the incumbent's 2 GHz license. The creation of these rights will provide the PCS licensee with the legal right to enforce the cost-sharing obligations of other licensees without hindering the incumbent's rights pursuant to its 2 GHz license. UTC believes that the creation of distinct "reimbursement rights" is preferable to the assignment of the incumbent's license to the PCS licensee.

UTC supports the Commission's proposal to use the TIA Bulletin 10-F to determine cost-sharing obligations between PCS licensees. This standard was specifically authorized by the Commission for use in determining potential interference to incumbent microwave operations by PCS licensees.

UTC supports the establishment of a neutral administrative body to manage the cost-sharing mechanism. This "clearinghouse" should be financed by the PCS industry, permit participation by the incumbent industries or their associations and maintain confidentiality of all sensitive business information. UTC strongly opposes any requirement that the PCS licensees and incumbents submit copies of their agreements to the clearinghouse. Instead, UTC recommends that the Commission require that the parties submit a summary of the pertinent sections of their agreements, including any necessary data related to per-link relocation costs.

UTC opposes the Commission's suggestion that a microwave licensee's failure to accept an offer of comparable facilities would create a rebuttable presumption that the incumbent is not acting in good faith. The term "good faith" is meant to govern the conduct of negotiations during the mandatory negotiation period. It is not meant to substantively restrict either party's ability to negotiate over replacement facilities. The term good faith should therefore be given its common sense everyday business meaning: an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage.

UTC generally supports the Commission's attempt to provide better guidance for "comparability." UTC concurs that three factors espoused by the Commission represent a sound basis for determining comparability, but urges the Commission to provide sufficient flexibility to permit the consideration of other factors in particular cases.

UTC strenuously opposes the Commission's suggestion that a PCS licensee could unilaterally "trade-off" system parameters in order to achieve comparable replacement facilities. Arbitrary trading off of system components is at odds with the fundamental premise of the Commission's transition plan -- incumbents will receive replacement facilities that are equal or superior to their existing system.

Under the obligation to provide a seamless transition, the Commission should clarify that PCS licensees are required to pay any expense incurred by an incumbent that is necessary to ensure the integrity of entire telecommunications system, including additional links.

UTC also opposes the Commission's proposal to limit comparable relocation costs to the actual costs associated with providing a replacement system. Such a limitation on reimbursable expenses is inconsistent with the Commission's underlying commitment to have the PCS licensees pay all relocation expenses. This limitation is also unfair to incumbents since these are necessary expenses for ensuring that incumbents emerge from this proceeding "whole," both operationally and financially, and that would not have been incurred but for the relocation of their systems

UTC opposes the Commission's recommendation that incumbents bear any additional costs that might be incurred as a result of replacing analog microwave equipment with digital equipment. This proposal does not account for the fact that digital microwave equipment is the predominant technology available now for new microwave systems and is therefore in many cases the *de facto* comparable technology. The Commission should not look solely to the existing systems but also to what type of microwave systems it would be reasonable for these incumbents to purchase today if they were to do so on their own.

UTC opposes the Commission's suggestion that parties that are unable to reach an agreement within one-year after the commencement of the voluntary negotiation period be required to submit an independent cost estimate. Such a requirement would impose an affirmative obligation on the parties during the voluntary negotiation period that does not currently exist and would be in direct violation of the Commission's stated intention that this proceeding not reopen the substantive provisions underlying the transition rules adopted in the Emerging Technology Docket.

UTC agrees with the Commission's proposal to clarify that the twelve month testing period for replacement systems runs from the time that the microwave licensee commences operations on the new system, provided that the system is fully operational rather than partially activated. Further, UTC seeks clarification that if there are significant disruptions to the system once activated, the twelve month clock will freeze until such problems are corrected.

UTC opposes the changes to the Commission's established 2 GHz fixed microwave licensing policy. The incumbent systems must not be left to stagnate until a PCS licensee determines that relocation is necessary. UTC recommends that instead of permitting most modifications only on a secondary basis, the Commission permit the modifications specified in the May 14, 1992, *Public Notice*: (1) upon a showing that it would not increase the relocation costs for PCS licensees; or (2) upon a showing of a valid need for the modification.

UTC is confounded by the Commission's tentative conclusion in the *NPRM* that microwave incumbents should not be permitted to retain primary status indefinitely. UTC strongly opposes the reclassification of incumbent licensees which are still operating in the 1850-1990 MHz band on April 4, 2005, on the grounds that this conclusion is contrary to the basis for the established regulatory framework, good spectrum management and basic principles of equity.

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COMMENTS OF UTC

Pursuant to Section 1.415 of the Federal Communications Commission's (Commission) Rules, UTC, The Telecommunications Association (UTC), hereby submits its comments in response to a *Notice of Proposed Rule Making (NPRM)*¹ regarding a cost-sharing plan for microwave relocation costs. UTC generally supports the Commission's attempt to ensure the equitable allocation of costs among PCS licensees, but opposes changes to the fundamental structure of the transition rules, including the proposal to reclassify all incumbents as secondary by a 2005 if they have not been relocated.

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 entities are members of UTC, ranging in size from large combination electric-gas-

¹ WT Docket No. 95-157, RM-8643. The Commission established November 30 as the deadline for the submission of comments; reply comments are to be filed by December 21, 1995.

water utilities which serve millions of customers, to smaller, rural electric cooperatives and water districts which serve only a few thousand customers each. Serving on UTC's Board of Directors are representatives from its affiliated trade associations, including:

- American Gas Association
- American Public Power Association
- American Water Works Association
- Edison Electric Institute
- Interstate Natural Gas Association of America
- National Rural Electric Cooperative Association

All utilities and pipelines depend upon reliable and secure communications to assist them in carrying out their obligations to provide service to the public, and many operate 2 GHz systems which are subject to relocation by emerging technology licensees. UTC is pleased to have the opportunity to further participate in this proceeding.

I. Introduction

In order to safeguard the rights of its members affected by the introduction of emerging technologies in the 1850-2200 MHz (2 GHz) band, UTC has been an active participant in this proceeding and related dockets, including the Commission's rulemakings regarding the introduction of Personal Communications Services (PCS) in the 2 GHz band (Gen. Docket No. 90-314) and the establishment of transition rules for incumbent licensees (ET Docket No. 92-9). UTC assisted the Commission in formulating its transition policy,

which carefully balances the need to protect the vital systems operating in the 2 GHz band with the desire to introduce new telecommunications services.

The rules adopted in ET Docket No. 92-9, which are based in large part on a plan developed by UTC, permit the parties to negotiate over the terms of the relocation. PCS licensees are provided with the right to require incumbent operations to relocate involuntarily and can unilaterally determine when to begin mandatory negotiations with incumbents and with which incumbents they will negotiate. Incumbents are provided with the right to demand compensation including, but not limited to, the cost of replacement facilities. Furthermore, as noted by the Commission in the *NPRM*, the PCS licensees may choose to offer "incentives" to the incumbent to encourage quick relocations.²

Contrary to the posturing of the PCS industry which is seeking to minimize its relocation expenses through a coordinated campaign of regulatory and legislative lobbying,³ the current transition rules are working and UTC understands that relocation agreements have been reached between numerous PCS and incumbent licensees. In many cases, both sides have worked together to enter mutually-beneficial agreements which

² *NPRM*, ¶6.

³ UTC and other associations representing the 2 GHz incumbents, including the Association of Public - Safety Communications Officials - International (APCO) and the Association of American Railroads (AAR), have met with PCS industry representatives to try and address the concerns they have raised regarding the current transition rules. At an initial meeting, both sides agreed that a dispute resolution procedure, if properly drafted, could address the few instances of alleged abuse cited by the PCS industry. However, while UTC was negotiating in good faith over this procedure, the PCS industry groups were continuing their war against the current rules. It is clear to UTC that this battle is not over the equities of the current rules, which were in place when the current PCS licensees bid for their licenses, but over the money that would be owed to incumbents which are being forced to relocate.

safeguard the vital incumbent operations and allow the rapid deployment of the new PCS service. Even one of the negotiating agencies working on behalf of the PCS licensees has admitted that "Most incumbents are being reasonable and negotiating in good faith ..."⁴

Recently, UTC commented on the *Petition for Rulemaking* filed by Pacific Bell Mobile Services (PBMS). UTC found merit in the cost-sharing proposal outlined by PBMS, noting that it will encourage a coordinated relocation of large integrated incumbent systems, streamline the negotiations process, and add a degree of certainty over reimbursement for both the PCS and incumbent licensees. UTC noted its concerns, which will be further explained in these comments, with the imposition of a cap on the reimbursement of relocation costs. UTC also urged the Commission to resist the efforts of the PCS industry to broaden the focus of the cost-sharing proceeding to incorporate the fundamental principals of the transition framework.

UTC reiterates its concerns over the breadth of this proceeding and urges the Commission not to adopt rules beyond those necessary to the implementation of a cost-sharing proposal. The existing framework was developed with extensive input from the incumbents, the PCS industry and Congress. There is no need to disrupt this carefully-tailored framework simply to satisfy the money-lust of the commercial PCS licensees.

⁴ Thomas Stroup, President of Columbia Spectrum Management, quoted in Radio Communications Report article, "Not all microwave incumbents are onerous about relocations," p. 69 (Oct. 23, 1995).

Furthermore, UTC agrees with the Commission that the current framework is "sound and equitable."⁵

The Commission should reconsider changing the rules regarding the status of incumbent licenses and presumptions regarding "comparable facilities" and "good faith" negotiations. Instead, the Commission should adopt narrowly-tailored rules aimed at establishing a cost-sharing mechanism which takes into account the commercial interests of the PCS licensees and the public safety nature of the incumbents.⁶

II. Cost Sharing Proposal

A. UTC Supports The Adoption of a Cost-Sharing Mechanism

In the *NPRM*, the Commission proposes to adopt a cost-sharing mechanism under which PCS licensees that relocate microwave links outside their geographic license areas or licensed frequency bands may seek reimbursement from the other PCS licensees that benefit from the relocation. UTC supports the adoption of such a cost-sharing mechanism in order to promote a more orderly transition of incumbent systems.

A cost-sharing mechanism will encourage the relocation of entire incumbent systems. As the Commission correctly notes, "most 2 GHz microwave licensees operate

⁵ *NPRM*, ¶3.

⁶ For these same reasons, UTC urges the Commission not to apply any proposed rule changes to the spectrum identified for other emerging technologies. The cost-sharing mechanism should be specific to the licensing of PCS systems and address the cost-sharing concerns addressed by these licensees. The same mechanism and associated rule changes may not be appropriate for mobile satellite service or for other unidentified emerging technology services to be introduced in the 2 GHz band.

multi-link systems."⁷ Each link of these systems may operate in a different PCS license area or frequency band, and the systems may be subject to numerous relocation transactions. However, to ensure reliability of the incumbent systems, there cannot be numerous changes to the systems' engineering; each time a link is replaced there is the possibility of disruption to the system. This risk should be minimized through the adoption of rules which encourage whole-system changeouts. Whole-system changeouts will also permit the development of comprehensive relocation plans which can further limit the risk to incumbent services.

Encouraging the replacement of entire systems by one licensee and at one time will also undoubtedly reduce the total transition costs. Replacement of an entire system may eliminate the need for temporary replacement equipment, such as digital-to-analog and analog-to-digital converters, which may be necessary in a path-by-path replacement of an analog system with a digital system. Engineering and cost-studies can also be performed once, reducing these costs. Finally, the costs associated with negotiations will also be reduced by permitting one PCS licensee to negotiate over the relocation of an entire system.

UTC notes that the adoption of a cost-sharing plan will also result in a more equitable allocation of expenses among PCS licensees and increase the speed of PCS deployment. In turn, this will provide greater assurance to the incumbents that their

⁷ *NPRM*, ¶9.

relocation expenses will be paid and will help to move them quickly to new communications systems.

To further streamline negotiations, speed up the deployment of PCS and encourage whole-system relocations, UTC believes that PCS licensees should be permitted to seek full reimbursement from licensees operating outside their operating territories or licensed frequency bands. Similarly, UTC believes that the Commission should permit reimbursement for relocation of paths that would be affected by adjacent channel licensees if it is likely that the adjacent channel licensee would have caused interference to the relocated link.

UTC disagrees with the Commission's initial determination that the administrative burdens outweigh the benefits associated with permitting cost-sharing for links without at least one end-point in the licensee's territory or which are affected by adjacent channel interference. It should be relatively easy, for example, for a PCS licensee or the authorized clearinghouse to predict co-channel interference based on TIA Bulletin 10-F and a microwave path's operational parameters. After all, this is the same analysis that PCS licensees are required to undertake before deployment.

Finally, UTC supports the Commission's proposal to permit existing PCS licensees to participate in the cost-sharing mechanism. Existing licensees should have the opportunity to be reimbursed for those costs relating to relocations which will benefit other

PCS licensees. It would be inequitable to treat these licensees differently than the Block C, D, E and F licensees which will have the opportunity to participate in cost-sharing.

B. UTC Opposes Adoption Of A Mandatory Cost Sharing Formula

The Commission proposes to adopt a mandatory formula for the determination of cost-sharing reimbursements. The formula attempts to establish an equitable, easy-to-administer calculation of reimbursement totals based on: the number of licensees benefiting from a relocation; the time of the relocation and associated benefit to the relocator; and the amount paid. Unfortunately, the formula is neither equitable nor easily administrated.

The inflexible cost-sharing formula proposed by the Commission fails to take into account a number of important variables, including:

- Non-cash settlements. Some PCS licensees are negotiating relocations with compensation packages such as participation in the PCS license venture, PCS services, and other non-cash items that tie the relocation amounts to the success of the PCS operations. While these forms of compensation are obviously mutually-beneficial, they are hard to define in terms of a specific relocation amount.
- Multiple links. When multiple links are relocated, a single relocation amount may be negotiated, and the parties might not designate a per-path amount. The formula would not permit a fair allocation of the costs without a per-path amount. The formula could therefore prolong negotiations by requiring that the parties establish a per-path cost, rather than just the whole-system replacement cost.
- Associated compensation. Some transition agreements involve mutually-beneficial arrangements under which incumbents provide certain goods and services to the PCS licensees which help them to deploy services sooner. Such associated goods/services include rights-of-way, dark fiber, cell sites, towers

and real estate. Because these assets are bundled into the relocation agreement, it may be impossible to distinguish the value of these goods/assets from relocation costs for the purpose of applying the formula.

Limiting cost-sharing to a specific formula may undermine the negotiations process.

Parties may be hesitant to enter into specific types of relocation agreements unless they are assured that the formula will apply. This is contrary to the intent of the existing rules which encourage the parties to negotiate mutually beneficial relocation agreements and which do not restrict the types of agreements that can be reached.

As an alternative to adoption of a mandatory formula, UTC suggests that the clearinghouse (discussed further below) determine, based on the appropriate interference standard, which licensees will benefit from the relocation of a particular link. These PCS licensees could then be required to negotiate with the relocating licensee over the allocation of relocation costs. The cost-sharing formula could be used as a guideline for determining an equitable allocation, but its use should not be mandated. Parties could resort to alternative dispute resolution procedures (ADR) if disputes are not resolved during negotiations. UTC further recommends that there be a rebuttable presumption that allocations made pursuant to the formula⁸ are reasonable. A PCS licensee disagreeing with the application of the formula would retain the opportunity to demonstrate why it is inequitable for a particular situation.

⁸ If the formula is applied, the T_1 variable should not begin on a date certain, but on the date that the relocation agreement is reached between the incumbent and PCS licensees. This would provide a more equitable application for those paths which are not relocated until later in the process.

C. The Commission Should Not Hinder Negotiations By Imposing Unnecessary Restrictions On Compensable Costs

While UTC supports the adoption of a cost-sharing mechanism, UTC believes that any such mechanism should not short-change the legitimate needs of incumbents or frustrate one of the Commission's main goals in adopting relocation mechanisms, "to prevent disruption of existing 2 GHz services and minimize the economic impact on the licensees of those services."⁹ The Commission should not hinder negotiations by restricting the types or amount of costs that are reimbursable under the formula.

1. Costs For Relocation-Related Expenses Which Benefit Subsequent Licensees Should Be Compensable

In the *NPRM*, the Commission proposes to limit the application of the cost-sharing mechanism to costs associated with such elements as the purchase of equipment and towers and with engineering, installing and testing the new equipment.¹⁰ Other costs, such as those associated with quick relocations from the band or related to the relinquishment of certain rights by the incumbent, cannot be recouped from subsequent licensees. UTC disagrees with this proposal.

Cost-sharing is intended to streamline the negotiations process by ensuring that all PCS licensees pay their fair share for relocations that benefit them. If a path is relocated by

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

¹⁰ *NPRM*, ¶37.

a previous licensee, the subsequent licensee should pay its fair share if that licensee's operations would have required relocation of the path. If compensation was provided to the incumbent to relocate quickly, subsequent licensees which benefit from the quick relocation should also share in the cost. For instance, if two PCS licensees are simultaneously deploying their networks and one pays to relocate an incumbent quickly, both licensees will benefit from the quick relocation. On the other hand, if a subsequent PCS licensee does not deploy in the frequency band and/or geographic area until long after the initial PCS licensee has paid to relocate the path (e.g., after there could have been an involuntary relocation by the PCS licensee), the subsequent licensee is unlikely to have benefited from the quick relocation, and should not be required to share in the additional expense.

In recognition of the lack of participation by subsequent licensees in the negotiation process over these additional costs,¹¹ UTC recommends that the Commission adopt an accelerated depreciation schedule for these expenses. In this way, the Commission can ensure an equitable distribution of these costs. Licensees which benefit from these additional payments by being able to deploy their systems more quickly will pay a share of these costs, while those not deploying until much later will not. Furthermore, if a

¹¹ The Commission uses the term "premiums" to describe costs over and above actual relocation costs. *NPRM*, ¶36. UTC objects to the use of this term as it implies that these payments are bonuses not based on specific value elements in the relocation. What are described as "premiums" are elements which have distinct costs for the 2 GHz licensees and distinct benefits to the PCS licensees. They include such elements as agreements to relocate quickly from the 2 GHz band and the relinquishment of certain rights (such as the right to re-occupy the 2 GHz band in the event that the replacement facility is not adequate).

subsequent licensee does not wish to pay its fair share, it can refuse to pay these additional costs and delay deployment in the affected area or frequency until these costs are fully depreciated.

2. No Cap Should Be Placed On Reimbursement Expenses

In the *NPRM*, the Commission proposes to impose a cap on the amount of money that can be reimbursed under the cost-sharing mechanism. The Commission proposes to set this cap, based on its estimation of the average relocation costs, at \$250,000 per link (plus \$150,000 if a new tower is required).¹² According to the Commission, the establishment of the cap will prevent subsequent PCS licensees from having to share in unreasonable relocation expenses and will not affect negotiations between incumbents and PCS licensees.

UTC strongly disagrees with the imposition of a cap on the reimbursement of relocation expenses. The Commission is mistaken if it believes that such a cap will not affect negotiations with incumbents or that it will not result in many incumbents having to pay part of their own relocation expenses. PCS licensees will be mindful of this cap during negotiations and will hesitate to pay relocation costs that exceed the cap, since they will not be reimbursed for these amounts. For links that greatly exceed the cap, due to their complexity and/or location, PCS licensees may be unwilling to offer full payment for relocation expenses, placing the incumbent in the position of being accused of delaying

¹² *NPRM*, ¶43.

deployment of PCS (which may be used against the incumbent by the PCS industry's frenzied media campaign against incumbents) or paying part of the relocation cost itself. It is a no-win situation for the incumbent.¹³

A cap on reimbursable expenses will also unfairly impact those incumbents that are operating systems which are particularly complex or which are operating in unique locations, such as over protected wetlands or in large urban centers, where tower siting and/or other costs are high. These licensees, through no fault of their own, will face greater burdens in negotiating with PCS licensees than will those incumbents operating less expensive systems.

Although UTC opposes the imposition of a cap, if the Commission determines that a cap is necessary, UTC urges the Commission to increase the limit to ensure that the majority of relocations will not exceed this cap. The proposed cap is intended only to cover the average cost of relocating a link. UTC believes that a more equitable solution would be to raise the cap to ensure that at least 75% of the incumbent links could be relocated without exceeding the cap.

Raising the cap will not result in unnecessary costs being shared among PCS licensees. As intelligent negotiators, PCS licensees will naturally seek to minimize their relocation expenses and will not pay more than is necessary to relocate a link.

¹³ The prospect of potentially having to incur part of the relocation costs is particularly troublesome for highly regulated entities such as utilities that face close scrutiny of the disposition of assets and of expenditures by state regulatory bodies.

Additionally, because there is no guarantee that other PCS licensees will share in these costs (for instance, if they delay deployment), the PCS licensees will have an incentive to pay only the minimum necessary.

Finally, UTC requests that, if a cap is imposed, the Commission establish a procedure under which a PCS licensee could request a waiver of the cap for a particular link(s). Such a procedure would provide some flexibility for high-cost relocations, but would still reduce the likelihood that excessive costs will be passed on to subsequent licensees. UTC recommends that PCS licensees apply for this waiver at the time the cost-sharing mechanism is invoked for a particular path and that the PCS licensee seeking the waiver provide cost support data outlining the reason for the additional cost.

D. UTC Supports The Creation Of Reimbursement Rights

UTC supports the Commission's proposal to create "reimbursement rights" separate and apart from the incumbent's 2 GHz license. The creation of these rights will provide the PCS licensee with legal right to enforce the cost-sharing obligations of other licensees without hindering the incumbent's rights pursuant to its 2 GHz license. UTC agrees with the Commission that "it is important for the microwave incumbent to retain all of its rights under its original authorization until its new system is in place."¹⁴

¹⁴ *NPRM*, ¶47.

UTC believes that the creation of distinct "reimbursement rights" is preferable to the assignment of the incumbent's license to the PCS licensee. UTC opposes allowing any entity that is not operating a microwave system, and which has no intention of operating such a system, to hold a microwave authorization.¹⁵ As the Commission also notes in the *NPRM*, granting interference rights through the transfer of an incumbent's license may prove troublesome since the existing licensing rules would require the cancellation of a license one year after the microwave system is relocated.

E. The Commission Should Adopt Bulletin 10-F To Determine Interference Under The Cost-Sharing Mechanism

UTC supports the Commission's proposal to use the TIA Bulletin 10-F to determine cost-sharing obligations between PCS licensees. This standard was specifically authorized by the Commission for use in determining potential interference to incumbent microwave operations by PCS licenses.¹⁶ Bulletin 10-F is appropriate for determining whether a subsequent PCS licensee's operations would have caused interference to a relocated path, and therefore whether that licensee should share in the relocation costs.

F. A Neutral Clearinghouse Should Be Established To Administer The Cost-Sharing Plan

UTC supports the establishment of a neutral administrative body to manage the cost-sharing mechanism. This "clearinghouse" will collect appropriate cost data and

¹⁵ UTC stated these same objections in its June 8, 1995, Letter to Regina Keeney, Chief of the FCC Wireless Telecommunications Bureau, responding to the Personal Communications Industry Association's (PCIA) proposal to transfer incumbent's microwave licenses to PCS licensees.

¹⁶ *Memorandum Opinion & Order*, Gen. Docket No. 90-314, 9 FCC Rcd 4957, 5030 (1994).

determine which licensees should participate in cost-sharing negotiations. As UTC notes elsewhere in its comments, UTC opposes the use of an inflexible mandatory formula for determining relocation expenses. The clearinghouse should incorporate the following principals:

- It should be financed by the PCS industry;
- As it will collect sensitive data regarding the cost and status of relocations, it must be a neutral body distinct from the PCS trade organizations;
- Because cost-sharing will undoubtedly affect negotiations between PCS licensees and incumbents and because of concerns related to the use of incumbent-provided information, there should be an opportunity for incumbent participation in the clearinghouse; and
- It must maintain confidentiality of all sensitive business information.

UTC is very concerned about the maintenance of confidentiality by the clearinghouse. While some information would have to be shared by the clearinghouse to administer the cost-sharing mechanism, UTC urges the Commission to ensure that only information that is absolutely necessary to the determination of cost-sharing obligations be disclosed, and that it be disclosed only to licensees from whom a relocater requests reimbursement.

UTC strongly opposes any requirement that the PCS licensees and incumbents submit copies of their agreements to the clearinghouse. Many of the agreements for relocation are comprehensive and cover issues beyond simple relocation costs. For example, these agreements may provide for the leasing of dark fiber or rights-of-way, or