

**ORIGINAL**

DOCKET FILE COPY ORIGINAL

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**RECEIVED**

JUN 30 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

**To: The Commission**

**Reply of UTC to**  
**MSS Coalition's Petition for Partial Reconsideration**

Pursuant to Section 1.429 of the Federal Communications Commission's (FCC) Rules, UTC, The Telecommunications Association (UTC), hereby replies to the oppositions submitted on the *Petition for Partial Reconsideration of the MSS Coalition (MSS Coalition Petition)* filed jointly by Celsat America, Inc., COMSAT Corporation, ICO Global Communications and Personal Communications Satellite Corporation (collectively MSS Coalition) in the above-captioned proceeding.<sup>1</sup> As the oppositions filed by numerous parties (including UTC<sup>2</sup>) demonstrate, the Commission must reject the *MSS Petition* and not deviate from its established relocation rules.

<sup>1</sup> Filed May 20, 1997, in ET Docket No. 95-18.

<sup>2</sup> Opposition of UTC, The Telecommunications Association (UTC Opposition), filed June 19, 1997.

Number of Copies rec'd 0+11  
DATE

**I. Commenters to *MSS Petition* Overwhelming Support the Application of the Existing Relocation Framework to MSS Licensees**

The overwhelming majority of those filing comments on the *MSS Petition* urged the FCC to reject the "tired," "baseless," "exaggerated" and "misplaced" arguments of the MSS Coalition.<sup>3</sup> Support for the application of the existing relocation rules comes from virtually all industries affected by this proceeding: emergency response agencies,<sup>4</sup> public safety/critical infrastructure entities (utilities, pipelines, railroads),<sup>5</sup> communications companies (including those who were required to relocate incumbents in the PCS bands),<sup>6</sup> broadcasters<sup>7</sup> and even satellite companies.<sup>8</sup> These disparate commenters are unified by their support for the application of the existing relocation framework to the upper 2 GHz band and their opposition of the MSS Coalition's attempt to avoid its obligations under these rules.

Many of those opposing the *MSS Petition* have noted the inherent inequity of one of the central arguments of the MSS Coalition -- that microwave incumbents should be required to pay for the relocation of their own vital systems to clear the spectrum for the

---

<sup>3</sup> The only support for the *MSS Petition* comes from L/Q Licensee, Inc. (LQL), a satellite licensee. The comments of LQL, however, do not offer any new reasons to abandon the existing relocation framework, but merely reiterate those found in the *MSS Petition*.

<sup>4</sup> Opposition of Association of Public-Safety Communications Officials-International, Inc. (APCO Opposition), Opposition of State of California Department of General Services (California Dept. of General Services Petition).

<sup>5</sup> Opposition of Affiliated American Railroads (AAR Opposition), Opposition of American Petroleum Institute (API Opposition), UTC Opposition.

<sup>6</sup> Opposition of AT&T Wireless Services, Inc. (AWS Petition), Opposition of ALLTEL Communications, Inc. (ALLTEL Opposition).

<sup>7</sup> Opposition of Association for Maximum Service Television, Inc. (MSTV Opposition).

<sup>8</sup> Opposition of Iridium LLC (Iridium Opposition).

benefit of new commercial licensees. Focusing on the economic burden that would be borne by the MSS licensees, the MSS Coalition attempts to draw the Commission's attention away from the economic hardship that would be imposed on incumbents but for the relocation rules. As the Affiliated American Railroads (AAR) point out, "if the Coalition gets its way, its members will receive all the benefits of access to this spectrum while somebody else bears the burden and expense of relocating the present users to other bands -- clearly an unfair and inequitable result."<sup>9</sup> The Association of Public-Safety Communications Officials-International, Inc. (APCO) agrees and notes that the MSS Coalition completely ignores the consequences for incumbent public safety users which "have spent hundreds and millions of taxpayer dollars to build imbedded communications networks that play a critical role in protecting the safety of life and property."<sup>10</sup>

The application of the relocation rules is also supported by at least one PCS licensee. In its opposition, AT&T Wireless Services, Inc. (AWS) notes that the failure of the Commission to adopt the same relocation framework for MSS as it did for PCS would unfairly discriminate against the PCS licensees that must comply with the relocation rules.<sup>11</sup>

---

<sup>9</sup> AAR Opposition at pp. 3-4 .

<sup>10</sup> APCO Opposition at pp. 3-4.

<sup>11</sup> AWS Opposition at p. 3.

## **II. The Possibility of Spectrum Sharing between Incumbent Microwave and MSS or BAS Operations Has No Impact on the Relocation Framework**

In its Opposition, UTC noted that there is no evidence that sharing between incumbent microwave and MSS operations can occur.<sup>12</sup> However, UTC also noted that the feasibility (or lack thereof) of sharing between microwave incumbents and MSS licensees has no bearing on the issue of whether there is a need for relocation rules. Regardless of whether sharing is possible, the relocation rules are applicable. If sharing is possible, then the transition framework specifically provides that no relocation need occur. If, however, sharing is not possible, the transition framework provides the mechanism to ensure that vital incumbent operations are not disrupted. As AAR puts it,

[t]he applicability of the PCS [transition] model arises precisely where frequency sharing is not feasible and incumbent relocation becomes necessary. Under these circumstances, requiring spectrum newcomers to pay incumbents' relocation costs is as appropriate in this proceeding as it was in the PCS proceeding.<sup>13</sup>

The Telecommunications Industry Association (TIA), which is working on the issue of MSS-microwave sharing, urges the Commission to apply the relocation rules to the MSS band in the event that sharing is not feasible. Describing the MSS Coalition's efforts in arguing against the relocation framework as "misguided," TIA urges the Commission to not allow TIA's work on developing interference standards to become sidetracked.<sup>14</sup> UTC agrees and urges the Commission not to be swayed by the as of yet

---

<sup>12</sup> UTC Opposition at p. 4.

<sup>13</sup> AAR Opposition at pp. 5-6.

<sup>14</sup> TIA Opposition at p. 4 .

unsubstantiated claims that sharing is possible. As APCO pointed out, the PCS industry also claimed that it could share spectrum with microwave incumbents, but this did not deter the Commission from imposing the relocation obligations in the event that sharing is not possible.<sup>15</sup>

The Commission should reject attempts made by the MSS industry to use the prospect of sharing between incumbent and MSS operations as a way to circumvent the relocation rules. As the California Department of General Services notes, behind the claims of sharing by the MSS Coalition, is the real goal of the MSS industry -- to get the incumbents to vacate the spectrum at their own expense.<sup>16</sup> UTC also agrees with the California Department of General Services conclusion that, if short-term sharing is feasible, there is an even greater reason to believe that the application of the relocation rules to the MSS band will be a success since MSS licensees will have additional time to negotiate with incumbents.<sup>17</sup>

### **III. The Relocation Framework Is Compatible with MSS Operations**

Numerous parties have pointed out the failure of the MSS Coalition to demonstrate why the established relocation framework cannot be applied to the upper 2 GHz band. As ALLTEL notes, "[d]espite the exaggerated claims as to the expense of relocating incumbents, the coalition has failed to offer a sufficient justification for any

---

<sup>15</sup> APCO Petition at p. 5.

<sup>16</sup> CA Dept. of General Services Petition at p. 9.

<sup>17</sup> Id.

departure from the Emerging Technologies precedent."<sup>18</sup> AAR states that the PCS relocation rules can be adapted for use in the upper 2 GHz band and notes that a TIA study on how to adapt the PCS frequency coordination procedures for nationwide application is underway.<sup>19</sup> TIA urges the Commission to reject the MSS Coalition's argument that the nationwide nature of MSS makes the application of the PCS relocation rules inappropriate.<sup>20</sup> TIA notes that several PCS licensees are building nationwide networks under the terms of the relocation rules; therefore, the relocation rules can be successfully used in the context of nationwide communications systems. Furthermore, TIA argues that the fate of incumbent licensees has never depended on the size any new licensee's proposed network.<sup>21</sup> UTC strongly agrees.

APCO points out that application of the relocation framework to the MSS band may not be as complicated as the MSS Coalition describes. "While the number of microwave incumbents is large, they are easily identifiable and will be quite familiar with the relocation process."<sup>22</sup> APCO also notes that there may be fewer incumbents than the MSS Coalition may realize as most incumbents operate multiple path systems.<sup>23</sup>

AAR disagrees with the MSS Coalition's argument that the Commission should not impose relocation costs on MSS licensees for fear that other countries will enact

---

<sup>18</sup> ALLTEL Opposition at pp. 2-3.

<sup>19</sup> AAR Opposition at p. 5.

<sup>20</sup> TIA Opposition at p. 5.

<sup>21</sup> Id.

<sup>22</sup> APCO Petition at p. 4.

<sup>23</sup> Id.

similar regulations. UTC joins AAR in noting that the worldwide acceptance of equitable rules protecting incumbent operations would be beneficial by imposing costs on those newcomers who will enjoy a major benefit from the relocation of incumbent operations.<sup>24</sup>

### **Conclusion**

The vast majority of commenters to the *MSS Petition* oppose the tired re-hash of previously-rejected arguments made by the MSS Coalition. These commenters support the application of the basic 2 GHz transition framework to the MSS band to protect vital incumbent operations.

---

<sup>24</sup> AAR Opposition at p. 7.

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

Respectfully submitted,

**UTC**

By:   
Jeffrey L. Sheldon  
General Counsel

  
Thomas E. Goode  
Senior Staff Attorney

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

(202) 872-0030

Dated: June 30, 1997

I, Ryan Oremland, certify that this document has been sent by first-class mail to the following names:

ASSOCIATION FOR MAXIMUM SERVICE  
TELEVISIONS INC.  
Victor Tawil,  
Vice President  
1776 Massachusetts Ave, NW  
Suite 300  
Washington, DC 20036

IRIDIUM LLC  
Patricia A. Mahoney, Senior Counsel  
1575 Eye Street, NW, Suite 500  
Washington, DC 20005

Jonathan D. Blake  
Ellen P. Goodman  
Donna M. Epps  
Covington & Burling  
1201 Pennsylvania Ave, NW  
Washington, DC 20044

ALLTEL COMMUNICATIONS, INC.  
Glenn S. Rabin, Federal Regulatory  
Counsel  
655 15th Street, NW  
Suite 220  
Washington, DC 20007

NAB  
Henry L. Baumann  
Executive Vice President and  
General Counsel  
Barry D. Umanksy  
Deputy General Counsel  
1771 N. Street, NW  
Washington, DC 20036

William D. Wallace  
Crowell & Moring LLP  
1001 Pennsylvania Ave, NW  
Washington, DC 20004

RADIO-TV DIRECTORS ASSOCIATION  
Peter D. O'Connell  
Kathleen A. Kirby  
Reed, Smith, Shaw & McCalry  
1301 K Street, NW  
Suite 1100 - East Tower  
Washington, DC 20005

ICO GLOBAL COMMUNICATIONS  
Richard DalBello  
Francis DR Coleman  
2000 Pennsylvania Ave, NW  
Suite 5500  
Washington, DC 20006

AT&T WIRELESS SERVICES, INC.  
Cathleen A. Massey, Esq.  
Douglas I. Brandon, Esq.  
1150 Connecticut Ave, NW  
Washington, DC 20006

Cheryl A. Tritt  
Stephen J. Kim  
Morrison & Foerster, LLP  
2000 Pennsylvania Ave, NW, Suite 5500  
Washington, DC 20006

PERSONAL COMMUNICATIONS SATELLITE

Lon C. Levin  
Vice President and Regulatory Counsel  
10802 Parkridge Blvd  
Reston, VA 22091

COMSAT CORPORATION

Warren Y. Zeger  
Nancy J. Thompson  
Bruce A. Henoch  
6560 Rock Spring Drive  
Bethesda, MD 20817

Phillip V. Permut  
Edward A. Yorkgitis, Jr  
Kelley, Drye & Warren, LLP  
1200 19th Street, NW, Suite 500  
Washington, DC 20036

Antoinette Cook Bush  
Brian Weimer  
Skadden Arps Slate Meagher & Flom  
1440 New York Ave, NW  
Washington, DC 20005

Gary M. Epstein  
John P. Janka  
Michael S. Wroblewski  
Latham & Watkins  
1001 Pennsylvania Ave, NW  
Suite 1300  
Washington, DC 20024

TIA  
Denis Couillard, Chairman  
Eric Schimmel, Vice President  
Fixed Point-to-Point Communications  
2500 Wilson Blvd, Suite 300  
Arlington, VA 22201

CALIFORNIA DEPARTMENT OF  
GENERAL SERVICES, Telecom Division  
Pete Wanzenried, Chief  
Public Safety Radio Services  
601 Sequoia Pacific Blvd  
Sacramento CA 95814

AFFILIATED AMERICAN RAILROADS

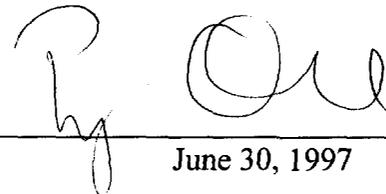
Thomas J. Keller  
Verner, Liipfert, Bernhard, McPherson  
and Hand  
901 15th St., NW, Suite 700  
Washington, DC 20005

ASSOCIATION OF PUBLIC-SAFETY  
COMMUNICATIONS OFFICIALS  
INTERNATIONAL, INC.

Robert M. Gurss  
Wilkes, Artis, Hedrick, and Lane  
1666 K Street, NW, #1100  
Washington, DC 20006

AMERICAN PETROLEUM INSTITUTE

Wayne Black, Esq.  
Keller & Heckman  
1001 G Street, NW  
Suite 500  
Washington, DC 20036



---

June 30, 1997