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

In the Matter of)
)
Biennial Regulatory Review -- Amendment of)
Parts 0, 1, 13, 22, 24, 26, 27, 80,)
87, 90, 95, 97, and 101 of the Commission's Rules)
to Facilitate the Development and Use of the)
Universal Licensing System in the Wireless)
Telecommunications Services)
)
Amendment of the Amateur Service Rules to)
Authorize Visiting Foreign Amateur Operators)
to Operate Stations in the United States)
)

WT Docket No. 98-20

WT Docket No. 96-188

RM-8677

To: The Commission

PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Federal Communications Commission's (Commission) Rules, UTC, The Telecommunications Association (UTC), hereby submits its *Petition for Clarification/Reconsideration (Petition)* in response to the Commission's *Report and Order (RO&O)*, FCC 98-234, released October 21, 1998, in the above-referenced docket.¹ UTC strongly urges the FCC to reconsider its rules regarding the implementation of the Universal Licensing System (ULS) and adoption of new FCC radio license application forms to provide for the identification of Power, Petroleum and Railroad Radio Systems. Identification of these entities will permit coordinators to better protect these systems from interference under existing licensing rules, and will be essential to the adoption of additional protection for these systems, as recommended by UTC and strongly encouraged by Congress.

¹ The *R&O* was published in the *Federal Register* on December 14, 1998.

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I. Background

UTC is the national representative on communications matters for the nation's electric, gas, water and steam utilities, and natural gas pipelines. Approximately 1,000 such entities are members of UTC, ranging 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 its affiliated trade associations, including:

- 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

UTC serves as the FCC's authorized frequency coordinator for the Power Radio Service frequencies in the private land mobile radio (PLMR) bands below 512 MHz. In this role, UTC assists the FCC in licensing private communications systems and has a great deal of experience with the FCC's existing licensing rules and methodology. UTC has a strong interest in ensuring that ULS does not diminish the ability of the Commission, or of the designated frequency coordinators, to protect Power Radio systems against interference from new licensees.

II. The FCC Should Provide for the Identification of Power, Petroleum and Railroad Radio Systems in the ULS

While UTC supports the FCC's implementation of ULS, UTC is very concerned about the effect that the FCC's ULS rules could have on the safe and reliable operation of private land

mobile radio systems by utilities in the bands below 512 MHz. By eliminating the radio service codes for public safety-related radio services, including the Power (service code – IW), Petroleum (service code – IP) and Railroad radio services (service code – LR), the FCC would undermine efforts to protect these important systems from interference. If ULS were to be implemented as planned for the private land mobile services, it would be virtually impossible for the FCC or the frequency coordinators to determine which existing systems are operated by public safety-related entities. They would therefore be unable to take into account important operational characteristics when recommending or approving coordination requests, and additional instances of harmful interference to important public service radio systems could result.

A. Background

The Commission’s ULS rules would establish a new licensing database for multiple radio services. Data would be collected on a new Form 601, which would replace existing FCC licensing forms including Form 600 for private land mobile applications.² Item 1 on Form 601 requests the Radio Service Code for the system at issue, and page 6 of the FCC’s instructions to the form indicate only four (4) acceptable codes may be used:

- IG Industrial/Business Pool Conventional
- YG Industrial/Business Pool Trunked
- PW Public Safety Pool Conventional
- YW Public Safety Pool Trunked

Other codes, including the designations for Power, Petroleum and Railroad radio services, are not permitted. It is also anticipated, though not specifically stated in the ULS *Report and Order*, that

² *Report and Order*, WT Docket No. 98-20, WT Docket No. 96-188, RM-8677 ___ FCC Rcd ____ (1998).

the FCC's new ULS database will include only the above-listed service codes. Other service codes, including IW, IP and LR, will be stripped from the database.

The Commission's ULS rules would exacerbate a problem brought about by previous FCC licensing rules that dramatically changed private land mobile licensing below 512 MHz. In March of 1997, the FCC released its *Second Report and Order (SR&O)* in PR Docket No. 92-235, consolidating the twenty (20) radio service pools operating below 800 MHz into two broad pools: (1) Public Safety; and (2) Industrial/Business.³

NEW POOL	OLD RADIO SERVICES
<i>Public Safety</i>	Police
	Fire
	Emergency Medical
	Special Emergency
	Local Government
	Highway Maintenance
	Forestry-Conservation
<i>Industrial/Business</i>	Power
	Petroleum
	Railroad
	Film and Video Production
	Relay Press
	Special Industrial
	Business
	Manufacturers
	Telephone Maintenance
	Motor Carrier
	Taxicab
	Automobile Emergency

³ *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307 at ¶11 (1997).

While the FCC chose not to include utility, pipeline or railroad systems in the Public Safety Pool, it did recognize these services as "critical, public safety related services."⁴

We recognize that within the Industrial/Business Pool, some 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. Often times 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.⁵

To protect these critical services from interference from others in the pool, the FCC required any entity that applies for channels allocated exclusively to these services to obtain coordination from the certified frequency coordinator for the respective service. The FCC acknowledged that there is a need to maintain the "integrity of spectrum used for such public safety purposes" -- using coordinators who are knowledgeable with these services' special communications needs is the best way to protect these systems.⁶

The FCC's consolidation rules eliminated the filing of service-specific radio codes for systems in the Industrial/Business Pool, though these codes are retained in the database for existing systems until a new Form 600 application is filed (e.g., for modification or renewal of an

⁴ *SR&O* at ¶2.

⁵ *SR&O* at ¶41.

existing system). Thus, the existing pool consolidation rules will slowly lead to the elimination of service-specific codes. The ULS rules would result in the immediate elimination of these codes, and without these codes it will be impossible to properly identify power, petroleum or railroad systems.⁷ As explained below, circumstances now make it clear that the codes are necessary for the protection of quasi-public safety systems.

B. Identifying Power, Petroleum and Railroad Services Is Necessary

Under existing rules, as well as rule changes proposed by UTC, the identification of power, petroleum and railroad services is necessary to avoid harmful interference to utility radio systems. In other pending proceedings, UTC has noted numerous examples of radio interference from newly coordinated industrial systems to existing utility radio systems.⁸ To effectively address this serious problem, UTC has recommended that the FCC: (1) temporarily restrict licensing on the same channels as existing utility and pipeline operations;⁹ and (2) establish a new Public Service Pool for power, petroleum and railroad operations, and other critical infrastructure or public service entities.¹⁰

⁶ *Id.*

⁷ The name of the licensee/applicant may not provide any insights as to the identity of the licensee or nature of the incumbent or proposed system. Many utilities' names, for example, do not indicate that they are in the electric, gas or water utility business (such as Conectiv, Amerigen, Houston Industries, etc.).

⁸ See *Petition for Rulemaking*, RM-9405 (filed August 14, 1998); Comments of UTC in RM-9405 (filed December 23, 1998); *Emergency Request for Limited Licensing Freeze* (filed June 26, 1998).

⁹ *Emergency Request for Limited Licensing Freeze*, filed June 26, 1998, by UTC and the American Petroleum Institute (API).

¹⁰ *Petition for Rulemaking*, RM-9405, filed August 14, 1998, by UTC, API and the Association of American Railroads.

The FCC has requested comments on the proposal to establish a new Public Service Pool, and numerous parties have voiced their opinion on this proposal. While UTC continues to strongly support the adoption of a new pool as the only appropriate long-term solution to the problems of frequency coordination and availability of spectrum for critical infrastructure industries (CII), UTC notes that even the most strident opponents of this solution recognize the need for informed coordination decisions. For instance, the Personal Communications Industry Association (PCIA) adamantly opposes the establishment of a new radio pool, recommending instead industry “task force” solutions.¹¹ Industry solutions, however, could not even be contemplated to address coordination problems such as UTC has described unless coordinators could know what types of incumbent systems were licensed. Likewise, the Industrial Telecommunications Association opposes UTC’s pool proposal, but still recognizes the need for coordinators to be aware of, and afford special protection to, power, petroleum and railroad systems.¹² Therefore, regardless of whether or when UTC’s long-term solution is adopted, changes must be made to the FCC’s licensing database to permit the identification of power, petroleum and railroad systems.

Even under existing licensing rules, the identification of power, petroleum and railroad systems is necessary. Section 90.175 of the Commission’s Rules specifies the requirements for the coordination of private land mobile radio spectrum. Under this section, coordinators must recommend “the most appropriate frequency” for PLMR operations. The coordinator’s

¹¹ PCIA Comments in RM-9405 at p. 3 (December 23, 1998).

¹² *Joint Opposition of the Industrial Telecommunications Association, Inc., the Council of Independent Communications Suppliers, the Taxicab & Livery Communications Council, the Telephone Maintenance Frequency Advisory Committee and USMSS, Inc.* in RM-9405 at p. 17 (December 23, 1998).

recommendation may be based on technical factors (power, height, etc.) or on “other factors which may serve to minimize potential interference.”¹³ The instances of serious interference that have occurred mandate that coordinators consider the nature of the incumbent operations as one of these “other factors” that should be considered when recommending a frequency. While some industries are not as dependent on the availability of their radio systems for important operations, quasi-public safety entities, such as utilities, cannot tolerate interference that could diminish the availability of their communications. This is an essential piece of information for determining which frequency is “the most appropriate”.

C. Congressional Recommendations to Protect Utility and Pipeline Spectrum Require that Incumbent CII Radio Systems Be Identifiable

Finally, as UTC pointed out in its comments in support of the Public Service Pool, Congress has strongly advised the FCC to address the problem of interference to utility and pipeline radio systems. This guidance includes:

- December 4, 1998, letter from ten members of the House Commerce Committee to FCC Chairman William Kennard urging the FCC to resolve interference problems to utility and pipeline spectrum before Congress is forced to take action. The members counseled the FCC “to take quick and decisive action to adopt the appropriate coordination guidelines to protect these vital emergency communication systems from interference.”
- The introduction of the Critical Infrastructure Radio Protection Act of 1998 by Representatives Walter Jones (R-NC) and Richard Burr (R-NC). The bill urged the FCC to take immediate steps to eliminate instances of interference to private land mobile systems of utilities and pipelines, incorporating the provisions of the UTC/API *Emergency Request for Limited Licensing Freeze* by mandating that the FCC discontinue licensing radio systems on channels that, prior to the recent rule change, were allocated for use by the utilities or pipelines.
- The adoption of language in the conference committee report accompanying the appropriations bill for the Commerce, State and Justice Departments urging the FCC to take action to address

¹³ 47 CFR 90.175(b).

interference concerns. The report states that the conferees are concerned about interference on frequencies used by public safety entities for emergency dispatch crews. “The conferees encourage the FCC to consider measures to address this concern through prior coordination of radio systems.”

Congress’s recommendations require that, at a minimum, the FCC and its authorized frequency coordinators be able to identify power, petroleum and railroad radio systems. Permitting the elimination of this capability through the adoption of a new Form 601 and the development of the ULS will only increase the likelihood of future instances of harmful interference to utility and pipeline systems in contravention of congressional guidance.

Conclusion

UTC urges the Commission to reconsider its ULS rules to permit the filing of service-specific codes for power, petroleum and railroad services and the maintenance of these codes in the Commission’s licensing records so these systems may be properly protected against interference from industrial users.

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

Respectfully submitted,

UTC

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