

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

**In the Matter of** )  
 )  
**Amendment of Section 2.106 of the** ) **ET Docket No. 95-18**  
**Commission's Rules to Allocate** )  
**Spectrum at 2 GHz for Use** )  
**by the Mobile-Satellite Service** )

**To: The Commission**

**OPPOSITION TO  
PETITIONS FOR RECONSIDERATION**

Pursuant to Section 1.429 of the Federal Communications Commission's (Commission) Rules, UTC, The Telecommunications Association (UTC), hereby submits its opposition to the *Petitions for Reconsideration* submitted in response to the Commission's *Memorandum Opinion and Order (MO&O)*, FCC 98-309, released November 25, 1998, in the above-referenced docket. UTC supports the Commission's decision to apply the previously adopted relocation framework to the upper 2 GHz (2110-2150-2160-2200 MHz) band, and urges the Commission to reject the arguments of mobile satellite service (MSS) interests to undermine this framework. As demonstrated in the lower 2 GHz (1850-1990 MHz) band, the existing relocation framework is both equitable and reasonable. The petitions by MSS interests offer no compelling arguments as to why the existing framework should be changed. Therefore, these petitions should be denied.

## **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

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 microwave systems that are subject to relocation by emerging technology licensees. To protect its members' vital interests in these systems, UTC has been an active participant in this proceeding, and in the related proceeding involving the relocation framework, ET Docket No. 92-9. As an association representing one of the largest segments of 2 GHz incumbents, UTC has a vital interest in protecting the rights of incumbent microwave users.

## **II. The Existing Relocation Framework Provides Sufficient Opportunity for the Exchange of Relevant Information between Incumbents and MSS Licensees**

BT North American, Inc. and Hughes Telecommunications and Space Company (BT/Hughes), in their joint *Petition for Expedited Reconsideration*, urge the Commission to impose additional requirements on incumbents to provide information about their systems. According to BT/Hughes, without this additional information “useful negotiations” with incumbents will be impossible and valuable incumbent and Commission resources will be wasted. UTC disagrees with BT/Hughes and supports the Commission’s decision not to impose these additional requirements.<sup>1</sup>

In the *Order* issued by the Commission concurrently with the *Memorandum Opinion and Order*, the Commission correctly rejects the notion that ‘the formation of regulatory policy requires the level of detail that the Petitioners request.’<sup>2</sup> The Commission also quite correctly notes that the existing relocation framework provides adequate opportunity for MSS licensees to obtain this information. The relocation framework provides for both voluntary and mandatory negotiation periods during which information regarding incumbent systems can be provided. In fact, the framework imposes an obligation on both parties to negotiate in “good faith” during the mandatory negotiation period. This obligation would include the exchange of relevant information by both parties.

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<sup>1</sup> BT/Hughes *Petition for Expedited Reconsideration* at p. 13.

<sup>2</sup> *Order*, Et Docket No. 95-18, at ¶55.

UTC disagrees with BT/Hughes that that MSS licensees will only receive the information they seek during the mandatory negotiation period. Incumbent systems have an incentive to quickly conclude negotiations under the existing framework to ensure that adequate replacement spectrum is available and to avoid the possibility of mandatory relocation. Thus, there will be an incentive for incumbents to provide relevant information about their systems even during the voluntary negotiation period.

### **III. The Relocation Framework Must Be Maintained**

In the *Memorandum Opinion and Order*, the Commission confirmed yet again the appropriateness of applying the existing relocation framework adopted in ET Docket No. 92-9 to the upper 2 GHz band. In response, one MSS interest, ICO Services Limited (ICO), has yet again restated its opposition to this decision but has provided no compelling arguments against the application of the existing relocation framework.<sup>3</sup> Instead, ICO, a British satellite company, simply disguises its desire to pass along the costs of forced 2 GHz system relocation from new licensees to incumbent systems as a discussion of property rights in spectrum.

ICO argues that the relocation rules, by providing that new licensees must pay the relocation costs of incumbents, confers property rights in spectrum in contravention of the Communications Act. Citing only the dissent to a 1985 Commission decision, ICO argues that questions regarding the Commission's basic relocation framework, in place for over six years, are

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<sup>3</sup> UTC is encouraged that the majority of MSS applicants appear to have finally accepted the Commission's established relocation rules and have not challenged the relocation framework.

“properly raised” at this late date.<sup>4</sup> Moreover, because the relocation framework provides a claim to rights that ICO characterizes as “beyond the terms, conditions and periods of the license,” ICO believes that an impermissible property right has been established.<sup>5</sup>

UTC strongly disagrees with ICO’s reasoning. First, ICO’s attempt to raise this issue at this date is inappropriate. The decision to require new emerging technology licensees to reimburse incumbents in the 2 GHz band has been settled for some time. In the *First Report and Order* in ET Docket 92-9, the Commission in 1992 outlined the basic relocation framework that would apply to the entire 2 GHz band, including the band eventually allocated for MSS.<sup>6</sup> This framework included the payment of relocation costs by emerging technology licensees. In 1997, the Commission reconfirmed the application of these established rules to the upper 2 GHz in the *First Report and Order* in this proceeding.<sup>7</sup> Now, in 1999, ICO finally raises statutory issues regarding the appropriateness of these rules. ICO has provided no persuasive justification as to why this untimely argument should not be rejected on procedural grounds as a late-filed petition for reconsideration of the Commission’s 1992 or 1997 orders.

Procedural issues aside, ICO’s argument should be rejected on its merits. ICO mischaracterizes the Commission’s established rules as conferring property rights on licensees. In

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<sup>4</sup> ICO *Petition for Further Limited Consideration (ICO Petition)* at p. 9.

<sup>5</sup> ICO *Petition* at pp. 10-11.

<sup>6</sup> Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9, *First Report and Order and Third Notice of Proposed Rulemaking*, 7 FCC Rcd 6886 (1992).

<sup>7</sup> Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, ET Docket No. 95-18, *First Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 7388 (1997).

support for this claim, ICO cites the failure of the Commission to freeze or condition 2 GHz licenses as evidence that impermissible vested property rights were provided beyond the terms or conditions of an incumbent's existing license. ICO's interpretation ignores the basic reasoning behind the relocation rules – to provide for the relocation of incumbents in the event that sharing between incumbent licensees and emerging technology licensees is not possible. The payment of relocation expenses by MSS licensees is not automatic or guaranteed, but is only required when an MSS licensee cannot share spectrum on a co-primary basis with an incumbent. The relocation right is not a property right, but a spectrum management tool that encourages spectral efficiency by promoting sharing and equitably imposes costs on those licensees that directly benefit from the relocation of the incumbent systems.<sup>8</sup>

Interestingly, ICO notes that “2 GHz BAS incumbents have been on notice that their existing frequency assignment would be subject to domestic reallocation since January 1995...” and microwave incumbents “have been on notice since 1992 that their use of spectrum frequencies at 2165-2200 would be restricted,” while ignoring the fact that MSS applicants have been on notice regarding their relocation obligations since the beginning of this proceeding.<sup>9</sup> MSS applicants such as ICO have participated in this proceeding and supported the introduction of MSS in the upper 2 GHz band, all the while knowing that the Commission had established relocation rules for this band. UTC urges ICO to finally accept the Commission's established

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<sup>8</sup> UTC agrees with most MSS applicants that sharing between MSS and microwave systems is not feasible. However, this does not impact the legality of the relocation rules. MSS applicants supported the introduction of MSS in the emerging technology band with full knowledge of the established relocation framework.

<sup>9</sup> *ICO Petition* at p. 12.

rules and to work with UTC and others representing incumbents to ensure a smooth transition of the upper 2 GHz band.

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

Respectfully submitted,

**UTC**

By: \_\_\_\_\_  
Thomas E. Goode

**UTC**  
1140 Connecticut Avenue, NW  
Suite 1140  
Washington, D.C. 20036

(202) 872-0030

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