

**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)	

ERRATUM

United Telecom Council ("UTC") hereby submits an erratum to its comments timely filed July 19, 1999 in response to the *Notice of Proposed Rulemaking* in the above referenced proceeding. Due to a computer error, an incorrect copy of UTC's comments was inadvertently filed electronically. The following comments should be substituted into the record.

Respectfully submitted,

UTC

By: _____

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July 20, 1999

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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, UTC recommends that a portion of the 746-764 and 776-794 MHz spectrum bands 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.

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

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*").

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 services,”³ the implication is that Congress intended to make the 746-806 MHz bands

² 47 U.S.C. 337(a)(2).

³ 47 U.S.C. 337(a)(1).

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.

The PMRS licensees comprising LMCC's membership⁴ face a growing shortage of private spectrum. Despite efforts to make more efficient use of existing bands, evolving spectrum needs and the loss of access to spectrum⁵ have nearly exhausted available private bands. In each of the top ten (10) cities, no channels are available for assignment in many private bands, including the 470-512 MHz, 800 MHz and 900 MHz bands. In short, private wireless users have been forced to make efficient use of a shrinking supply of spectrum. In recognition of their efforts and the important services they provide, private wireless licensees deserve effective access to auctioned spectrum in the 746-806 MHz bands.

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

⁴ In addition to UTC, LMCC is comprised of the following organizations: Aeronautical Radio, Inc. (ARINC); American Association of State Highway and Transportation Officials (AASHTO); American Automobile Association (AAA); American Mobile Telecommunications Association, Inc. (AMTA); American Petroleum Institute (API); American Trucking Association, Inc. (ATA); Association of American Railroads (AAR); Association of Public Safety Communications Officials-International, Inc. (APCO); Central Station Alarm Association (CSAA); Forest Industries Telecommunications (FIT); Forestry-Conservation Communications Association (FCCA); Industrial Telecommunications Association, Inc. (ITA); Intelligent Transportation Society of America, Inc. (ITSA); International Association of Fire Chiefs (IAFC); International Association of Fish and Wildlife Agencies (IAFWA); International Municipal Signal Association (IMSA); International Taxicab and Livery Association (ITLA); Manufacturers Radio Frequency Advisory Committee (MRFAC); National Association of State Foresters (NASF); Personal Communications Industry Association (PCIA); and Telecommunications Industry Association (TIA).

⁵ See *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies (Emerging Technologies)*, ET Docket No. 92-9, *First Report and Order and Third Notice of Proposed Rule Making*, 7 FCC Rcd 6886 (1992); *Second Report and Order*, 8 FCC Rcd 6495 (1993); *Third Report and Order and Memorandum Opinion and Order*, 8 FCC Rcd 6589 (1993); *Memorandum Opinion and Order*, 9 FCC Rcd 1943 (1994); *Second Memorandum Opinion and Order*, 9 FCC Rcd 7797 (1994), *aff'd*, *Association of Public Safety Communications Officials-International, Inc. v. FCC*, (APCO v. FCC), 76 F. 3d 395 (D.C. Cir. 1996).

UTC generally supports the Commission’s proposals to adopt flexible service rules for licensing the 746-806 MHz bands.⁶ 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.”⁷

At the same time, to carry out Congress’s mandate to prevent “excessive concentration of licenses,”⁸ the Commission should retain multiple ownership restrictions for broadcast services and spectrum caps for CMRS.⁹ 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.¹⁰ Such arbitrary regulatory disparities could create marketplace distortions that would impede competition among similar services.

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

⁶ 700 MHz CMRS NPRM at ¶¶9-16.

⁷ 47 U.S.C. 309(j)(3)(B).

⁸ *Id.*

⁹ See 700 MHz CMRS NPRM at ¶¶26-28.

¹⁰ 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*

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.”¹¹ 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.

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).

¹¹ 700 MHz CMRS NPRM at ¶50.

IV. 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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