

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
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Amendment of the Commission's Rules )  
to Establish Part 27, the Wireless )  
Communications Service ("WCS") )

GN Docket No. 96-228

TO: The Commission

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**Reply Comments of UTC**

Pursuant to Section 1.415 of the Federal Communications Commission's (FCC) Rules, UTC, The Telecommunications Association (UTC),<sup>1</sup> respectfully submits the following reply comments on the *Notice of Proposed Rulemaking (NPRM)*, FCC 96-441, released November 12, 1996, in the above-captioned proceeding.

As the national representative on communications matters for the nation's electric, gas and water utilities and natural gas pipelines, UTC submitted comments in this proceeding on the Commission's proposal to establish a new Wireless Communications Service (WCS). Below, UTC again addresses this proposal in the context of some of the comments of other parties to this proceeding.

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

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## **I. Licensing Plan for WCS**

### **A. Comments Support Flexible Use**

Pursuant to the 1997 Omnibus Consolidated Appropriations Act ("Appropriations Act") the Commission is required to reallocate the frequencies at 2305-2320 and 2345-2360 MHz to wireless services 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) that 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. While UTC shares the concerns of some commenting parties with regard to the inappropriateness of using competitive bidding as a means of allocating spectrum,<sup>2</sup> UTC concurs with ITA's assessment that there is "little room for enlightened comment" on the issues raised in the notice.<sup>3</sup> As ITA notes, the conditions deadlines and revenue expectations, established by Congress effectively eliminate the FCC's discretion in this proceeding.

Given the explicit language of the statute concerning the use of auctions for the assignment of the spectrum under consideration, UTC supports the FCC proposal to give WCS licensees maximum flexibility in designing their service offerings. As GTE notes, allowing for a wide variety of services, will enable the market place to determine the most efficient mix of services.<sup>4</sup>

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<sup>2</sup> Telecommunications Industry Association and Motorola.

<sup>3</sup> Industrial Telecommunications Association, p. 3.

<sup>4</sup> GTE, p. 3.

UTC disagrees with the comments of the Cellular Telecommunications Industry Association (CTIA) and the Personal Communications Industry Association (PCIA), who argue against flexible service rules because of the potential impact that this may have on existing commercial mobile radio service (CMRS) providers. In transparently self-serving comments CTIA and PCIA attempt to argue that allocating additional spectrum on a flexible-use basis could devalue existing CMRS allocations and impede the development of nascent services such as PCS. However, it is a well-established principle of communications policy that the FCC is to protect competition and not specific competitors. PCS licensees who obtained spectrum at auction are entitled to no greater assurance of protection against new entrants than any other competitors in a competitive market. As a practical matter, in a competitive market there will always be a host of new entrants and new competing technologies just around the corner.

PCIA blatantly reveals the protectionist nature of its objections by conceding that flexible use of this spectrum may be acceptable at a later date after “the PCS industry is on its feet, built out, and serving the public.”<sup>5</sup> The FCC has repeatedly stated that auctions are a tool to quickly and efficiently introduce competition into the marketplace, and that expectations of revenues play no role in this process. If this is true, a necessary corollary is that in allocating additional spectrum for a new service it does not matter how much previous licensees have paid for spectrum.

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<sup>5</sup> PCIA, p. 7.

Accordingly, UTC renews its recommendation that WCS licensees should have the flexibility, subject to appropriate technical constraints to offer fixed service, mobile service or both.

**B. WCS Licenses Should Be Granted On Smaller Rather Than Larger Geographic Areas**

A number of commenters agree with UTC that WCS should be licensed on the basis of geographic areas that are sufficiently large to provide economies of scale while at the same time allowing the participation of a wide variety of applicants. Commenters such as BellSouth noted that the FCC should license WCS on the basis of service areas that are small enough to reduce the initial cost of acquiring an authorization through competitive bidding, and therefore allowing for greater diversity of overall participation.<sup>6</sup> Similarly as CTIA notes, it is more efficient to allocate small licenses and build to the needed level than it is to require, as a condition of entry, the accumulation of unmanageably large licenses necessitating subsequent disaggregation.<sup>7</sup>

Moreover, as UTC argued in its comments 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

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<sup>6</sup> BellSouth, p. 7.

<sup>7</sup> CTIA, p. 12.

organizations can best be served by license areas that are small enough to allow for customized service offerings suited to their particular needs.

Finally, while PCIA is correct that the adoption of a large service area such as an MTA may promote ubiquitous service coverage, this assumes that the service to be provided has wide-area coverage requirements. If on the other hand, the service to be provided is a fixed service the licensee may want to focus on smaller more specific locations (e.g., residential, commercial, industrial) for the construction of their networks. Thus, the Commission should not adopt a geographic service area that will tend to preordain the types of services to be offered.

UTC continues to recommend 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. However, as an alternative UTC would support the use of BTAs.

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

Both CTIA and PCIA support the use of 10 MHz for each license.<sup>8</sup> UTC agrees that this would provide a solid basis for certain services requiring a relatively wide amount of bandwidth, however, UTC continues to believe that licensing the WCS spectrum on the basis of two 5 MHz and two 10 MHz license blocks of paired spectrum would provide the greatest degree of flexibility. Blocks of 5 and 10 MHz would allow for direct competition with existing fixed and mobile service providers and would ensure

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<sup>8</sup> CTIA, p. 14; and PCIA, p. 9.

that there are multiple new entrants. UTC recommends that a party could aggregate up to 20 MHz of WCS spectrum within a particular service area.

Few commenters provided substantive recommendations on how to best meet the Act's requirement that the FCC consider the needs of public safety in allocating this spectrum. At a minimum the FCC should allocate the spectrum in a manner that is 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. UTC continues to urge the Commission to consider adopting incentives to encourage licensees to serve public safety communications requirements. For example, as described in UTC's comments, 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. The FCC Should Allow Disaggregation and Partitioning**

Virtually all parties joined UTC in supporting the FCC's proposals to permit WCS licensees to partition their service areas into smaller geographic service areas, and to permit WCS licensees to disaggregate their spectrum into smaller blocks. 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.

### **III. Conclusion**

The majority of commenters support 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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By:

  
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Jeffrey L. Sheldon  
General Counsel

  
\_\_\_\_\_  
Sean A. Stokes  
Associate General Counsel

UTC  
1140 Connecticut Avenue, N.W.  
Suite 1140  
Washington, D.C. 20036

(202) 872-0030

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