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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
**Federal Communications Commission**  
Washington DC 20554

In the Matter of )  
 )  
The Establishment of Policies and )  
Service Rules for the Mobile Satellite )  
Service in the 2 GHz Band )  
 )

IB Docket No. 99-81  
RM-9328

**COMMENTS**

The United Telecom Council (“UTC”)<sup>1</sup> hereby submits these Comments in response to the Public Notice of February 7, 2000, in the above-captioned proceeding.<sup>2</sup> The Public Notice seeks additional comment on a “hybrid processing alternative,” that would permit each of the 2 GHz MSS operators to select a “home” spectrum assignment from among distinct segments of bandwidth, each defined by the Commission.<sup>3</sup> This hybrid processing alternative would also allow a satellite operator to provide service outside of its “home” spectrum assignment anywhere in the 2 GHz MSS spectrum on a secondary basis with respect to other MSS operators.<sup>4</sup>

UTC is concerned that allowing 2 GHz MSS operations outside the “home” spectrum assignment would dramatically complicate the process of reimbursing incumbent terrestrial fixed service operations for relocation expenses. For instance, a MSS operator might disclaim liability for relocation costs if another MSS operator has

<sup>1</sup> Formerly UTC, The Telecommunications Association.

<sup>2</sup> International Bureau Requests Further Comment on Selected Issues Regarding Authorization of 2 GHz MSS Systems, *Public Notice* DA 00-222 in IB Docket No. 99-81, RM-9328 (released Feb. 7, 2000)(“Public Notice”).

<sup>3</sup> Public Notice at 2.

<sup>4</sup> *Id.*

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used its “home” spectrum. If the Commission adopts the proposed hybrid processing alternative, it should clarify that a MSS operator is wholly liable for the cost of relocating incumbents on its “home” spectrum. The Commission must further clarify that a 2 GHz MSS operator may not withhold reimbursement from incumbent fixed operators while the MSS operator waits for indemnification from another MSS operator that might use its home spectrum assignment.

As a general matter, UTC urges the Commission to ensure that the assignment methodology that it ultimately adopts will account for the impact it will have on the reimbursement for the relocation of incumbent fixed operations. The Commission must not adopt assignment methodologies that would impair the ability of incumbents to obtain reimbursement for the cost of relocating to make way for MSS.

As stated in its previously filed comments and reply comments (and incorporated by reference herein),<sup>5</sup> UTC continues to oppose the licensing of MSS feeder links in the bands currently available for private operational fixed microwave (“POFS”) and other terrestrial fixed services. Alternatively, if the licensing of MSS feeder links is permitted in terrestrial fixed spectrum, UTC supports the sharing and coordination recommendations of the Fixed Wireless Communications Coalition (“FWCC”), of which UTC is a member. UTC supports the application of the established relocation framework for incumbent POFS systems in the upper 2 GHz band and urges the FCC to quickly resolve outstanding issues related to this framework in ET Docket No. 95-18.

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<sup>5</sup> The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band, IB Docket No. 99-81, *Notice of Proposed Rulemaking*, FCC 99-50, 14 FCC Rcd. 4843 (1999) (“NPRM”); *See generally* Comments and Reply Comments of UTC (June 24, 1999 and July 26, 1999).

## **I. Background**

UTC is the national representative on communications matters for the nation's electric, gas, water and steam utilities, and natural gas pipelines. UTC's members provide public safety-and public service-related services throughout the United States and its possessions. UTC's members range 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.

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. UTC has been an active participant in the FCC's proceedings involving the introduction of emerging technology licensees in, and relocation of microwave incumbents from, the 2 GHz band. UTC is therefore pleased to comment in this proceeding.

## **II. The Commission must not adopt a MSS assignment methodology that impairs the ability of incumbent fixed operators to obtain relocation reimbursement.**

In the Public Notice, the Commission invited comment on a "hybrid processing alternative" that would allow 2 GHz MSS operators to pick their uplink and downlink "home" spectrum assignment from among distinct segments of equal bandwidth.<sup>6</sup> A MSS operator could operate outside its home spectrum assignment on a secondary basis

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<sup>6</sup> Public Notice at 2.

to another MSS operator by negotiating access with the MSS operator that claimed that spectrum.<sup>7</sup>

UTC is concerned about the impact that this proposed assignment methodology would have on the reimbursement of relocation costs. In one possible scenario, a MSS operator could use the presence of another MSS operator on its “home” spectrum assignment as an excuse for delaying or withholding reimbursement to incumbents that must be relocated. The Commission should address this concern and institute safeguards to prevent MSS operators from shirking their obligation to reimburse incumbents for the costs of relocation. The Commission should also broadly consider other potential impacts on the incumbent relocation process that may result from the assignment methodology that it ultimately adopts.

### **III. UTC opposes assigning MSS feeder links on spectrum occupied by POFS.**

MSS is a technology in search of a market and a glutton for free spectrum. Nonetheless, the Commission continues to throw more spectrum into this pipe dream. The latest spectrum catered to MSS specifications is nine distinct feeder uplink and downlink bands, ranging from the 3550-3700 MHz band to the 29.1-29.5 GHz band.<sup>8</sup> Some of these bands are currently used for POFS by utilities and other critical infrastructure industries.

Utilities and critical infrastructure industries are increasingly dependent upon POFS to provide reliable, secure communications in support of their core businesses. At the same time, a critical shortage of available POFS spectrum has developed, in part due

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<sup>7</sup> *Id.*

<sup>8</sup> NPRM at ¶50.

to other bands being reallocated to meet the needs of MSS. Moreover, pending proposals threaten to put an even greater squeeze on POFS and other terrestrial fixed users.<sup>9</sup>

The Commission must not bail out MSS with more terrestrial fixed spectrum. Not only would it be inequitable, it would be poor spectrum management to take spectrum away from productive uses in order to reallocate it for an unproven service. Therefore, UTC opposes assigning MSS feeder links in the proposed spectrum that is being more effectively used by POFS and other terrestrial fixed operations.

**III. If MSS feeder links are licensed in terrestrial fixed spectrum, the FCC must protect fixed operations and initiate a proceeding to allocate new fixed spectrum suitable for POFS.**

UTC fully supports the proposals of the FWCC to minimize the impact of MSS feeder link assignments on fixed services. These proposals, which include sharing and coordination rules, would encourage efficient use of the spectrum.<sup>10</sup>

In addition, UTC recommends that the FCC initiate a rulemaking to identify new spectrum for use by fixed services. This rulemaking may offer a unique opportunity for the FCC to promote the efficient use of new bands or to provide for sharing among appropriate users. For instance, due to the spectrum efficient nature of fixed microwave

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<sup>9</sup> See Amendment of Parts 2, 25 and 97 of the Commission's Rules with Regard to the Mobile-Satellite Service Above 1 GHz, *Notice of Proposed Rulemaking*, ET Docket No. 98-142, FCC 98-177, 13 FCC Rcd 17107 (1998)(designating the upper 6 GHz for MSS feeder links); Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite Service Use, *Notice of Proposed Rulemaking*, IB Docket No. 98-172, FCC 99-18, 13 FCC Rcd 19923 (1999)(reducing available 18 GHz spectrum for fixed services; and Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range and Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates, *Notice of Proposed Rulemaking*, ET Docket No. 98-206, FCC 98-310, 14 FCC Rcd 1131 (1999) (expanding NGSO gateway stations into the 11 GHz band).

<sup>10</sup> Comments of FWCC to the NPRM in IB Docket 99-81 at 3-7 (June 24, 1999).

operations, these services may be ideal candidates to share new spectrum with Federal users or to make use of underutilized spectrum in rural areas.

**IV. UTC urges the FCC to quickly resolve outstanding issues regarding the application of the emerging technologies band incumbent relocation framework to the upper 2 GHz band.**

UTC strongly supports the FCC's determination that the established relocation framework governing the relocation of incumbents from the emerging technology band will apply to MSS licensing. This framework provides that incumbent licensees remain co-primary in the band unless or until they are relocated from the band to comparable facilities in other bands. Parties are encouraged to negotiate relocation terms, with both voluntary and mandatory negotiation periods established. The rules also provide guidance as to what constitutes good faith negotiations, and provide for an involuntary relocation procedure in the event that mutually acceptable relocation terms are not reached within either the voluntary or involuntary negotiation periods.<sup>11</sup>

UTC recommended some modifications to the relocation framework to accommodate the unique circumstances involved with the nationwide relocation of incumbents by MSS operators:

- Due to the intricacies of introducing MSS into a band with thousands of incumbent systems, UTC urged the FCC to extend the period for mandatory negotiations between MSS and non-public safety incumbents from one year to two years. Expanding the mandatory period to two years would provide a more reasonable time period for these negotiations and reduce the possibility that the involuntary relocation procedures would be invoked simply due to the inability of incumbents and MSS licensees to conclude the simultaneous complex relocation negotiations within the one-year period as proposed.
- UTC recommended that the FCC clarify that the ten (10) year sunset period on the relocation obligations of MSS licenses begins only after the voluntary period begins

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<sup>11</sup> Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, *Memorandum Opinion and Order and Third Notice of Proposed Rulemaking*, ET Docket 95-18, FCC No. 98-309, 13 FCC Rcd. 23949 at ¶ 12-29(1998).

for a particular licensee. If licenses are granted in the upper 2 GHz band at different dates, the FCC should provide all incumbents with a full ten-year sunset period.

- UTC also supported the FCC's proposal to introduce cost sharing in the upper 2 GHz band,<sup>12</sup> and urged the FCC to adopt rules to specifically allow incumbents who voluntarily relocate their systems to receive reimbursement from FSS licensees in accordance with the cost-sharing plan. UTC recommended that self-relocating incumbents be subject to the same reimbursement rules as are proposed for cost-sharing between MSS and other emerging technology licensees in the upper 2 GHz band; namely, that there be no depreciation in the cost-sharing expenses over time.<sup>13</sup>

UTC urges the FCC to quickly resolve all outstanding issues pertaining to the relocation of incumbent systems from the upper 2 GHz band, including those requested by UTC. Both incumbents and MSS applicants are awaiting these rules to make strategic business plans. The confirmation and finalization of the relocation obligations of MSS providers and rights of incumbents will allow all parties to plan for an expedited transition of the 2 GHz band.

## CONCLUSION

UTC urges the Commission to carefully consider the impact on the incumbent relocation process before adopting any MSS assignment methodology. In this regard, the hybrid processing alternative is potentially problematic, and safeguards need to be established to prevent abuse of the relocation process. If the Commission adopts this methodology, UTC recommends that the Commission clarify that 2 GHz MSS operators remain wholly liable for reimbursing the expenses associated with relocating incumbent fixed operations on the "home" spectrum assignment that they select. UTC also recommends that the Commission clarify that reimbursement may not be withheld or

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<sup>12</sup> *Id.* at ¶51.

<sup>13</sup> Depreciation is an accounting function, and bears little or no relationship to the actual useful life of microwave systems. It would be entirely inequitable, and a taking of private property without just compensation, for the FCC to allow MSS operators to reimburse fixed service licensees for only a

delayed, while the MSS operator waits for indemnification from the other MSS operator(s) that use its home spectrum assignment.

UTC continues to oppose the licensing of MSS feeder links in the bands currently available to licensing for fixed services. If the licensing of MSS feeder links is permitted in terrestrial fixed spectrum, UTC recommends the FCC adopt the coordination and sharing proposals recommended by the FWCC; and initiate a rulemaking to provide additional spectrum for POFS. Finally, UTC supports the application of the established relocation framework for incumbent systems in the upper 2 GHz band and urges the FCC to quickly resolve outstanding issues related to this framework.

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percentage of the value of the communications equipment they will render useless when their systems come on-line.

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

Respectfully submitted,

**UTC**

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