

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

<b>In the Matter of</b>	)	
	)	
<b>Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz</b>	)	<b>RM-9405</b>
	)	
	)	

**Reply Comments of the National Utility Contractors Association**

The National Utility Contractors Association (NUCA), pursuant to the *Public Notice* released on November 23, 1998, in the above-referenced matter, hereby respectfully submits these Reply Comments.<sup>1</sup>

**I. Introduction**

1. NUCA is a national trade association of 1,900 companies that build, rehabilitate, and repair water, sewer, gas, electric, and communications (underground cable) systems. NUCA members also supply the materials and services that are necessary for construction and maintenance of these facilities.

**II. Background**

2. On November 23, 1998, the Commission released a *Public Notice* inviting comment on the August 14, 1998, petition for rule making filed by UTC, the Telecommunications Association, the Association of American Railroads, and the American Petroleum Institute (collectively, "Petitioners").<sup>2</sup> The Petitioners requested the creation of a new "public service" pool in the bands below 800 MHz.<sup>3</sup> On December 23, 1998, several parties filed comments in this matter. NUCA did not file comments. Now, however, the NUCA submits these "Reply Comments" in order to present its views and insights to the Commission regarding the matters raised in this proceeding.

**III. Reply Comments**

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<sup>1</sup> *Public Notice*, Office of Public Affairs Reference Operations Division Petition for Rule Making Filed, Report No. 2306 (rel. Nov. 23, 1998).

<sup>2</sup> See Petition for Rule Making filed by UTC, the Telecommunications Association, the Association of American Railroads, and the American Petroleum Institute, dated Aug. 14, 1998 (Petition).

<sup>3</sup> Petition at 6.

3. Petitioners have requested that the Commission establish a separate "public service" pool to protect the "public service" frequencies from the encroachment from "non-essential" industrial services.<sup>4</sup> The nation's utility contractors are some of these so-called "non-essential" industrial users. As better described below, to characterize utility contractors as "non-essential" shows a profound lack of understanding of the service that these companies provide to the general public.

4. In the area of water and wastewater infrastructure, utility contractors provide an invaluable service to the American public, protecting the public health and safety and the environment. Water and wastewater infrastructure also safeguards the environment by protecting ecosystems that allow many species of plants, animals, and marine life to prosper and provide sustenance for humans. As a result, U.S. citizens enjoy a higher standard of living than most other countries because we can confidently use our water for drinking, cooking, and recreation.

6. Apparently, the Petitioners would have the FCC and others believe the petroleum products, rail transportation, and electricity are the only products that support and maintain the American economy and promote the safety of life, health and property. Does that mean that all other goods and services, including clean water, are "non-essential?" As was shown above, to depict other industries as "non-essential" could not be further from the truth.

7. NUCA does not share the belief that Petitioners' industries are more essential than the millions of other users in the agriculture, construction, airline, taxicab, automobile emergency, overland trucking, chemical, manufacturing, forest products, security, mining and telephone maintenance industries.

8. NUCA believes the Petition is a reaction to the passage of the Balanced Budget Act of 1997, which expanded the Federal Communications Commission's auction authority.<sup>5</sup> The Petition is a thinly veiled attempt by the power, railroad, and petroleum industries to avoid the potential auction of private wireless spectrum.<sup>6</sup> The implementation of the 1997 Budget Act must be the subject of a rule making. At this time, it is premature for any entities to seek auction exempt status outside the scope of a rule making proceeding.

9. The Petitioners' implied suggestion that the Commission "de-consolidate" the pools and create a new "public service" pool is merely an untimely petition for reconsideration of the consolidation decision in the "refarming proceeding."<sup>7</sup> Instead, the Commission should dismiss or deny

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<sup>4</sup> Petition at 6.

<sup>5</sup> See Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997) (1997 Budget Act).

<sup>6</sup> See Petition at 8 ("These services, along with traditional public safety services, were determined to require special protection from spectrum auctions.").

<sup>7</sup> See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services

the petition as what it is, a poorly disguised and substantively inadequate petition for reconsideration.

Respectfully Submitted,

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By: \_\_\_\_\_  
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Dated: January 7, 1999

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and Modify the Policies Governing Them, *Second Report and Order*, PR Docket No. 92-235, FCC 97-61 (rel. March 12, 1997).