Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	GN Docket No. 96-228
Amendment of the Commission's Rules	)	
to Establish Part 27, the Wireless	)	
Communications Service ("WCS")	)	

TO: The Commission

Comments of UTC

Pursuant to Section 1.415 of the Federal Communications Commission's (FCC) Rules, UTC, The Telecommunications Association (UTC),[1] respectfully submits the following comments on the *Notice of Proposed Rulemaking* (*NPRM*), FCC 96-441, released November 12, 1996, in the above-captioned proceeding. In this proceeding, the FCC proposes to establish a new Wireless Communications Service (WCS).

UTC is the national representative on communications matters for the nation's electric, gas and water utilities and natural gas pipelines. Over 1,200 organizations are members of UTC ranging in size from large multi-state combination electric-gas and water utilities serving millions of customers to small rural cooperatives serving less than a thousand customers. All utilities and pipelines depend upon reliable and secure

[1] UTC, The Telecommunications Association, was formerly known as the Utilities Telecommunications Council.

communications facilities in carrying out their public service obligations. In order to meet these communications requirements, utilities and pipelines operate extensive private land mobile, point-to-point and point-to-multipoint radio systems. While utilities and pipelines rely on private communications systems for their most critical communications requirements, they are also among the largest users of commercial communications services. In addition, as the utility industry undergoes a dramatic restructuring a number of UTC's members are looking at opportunities to provide commercial communications or information services in the deregulated telecommunications environment.

UTC is therefore pleased to have this opportunity to comment on the FCC's proposals in this docket.

I. Licensing Plan for WCS

A. Flexible Use Should Be Permitted

The current proceeding has been initiated pursuant to the 1997 Omnibus Consolidated Appropriations Act ("Appropriations Act") which requires the Commission to reallocate the frequencies at 2305-2320 and 2345-2360 MHz to wireless services that are consistent with international agreements concerning spectrum allocations, and to assign the use of such frequencies by competitive bidding. In order to accommodate the requirements of the Appropriations Act the FCC has proposed to establish a new Wireless Communications Service (WCS).

Under the FCC's proposal WCS licensees would be given broad flexibility to offer virtually any kind of fixed or mobile radio services, provided that they do not cause interference to other radio services. UTC generally does not support the use of

competitive bidding as a means of allocating spectrum because this necessarily bypasses the FCC's public interest assessment and determination of whether the service is a commercial service subject to auctions. In this particular instance, however, the statutory language appears to indicate that the spectrum is to be auctioned and that the new service is presumptively a commercial service.[2] Accordingly, UTC supports the FCC proposal to give WCS licensees maximum flexibility in designing their service offerings. Indeed, where licenses have been issued pursuant to competitive bidding, the licensee should have the flexibility, subject to appropriate technical constraints to offer fixed service, mobile service or both. Further, with the growth of applications such as wireless data services and various telemetry functions, the lines between "fixed" and "mobile" services are blurring. Such an approach is consistent with the FCC's recent actions to allow commercial mobile radio service licensees to offer fixed services.[3] Given the "clean slate" aspect of this allocation there is no need to impose an artificial service constraint to the band.

B. Licenses Should Be Granted On An Economic Area Basis

In seeking comment on the appropriate size for WCS licenses. The FCC suggests that licensing the WCS spectrum on the basis of large geographic service areas would facilitate operation of the broadest possible range of new communications services in the WCS spectrum and would promote their introduction in the most rapid and efficient

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[2] The explicit statutory language on the use of auctions for this spectrum underscores Congressional expectations that other bands continue to be allocated to private as well as commercial services based on traditional public interest considerations, and without reference to anticipated auction revenues, 47 U.S.C. Section 309(j)(7).

[3] *First Report and Order*, WT Docket No. 96-6, released August 1, 1996.

manner. UTC disagrees. While larger service areas allow for economies of scale and scope they could also act to restrict the range and diversity of services offered by concentrating access to spectrum in a smaller number of licensees.

Moreover, large service areas, such as nationwide or regional licenses, will not further the Congressional directive that the FCC consider the needs of public safety users in allocating spectrum. Public safety organizations have discrete, well-defined service areas or jurisdictions which rarely require national or even regional coverage. Instead, the communications requirements of public safety organizations can best be served by license areas that are small enough to allow for customized service offerings suited to their particular needs.

Finally, larger geographic service areas could tend to skew the type of services offered. Larger areas may be more attractive to mobile services looking to develop ubiquitous coverage for a customer roaming throughout extensive service areas. On the other hand, a large service area may actually impede the development of fixed services whose providers would tend to focus on specific locations (e.g., residential, commercial, industrial) for the construction of their networks.

UTC recommends licensing the WCS on the basis of the 172 Economic Areas (EAs) developed by the Bureau of Economic Analysis within the Department of Commerce. EAs are sufficiently large to allow for wide-area coverage and some economies of scale but are not so big as to preclude new entrants or individualized

service offerings. The FCC has specifically recognized the value of EAs and adopted them for the licensing of enhanced specialized mobile radio in the 800 MHz band.[4]

C. WCS Should Be Licensed In 5 and 10 MHz Blocks

The FCC requests comment on the appropriate amount of spectrum to be provided for each WCS license. Specifically, the FCC seeks comment on a range of spectrum options for WCS; that is, whether 5, 10, 15 or 30 MHz is the most suitable amount. UTC believes that the FCC should license the WCS spectrum on the basis of two 5 MHz and two 10 MHz license blocks of paired spectrum. Blocks of 5 and 10 MHz would allow for direct competition with existing fixed and mobile service providers and would ensure that there are multiple new entrants. UTC would recommend that a party could aggregate up to 20 MHz of WCS spectrum within a particular service area.

While the Appropriations Act requires the use of competitive bidding to assign this spectrum it also directs the FCC to consider the needs of public safety users in allocating this spectrum. The FCC seeks comment on how best to effectuate the Congressional intent with regard to public safety needs related to this spectrum. The FCC notes that the Public Safety Wireless Advisory Committee recently issued a report ("PSWAC Final Report") that analyzes the current and future communications resource and underlying spectrum needs of public safety users. The FCC asks commenters to make specific recommendations regarding how it can design auction and licensing rules

[4] Adoption of EA licensing areas will also obviate any concerns by commercial cartographers over potential copyright infringement.

that will benefit the public safety community consistent with the recommendations contained in the PSWAC Final Report.

UTC was an active participant in PSWAC and many of the recommendations contained in the Final Report specifically recognize the public safety role of public service utilities and pipelines. Moreover, UTC has worked closely with the public safety community as part of its joint membership in "COPE," a coalition of private radio user groups seeking an allocation of additional spectrum to meet the emerging technology needs of the nation's core public safety, public service and industrial sectors. Both the PSWAC Report and COPE document a pressing need for additional spectrum for public safety and public safety-related services.

In order to reconcile the apparent inconsistency of the two statutory directives -- use of auctions and meeting the needs of public safety -- the FCC must design the WCS service rules in a manner that will encourage parties to offer services that are consistent with the needs of public safety. As indicated above, this would include geographic licensing, such as EAs, that approximates public safety service areas and jurisdictions. WCS spectrum should be licensed in blocks that more closely approximate the bandwidth requirements of public safety entities so that carriers looking to only serve public safety will not be required to purchase spectrum in excess of their requirements.

The Commission should consider adopting incentives to encourage licensees to serve public safety communications requirements. For example, the FCC could provide contingent bidding credits to entities that propose to provide service to public safety agencies. That is, an applicant proposing to offer substantial service to public safety

would qualify for a bidding credit, receipt of which would be contingent on actually demonstrating fulfillment of its commitment within a reasonable period after license grant; e.g. five years. The licensee would be required to post the full amount of its winning bid, but the contingent bidding credit would be placed in escrow until the licensee successfully demonstrates to the FCC it has fulfilled its public safety commitment.

II. Service Rules

A. The FCC Should Allow Disaggregation and Partitioning

The FCC is proposing to permit WCS licensees to partition their service areas into smaller geographic service areas. In addition, the FCC proposes to permit WCS licensees to disaggregate their spectrum into smaller blocks. Thus, a WCS licensee would be allowed to transfer the license for all or a portion of its spectrum in a given geographic area to another party. For the purposes of partitioning and disaggregation, the FCC is proposing to require that WCS systems be designed to not exceed a signal level of 47 dBuV/m at the licensee's service area boundary, unless the affected adjacent service area licensees have agreed to a different signal level.

UTC supports the concept of allowing WCS licensees to engage in geographic partioning and spectrum disaggregation. Because of the high prices of auctions and the significant capital that will be required to build-out commercial systems, one could reasonably expect that at least some WCS licensees will be interested in selling some portion of their spectrum rights in return for capital. It is also uncertain, if not unlikely, whether WCS licensees will provide ubiquitous coverage throughout their authorized

service areas using the full bandwidth authorized to them. Providing these licensees with flexibility to divest elements of their authorizations, both geographically and by bandwidth, would provide opportunities for others interested in providing service or in securing spectrum for other purposes. The rules would have to make clear that an entity obtaining access to spectrum through partitioning or disaggregation would be free to utilize the spectrum in any manner that it chooses provided that it abides by all applicable interference parameters.

B. The 45 MHz Spectrum Cap Should Apply

The FCC proposes that there be no restrictions on eligibility for a WCS license, but seeks comment on whether WCS spectrum used to provide CMRS should count against the 45 megahertz spectrum cap that applies to CMRS licensees. UTC supports the application of the spectrum cap to WCS licensees seeking to offer CMRS. While it is true that applying the spectrum cap could exclude firms with the most experience and innovative technologies from participating in the auction, UTC believes that this concern is outweighed by the danger of providing these entities them with an unfair dominance in the CMRS marketplace. Moreover, application of a spectrum cap would tend to encourage participation by new entrants and thereby foster the Commission's goal of diversity of ownership and in potential service offerings.

III. Conclusion

UTC supports the creation of a flexible use WCS in the 2305-2320 and 2345-2360 MHz band. The FCC should design the WCS rules in a manner that will encourage parties to offer services that are consistent with the needs of public safety -- this would

include geographic licensing that approximates public safety service areas and jurisdictions such as EAs, and 5 and 10 MHz spectrum blocks that more closely approximate the bandwidth requirements of public safety entities. The FCC should allow WCS licensees to disaggregate and partition their spectrum.

WHEREFORE, THE PREMISES CONSIDERED, UTC respectfully requests the Commission to take actions consistent with the views expressed herein.

Respectfully submitted,

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