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

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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 REPLY COMMENTS ON FURTHER NOTICE OF PROPOSED RULEMAKING

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In order to introduce MSS and 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. This decision strikes the proper balance of allowing for the emergence of new services while ensuring that incumbent system operators remain "whole" both economically and operationally.

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.

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.

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Pursuant to Section 1.415 of the Federal Communications Commission's (FCC) Rules, UTC, The Telecommunications Association (UTC)[1], hereby submits its reply 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. As the national representative on communications matters for the nation's electric, gas, and water utilities, and natural gas pipelines, UTC has been an active participant in this proceeding and in all of the associated proceedings related to the relocation of 2 GHz microwave licensees.

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.

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

In its comments UTC supported the adoption of transition rules that will ensure that microwave incumbents emerge from the relocation process "whole" both financially and in terms of operational reliability. Below, UTC will again address these issues in the context of the other comments filed in this proceeding.

I. The Majority Of Commenters Support Requiring New Emerging Technology Licensees, Not Incumbents, To Bear The Costs Of Relocation

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. The overwhelming majority of commenters supported the *First R&O's* affirmation of the principal that new emerging technology licensees (i.e., MSS providers), not the incumbents, must bear the cost of relocation.[2]

Predictably, the lone opposition to the requirement that MSS operators pay the relocation expenses of microwave incumbents comes from a coalition of five prospective MSS applicants: Celsat America, Comsat, Hughes Space and Communications

[2] Affiliated American Railroads (AAR), Alcatel, ALLTEL, Association of Public-Safety Officials-International (APCO), American Petroleum Institute (API), AT&T Wireless, BellSouth, Burlington Northern and Santa Fe Railway Company and Norfolk Southern Railway (BNSF and NS), and the State of California.

International, ICO Global Communications, and Personal Communications Satellite Corporation (collectively, the MSS Coalition).[3] In a series of contradictory, misleading and inaccurate arguments the MSS Coalition attempts to convince the Commission to abandon the well-reasoned transition/relocation rules which were developed with input from all industry segments during the past five years. UTC joins ALLELE in urging the FCC not to be swayed by the MSS industry's repeated efforts to undercut the allocation of responsibility for relocation expenses.[4] As API and BellSouth point out, rules are made to be relied upon. Microwave incumbents have conducted their business operations in reliance on the relocation rules since the emerging technology rules were first created. Both incumbents and emerging technology providers, including MSS, had ample opportunity to participate in the development of the relocation rules in the emerging technology proceeding and the *NPRM* in this proceeding. No circumstances have changed that would warrant a wholesale recission of established Commission policies.[5]

The MSS coalition indicates that requiring MSS operators to pay relocation expenses for BAS and microwave incumbents contravenes the public interest because such a requirement will operate as a significant barrier to entry for prospective MSS operators who wish to operate at 2 GHz in the US market. This argument should be rejected as baseless. As APCO and others note, in the PCS context the relocation process

[3] The MSS Coalition has 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.*
[4] ALLELE, p. 2.
[5] API, p. 6; and BellSouth, p. 2.

has been in effect for three years and has lead to the expeditious clearing of incumbent microwave facilities and introduction of PCS throughout the nation.[6] Moreover, the success and fundamental fairness of the relocation process developed in the Emerging Technologies proceeding has lead to its adoption as a model for the introduction of new wireless services into other encumbered bands such as the upper 800 MHz SMR channels. Thus, far from being a "barrier to entry" the relocation of incumbents has come to be a recognized cost of business in establishing a new wireless service.[7]

Finally, UTC takes exception to the MSS Coalition's statement that if the FCC requires MSS operators to pay relocation costs some incumbents will be encouraged to demand reimbursed relocation rather than continue to cooperate in efforts to share spectrum through the auspices of the Telecommunications Industry Association (TIA) interference standards. The FCC's decision in the *First R&O* regarding re location expenses does not impact the commitment of UTC and other incumbents to continue to work within TIA to develop mutually agreed upon interference sharing criteria. In fact, a fundamental premise of the incumbent's participation in this process has always been the complete repayment of relocation expenses in instances where sharing is not feasible.[8]

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[6] APCO, p. 2.

[7] If the MSS industry cannot bear this relatively modest expense, then the overall viability of MSS should be questioned.

[8] If anything, it is the MSS Coalition's recommendation to impose a secondary licensing status as of January 1, 2000, on all microwave renewals that suggests a lack of good faith in developing even-handed sharing criteria. MSS Coalition Comments p. 15, fn. 39.

II. Commenters Generally Support The Relocation Negotiation Periods Proposed By The Commission As They Will Provide Sufficient Time For The Parties To Engage in Meaningful Negotiations

While the *First R&O* established the basic framework of the transition rules, the current *FNPRM* will determine the details of the relocation process. 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. Upon the expiration of the initial voluntary negotiation 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. The commenters generally agree with UTC in supporting these procedures as they are consistent with the successful approach that has been taken for microwave relocation in the bands allocated for PCS.[9]

UTC agrees with commenters such as APCO, BellSouth and BNSF and NS, that the voluntary negotiation period for MSS relocation must begin no sooner than the date on which an MSS licensee receives its final grant of license.[10] Prior to that time, there is

[9] AAR, ALLELE, API, APCO, BellSouth, BNSF and NS.
[10] APCO, p. 5; BellSouth, p.6; and BNSF and NS, p. 5.

no MSS "licensee" available to negotiate a relocation agreement. MSS applicants will not want to incur relocation costs unless they are ensured a license. By triggering voluntary negotiations, on the date of the initial license grant, the Commission will improve the quality and number of negotiations that take place between incumbents and MSS licensees and encourage successful completion of such negotiations.[11]

In contrast, the MSS Coalition opposes the adoption of a voluntary/mandatory negotiation framework under which MSS licensees will be required to pay any relocation expenses. The MSS Coalition argues that comparisons to the PCS relocation rules are wholly unwarranted in that the PCS relocation rules assumed that PCS operators and existing incumbents could not share spectrum. In contrast, the MSS Coalition asserts that MSS and microwave operators will likely be able to share the 2 GHz band for a reasonable transition period and therefore the period for voluntary negotiations will not commence until actual harmful interference is experienced.[12]

The MSS Coalition's argument is flawed in two respects. First, the PCS relocation rules did not assume that PCS and incumbent microwave licensees could not share spectrum. To the contrary, the PCS rules assumed a certain level of sharing between the two services and specifically adopted transition rules that did not compel relocation unless there was a threat of actual harmful interference.[13] Second, the MSS

[11] BellSouth, p. 6.
[12] MSS Coalition, p. 14.
[13] In fact, the original PCS proponents were so sure of the ability to share with incumbents that they also argued against the need for mandatory relocation rules. The fact that the two services were not ultimately able to share in many instances should serve as an important reminder for the FCC in considering the MSS industry's current optimism over sharing.

Coalition is confusing the commencement of the voluntary negotiation period with the requirement for a mandatory relocation. Under the existing PCS relocation rules and the proposed MSS rules, the voluntary negotiation period is triggered by the grant of an emerging technology license not, the on-set of actual interference. In fact, the voluntary negotiation period may completely lapse prior to a MSS licensee's need to engage in relocation negotiations with an incumbent licensee. In any case, , and therefore the voluntary negotiation period will not "cripple" MSS expansion..

The MSS Coalition further argues against a voluntary/mandatory negotiation period stating that, unlike PCS which is inherently local in nature, MSS is national service. The MSS Coalition maintains that this means that an MSS operator would be required to relocate microwave operations throughout the country, and thus would make individualized negotiations difficult.[14] While observing that a number of PCS licensees such as Sprint and AT&T Wireless are inherently national in their service areas, UTC nevertheless 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 continues to recommend that the FCC remain flexible and consider the use of MSS/microwave-supported consensus plans on common relocation terms and conditions.

Finally, UTC agrees with APCO's observation that from the incumbent's perspective, the identity of the new technology licensee forcing it to move is irrelevant.

[14] This argument seems to undercut the MSS Coalition's argument that MSS/microwave sharing will be feasible in all but the rarest of situations.

Whether the new user is PCS or MSS an incumbent still faces the same problem of being forced to relocate sensitive radio communications systems used fro the protection of life and property.[15]

III. At A Minimum 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.

The MSS Coalition opposes a ten year sunset provision. Again, apparently confusing the commencement of the voluntary negotiation period with the requirement for mandatory relocation the MSS Coalition notes that:

> [A] voluntary negotiation period for MSS logically could not begin until there is harmful interference. Harmful interference likely will not occur until MSS systems are operating and carrying significant levels of traffic. Thus the sunset period proposed by the Commission likely would not end until well after 2010.[1617]

As noted, above under the proposed MSS rules, the voluntary negotiation period is triggered by the grant of an emerging technology license <u>not</u> the on-set of actual interference.

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[15] APCO, p. 5.
[16] MSS Coalition, pp. 6-7.
[17] It is interesting to note that according to the MSS Coalition's assumption regarding the commencement of the voluntary negotiation period it is conceding that harmful interference is likely to occur in as early as 2000.

The MSS coalition urges the FCC to adopt a sunset for microwave relocation of January 1, 2005. The MSS Coalition asserts that microwave operators have had more than ample opportunity to plan for their eventual relocation from the 2 GHz band, since they have been on notice since 1992 that they would eventually have to vacate the radio spectrum that has been allocated to MSS. The MSS Coalition argument is unpersuasive. Microwave incumbents have been "on notice" since 1992 that the reallocation of their spectrum would not disrupt their on-going operations and that they would emerge "whole" from the relocation process. While new system licensing has not taken place since 1992 the FCC's rules and policies allowed incumbents to renew, modify and upgrade existing facilities and component parts under the expectation that if forced to relocate at some future date the new emerging technology licensee would pay for the relocation expenses.

As a general matter UTC supports the comments of API and AAR in opposing the adoption of any sunset date. As API notes, a sunset date would provide a disincentive for MSS licensees to relocate microwave incumbents as that date approaches. API argues that if incumbents and MSS can co-exists without interference then there should be no need for an arbitrary deadline by which incumbents would become secondary. Similarly, if both parties cannot co-exist due to interference problems, than an incumbent should be relocated and reimbursed for its facilities, regardless of when that relocation occurs.[18]

[18] API, p. 10; and AAR, pp. 7-8.

In addition, as AAR indicates a ten-year sunset fails to reflect the actual useful life of microwave equipment. Utilities and pipelines, like railroads, report a useful that is often much more than ten years.

However, if a sunset period is adopted, UTC believes that the sunset date should at a minimum 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, UTC reiterates that 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.[19]

IV. Comparable Replacement Facilities Should Not Include A Consideration Of The Age And Value Of The Microwave Equipment

In the *FNPRM*, the Commission requests comment as to whether its relocation rules should consider "the age and value of FS equipment." UTC joins APCO, API, AAR and BellSouth in opposing such a suggestion, the age and value of equipment should not be a factor in determining reimbursement costs. As APCO notes, incumbents face the same substantial and unexpected replacement costs regardless of the age and value or their old equipment. Further as APCO points out, normally an microwave

[19] An identical provision is contained in 47 C.F.R. 101.79(a).

incumbent would gradually replace components on a system and only rarely undergo a complete system replacement. In contrast, forced relocation to new frequencies requires an incumbent to make major expenditures all at one time and much sooner than would have been expected. Finally, the cost of moving to new frequencies is much higher in most instances than simply buying new radios without switching frequencies, as would normally occur.

UTC concurs with BellSouth, that as with PCS, the FCC should decline to consider age or value into the equation for determining comparable facilities. Instead, the FCC should only look to whether the facility is equivalent to the original facility with respect to: (i) communications throughput; (ii) system reliability; and (iii) operating costs. Because MSS will compete directly with PCS , regulatory parity requires that the relocation standards imposed on MSS and PCS licensees be similar. Otherwise MSS licensees will be competitively advantaged vis-à-vis PCS licensees, at the expense of incumbent users.[20]

V. 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, Bellsouth supports UTC's recommendation that FCC 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,

[20] BellSouth, p. 8.

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 MSS operators for the relocation of links that may be outside of the first MSS operators service contour.[21]

TRW characterizes the FCC proposal to require MSS operators that are later entrants to the market to compensate earlier MSS operators for the costs of relocating incumbent microwave licensees as a significant regulatory burden necessitating significant administration by the FCC. TRW asserts that the FCC would need to act as a repository for all of the relocation agreements negotiated between new MSS providers and the incumbents, and would have to act as an arbiter.[22] TRW is incorrect. The cost sharing rules adopted in the PCS context involve a minimum of FCC oversight since the process is administered by two independent "clearing houses."

UTC renews its recommendation that the FCC specifically allow incumbents who voluntarily relocate their systems to receive reimbursement from MSS licensees in accordance with the cost-sharing plan. The MSS Coalition's objection to self relocation reimbursement should be rejected. Self-relocating incumbents will only be entitled to reimbursement if it is demonstrated that interference would have been caused to the paths in question, and thus would have required relocation. Therefore, it is inaccurate for the MSS Coalition to characterize such reimbursement as the MSS licensees' "footing the

[21] BellSouth, p. 9.
[22] TRW, p. 5.

bill" of incumbents.[23] 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.

VI. The Commenters Agree That 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. UTC agrees with commenters such as AAR, APCO and API that moving the 2130-2150 MHz frequency is a necessary and direct consequence of moving the 2180-2200 MHz frequency, and must be subject to reimbursement by the MSS licensee.

Utilities and pipelines and other critical infrastructure providers operate individual microwave links as part of an integrated two-way system of communications. As UTC indicated in its comments, 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

[23] MSS Coalition, p. 13, fn. 30.

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. 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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