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Before the
FEDERAL COMMUNICATIONS COMMISSION JUN 23 1997
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 2.106 of the)	ET Docket 95-18
Commission's Rules to Allocate)	
Spectrum at 2 GHz for Use by)	RM-7927
the Mobile Satellite Service)	

To: The Commission

**UTC COMMENTS ON
FURTHER NOTICE OF PROPOSED RULEMAKING**

Pursuant to Section 1.415 of the Federal Communications Commission's (FCC) Rules, UTC, The Telecommunications Association (UTC), hereby comments on the *Further Notice of Proposed Rulemaking (FNPRM)* in the above-captioned proceeding to adopt specific transition rules for the relocation of incumbent systems from the upper portion of the 2 GHz band.

UTC is the national representative on communications matters for the nation's electric, gas, water and steam utilities, and natural gas pipelines. UTC's members provide public safety- and public service-related services in all fifty (50) states. UTC's members range in size from large combination electric-gas-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:

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- 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 therefore pleased to comment in this proceeding.

I. Background

Concurrent with the issuance of the *FNPRM*, the FCC adopted a *First Report and Order (First R&O)* allocating 70 megahertz of spectrum at 1990-2025 MHz and 2165-2200 MHz for mobile satellite services (MSS). In order to accommodate MSS while at the same time protecting incumbent point-to-point microwave and broadcast systems, the *First R&O* provides for MSS sharing with, and any necessary relocation of, fixed microwave incumbents at the expense of the MSS operators in accordance with the policies established in the Emerging Technologies proceeding, ET Docket No. 92-9.¹ While the *First R&O* established the basic framework of the transition rules, the current *FNPRM* will determine the details of the relocation process.

¹ Several MSS proponents have filed a "petition for reconsideration" of the *First R&O* in which they attempt to eliminate the basic principles of the transition plan. UTC filed comments on June 19, 1997, opposing the MSS petition and in support of the *First R&O*.

In addition to the direct impact on point-to-point microwave systems operating in the 2165-2200 MHz portion of the 2 GHz band, the allocation of the 1990-2025 MHz band segment will indirectly require a relocation of microwave systems operating in the 2110-2130 portions of the band. This is because the 1990-2025 MHz band is currently utilized by the Broadcast Auxiliary Service (BAS) for electronic news gathering services. In order to make this spectrum available for MSS use, the FCC is rechannelizing the BAS spectrum and providing a new BAS spectrum allocation at 2025-2130 MHz. This reallocation to BAS will in turn require the relocation of fixed microwave users from 20 megahertz at 2110-2130 MHz. MSS users will be required to pay the relocation costs of microwave users that are displaced as a result of the reallocation of spectrum to BAS.

II. The Relocation Negotiation Period Must Provide Sufficient Time For The Parties To Engage in Meaningful Negotiations

Under the transition rules adopted in *First R&O*, spectrum sharing is encouraged between emerging technology services and incumbent microwave systems whenever technically feasible. The rules do not require relocation of incumbents unless and until the incumbents will receive harmful interference from, or cause harmful interference to, a new technology service. The MSS and microwave industry groups are currently working under the auspices of the Telecommunications Industry Association to adopt a set of mutually agreeable sharing criteria. UTC has been actively participating in these meetings. UTC supports the inclusion of such criteria in the FCC's final rules as the standard for evaluating the likelihood of unacceptable MSS/microwave interference.

Pursuant to the general provisions of the relocation rules adopted in the *First R&O* in instances where sharing between MSS and microwave incumbents is not possible the MSS operators are required to enter into negotiations with the incumbents over the relocation of their facilities. The FCC proposes to utilize a two-year voluntary and one year mandatory approach to negotiations for relocations. Under this approach, incumbents would be given a two-year voluntary negotiation period, commencing with the FCC's acceptance of final applications for MSS licensing. After that period, a MSS licensee could invoke a one-year mandatory negotiation period by a written request to the current licensee to negotiate relocation terms. During the mandatory period, the parties would be required to negotiate in good faith. After the mandatory negotiation period, the MSS licensee could involuntarily relocate the current licensee to comparable facilities at the expense of the MSS provider. UTC supports the use of this procedure as it is consistent with the successful approach that has been taken for microwave relocation in the bands allocated for personal communications services (PCS). At a minimum, the FCC must provide sufficient time for the incumbents and MSS operators to engage in meaningful negotiations that will allow for mutual relocation agreements.

UTC recognizes that there may be unique factors regarding the feasibility of individualized negotiations between MSS operators and incumbent microwave licensees that may warrant a modification of the negotiation time periods. UTC therefore recommends that the FCC remain flexible and consider the use of MSS/microwave-supported consensus plans on common relocation terms and conditions.

III. A Sunset Date Should Not Commence Until Ten Years After The Beginning Of The Voluntary Negotiation Period

In the PCS context, the FCC has adopted a ten year “sunset” period after which the relocation rules no longer apply. The FCC proposes to adopt a similar ten year sunset period for microwave/MSS relocation rules and inquires as to what date the ten year period should be tied. As with the PCS rules, UTC believes that the sunset date should be ten years after the beginning of the voluntary negotiation period for relocation. Prior to this date the incumbents will not have any basis to negotiate a relocation agreement because the MSS licenses will not yet have been awarded, and therefore incumbents will not have any assurance that a particular party will obtain a license.

In addition, all incumbents operating in the band after the sunset date must be provided with at least six months prior notice to vacate the spectrum before being compelled to cease operations.²

IV. The Commission Should Adopt Cost-Sharing Rules And Allow Self-Relocating Incumbents To Participate

Consistent with the microwave transition rules that have been adopted in the context of PCS, UTC urges that FCC to adopt rules to allow for cost-sharing of microwave relocation expenses by MSS operators who relocate all or part of a microwave system that benefits subsequent MSS licensees. As with PCS, the implementation of cost-sharing rules for the MSS bands should facilitate the relocation of microwave systems by MSS licensees since it will ensure that they obtain reimbursement from other

² An identical provision is contained in 47 C.F.R. 101.79(a).

MSS operators for the relocation of links that may be outside of the first MSS operators service contour.

In addition, the FCC should specifically allow incumbents who voluntarily relocate their systems to receive reimbursement from MSS licensees in accordance with the cost-sharing plan. By extending the provisions of cost-sharing to microwave incumbents in the upper 2 GHz band, the FCC will provide an incentive for microwave incumbents to relocate their own systems rather than requiring them to wait to be relocated by MSS operators thus clearing the spectrum for MSS that much earlier.

V. The Rules Need To Provide For The Complete Relocation Of All Impacted Microwave Licensees In The 2110-2130 MHz Band Prior To The Commencement Of BAS Operations In This Band

As indicated above, the FCC modified the BAS spectrum allocation from 1990-2110 MHz to 105 megahertz at 2025-2130 MHz, and stated that it will require MSS operators to pay the costs of relocating BAS incumbents into the new BAS band, including the costs of clearing incumbents microwave systems from the 2110-2130 MHz portion of the new BAS band. Because BAS and fixed microwave generally cannot share spectrum, the relocation and rechannelization of the BAS band in any specific geographic area must be coordinated with the clearing of fixed microwave licensees in that area from the 2110-2130 MHz band. The FCC proposes to set a specific date by which all relocation and rechannelization of BAS, and the accompanying relocation of incumbent microwave licenses in the 2110-2130 MHz band, will be expected to be completed nationally. While UTC agrees with need to complete the relocation of all impacted

microwave licensees in the 2110-2130 MHz band prior to the commencement of BAS operations in this spectrum, it is concerned that the FCC not adopt an arbitrary date that is ultimately unrealistic. Instead, UTC would urge the creation of industry advisory committee made up of representatives of all of the impacted sectors -- FS, BAS and MSS -- that will attempt to arrive at a consensus on the timing and method of relocating these incumbent operations.

VI. Paired Microwave Links In The 2130-2150 MHz Band Should Be Relocated By MSS Operators Under The Transition Rules

In addition to addressing microwave systems in the 2110-2130 MHz and 2165-2200 MHz bands, the FCC inquires into procedures for relocation of microwave licensees in the 2130-2150 MHz band. This band is not directly reallocated by this proceeding, but microwave links in the 2130-2150 MHz band are paired with links in the 2180-2200 MHz band, which is being reallocated to MSS. Utilities and pipelines and other critical infrastructure providers operate individual microwave links as part of an integrated two-way system of communications. The FCC cannot impede the integrity of these systems by removing one link in a paired system. Moreover, while it may be technically possible to operate paired links in widely separated frequency bands, it will increase the cost and complexity of the system, impair its reliability, and ultimately orphan these links in a band for which equipment is no longer manufactured. The Commission should therefore treat the involuntary relocation of microwave links in the 2180-2200 MHz band as

necessitating the relocation of the paired links in the 2130-2150 MHz band at the expense of the MSS licensees.

VII. Conclusion

In order to accommodate MSS, while at the same time protecting incumbent point-to-point microwave and broadcast systems, the *First R&O* provides for MSS sharing with, and any necessary relocation of, fixed microwave incumbents at the expense of the MSS operators in accordance with the policies established in the Emerging Technologies proceeding, ET Docket 92-9. In adopting specific transition rules the FCC must establish a relocation negotiation period that provides sufficient time for the parties to engage in meaningful negotiations. Any sunset date on relocation rights should be set no earlier than ten years after the beginning of the voluntary negotiation period for relocation. Consistent with the microwave transition rules that have been adopted in the context of PCS, the FCC should adopt rules to allow for cost-sharing of microwave relocation expenses and allow incumbents who self-relocate to seek reimbursement.

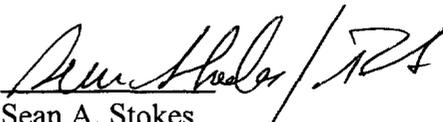
UTC agrees with the need to complete the relocation of all impacted microwave licensees in the 2110-2130 MHz band prior to the commencement of BAS operations in this spectrum. The FCC should treat the involuntary relocation of microwave links in the 2180-2200 MHz band as necessitating the relocation of the paired links in the 2130-2150 MHz band at the expense of the MSS licensees.

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

Respectfully submitted,

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