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

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In the Matter of)
)
The Development of Operational,)
Technical and Spectrum Requirements)
For Meeting Federal, State and Local)
Public Safety Agency Communication)
Requirements Through the Year 2010)
)
Establishment of Rules and Requirements)
For Priority Access Service)

WT Docket No. 96-86

To: The Commission

COMMENTS OF UTC

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Summary

UTC supports the Commission's proposal to allocate spectrum for public safety services and urges the Commission to adopt rules that facilitate interoperability both among public safety service licensees and utilities and pipelines. UTC also urges the Commission to promote the development of a priority access system for CMRS that permits participation by public safety and critical public service entities such as utilities and pipelines

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To: The Commission

COMMENTS OF UTC

Pursuant to Section 1.415 of the Federal Communications Commission's (Commission) Rules, UTC, The Telecommunications Association (UTC), hereby submits its comments in response to the Commission's *Second Notice of Proposed Rule Making (SNPRM)* in the above-referenced docket. UTC supports the Commission's efforts to allocate additional spectrum for public safety purposes, recommends minor changes to the proposed rules to ensure that public safety interoperability needs are satisfied and supports the establishment of a priority access system on commercial mobile radio service (CMRS) systems.

I. Introduction

UTC is the national representative on communications matters for the nation's electric, gas, water and steam utilities, and natural gas pipelines; UTC also represents other organizations that use communications to support essential public service obligations. UTC's members range in size from large combination electric-gas-water utilities that serve millions of customers, to smaller, rural electric cooperatives and water districts that serve only a few thousand customers each. Serving on UTC's Board of Directors are representatives from the following associations:

- American Gas Association
- American Public Power Association
- American Water Works Association
- Association of Edison Illuminating Companies
- 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. UTC is pleased to have the opportunity to submit its comments in this proceeding.

II. The Commission Must Accommodate Interoperability Between "Public Safety Providers" and Utilities and Pipelines

UTC supports the Commission's efforts to allocate spectrum for public safety. As entities that work very closely with traditional public safety providers, utilities and pipelines recognize the need to provide public safety agencies with additional communications capabilities. UTC's

comments are focused on ways to complement and supplement the proposed public safety allocation.¹

The Commission's proposals in this proceeding are based on statutory mandate. The Balanced Budget Act of 1997 (97 Budget Act)² requires the Commission to allocate 24 MHz in the 746-806 MHz band for "public safety services," which are defined as services:

- (A) the sole or principal purpose of which is to protect the safety of life, health, or property;
- (B) that are provided--
 - (i) by State or local government entities; or
 - (ii) by nongovernmental, private organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and
- (C) that are not made commercially available to the public by the provider.³

UTC recognizes that this narrow definition of public safety services in Section 3004 of the 97 Budget Act (new Section 337 of the Communications Act) generally would not include utilities and pipelines. UTC does not seek a specific allocation of spectrum for general utility and pipeline communications systems in the 746-806 MHz band. However, the close relationship between utilities, pipelines and public safety agencies requires the Commission to consider the need for interoperability between utilities/pipelines and public safety agencies in determining eligibility for spectrum identified for interoperability.

¹ UTC shares the Commission's concern that the amount of spectrum identified by the Public Safety Wireless Advisory Committee (PSWAC) for interoperability may be insufficient. *SNPRM*, ¶15. The Commission should allocate sufficient spectrum to meet the needs for interoperability among public safety service providers and between these providers and entities such as utilities and pipelines.

² P.L. 105-33 (enacted August 5, 1997).

³ P.L. 105-33, Section 3004 (adding Section 337(f)(1) to Title III of the Communications Act of 1934).

UTC therefore strongly supports the Commission's statements that it would be consistent with new Section 337 and the intent of Congress to broaden the eligibility for interoperability channels to promote public safety.⁴ The Commission correctly notes that:

In the course of their duties, public safety service providers may need to interact with other public safety related entities, which provide services that do not fall within the [Section 337] definition... For example, public safety agencies may need to communicate with non-governmental workers during an industrial disaster, and during the aftermath of an incident such as the Oklahoma City Federal building bombing.⁵

As UTC has pointed out in numerous proceedings, utilities and pipelines are often among the first to respond to disasters. In many instances, before public safety agencies can begin their work at the scene of a disaster, utilities and pipelines must be involved to shut off gas mains and electricity. Additionally, police and fire departments depend on the availability of energy and water services to provide emergency services during disasters and at all times.

Congress acknowledged the close relationship between utilities/pipelines and traditional public safety agencies in the 97 Budget Act. Congress specifically included utilities and pipelines in the definition of "public safety radio services" in Section 3002 of the 97 Budget Act. This provision includes an exemption from auctions:

[F]or public safety radio services, including private internal radio services used by non-Government entities, that—

- (i) protect the safety of life, health, or property; and
- (ii) are not made commercially available to the public...⁶

In the Conference Committee report that accompanied the 97 Budget Act, Congress explained:

⁴ *SNPRM*, ¶88.

⁵ *SNPRM*, ¶88-89.

⁶ P.L. 105-33, Section 3002(a)(2)(A) (amending Section 309(j)(2) of the Communications Act).

[T]he exemption from competitive bidding authority for “public safety radio services” includes “private internal radio services” used by **utilities**, railroads, metropolitan transit systems, **pipelines**, private ambulances, and volunteer fire departments. Though private in nature, the services offered by these entities protect the safety of life, health, or property and are not made commercially available to the public.⁷

Senator McCain, Chairman of the Senate Commerce Committee, and Senator Bryan also emphasized the need for interoperability between utilities/pipelines and traditional public safety entities during deliberations on the 97 Budget Act.

Sen. Bryan: I rise in support of the proposal to ensure that sufficient radio spectrum is made available for public safety and maintenance of the Nation’s critical infrastructure, such as pipeline, railroad, and electric, gas and water utility services... I hope the FCC will promote the development of shared public safety/public service radio systems...

Sen. McCain: I would also like to offer my support for the allocation of new spectrum for use by public safety and public services organizations and would urge the FCC to adopt rules that would facilitate, if not promote, the development of shared radio systems by such entities.⁸

Clearly, it is consistent with the intent of Congress to broaden the eligibility for interoperability channels to include utilities and pipelines.

The public safety community also agrees that there is a need for interoperability between utilities/pipelines and public safety agencies. The Public Safety Wireless Advisory Committee (PSWAC) noted in its *Final Report* that there is a close relationship between public safety and public service organizations. In fact, PSWAC defined “public safety services” and “public services” similarly, noting that both protect essential resources and promote public welfare:

⁷ H. Rpt. 105-49, *Congressional Record*, p. H6173 (June 29, 1997) (emphasis added).

⁸ *Congressional Record*, p. S6325 (June 25, 1997).

Public Safety: The public's right, exercised through Federal, State or Local government as prescribed by law, to protect and preserve life, property, and natural resources and to serve the public welfare.

Public Services: Those services provided by non-Public Safety entities that furnish, maintain, and protect the nation's basic infrastructures which are required to promote the public's safety and welfare.⁹

PSWAC acknowledged the need for interoperability between these closely aligned services.

Coordination of these groups is critical as they may involve police, fire, ambulance, hospitals, utilities, and federal/state/local government responsibilities...Especially in large disaster situations, the effective coordination of multiple agencies (fire, police, local government, utilities) and jurisdictions is largely dependent on interoperable communications systems. Thousands of individuals may be involved.¹⁰

PSWAC also stated:

Entities such as transportation companies and public utilities operate communications networks that interface with local, state, Department of Defense and federal public safety entities on a daily basis. One primary purpose of these networks is to minimize risk to the public. These networks also aid other public safety providers in performing their missions when a catastrophe does occur.¹¹

To promote interoperability between public safety and public service entities, PSWAC recommended that a new interoperability band be established and "the FCC and NTIA freely license frequencies in this band to all eligible public safety/public service entities..."¹²

The President's Commission on Critical Infrastructure Protection (PCCIP) has also identified the importance of protecting the nation's critical infrastructure, including utilities and pipelines. Among the recommendations of the PCCIP is the development of better coordination

⁹ *Final Report of the Public Safety Wireless Advisory Committee (PSWAC Final Report)*, Section 4.3.2.

¹⁰ *PSWAC Final Report*, Sections 4.1.9, 4.1.16.

¹¹ *PSWAC Final Report*, Appendix A - Operational Requirements Subcommittee Final Report, Section 4.10.2.

¹² *PSWAC Final Report*, Section 4.3.27.2.

and cooperation among those responsible for the nation's critical infrastructure. Establishing an interoperability band is an important step in promoting cooperation. The PCCIP also recommends that the Secretary of the Energy work with the industry to "[R]eview regulations that may inhibit efforts by utilities to aid one another in emergency response efforts."¹³ One way to further this policy goal is to permit utilities and pipelines access to the interoperability spectrum.

The Commission has also acknowledged the public safety nature of utility and pipeline communications. In the refarming proceeding, PR Docket No. 92-235, the Commission consolidated the private radio service pools below 800 MHz. In its consolidation plan, the Commission took into account the "critical, public safety-related services" provided by utilities and pipelines and provided special coordination protection for these services.¹⁴

[S]ome types of radio users employ radio not just for day-to-day business needs but also to respond to emergencies that could be extremely dangerous to the general public. Oftentimes these communications systems are employed to meet Federal regulations... In this regard, there is broad support in the comments to protect operations in several radio services (Railroad, Power, and Petroleum) where radio is used as a critical tool for responding to emergencies that could impact hundreds or even thousands of people. Although the primary function of these organizations is not necessarily to provide safety services, the nature of their day-to-day operations provides little or no margin for error and in emergencies they can take on an almost quasi-public safety function. Any failure in their ability to communicate by radio could have severe consequences on the public welfare... Because interruptions in the ability of these entities to communicate could detrimentally affect the public welfare, we believe that it is important to maintain the integrity of communications on radio spectrum used for railroad, power, and petroleum operations.¹⁵

¹³ Final Report of the PCCIP, Appendix A, Sector Summary Reports, p. A-32.

¹⁴ *Second Report and Order (SR&O)*, PR Docket No. 92-235, 12 FCC Rcd 14307, 14309 (1997).

¹⁵ 12 FCC Rcd 14329.

Finally, the Telecommunications Service Priority (TSP) rules acknowledge the importance of utility/pipeline operations. In 1988, the Commission adopted the “Telecommunications Service Priority” (TSP) System for National Security Emergency Preparedness.¹⁶ Developed in close coordination with the National Communications System, the National Telecommunications and Information Administration, the Federal Emergency Management Agency, and other Federal and state agencies, the TSP System represents a unified national policy on the priorities for provisioning and/or restoring telecommunications circuits in the event of general service disruption.

Under the TSP system, the following categories have been established for “essential” telecommunications services, ranked in order of highest priority to lowest:

1. National Security Leadership -- including presidential communications and intelligence communications.
2. National Security Posture and U.S. Population Attack Warning -- including the conduct of diplomatic negotiations and control of military forces.
3. Public Health, Safety, and Maintenance of Law and Order -- including:
 - a. Law Enforcement
 - b. Continuity of critical state and local government functions
 - c. Critical logistic functions and public utility services
 - d. Hospitals and distribution of medical supplies
 - e. Civil air traffic control
 - f. Military assistance to civil authorities
 - g. Defense and protection of critical industrial facilities
 - h. Transportation to accomplish the foregoing functions
4. Public Welfare and Maintenance of National Economic Posture - including:
 - a. Distribution of food and other essential supplies

¹⁶ See *Report and Order*, Gen. Docket No. 87-505, 3 FCC Rcd 6650 (1988). See also Appendix A, to Part 64 of the Commission’s Rules.

- b. Prevention and control of environmental hazards or damage
- c. Transportation to carry out these functions

The TSP rules highlight the importance of utility and pipeline communications during emergencies and natural disasters, and demonstrate the complex web of communications systems that are necessary to respond to emergencies. All traditional public safety services are dependent on the restoration of utility services, clearing of downed power lines, shutting off of damaged water or gas pipelines, etc. There is therefore a great need for interoperability between traditional public safety entities and utilities/pipelines.

III. The Commission Should Initiate a Rulemaking to Allocate Spectrum for Interoperability Among Utilities and Pipelines

As explained above, there is ample evidence to demonstrate the need for interoperability between utilities/pipelines and traditional public safety entities. What is equally obvious is the strong need for a new spectrum allocation for interoperability between utilities and pipelines.

Utilities and pipelines operate some of the most extensive private communications systems in the world, including extensive private radio systems. These systems are designed to protect each utilities' unique operating territory and critical infrastructure. During natural disasters, there arises a need for those utilities and pipelines affected by the disaster to communicate with neighboring utilities. Utilities outside the affected area will send restoration crews to assist their neighboring utilities. Communications between these foreign utility restoration personnel and the affected utility is subject to the availability of radio equipment and

communications capacity. For large disasters that may affect multiple utility service territories, the situation becomes even more complex, involving the coordination of multiple affected utilities and multiple assistance utilities. One way to facilitate the rapid restoration of utility services after an emergency is to allocate spectrum specifically for mutual aid and interoperability between utilities. Therefore, UTC urges the Commission to initiate a rulemaking to identify spectrum for utility mutual aid outside of the public safety spectrum at issue in this proceeding.

UTC previously sought spectrum for utility and pipeline mutual aid channels in PR Docket No. 89-552. In that proceeding, UTC, as part of the Utility Cooperative Communications Service (UCCS), applied for a nationwide non-commercial license in the 220-222 MHz band. The UCCS was a consortium of utilities that filed jointly for a group of channels that would be used for mutual aid and interoperability. Among the goals of the UCCS were to establish interoperability with neighboring utilities, facilitate mutual aid between utilities during emergencies and permit roaming between service territories. The UCCS also proposed to purchase mobile emergency communications facilities for use by any member during an emergency. These needs have gone unmet; the Commission has refused to hold lotteries for the 220-222 MHz nationwide licenses and has, instead, implemented a new commercial licensing and auctioning scheme in the band. UTC urges the Commission to address this issue and allocate spectrum for mutual aid and interoperability among utilities.

IV. The Commission Should Establish Priority Access on CMRS Systems in Accordance with the Protection Levels Established in the Telecommunications Service Priority (TSP) System

In the *SNPRM*, the Commission also seeks comment on a proposal to establish a priority access system for commercial mobile radio services (CMRS).¹⁷ This proposal was initially made by the National Communications System (NCS) in its July 17, 1996, *Petition for Rulemaking*. As noted in its comments on the NCS petition, UTC supports the establishment of priority access on CMRS for public safety related entities.

Public safety and other critical users, including utilities and pipelines, have not been able to successfully rely on CMRS systems. This has been due, in part, to the lack of priority access which hampers use of these systems during emergencies and disasters, when the wireline communications networks may fail and wireless networks may experience a dramatic increase in demand. The implementation of a priority access system will permit public safety entities to better utilize CMRS for new applications.¹⁸

UTC recommends that the Commission conform protection levels for priority access to those established in the Telecommunications Service Priority (TSP) system, at least with regard to public utility services. Under the established TSP levels (outlined above), most utility and pipeline communications would be protected under level 3, Public Health, Safety, and Maintenance of Law and Order. Other communications, relating to the "viability or reconstruction of the basic infrastructure in an emergency area," would be protected under level

¹⁷ *SNPRM*, ¶172 -227.

2, National Security Posture and U.S. Population Attack Warning. Any priority access system should conform to the TSP system and permit participation by utilities and pipelines.¹⁹

In the *SNPRM*, the Commission seeks comment on whether the public safety allocation in the 746-806 MHz band obviates the need for a priority access system.²⁰ UTC believes that there is a need for priority access in addition to the proposed public safety allocation for two important reasons. First, there is no way to predict the extent to which priority access will alleviate the need for public safety spectrum, or vice-versa. There is clearly a demonstrable need for spectrum to meet public safety needs over and above identified in the 746-806 MHz. It is also clear that CMRS systems will not be available to meet the critical needs of public safety or public service entities in the foreseeable future; public safety and public service entities have certain unique communications needs (in terms of reliability, security and operating territory) that likely will not be satisfied by CMRS. However, for some applications, CMRS systems may provide adequate service.

Second, in the event that the Commission conforms the priority levels to those established in the TSP system, priority access would promote the use of CMRS by other entities that will not have access to the bulk of the new public safety spectrum. Utilities and pipelines,

¹⁸ Of course, most public safety entities will still require extensive private communications systems to meet truly critical communications needs.

¹⁹ In order to promote the development of the priority access system, the Commission should extend, therefore, the limitation on carrier liability for priority access to all organizations participating in the priority access system, including utilities and pipelines.

²⁰ *SNPRM*, ¶194.

for instance, would benefit from the priority access system, even though they would only have limited access to the interoperability spectrum in the 746-806 MHz band.

Conclusion

UTC supports the Commission's proposal to allocate spectrum for public safety services and urges the Commission to adopt rules which facilitate interoperability both among public safety service licensees and utilities and pipelines. UTC also urges the Commission to promote the development of a priority access system for CMRS that permits participation by public safety and critical public service entities such as utilities and pipelines.

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

Respectfully submitted,

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