

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

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)	WT Docket No. 96-86
)	
Establishment of Rules and Requirements For Priority Access Service)	
)	

To: The Commission

OPPOSITION OF UTC

Pursuant to Section 1.429(f) of the Federal Communications Commission's ("Commission") Rules, UTC, The Telecommunications Association ("UTC"), hereby submits its opposition in response to certain Petitions for Reconsideration of the Commission's *Report and Order* in the above-referenced docket.¹ UTC opposes supplementing the eligibility requirements or the process for licensing non-governmental organizations ("NGOs") in the general use or

¹ *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*, First Report and Order and Third Notice of Proposed Rulemaking, WT Docket No. 96-86, FCC 98-191, released September 29, 1998 ("*Report and Order*" or "*Third Notice*").

interoperability bands of the 700 MHz public safety spectrum. However, it would support reducing the requirements that apply to utilities and pipeline companies.

I. The petitions for reconsideration propose unnecessary restrictions on NGO eligibility.

Certain petitioners request that the Commission interfere with the judgment of local public safety agencies that sponsor NGOs to become 700 MHz public safety spectrum licensees. Two petitioners suggest giving the Regional Planning Committees (“RPCs”) veto power over their choices, both at the initial licensing stage and for an indefinite review period thereafter.² One petitioner would also narrow to fewer groups the authority to sponsor NGOs, and obligate NGOs to construct systems that cover territories outside of their contractual obligations.³

II. Eligibility restrictions on utilities and pipeline companies should be eliminated or reduced.

UTC, an association whose membership is composed of electric, gas and water utilities and pipeline companies, objects to superimposing a needless layer of bureaucracy that will only serve to slow the deployment of public safety spectrum in the 700 MHz bands. While UTC agrees that certain NGOs that provide service on a commercial basis may have an incentive to abuse their privileges once they are licensed, other NGOs that use the frequencies for private communications, especially utilities and pipeline companies, are not so inclined. To lump the two

² Petition for Reconsideration filed by the Association of Public-Safety Communications Officials-International, Inc. (“APCO Petition”), at 16; and Petition for Reconsideration filed by the State of California (“California Petition”) on the *Report and Order* in CC Docket 96-86, at 9 (January 22, 1999).

groups together is the flawed premise from which the petitions operate. However, their false impression is understandable, owing to the failure of the *Report and Order* to differentiate among NGOs.⁴ Nevertheless, if the Commission relegates utilities and pipeline companies with the likes of entities that provide radio service for a fee, UTC must insist that NGOs as a whole be licensed without RPC supervision.

In the alternative, the issues raised by petitioners represent an opportunity for the Commission to set utilities and pipeline companies apart by eliminating the sponsorship requirement as it applies to them. The public safety role of utilities and pipeline companies is well-recognized both by the Commission and state and local agencies.⁵ UTC has filed a petition to establish a separate “Public Service Pool” in the land mobile bands below 800 MHz frequencies to reflect this reality.⁶ Likewise, it would be appropriate to grant utilities and pipelines greater latitude with respect to eligibility in the 700 MHz public safety bands.

UTC filed comments in this proceeding addressing the unique relationship of utilities and pipelines with public safety entities as the grounds for their eligibility to hold licenses in the 700

³ California Petition, at 9.

⁴ *Report and Order*, at ¶¶50-59.

⁵ See H. Rpt. 105-49, *Congressional Record*, at H6173 (June 29, 1997); *Congressional Record*, at S6325 (June 25, 1997); *Final Report of the Public Safety Wireless Advisory Committee*, Sections 4.1.9, 4.1.16, 4.3.2, 4.3.27.2 and 4.10.2; *Final Report of the President’s Commission on Critical Infrastructure Protection*, Appendix A, Sector Summary Reports, at A-32; *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307, 14309, 14329 (1997).

⁶ Petition for Rulemaking filed by UTC, The American Petroleum Institute (API) and the Association of American Railroads, RM-9405 (August 14, 1998).

MHz interoperability bands.⁷ Support for the proposal was found among Congress, the Public Safety Wireless Advisory Committee, the President's Commission on Critical Infrastructure Protection and even the Commission itself.⁸ However, in its *Report and Order*, the Commission declined to differentiate pipelines and utilities, in part because UTC's request for separate spectrum was considered "beyond the scope of the *Second Notice*."⁹

By this Opposition, UTC merely suggests that the appropriate response to the petitions may be fewer restrictions on utilities and pipeline companies, not more. One solution would be to reward their contribution to public safety by making them eligible without sponsorship to share the 700 MHz public safety interoperability spectrum allocated in the *Report and Order*. Eliminating the sponsorship condition on their licenses would eliminate the unnecessary step of validating the public safety credentials of utilities and pipelines, and would also create incentives for utilities and pipeline companies to increase their commitment to deploying facilities in the 700 MHz interoperability bands, thereby improving the quality of communications with emergency response public safety agencies.

At the very least, the Commission should establish a presumption that utilities and pipeline companies qualify to become eligible licensees in the 700 MHz spectrum. The sole or principal purpose for their deployment of facilities in this band would be to communicate with public safety

⁷ Comments of UTC on the *Second Notice of Proposed Rulemaking* in WT Docket 96-86 (December 23, 1997).

⁸ *Id.* at 4-7.

⁹ *Report and Order*, at ¶72, n. 174.

agencies. Thus, establishing a presumption in favor of utility and pipeline eligibility as licensees in the 700 MHz public safety bands would satisfy the standard from Section 337(f) of the Balanced Budget Act of 1997.¹⁰ On balance, establishing a presumption for eligibility would protect the interests of traditional public safety organizations while facilitating the rapid and full deployment of systems by utilities and pipeline companies.

III. RPC review of NGO eligibility would be a waste of administrative resources.

In any event, UTC opposes RPC oversight of the sponsorship process. It should be noted that UTC filed comments in response to the *Third Notice* supporting the use of RPC for licensing the reserved spectrum.¹¹ Despite its general support for the RPC process, UTC believes that the RPC should not be distracted from its more important duties by forcing it to review the qualifications of NGOs that have already received written sponsorship from public safety organizations. Moreover, these sponsors must be organizations whose sole or principal purpose is to protect the safety of life, health or property. They possess the legitimacy and sophistication to discern a legitimate NGO from a fraudulent one. Oversight by the RPC would be a redundant waste of resources.

UTC also objects to dictating the terms by which sponsorship is obtained. As a practical matter, UTC disagrees that NGOs will leapfrog unserved areas in order to concentrate service to

¹⁰See Balanced Budget Act of 1997, Pub. L. No. 105-33, §3004, 111 Stat. 251 (1997), 47 U.S.C. §337(f)(1) (1998).

¹¹Comments of UTC on the *Third Notice of Proposed Rulemaking* in WT Docket 96-86 (January 19, 1999).

their sponsors. However, even if bypass did occur, nothing prevents public safety representatives from bypassed areas contracting with NGOs to receive service. The Commission should not intervene in the private contracts between NGOs and traditional public safety organizations in order to avoid speculative concerns.

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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CERTIFICATE OF SERVICE

I Brett Kilbourne certify that a copy of the foregoing Opposition of UTC was

served on the parties below via first class mail, postage prepaid this 5th day of February, 1999.

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