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

In the Matter of	)	
	)	
Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended	)	**WT Docket No. 99-87**
	)	
Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies	)	**RM-9332**
	)	
Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz	)	**RM-9405**

REPLY COMMENTS OF UTC

United Telecom Council

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UTC urges the FCC to faithfully implement the Balanced Budget Act of 1997 (97 BBA) in accordance with the clearly expressed wishes of Congress. As demonstrated by virtually all commenters, the FCC must reexamine its obligation to avoid mutual exclusivity in light of the 97 BBA. Auctions should only be used if mutual exclusivity cannot be avoided through engineering or other means. There was no dispute by any commenter that utilities and pipelines are included within the 97 BBA's exemption from auctions for "public safety radio services."

There was also widespread support for the establishment of a three-pool approach to radio licensing as proposed by the Critical Infrastructure Industries (CII). Support for this pool came from a wide variety of industries including traditional public safety providers, CII and industrial users. The establishment of a third pool in bands below 512 MHz is especially important in light of the FCC's recent decision to stay the effectiveness of certain coordination protection rules in the refarming docket.

UTC urges the FCC to adopt a reasonable narrowbanding plan for the frequencies below 512 MHz. The majority of commenters supported the introduction of greater efficiency in the bands below 512 MHz through reasonable deadlines for mandatory narrowbanding. However, there was strong opposition to the mandatory narrowbanding of spectrum above 512 MHz.

UTC urges the FCC to consider the virtually unanimous opposition to the FCC's proposals to auction Band Manager licenses and use application freezes to avoid speculation in private radio bands that are to be auctioned.

Finally, UTC urges the FCC not to expand the scope of this proceeding to address the issue of user fees. The FCC should instead focus on the quick resolution of issues that are specifically related to the implementation of the provisions of the 97 BBA or for which the FCC has existing statutory authority.

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Reply Comments of UTC

Pursuant to Section 1.405 of the Federal Communications Commission's (FCC) Rules, the United Telecom Council (UTC) hereby submits its reply comments in response to the numerous comments filed on the issues raised in the *Notice of Proposed Rulemaking* (*NPRM*) in the above referenced proceeding. The comments demonstrate that the private radio community has reached a strong consensus on most of the important issues relating to the implementation of the Balanced Budget Act of 1997's (97 BBA) spectrum provisions. There is overwhelming opposition against the use of auctions in private bands, the FCC's Band Manager proposal and the imposition of freezes in private bands. There is also overwhelming support for the exemption of utility and pipeline systems from auctions, the appropriateness of site-by-site licensing in private bands and the avoidance of mutual exclusivity in licensing. There is also a great deal of support from a broad variety of entities,

including traditional public safety, critical infrastructure industries and others, for the establishment of a three-pool approach to radio licensing.

I. The Overwhelming Majority of Commenters Urged the FCC to Recognize its Obligation to Avoid Mutual Exclusivity in Licensing

Almost all commenters join with UTC in urging the FCC to recognize its statutory obligation to avoid mutual exclusivity in licensing. As UTC noted in its comments, the FCC must first consider whether it can avoid mutual exclusivity in licensing before it can use auctions to assign licenses. Section 309(j)(1) makes this obligation very clear.

The American Petroleum Institute (API) strongly agrees. As explained by API, the FCC "must give prior, independent consideration to its obligation to avoid mutual exclusivity, rather than continuing to weigh this obligation against the 'public interest factors' set forth in Section 309(j)(3)."[1] The Central Station Alarm Association CSAA) notes that "[w]hen determining whether a license is auctionable, the Commission should ... ask whether an auction would serve the public interest, or if mutual exclusivity can be eliminated through engineering solutions, or other means described in Section 309(j)(6)(E)."[2] Perhaps Small Business in Telecommunications (SBT) states the FCC's obligation most clearly: "One need only consider the simple question, 'would mutual

[1] Comments of API at p. 15.
[2] Comments of CSAA at p. 5.

exclusivity exist with the use of auction-based licensing?' to determine whether auction authority should, indeed, be employed."[3]

Instead of seeking to introduce auctions through mandated mutual exclusivity, the FCC should continue to use site-by-site licensing for private radio bands. As virtually all commenters agree, site-by-site licensing is the most appropriate licensing methodology for utilities, pipelines and most other private radio users. Forest Industry Telecommunications (FIT) notes that the current method of site-by-site licensing with prior coordination is well suited for private communications because there is "practically an infinite variety of private land mobile systems, varying greatly in size, configuration coverage and purpose."[4] The Land Mobile Communications Council (LMCC) states that the shared Part 90 land mobile services are "the shining example of what Congress has now mandated by statute" – "the most efficient, effective and least costly burden of all services regulated by the Commission."[5]

UTC and the utility commenters agree. Utilities have unique operating territories that do not correspond to any pre-defined geographic auction area. Arizona Public Service Company (APS) explains in its comments the unique characteristics of its service territory.

> APS's service territory covers portions of the state of Arizona. The service area boundaries are extremely complex, following national, state, tribal, county and city boundaries, transmission line corridors, canals, private property lines, and yet other

[3] Comments of SBT at p. 7.
[4] Comments of FIT at p. 5.
[5] Comments of LMCC at p. 3.

> naturally occurring or legally defined borders. Furthermore, APS's service territory is not contiguous; some service areas are separated by over 50 miles from the main service area.[6]

Utilities' unique operating territories often preclude the availability of commercial services. Consumers' Energy explains that for its mandated utility service areas, no commercial service alternatives are present. Noting that a significant portion of Michigan's lower peninsula is rural, Consumers Energy states: "The plain fact is that radio common carriers do not currently provide their services in these low revenue potential areas."[7] Moreover, when commercial services are available, their cost may be prohibitive. The North Marin Water District (NMWD) states that "[p]rivate sector communications providers do not regard private line and access services for water utility data and control as high priority services" and monthly costs for these services have increased by approximately 300%, making it unaffordable for NMWD to expand its distribution control and monitoring system.[8]

The elimination of site-by-site licensing in favor of geographic licensing would also not be spectrally efficient. The existing site-by-site approach allows a private licensee to tailor its system to its individual coverage requirements.[9] According to Commonwealth Edison Company (Commonwealth Edison), "[t]he practical effect of adopting geographic area licensing and auctions would be wasted resources and inefficient use of spectrum."

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[6] Comments of APS at pp. 4-5.
[7] Comments of Consumers Energy at p. 4.
[8] Comments of NMWD at p. 5.

The FCC would have to expend resources to auction the spectrum and private licensees that win more spectrum than needed must seek to partition this spectrum. Again, FCC involvement would be necessary to review the partitioning application. The result, as Commonwealth Edison correctly notes, is that "the licensee and the FCC would go through an entire series of additional steps in order to get the same result yielded by the existing licensing scheme."[10]

The introduction of auctions in private bands would not be in the public interest. SCANA Corporation (SCANA) notes that the FCC found that it would be "imprudent" and "potentially disruptive" to overhaul the existing frequency assignment approach for public safety spectrum. SCANA notes that the FCC cannot support a determination that a disruption that would be imprudent to impose on the Public Safety Pool would be in the public interest to impose on other private radio services.[11] The Boeing Company (Boeing) expresses a similar sentiment, noting the disruption to private users would include additional expenditures of time and money in participating in auctions that would trickle down to the market and affect consumer prices. Boeing urges the FCC not to "attempt to manipulate its private wireless licensing processes in a manner that fabricates the increased occurrence of mutual exclusivity simply as a pretext to pursue auctions."[12]

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[9] Comments of API at p. 12.
[10] Comments of Commonwealth Edison at p. 12.
[11] Comments of SCANA Corporation at p. 9.
[12] Comments of Boeing at pp. 4-7.

II. Commenters Support the Classification of Utilities and Pipelines as "Public Safety Radio Services"

Based on the clear legislative history, there was no disagreement among commenters that utilities and pipelines are "public safety radio services." Recognition came from all types of entities, including Critical Infrastructure Industries (CII),[13] public safety,[14] equipment and service providers[15] and others.[16] UTC will not waste the FCC's time by restating the clear Congressional mandate on this issue, and the numerous arguments espoused by UTC and others regarding the criticality of utility and pipeline communications systems. UTC does note, however, that even Chairman Kennard has acknowledged that "the exemption . . . includes private internal radio services used by utilities, railroads, . . . [and] pipelines."[17]

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[13] See Comments of Alliant Energy, American Electric Power Service Corporation, American Petroleum Institute, American Water Works Association, Anchorage Water and Wastewater Utility, Arizona Public Service Company, Association of American Railroads, Baltimore Gas and Electric Company, City of Calhoun, Georgia Water System, Central and South West Corporation, Cinergy Corporation, Citizens Water Resources, Clay Electric Cooperative, Commonwealth Edison Company, Consumers Energy, Entergy Services, Inc., Hill County Electric Cooperative, Inc., Kansas City, Missouri Water Services Department, City of Lincoln Water System, Minnesota Power, Inc., National Association of Water Companies, North Marin Water District, Ponca City Refinery, San Francisco Public Utilities Commission, Water Quality Bureau, Texas Section of the American Water Works Association, City of Sacramento, Department of Utilities, Union Electric Company d/b/a Ameren UE and Central Illinois Public Service Company d/b/a Ameren CIPS, United Water, Idaho, United Water, New Jersey, United Water, New York, United Water Resources, Western Resources, Wilkinsburg-Penn Joint Water Authority, Wisconsin Public Service Corporation.

[14] Comments of Association of Public-Safety Communications Officials-International, Inc.

[15] See e.g., Comments of Radscan, Inc., CellNet Data Systems, Inc., North Texas Communications Council.

[16] Comments of LMCC at p. 7.

[17] Letter from Chairman William Kennard to Senator Trent Lott responding to Senate Reauthorization Follow UP Questions for May 26, 1999 Hearing Record of the Senate Committee on Commerce, Science, and Transportation, at 5.

UTC reiterates its call for the FCC to recognize that, based on the clear intent of Congress, the FCC must not simply "exempt" these services from auctions, but must modify its licensing rules to give this exemption some practical effect. The FCC must not apply the exemption only to those bands of spectrum for which utilities and pipelines do not have access.; that is, the bands allocated to traditional "public safety" services such as police and fire. UTC urges the FCC to provide access to, and to continue to allocate spectrum for, those exempt services that are not eligible for these "public safety" bands.

UTC supports the comments of APCO and others that auctions must not be the only way to obtain spectrum in bands that are used by both exempt and non-exempt services. The FCC "should either avoid the use of auctions in spectrum in which there [are] likely to be public safety licensees or designate portions of such spectrum for exclusive, auction exempt public safety use."[18]

[18] Comments of APCO at p. 4 (footnote omitted).

A. Cost-shared Systems Are Private Internal Radio Services

In the *NPRM*, the FCC sought comment on how it should interpret other provisions of the "public safety radio services" definition. The FCC, for instance, asked how it should interpret the phrase "private internal radio services" and whether licensees that operate systems on a not-for-profit basis and under a cost-sharing arrangement, on a cooperative basis or as a multiple licensed system, should be included within this definition. UTC urged the FCC to include these types of systems as "private internal radio services," noting that numerous utilities operate these not-for-profit shared systems to meet critical internal needs in a cost-effective manner.

There is widespread support for UTC's position on this issue. SCANA, for instance, notes that "[t]he FCC has repeatedly recognized the importance of non-profit, cost-shared operations in making advanced wireless capabilities available to public safety entities."[19] SCANA points out that there is no reason to regulate these systems differently because they involve the receipt of cost reimbursement." Cinergy Corporation (Cinergy) agrees, stating in its comments: "the fact that the systems are shared does not make them any less 'private' for the purposes of the exemption."[20]

[19] Comments of SCANA at p. 24.
[20] Comments of Cinergy at p. 24.

Motorola, Inc. (Motorola), states its belief that the success of the private wireless services is "very much dependent" on the ability of users to defray costs through shared infrastructures.[21] With the limited availability of spectrum suitable for advanced private wireless services, shared systems will likely help maximize spectrum efficiency.

B. Commenters Oppose Unreasonable Restrictions on Use of Exempt Spectrum

In response to the FCC's request for comment on whether the use of exempt spectrum should be limited only to communications directly related to the safety of life, health or property, there was unified agreement among the parties that this unreasonable restriction on use of exempt spectrum should be rejected.

American Electric Power Service Corporation (AEP) notes that:

> [I]t is difficult to draw the line where public safety ends and routine business begins. For example, a good deal of AEP's radio traffic is related to the switching and tagging of electrical equipment. These procedures are performed over 50 times a day by crews across AEP's System. While they are part of AEP's routine business, these procedures also protect utility personnel and the general public from downed lines and malfunctioning equipment. This is much like a police officer running a check on an auto or drivers license number.[22]

The difficulty in identifying public safety communications is also mentioned by the Association of American Railroads (AAR) in its comments. AAR notes that railroads use their radio systems for largely preventative, rather than responsive, activities. "Routine

[21] Comments of Motorola at p. 13.
[22] Comments of AEP at p. 5.

communications carried on the railroad radio network ensure the safe operation of the rail network in order to prevent malfunctions and accidents, rather than to respond to accidents that have already take place (although in the event that an accident does occur, the rail industry's communications network is a vital part of the response effort)."[23]

Central and South West Corporation (CSW) also strongly opposes this restriction. "It is simply unrealistic to expect crews to carry two sets of mobile phones and decide for each call which mobile phone is permitted to be used."[24] Commonwealth Edison Company adds that subjecting public safety and non-public safety traffic to two different licensing schemes "would likely require exempt entities to develop parallel, duplicative systems, resulting in extraordinary cost and inefficiency."[25]

III. There is Widespread Support for the Establishment of a Three-Pool Approach to Radio Licensing

In the *NPRM*, the FCC sought comment on the proposal filed by UTC, API and AAR to establish a new Public Service Pool in the private land mobile bands below 512 MHz. There is widespread support for a three-pool approach to radio licensing from commenters representing critical infrastructure industries (CII) and others.

[23] Comments of AAR at p. 6.
[24] Comments of CSW at p. 2.
[25] Comments of Commonwealth Edison at p. 23.

Support for the establishment of a three-pool plan comes from numerous sources, including the public safety community. In its comments, the Association of Public-Safety Communication Officials-International, Inc. (APCO) finds "considerable merit" in the CII three pool proposal and notes that this proposal in many ways reflects the definitions adopted by the Public Safety Wireless Advisory Committee, which distinguished Public Safety and Public Services.[26] APCO also disagrees with commenters that argue that the establishment of a third pool would result in inefficient use of radio spectrum,[27] explaining that "dividing all private wireless users into three pools, rather than two, would still leave more than adequate diversity within each pool to ensure efficient spectrum utilization."[28]

The CSAA also supports a three-pool approach. "[T]his proposal helps to implement Congress' recognition that certain non-governmental entities play an important role in public safety."[29] The American Automobile Association (AAA) notes that creating a third pool as proposed in the CII petition "would better protect these vital services by eliminating the ability of regular Industrial/Business users to obtain access to frequencies used by Public Safety Radio Service entities" as well as protect against a "very real" risk of interference by Industrial/Business licensees. [30] SBT also finds the creation of a third pool entirely appropriate if auctions are introduced in the private radio spectrum.[31]

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[26] Comments of APCO at pp. 7-8.
[27] See Comments of NTCC at p. 12.
[28] Id. at p. 9.
[29] Comments of CSAA at p. 13.

Even the American Mobile Telecommunications Association (AMTA) recognizes the need to "redistribute channels from the Industrial/Business Pool" in the event that the FCC expands its recognition of public safety services.[32] While AMTA appears to support the expansion of eligibility for the Public Safety Pool (which UTC does not support) rather than the creation of a new pool, UTC is encouraged by AMTA's recognition of the need to redistribute channels used by "public safety radio services" out of the Industrial/Business Pool. This position is entirely consistent with the creation of a third pool, as proposed by the CII.

Opposition to the three-pool plan generally centers on a single misconception – that there is no need for additional protection for critical infrastructure industries such as utilities and pipelines. The North Texas Communications Council's (NTCC) comments are typical. Pointing to the coordination protections adopted by the FCC in the refarming docket for channels that were either exclusively allocated to CII or that shared with a limited number of other industries, NTCC states that the protections that the CII seek through the creation of a third pool are already available.[33] What NTCC and others that oppose the third pool fail to recognize is that: (1) existing protections are not adequate to protect CII systems against interference; and (2) there is no way, absent a third pool, to protect CII access to spectrum.

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[30] Comments of AAA at p. 8 (footnote omitted).
[31] Comments of SBT at p. 5.
[32] Comments of AMTA at p. 5, n. 8.
[33] Comments of NTCC at p. 12.. See also Comments of ITA at p. 12, Comments of PCIA at p. 18.

Existing FCC coordination protections are inadequate. In the two years since the consolidation of the radio service pools, CII entities have encountered numerous instances of interference which have prevented them from carrying out vital, public safety-related responsibilities. In its *Second Memorandum Opinion and Order* in PR Docket No. 92-235, the FCC adopted rules that would have provided important protections for CII systems by requiring coordination by a CII frequency advisory committee of channels that had been previously shared by CII with a select group of industrial users. This decision expanded the previously adopted coordination protections beyond those channels that had been "exclusive" to the power, petroleum and railroad industries. However, on August 5, 1999, the FCC stayed these rules on procedural grounds. As a result of the FCC's stay, there is now a greater need for the FCC to establish a new pool to protect CII against interference from Industrial/Business systems.

Some of those opposing the three pool approach point to the lack of protection for CII systems operating on channels that are outside the proposed pool. While acknowledging that the CII have proposed protected service contours to safeguard these important systems, the opposing parties note that Section 90.187 of the Commission's Rules provides for similar protection without a change in the licensing rules.[34] UTC strongly disagrees that requiring all incumbent CII operations on non Public Service channels to seek co-channel concurrence and implement trunking systems, as required by

90.187, is a reasonable alternative. Not only would this proposed solution result in a tremendous financial burden on CII, but it is also dependent on the concurrence of co-channel users – a requirement that is difficult, and in some cases impossible, to fulfill.

Moreover, none of the commenters opposed to the three-pool plan have adequately addressed how availability of spectrum for CII can be assured absent a third pool. As explained above, there is no disagreement that utilities and pipelines are "public safety radio services" and "vitally important."[35] These services' access to spectrum must, therefore, be protected. As Hewlett-Packard stated in its comments on the CII petition, which were incorporated by reference into this proceeding, "the FCC must take action to protect essential communications systems that are vital to health and safety from expanding commercial systems in the frequencies below 800 MHz" and "frequencies must be reserved for such vital functions..."[36] It is clear, therefore, that the adoption of a third pool is necessary to avoid the "irreparable harm" that would result from spectrum depletion.[37]

SBT notes that its opposition to a third pool is based on a "licensing mechanism that arises moreover from effective lobbying of Congress ... rather than licensing processes which recognize the benefit to the Country and its citizens."[38] SBT's condescending

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[34] See Comments of PCIA at p. 19.
[35] Reply Comment of SBT at p. 23.
[36] Comments of Hewlett-Packard Company at p. 2 (incorporating by reference Comments of Hewlett-Packard Company, RM-9405 (filed December 23, 1999)).
[37] See Comments of SCANA Corporation at p. 21 (noting that the FCC has previously recognized the likelihood of "irreparable harm" from spectrum depletion.)
[38] Reply Comments of SBT at p. 25.

attitude toward the Congress and the elected officials of this country is disturbing. Congress made a clear policy decision to exempt certain radio services from auctions. This policy determination is not only a valid reason for the FCC to make licensing decisions, it is a conclusive reason to do so. As a government agency, the FCC must implement Federal statutes in accordance with congressional intent. For SBT to suggest Congress's policy determination should be rejected simply because another company was unable to justify its own inclusion in this exemption is ridiculous.

IV. There is Widespread Support for the Imposition of Reasonable Deadlines for Narrowband Operations in the Bands Below 512 MHz

Many commenters join with UTC in supporting the establishment of reasonable deadlines for the conversion of incumbent systems to narrowband operations in the bands below 512 MHz. UTC supported in its comments a narrowband transition plan based on the following equitable principles: (1) any proposal for mandating the use of narrowband systems in the bands below 512 MHz must provide an adequate period for the amortization of equipment costs; (2) those bearing the burden of narrowbanding should be given the opportunity to apply for any "new" channels created as part of such a mandatory conversion process so long as it meets any applicable loading criteria; (3) mandatory narrowbanding should be recognized as a spectrum management tool that should be used to ease overcrowding, not as a way to introduce auctions and geographic licensing into overcrowded bands; and (4) narrowbanding should not apply to the private bands above 512 MHz. Based on these principles, UTC recommended that narrowbanding only be

mandated for systems in urban areas, where spectrum congestion is most severe. To minimize the impact on users, UTC recommended that new urban systems be required to operate on 12.5 kHz channels or equivalent technologies by 2005. Existing urban systems would be required to convert to 12.5 kHz systems or equivalent technologies by 2010.

Numerous parties share UTC's call for reasonable narrowbanding requirements in the bands below 512 MHz.[39] LMCC restates its previous support for mandatory narrowbanding deadlines and explains that there is little indication that the current rules, which rely on the type-acceptance process alone, "will accomplish the necessary transition to narrowband technologies."[40] LMCC notes that manufacturers may be hesitant to invest in new narrowband technologies without some anticipation of an adequate level of sales and system deployments.[41] Motorola explains that incumbents in the bands below 512 MHz "have found insufficient opportunities to replace existing systems with more narrowband technologies" and encouraged the FCC to impose a date-certain to replace 25 kHz systems with 12.5 kHz technology.[42] Motorola also supports tailoring the narrowbanding requirements to meet spectrum management needs, noting that "the date certain could be

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[39] See Comments of Personal Communications Industry Association at pp. 26-27. While UTC's supports PCIA's request for an extension of the 2004 deadline it supported in 1993, UTC opposes PCIA's call for the immediate implementation of a 12.5 kHz narrowbanding requirement for new applications. UTC strongly urges the FCC to adopt a transition period to minimize the impact of this substantial change in the rules on incumbents. This transition period should provide those entities, such as utilities and pipelines, that have long business planning schedules and that, in some cases, must seek state approval of expenditures with sufficient time to revise plans to implement new radio systems. See, e.., Section 90.629, which recognizes that some licensees have large budgeting and approval cycles than others. Moreover, it could be very complicated, if not impossible, for an incumbent licensee to incorporate a new "narrowband" station into an existing "wideband" system without completely overhauling the system.

[40] Comments of LMCC at p. 10.

[41] Id.

tailored to minimize burdens on rural or other users whose use of 25 kHz technologies do not affect other potential users."[43]

UTC strongly opposed the mandatory narrowbanding of systems above 512 MHz, as proposed by AMTA. As UTC noted in its comments, AMTA's request is intended to provide its members with the opportunity to construct additional for-profit radio systems at the expense of utilities, pipelines and other Industrial/Land Transportation incumbents that have invested substantial sums in their radio systems. APS, for instance, explains in its comments that it is in the process of implementing a statewide 800 MHz system at a total cost of $18 million.[44] Similarly, Baltimore Gas and Electric Company notes that it has invested approximately $30 million in its 800 MHz system in the last ten years.[45] Consumers Energy is completing construction of its own 800 MHz system at a cost in excess of $50 million.[46] Western Resources notes that it has invested nearly $16.9 million in its 800 MHz trunked radio systems.[47]

PCIA agrees and joins UTC in strongly opposing narrowbanding above 512 MHz. Like UTC, PCIA is aware of many members that have recently installed or are in the process of installing state-of-the-art equipment that would have to be scrapped in only four

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[42] Comments of Motorola, Inc. at p. 11.
[43] Comments of Motorola, Inc. at p. 12.
[44] Comment of APS at p. 4.
[45] Comments of Baltimore Gas and Electric Company at p. 2.
[46] Comments of Consumers Energy at p. 5.
[47] Comments of Western Resources at p. 2.

years under AMTA's plan.[48] There is no valid reason for I/LT licensees to bear the cost of narrowbanding simply to satiate the appetite of AMTA's members for new customers or new spectrum. The substantial investment made by I/LT eligibles in spectrally efficient and state of the art systems must be preserved.

V. There is Virtually Universal Opposition to the FCC's Band Manager Proposal

In its comments, UTC raised serious concerns with the FCC's proposal to auction Band Manager licenses. UTC noted that this untried concept could be disastrous for those entities that require access to spectrum to meet critical internal operational needs. Among the problems noted by UTC are: potential anti-competitive behavior; conflict with the BBA's spectrum auction exemption language of requiring "public safety radio service" applicants to pay an indirect auction fee through the Band Manager; the likely inability of Band Managers to address the failure of the marketplace to meet the unique needs of CII; and the potential for protracted legal battles over private contractual agreements, rather than a quick resolution of the problem by the expert government agency.

The majority of commenters agree with UTC in its opposition to Band Manager licensing as proposed by the FCC. SCANA notes, for instance, that Band Manager licensing "would constitute an impermissible ceding of the FCC's authority over radio

[48] Comments of PCIA at p. 28.

spectrum, and has an extraordinary potential for inefficiencies and abuse."[49] SCANA further notes that Band Managers' interests would not necessarily lie in advancing the public interest, but in recouping their investment and maximizing revenue.[50] The Private Internal Radio Service Coalition points out that that Band Manager licensing may also fail to address the needs of rural users. Noting that the emergence of competition generally comes slower to some parts of the country, some users may be "held hostage" by an inefficiently operated Band Manager.[51] SBT adds that Band Managers could set rules for use of the spectrum that "would not be subject to due process protections or the dictates of the Administrative Procedures Act, but rather would be determined by the band manager's understandable desire to maximize the profit-making potential of its coordination of the spectrum under its control."[52]

While support for the Band Manager proposal as set forth by the FCC was virtually unanimous, there was support for a modified spectrum management proposal to privatize some FCC functions. UTC and others recommended that the FCC look to the existing frequency coordinators as potential spectrum managers. The Industrial Telecommunications Association, Inc, Council of Independent Communications Suppliers, Taxicab and Livery Communications Council and Telephone Maintenance Frequency Advisory Committee supports in their joint comments the reclassification of existing

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[49] Comments of SCANA Corporation at p. 26.
[50] Id. at p. 27. See also Comments of Commonwealth Edison at p. 27; Union Electric Company at p. 26; Cinergy Corporation at pp. 25-26.
[51] Comments of Private Internal Radio Service Coalition at p. 18.

frequency advisory committees as band managers with greater spectrum management roles. New duties could include verifying construction and issuing call signs.[53] The Personal Communications Industry Association (PCIA) opposes the FCC's Band Manager proposal and urges the FCC to explore instead "reasonable means to delegate additional responsibilities for the management of private radio spectrum," noting that this can best be accomplished through modifications to the existing frequency coordination system."[54]

UTC reiterates its support for the delegation of certain FCC function to the frequency advisory committees. Within each frequency pool, the authorized frequency coordinators could cooperate to sublicense the spectrum, resolve interference complaints (which would be greatly reduced by establishing three pools of similar users) and promote spectrum efficiency. This delegation would reduce the FCC's licensing role and better address the needs of individual services through the active participation of coordinators who are familiar with the needs of those services.

VI. Commenters Strongly Oppose the Use of Application Freezes in Private Bands

In its comments, UTC strongly opposed the use of application freezes to avoid speculation in private bands in which auctions were to be introduced. There was uniform opposition to the use of freezes.

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[52] Reply Comments of Small Business in Telecommunications at p. 29.

API urges the FCC to "not allow all private radio licensing to come to a screeching halt" while the FCC resolves spectrum auction issues in a circumspect and deliberate manner.[55] SCANA states that any application freeze would hinder its ability to ensure the smooth delivery and operation of power services.[56] SCANA also notes that application freezes tend to last longer than the FCC has historically anticipated. In many cases, "short freezes intended to allow the agency and the public time to formulate rules and raise capital turned into freezes lasting years."[57] NTCC notes that the 929 MHz freeze on paging frequencies has been extremely difficult for small businesses and urges the FCC to avoid using freezes again.[58] MRFAC, Inc. (MRFAC) explains the imposition of freezes would simply add to the uncertainty and delay to which the private community has already been subject.[59]

There was particular concern regarding an existing freeze on applications for 900 MHz Multiple Address Systems (MAS), which was adopted by the FCC on July 1, 1999.[60] CellNet Data Systems, Inc. (CellNet) notes that this freeze will hurt those who consistently

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[53] Joint Comments of the Industrial Telecommunications Association, Inc, Council of Independent Communications Suppliers, Taxicab and Livery Communications Council and Telephone Maintenance Frequency Advisory Committee at pp. 19-20.
[54] Comments of the Personal Communications Industry Association at p. 30.
[55] Comments of API at p. 19
[56] Comments of SCANA Corporation at p. 28.
[57] Id. at p. 28. See also Comments of Commonwealth Edison Company, Union Electric and Entergy Services.
[58] Comments of NTCC at p. 21.
[59] Comments of MRFAC, Inc. (MRFAC) at p. 13.
[60] *Further Notice of Proposed Rulemaking and Order*, WT Docket No. 97-81 (released July 1, 1999).

made good faith efforts to comply with the FCC's existing licensing efforts.[61] API summarizes the problems with the MAS freeze concisely: "Due to the freeze, critical infrastructure industries who rely heavily on MAS spectrum to meet important safety-related requirements must look to less reliable alternatives while the Commission considers whether to auction spectrum that they so vitally need. API cannot imagine that Congress intended such result when in enacted the 1997 Act [BBA 97]."[62]

Commenters in this proceeding were not the only parties concerned about this freeze. On September 22, twelve members of Congress, including House Telecommunications Subcommittee Chairman W.J. "Billy" Tauzin (R-LA), sent Chairman Kennard a letter urging that the current 928/952/956 MHz MAS licensing freeze be lifted for non-subscriber-based MAS operations such as those of utilities and pipelines. A similar letter, signed by ten members of the Senate, was sent to the Chairman on September 24, 1999. The letters state that the "suspension on the filing of applications for these frequencies will impede utility and pipeline access to technologies that are essential elements in energy management systems." The letters describe the use of these systems as "consistent with United States foreign policy . . . to reduce our dependence on foreign energy sources," noting that these systems "improve energy management and cost savings for businesses and consumers every day." The Congressmen further wrote that utilities generally have "no practical alternative to using MAS frequencies for automatic metering

[61] Comments of CellNet at p. 19.
[62] Comments of API at p. 19.

equipment" and that the current policy has hurt utilities and discouraged further investment in such technology. The letters conclude by stating that a lifting of the licensing freeze would "result in significant benefits to consumers, emergency and water systems, and the competitive position of domestic companies located in many of our states."

VII. The FCC Should Not Address User Fees in this Proceeding

In its comments, UTC urged the FCC to avoid further complicating this already complex proceeding by examining the use of user fees in radio licensing. UTC noted that the FCC does not specifically seek comment on user fees and urged the FCC to reject efforts to expand the scope of this rulemaking to include this issue. By ignoring this issue in their comments, most parties appear to agree that this issue is not germane to this proceeding.

However, as anticipated, several parties did take this opportunity to seek to incorporate the issue of user fees in this rulemaking.[63] While UTC does not oppose reasonable user fees to encourage spectrum efficiency by private users in new bands of spectrum, [64] UTC strongly opposes the expansion of the scope of this rulemaking to

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[63] See Comments of MRFAC, Inc. at p. 11; International Communications Association at p. 3; Intek Global Corp. at p. 7; CellNet Data Systems, Inc. at p. 20; The Boeing Company at p. 7.

[64] UTC does oppose as unreasonable the proposal by The Boeing Company that the FCC impose "varying degrees of users fees" on community repeater and other non-profit shared systems. Comments of The Boeing Company at p. 14. As demonstrated by UTC's comments and the comments of the overwhelming majority of parties, these systems should be treated no differently than other private internal use radio systems.

examine an issue that is not necessary to the resolution of issues surrounding the implementation of the provisions of the BBA 97 and that cannot be resolved within the context of this rulemaking. As UTC noted, the FCC's initial proposal regarding user fees, made in the FCC's refarming docket, was premised on a grant of statutory authority that never materialized. Without this statutory authority, the FCC cannot implement user fees and therefore need not waste its valuable resources addressing this issue. Instead, UTC believes that the public interest would be better served by the expedited resolution of issues directly raised in the rulemaking or pertaining specifically to the implementation of Sections 309(j) and 337 of the Communications Act as amended by the 97 BBA.

Conclusion

UTC urges the FCC to consider the consensus reached by private land mobile community on most issues relating to the implementation of the Balanced Budget Act of 1997's spectrum provisions. UTC notes that the commenters overwhelming oppose the use of auctions in private bands, the FCC's Band Manager proposal and the imposition of freezes in private bands. Commenters strongly support the exemption of utility and pipeline systems from spectrum auctions, the appropriateness of site-by-site licensing in private bands and the avoidance of mutual exclusivity in licensing. There is also a great deal of support from a broad variety of entities, including traditional public safety critical infrastructure industries and others, for the establishment of a three-pool approach to radio licensing.

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

Respectfully submitted,

United Telecom Council

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Dated: September 30, 1999

CERTIFICATE OF SERVICE

I, Tom Goode, do hereby certify that I have caused to be sent, this 30th day of September 1999, by first class mail, postage prepaid, copies of the foregoing to the following:

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