

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Service Rules for the 746-764 and)	WT Docket No. 99-168
776-794 MHz Bands, and)	
Revisions to Part 27 of the)	
Commission’s Rules)	

COMMENTS OF UTC

Pursuant to Section 1.415 of the Federal Communications Commission (“FCC”) Rules, United Telecom Council (“UTC”) hereby submits its comments in response to the *Notice of Proposed Rulemaking* in the above referenced proceeding.¹ Given the extreme shortage of private spectrum that currently exists, a portion of the 746-764 and 776-794 MHz spectrum bands should be allocated for private wireless users. Consistent with the theme of promoting broad access to CMRS spectrum, UTC generally supports flexible licensing schemes for efficient and equitable spectrum management. UTC also urges the Commission to take this opportunity to correct the disparity in regulatory forbearance that has been extended to the *pro forma* transfer of commercial licenses, but withheld from such transfers by private licensees. Finally, in order to maximize spectral efficiency, UTC recommends that frequency coordination should be used rather than field strengths to manage the 746-806 MHz spectrum.

¹ *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, Notice of Proposed Rulemaking*, WT Docket No. 99-168 (June 3, 1999) (“700 MHz CMRS NPRM”).

I. Introduction

UTC is the national representative on communications matters for the nation's electric, gas, and water utilities and natural gas pipelines. Approximately 1,000 such entities are members of UTC, ranging in size from large combination electric-gas-water utilities which serve millions of customers, to smaller, rural electric cooperatives and water districts which serve only a few thousand customers each. Although they share a collective need for spectrum in general, each entity has unique communications needs and resources that would make it difficult for them to obtain spectrum at auction. Thus, in order to reduce barriers to auctioned spectrum for its members, UTC has an interest in the instant proceeding.

II. The public interest requires that private wireless licensees have access to new allocations of spectrum.

In the 700 MHz CMRS NPRM, the Commission invited comment on “the extent to which . . . the spectrum here can and should be available for private mobile and private fixed radio services” and noted that the Land Mobile Communications Council (“LMCC”) has asked it to allocate a portion of the 746-764 and 776-794 MHz spectrum bands for private mobile radio services.

From the outset, UTC notes that nothing in the statute prevents the assignment of the spectrum for private radio services. Section 337(a)(2) merely designates the spectrum for commercial use without defining the term “commercial”.² Given the juxtaposition of the preceding section that designates 24 megahertz of spectrum for “public safety

² 47 U.S.C. 337(a)(2).

services,”³ the implication is that Congress intended to make the 746-806 MHz bands available for a broader, non-exclusive group of non-public safety services. UTC strongly supports allocations of a portion of this spectrum for private wireless users.

Private radio users have little chance competing at auction against providers of commercial services. Geographic area auctions are especially ill-suited to the needs and resources of private users. Within the limited context of commercial spectrum auctions, UTC supports using the band manager concept first explored in the *Balanced Budget Notice* in order to put private users on an equal footing with commercial service providers as viable competitors for commercial spectrum. Conversely, UTC does not believe that band managers would be appropriate in auctions for private spectrum.

The Commission has acknowledged that the Balanced Budget Act, “has not altered the criteria in Section 309(j)(3) that [it] must use to determine that a particular licensing scheme is in the public interest.”⁴ Permitting a band manager to lease the commercial spectrum that it won at auction would help achieve Congress’s objective of “promoting economic opportunity and competition . . . by avoiding excessive concentration of licenses and . . . disseminating licenses among a wide variety of applicants.”⁵ Through band managers, utilities, as well as other small businesses and rural service providers, could lease certain bands and service areas tailored to their needs, rather than being forced to accept excessive spectrum or bloated geographic service territories at

³ 47 U.S.C. 337(a)(1).

⁴ *Balanced Budget Notice* at ¶ 59. Additionally, in the Conference Report, Congress cautioned the Commission against abandoning its obligations under Section 309(j)(6)(e). See H.R. Conf. Rep. No. 105-217, 105th Cong., 1st Sess., at 572.

⁵ 47 U.S.C. 390(j)(3)(B).

auction. Enabling such access to new spectrum for utilities and other entities with unique spectrum needs and limited resources would give meaning to the public interest mandate by Congress to consider factors apart from auction revenues.

Although the *Balanced Budget Notice* notes that band managers would remove administrative obstacles and costs associated with regulating use of the spectrum, the Commission should retain regulatory oversight of their performance.⁶ Band managers should be made subject to public interest obligations that would ensure that the rates, terms and conditions for access to their spectrum were just and reasonable and not unreasonably discriminatory. Consequently, the Commission should also implement enforcement mechanisms to handle complaints against band managers.

⁶ *Balanced Budget Notice* at ¶92.

III. Access to 700 MHz spectrum would help alleviate a critical shortage of available spectrum for private uses.

IV. The Commission should adopt a flexible approach to licensing the 746-806 MHz bands without compromising regulatory parity among services.

UTC generally supports the Commission's proposals to adopt flexible service rules for licensing the 746-806 MHz bands.⁷ It agrees that eliminating service requirements and minimum restrictions as to the amount of spectrum and the size of the geographic area is consistent with Congress's goal of "disseminating licenses among a wide variety of applicants."⁸

At the same time, to carry out Congress's mandate to prevent "excessive concentration of licenses,"⁹ the Commission should retain multiple ownership restrictions for broadcast services and spectrum caps for CMRS.¹⁰ Retaining such restrictions is necessary to ensure regulatory parity among services. It will assure that broadcast services subject to Part 73 are not subject to obligations that are not shared by their Part 27 counterparts licensed in the 746-806 MHz bands. Likewise, CMRS licensees will not gain an unfair advantage simply by virtue of their being licensed in the 746-806 MHz bands.¹¹ Such arbitrary regulatory disparities could create marketplace distortions that would impede competition among similar services.

⁷ 700 MHz CMRS NPRM at ¶¶9-16.

⁸ 47 U.S.C. 309(j)(3)(B).

⁹ *Id.*

¹⁰ See 700 MHz CMRS NPRM at ¶¶26-28.

¹¹ Admittedly, Part 27 spectrum allocated to WCS is not subject to spectrum caps, but WCS does not compete with CMRS so that a limited exemption of the spectrum cap was warranted to encourage deployment of this service. See *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS")*, Report and Order, GN Docket No. 96-228, 12 FCC Rcd 10785, 10833 (1997). See also 47 C.F.R. § 20.6(a).

Consistent with promoting regulatory parity, the Commission should take this opportunity to remedy the disparity that currently requires private radio licensees to obtain prior consent to *pro forma* transfers and assignments of licenses, even though the Commission forbore from requiring commercial licensees to do so. The Commission invited comment on “whether [it] should exercise our authority under Section 10 of the [Communications Act of 1934, as amended] to forbear from applying to non-CMRS licensees of this spectrum the specific Title II requirements that the Commission previously has determined not to apply to CMRS licensees.”¹² UTC reiterates its position that holding private licensees to a higher standard of compliance with respect to *pro forma* license transfers is contrary to the public interest. The Commission should address this issue in the larger context of waiving consent to *pro forma* transfers of all private radio licenses in addition to those in the 746-806 MHz bands.

V. Conclusion

Wherefore, the premises considered, UTC urges the Commission to adopt service rules for the 746-764 and 776-794 MHz bands in conformity with those expressed herein.

Respectfully submitted,

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¹² 700 MHz CMRS NPRM at ¶50.

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