

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

RECEIVED

MAR 4 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

DOCKET FILE COPY ORIGINAL

02-8

Reallocation of the 216-220 MHz,
1390-1395 MHz, 1427-1429 MHz,
1429-1432 MHz, 1432-1435 MHz,
1670-1675 MHz and 2385-2390 MHz
Government Transfer Bands

)
)
)
)
)
)
)

WT Docket No. ~~02-08~~
RM-9267
RM-9692
RM-9797
RM-9854
RM-9882

**COMMENTS OF THE
UNITED TELECOM COUNCIL**

Jill M. Lyon
Brett W. Kilbourne
UNITED TELECOM COUNCIL
1901 Pennsylvania Avenue, Fifth Floor
Washington, DC. 20006
(202) 872-0030

March 4, 2002

No. of Copies rec'd 0+4
List A B C D E

TABLE OF CONTENTS

SUMMARY	i
I. INTRODUCTION	1
II. TELEMETRY IN THE REALLOCATED BANDS	3
A. UTC supports the Data Flow Petition to amend Sections 90.35 and 90.259 to permit fixed telemetry in the 216-220 MHz band.....	3
B. UTC supports the Itron/AHA agreement concerning frequency allocation in the 1427-1432 MHz band.	4
C. UTC supports limiting telemetry in the 1.4 GHz band to utility telemetry....	5
D. UTC supports site-by-site licensing of telemetry on a first-come-first-served basis.	6
E. UTC supports grandfathering incumbents on a secondary basis in the 1429.5-1432 MHz band.....	8
F. UTC supports frequency coordination of 217-220 MHz and 1.4 GHz telemetry.....	9
G. UTC proposes technical rules for telemetry.....	10
III. LAND MOBILE COMMUNICATIONS IN THE 1.4 GHz BAND	13
A. The auction of 1392-1395/1432-1435 MHz should be limited to Band Managers.....	13
B. UTC recommends that at least two licenses be created in this band in each of six regions.	15
C. The FCC should adopt the 700 MHz Guard Band Manager rules for the 1392-1395/1432-1435 MHz band.....	17
IV. CONCLUSION	18

SUMMARY

The Commission should adopt service rules and auction methodologies that promote access to private wireless spectrum for utilities and other critical infrastructure industries. To this end, UTC supports the Commission's tentative conclusions to continue to license secondary and primary telemetry in the 216-220 MHz and 1.4 GHz bands on a site-by-site, first-come-first-served basis. UTC proposes a flexible channel plan and supports the use of mileage separations between telemetry services in the 1.4 GHz band. It also supports coordination of telemetry services by UTC or other certified coordinators, which will prevent interference between licensed facilities in the bands. The potential for interference to WMTS may be further reduced by reserving the 1429.5-1432 MHz band for utility telemetry, and in accordance with an agreement between AHA and Itron. In this regard, utility telemetry should include the entities and services encompassed by the Commission's definition of "Public Safety Radio Services."

UTC remains concerned that its CII members and affiliates may be denied a realistic opportunity for access to the 1392-1395/1432-1435 MHz spectrum, if the Commission does not limit eligibility to Band Managers that would be obligated to lease spectrum to unaffiliated entities. In that regard, the Commission should rely on its 700 MHz Guard Band Manager rules for licensing the 1392-1395/1432-1435 MHz bands. UTC also believes that the prospects for PLMR access to spectrum in these bands will be promoted to the extent that the Commission creates two licenses in this band in each of six regions, comparable to the REAGs used in the 220-222 MHz Phase II auction.

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

In the Matter of)	
)	
Reallocation of the 216-220 MHz,)	WT Docket No. 02-08
1390-1395 MHz, 1427-1429 MHz,)	RM-9267
1429-1432 MHz, 1432-1435 MHz,)	RM-9692
1670-1675 MHz and 2385-2390 MHz)	RM-9797
Government Transfer Bands)	RM-9854
)	RM-9882

**COMMENTS OF THE
UNITED TELECOM COUNCIL**

The United Telecom Council ("UTC") hereby submits its Comments on the *Notice of Proposed Rulemaking* in the above-captioned proceeding.¹

I. INTRODUCTION

UTC is the national representative on communications matters for the nation's electric, gas, and water utilities, natural gas pipelines and other critical infrastructure industry ("CII") entities. 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. Together

¹ Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz and 2385-2390 MHz Government Transfer Bands, *Notice of Proposed Rulemaking*, WT Docket No. 02-08, FCC 02-15 (released February 6, 2002) (the "Notice", "NPR").

with the Critical Infrastructure Communications Coalition (“CICC”)², UTC represents the telecommunications and information technology interests of virtually every utility, pipeline, railroad and other CII entity in the country.

The members of UTC and its affiliates are directly affected by the proposals under consideration in this proceeding. For them, telemetry services are the communications backbone for remote monitoring and control of critical infrastructure; and private land mobile radio (PLMR) services are the network nerve-endings for voice dispatch and data applications for routine maintenance and emergency restoration. “Any failure in their ability to communicate by radio could have severe consequences on the public welfare.”³ Therefore, network reliability and integrity must be maintained to the highest standards for the safety of the work crews and the public that relies on the services that they help deliver. As such, UTC is pleased to have the opportunity to submit its comments on the proposals pertaining to telemetry and other potential services envisioned in the *Notice*.

² The CICC is composed of the following organizations: The American Gas Association, the American Petroleum Institute, the American Public Power Association, the American Water Works Association, the Association of American Railroads, the Edison Electric Institute, the Interstate Natural Gas Association of America, the National Association of Water Companies, the National Rural Electric Cooperative Association and UTC.

³ See, In the Matter of Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies; Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz; Petition for Rule Making of The American Mobile Telecommunications Association, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd. 22709, 22746 at ¶176 (2001)(“*BBA97 Report and Order*”).

II. TELEMETRY IN THE REALLOCATED BANDS

A. UTC supports the Data Flow Petition to amend Sections 90.35 and 90.259 to permit fixed telemetry in the 216-220 MHz band.

The *Notice* seeks comment on Data Flow's petition for rulemaking requesting that the Commission amend Sections 90.35 and 90.259 of the Commission's Rules to allow the use of fixed telemetry in the 216-220 MHz band.⁴ Specifically, Data Flow requests that the "Class of Stations" column for frequency band 216-220 of the Industrial/Business Pool Frequency Table in Section 90.35 be changed from "Base or mobile" to "Fixed, base, or mobile." Data Flow also requests that Section 90.259 be amended to substitute the word "shall" for "may" to read as follows: "Base stations authorized in these bands *may* be used to perform telecommand functions with associated mobile telemetering stations."⁵

UTC incorporates by reference its comments in support of Data Flow's petition that were filed in docket RM-9882.⁶ Data Flow requests a minor revision to the Rules that will facilitate the provision of public safety radio services by utilities and pipeline companies.⁷ Fixed telemetering in the 216-220 MHz band is necessary because of inadequate spectrum available to support the reliability

⁴ *Notice* at ¶¶ 8, 45-46, *citing* Petition for Rulemaking filed by Data Flow Systems, Inc. March 6, 2000 (RM-9882) ("*Data Flow Petition*").

⁵ *Notice* at ¶ 45.

⁶ Comments of UTC in RM-9882, filed June 26, 2000.

⁷ See e.g., *BBA97 Report and Order*, 15 FCC Rcd. at 22712, ¶ 5.

standards demanded for utility applications. Although the Commission will no longer accept applications for telemetry at 216 MHz and has decided to retain secondary licensing of telemetry services in the 217-220 MHz band, utilities could benefit from the proposals in the *Data Flow Petition*. Therefore, UTC supports amending the Commission's Rules to permit fixed telemetry services in the 217-220 MHz band.

B. UTC supports the Itron/AHA agreement concerning frequency allocation in the 1427-1432 MHz band.

The *Notice* proposes to codify a band swap proposal from AHA and Itron that would in effect switch the primary allocation between Wireless Medical Telemetry Service (WMTS) and Telemetry in seven defined geographic areas,⁸ so that WMTS would be primary at 1429.5-1432 MHz in these areas, and Telemetry would be primary at 1427-1429.5 MHz.⁹ The Commission tentatively concluded that it is in the public interest to support AHA and Itron's proposal in broad terms, and that a footnote should be added to the Table of Frequency Allocations that would elevate the telemetry allocation to primary status in the 1427-1429.5 MHz band in the seven geographic areas, and specify WMTS as primary in the corresponding seven areas in the 1429.5-1432 MHz band.¹⁰

⁸ AHA/Itron propose switching the primary allocation between medical telemetry and telemetry in the following locations: Pittsburgh, PA, Washington, DC metropolitan area, Richmond/Norfolk, VA, Austin/Georgetown, TX, Battle Creek, MI, Detroit, MI and Spokane, WA. *Notice* at ¶50, n. 135.

⁹ *Notice* at ¶ 50, 52, *citing* attachment to Itron comments filed March 8, 2001, entitled Joint Statement of Position by the American Medical Hospital Association Task Force on Medical Telemetry and Itron, Inc. (*Joint Statement*).

¹⁰ *Notice* at ¶ 52.

UTC supports codifying the proposed rule change, which would protect incumbent utility telemetry in the seven geographic areas while providing equivalent spectrum for WMTS. This spectrum swap is an equitable resolution that accommodates the interests of all the affected services in the respective bands. To the extent that the Commission tentatively concludes that the public interest would be served in broad terms by spectrum swaps, such as between AHA/Itron, it should not sanction other swaps that serve the interests of certain services at the expense of others.

C. UTC supports limiting telemetry in the 1.4 GHz band to utility telemetry.

In the *Notice* the FCC recognized that it might be necessary to restrict the service uses of the telemetry allocation to telemetry operations used by utility companies or to otherwise adopt technical restrictions to protect adjacent WMTS operations, in light of AHA's concerns on the record about interference from incompatible operations.¹¹

UTC supports the comments of AHA that propose limiting telemetry in the 1.4 GHz band to utility telemetry. UTC echoes AHA's evaluation of the merits of each of the three options for protecting the WMTS, and it offers the following suggestions for defining a utility that would be eligible to be licensed in the 1.4 GHz bands, if the FCC adopts the proposal to limit telemetry in the 1.4 GHz band to utility telemetry. A suitable definition for a utility could be borrowed from the *BBA97 Report and Order*, where the Commission concluded that utilities provide

¹¹ *Notice* at ¶¶ 54-55, *citing*, AHA *Ex Parte* comments, filed on August 29, 2001 at 2 and AHA *Ex Parte* comments, filed on June 12, 2001, at 3.

public safety radio services because they 1) have an infrastructure that they use primarily for the purpose of providing essential public services to the public at large; and 2) need, as part of their regular mission, reliable and available communications in order to prevent or respond to a disaster or crisis affecting the public at large.¹² Crafting a definition for utility telemetry in the 1.4 GHz bands based upon this two-pronged test would encompass the wide variety of entities that provide utility service.¹³

D. UTC supports site-by-site licensing of telemetry on a first-come-first-served basis.

In the *Notice* the Commission tentatively concluded that it would continue to license telemetry services in the 217-220 MHz and the 1427-1432 MHz bands on a site-by-site basis.¹⁴ The Commission recognized that a remote possibility existed that mutually exclusive applications could be received for primary telemetry in the 1427-1432 MHz, and it invited comment on the standards that should be used for determining mutual exclusivity in these bands.¹⁵ Comment was also invited on the application process and the license area for primary telemetry in the 1.4 GHz bands.¹⁶

¹² *BBA97 Report and Order*, 15 FCC Rcd. at 22746, ¶ 75.

¹³ UTC agrees with API that “utility telemetry” should be broadly construed to permit such services as AMR and MAS by CII in this band. See Comments of API in Docket No. 00-221, filed March 8, 2001, at 7.

¹⁴ *Notice* at ¶¶ 59-60.

¹⁵ *Id.* at ¶ 61.

¹⁶ *Id.*

UTC supports first-come-first-served site-by-site licensing of telemetry in the 1.4 GHz band. This process has worked extremely well for telemetry applications, as well as other areas of private wireless service, and UTC sees no reason to alter that framework. Telemetry can be coordinated easily to avoid interference, and first-come-first-served processing would be consistent with the FCC's obligation to consider licensing schemes that avoid the receipt of mutually exclusive applications. With this licensing method, mutual exclusivity is extremely rare. Moreover, UTC agrees with the Commission's assessment that geographic licensing "would be neither workable nor efficient," for secondary telemetry generally and would conflict with WMTS in the 1427-1429.5 MHz band and the seven "carve-out" areas in the 1429.5-1432 MHz band specifically.¹⁷ Therefore, UTC supports the FCC's tentative conclusion that it should retain site-by-site licensing on a first-come-first-served basis in all frequency bands considered for telemetry in this proceeding.

Availability of frequencies should be determined according to strict mileage separation standards that could be waived only upon approval by the Commission in accordance with Section 1.925 of the Commission's Rules.¹⁸ UTC agrees with the Commission's proposal to adopt a separation distance between co-channel fixed systems of at least 113 km (70 miles). This would be consistent with the mileage separations for Multiple Address Systems (MAS), and would be appropriate given that the propagation characteristics in the 1.4

¹⁷ *Id.* at ¶¶ 59-60.

¹⁸ 47 C.F.R § 1.925.

GHz bands are expected to be somewhat similar to those of 900 MHz MAS systems.¹⁹ Mobile operations should operate on the same geographic boundaries as fixed systems. However, as an alternative, mobile telemetry operations could be disabled automatically or operate on reduced power within proximity of WMTS to avoid potential interference.

E. UTC supports grandfathering incumbents on a secondary basis in the 1429.5-1432 MHz band.

If the Commission grandfathers incumbent operations in the 1427-1432 MHz bands, it inquires whether to give them the option of requesting primary status prior to the licensing of new entrants.²⁰ UTC prefers that grandfathered incumbents retain their secondary status. The incumbents are predominantly operating in remote locations where secondary status will not as a practical matter impact operations.²¹ It is not clear that primary status for grandfathered incumbents would necessarily confer a public interest benefit, but it may preclude, or have the effect of precluding new entrants from competing in this band. Therefore, UTC requests that the Commission retain secondary status for incumbents, if it grandfathers them.

¹⁹ 47 C.F.R. § 101.105(c)(3)(i).

²⁰ *Notice* at ¶ 62. The Commission has clarified that the option would only be available to facilities grandfathered and operating in the 1429.5-1432 MHz band as of the date of this item. *Id.*

²¹ See Appendix B to the *Notice*.

F. UTC supports frequency coordination of 217-220 MHz and 1.4 GHz telemetry.

In the *Notice*, the FCC proposes that all new telemetry operations or modified existing telemetry operations licensed on a site-by-site basis be required to include a showing of frequency coordination in accordance with Section 90.175 of the Commission's Rules.²² UTC supports this proposal, which would prevent interference and facilitate the efficient and rapid processing of applications in these bands.²³

Frequency Advisory Committees ("FACs", "coordinators") provide important spectrum management functions in the bands subject to coordination. Their day-to-day examination of applications and knowledge of existing systems help to protect both incumbents' and new applicants' operations from harmful interference, to the extent that the FCC's Rules permit. Also, CII entities are very familiar with the coordination process, as land mobile and telemetry systems in other bands have been subject to the coordination process for decades.

Given the sensitive nature of the potential co-channel and adjacent channel operations in these bands,²⁴ it is particularly important that frequency coordination requirements be established here. Therefore, UTC supports the

²² *Notice* at ¶ 65.

²³ UTC assumes that AHA will continue to act as the designated coordinator of primary WMTS in its modified allocation of 1427-1429.5 MHz band and the seven geographic carve-outs in the 1429.5-1432 MHz band.

²⁴ The 217-220 MHz band will be shared between Low Power Radio Service and secondary telemetry; the 1427-1429.5 MHz band will generally be shared between WMTS and secondary telemetry; and the 1429.5-1432 MHz band will generally operate adjacent to WMTS.

Commission's proposal to require prior coordination of new or modified facilities in these bands. Based on its long experience as an FAC, including work on many telemetry systems, UTC further offers itself as a coordinator for telemetry systems on the 217-220 MHz, 1427-1429.5 MHz and 1429.5-1432 MHz bands, on either an exclusive or competitive basis.

G. UTC proposes technical rules for telemetry.

In the *Notice*, the Commission inquires as to the technical rules that should be established under Part 90 for telemetry operations in the 216-220 MHz band, the 1427-1429.5 MHz band, and the 1429.5-1432 MHz band.²⁵ UTC proposes technical standards that are tailored to the challenges facing telemetry operations in the 1.4 GHz band. These standards should protect SPASUR sites, adjacent TV Channel 13, LPRS, AMTS and "218-219" service – all found in this spectrum -- from harmful interference. They should also prevent interference to WMTS in the 1427-1429.5 MHz band from secondary telemetry in that band or from primary telemetry in the 1429.5-1432 MHz band. Therefore, UTC recommends the following channel plan and suggests limits on power and antenna height, bandwidth, and emissions for secondary and primary telemetry in these bands.

UTC believes that no channel plan is necessary or appropriate for secondary telemetry in the 217-220 MHz band and the 1427-1429.5 MHz band. Telemetry operations have successfully coexisted with other users of these bands for decades, and will likely continue to do so if frequency coordination

²⁵ *Notice* at ¶¶66-69.

requirements are adopted in this proceeding for secondary telemetry. Moreover, secondary operations are authorized only on a non-interference basis, and must immediately cease operations in the event these operations result in harmful interference to other operations licensed on a primary basis. In order to encourage the continued use of these bands for telemetry applications, UTC recommends that the FCC refrain at this time from adopting a formal channel plan in these bands.

UTC proposes that primary telemetry in the 1429.5-1432 MHz band be licensed with a nominal bandwidth of 25 kHz. Licensees should be permitted to aggregate up to 500 kHz of contiguous spectrum (.5 MHz) and should be permitted to subdivide each channel into quarter increments that would each be 6.25 kHz wide. UTC also recommends that simplex operations be permitted, and that facilities be separated by a minimum distance of 113 km (70 miles).²⁶ UTC believes that its channel plan strikes an equitable balance among spectral efficiency, flexibility and practicality.²⁷ This plan would provide incentives for equipment manufacturers to develop efficient technology, and allow sufficient flexibility for licensees to tailor their spectrum needs to the services they would provide and the equipment that would be available.

²⁶ *Supra* at 7.

²⁷ Aggregation and subdivision of channels would satisfy the wide range of potential applications in this band. For instance, a licensee could divide a 25 kHz channel into 12.5 kHz channels that could be integrated to support a MAS network. Conversely, a licensee could aggregate 25 kHz contiguous channels that would satisfy unique equipment specifications or service applications, as necessary.

The Commission's Rules generally require that licensees use the minimum power necessary for satisfactory operation, but that in no event shall the output power exceed prescribed limits for discrete bands.²⁸ The same general framework should apply to secondary telemetry in the 217-220 MHz band and the 1427-1429.5 MHz bands, as well as to primary telemetry in the 1429.5-1432 MHz band and the carve-out spectrum.

Specifically with respect to primary telemetry, to protect adjacent WMTS operations, maximum transmitter output power should be 1 watt EIRP in the 1429.5-1430 MHz band, no greater than 10 watts EIRP in the 1430-1431 MHz band, and no greater than 100 watts EIRP in the 1431-1432 MHz band. In the carve-out areas, telemetry should be limited to 100 watts or less EIRP in the 1427-1428 MHz band, 10 watts in the 1428-1429 MHz band and 1 watt in the 1429-1429.5 MHz band.

The maximum out-of-band emissions should be 150 uV/m (horizontal and vertical) measured over any 1 MHz with an averaging detector as measured at the interference site.²⁹ Finally, UTC recommends retaining the frequency stability requirements as specified at Section 90.213 for telemetry in the 1427-1435 MHz bands.³⁰

²⁸ 47 C.F.R. § 90.205 and §101.113.

²⁹ *Id.*

³⁰ 47 C.F.R. §90.213(a).

III. LAND MOBILE COMMUNICATIONS IN THE 1.4 GHz BAND

UTC has been an ardent advocate for additional spectrum for PLMR applications, and to that end it filed comments supporting an allocation for a site-by-site licensed Land Mobile Communications Service (LMCS) in the 1390-1392 MHz/1427-1429 MHz bands.³¹ Although the Commission rejected this allocation, the prospects for access to spectrum for PLMR use – even with a mandated auction -- in the 1392-1395 MHz/1432-1435 MHz band appeared promising after the release of the *Reallocation Report and Order*.³² However, the *Notice* raises doubts whether a realistic opportunity for PLMR exists even in this band. In response, UTC focuses on the service and eligibility rules for this band, and it supports strongly the comments filed by the LMCC.

A. The auction of 1392-1395/1432-1435 MHz should be limited to Band Managers.

The record reflects broad support for limiting eligibility to band managers as the only method that would result in private wireless access to the 1.4 GHz spectrum earmarked for auction.³³ UTC urges again that the FCC limit auction eligibility to Band Managers, and to prohibit CMRS services by lessees. To do

³¹ Comments of UTC in WT Docket No. 00-221, filed March 8, 2001 at 5.

³² Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz and 2385-2390 MHz Government Transfer Bands, *Report and Order and Memorandum Opinion and Order*, WT Docket No. 00-221, FCC 01-382 (released January 2, 2002) (the "*Reallocation Report and Order*" or "*Reallocation Proceeding*").

³³ Joint Comments of UTC and APPA in WT Docket No. 00-221 filed March 8, 2001 at 4-5; Comments of ITA filed March 8, 2001 at 5-7; and Comments of LMCC filed March 8, 2001 at 6-7.

otherwise would eliminate any chance that this allocation could be used to help ameliorate the need for additional private wireless spectrum.

UTC agrees with the LMCC that:

Neither geographic licensing nor traditional competitive bidding methods are capable of meeting private wireless spectrum needs. PMRS users generally require specialized, and often quite small, operating areas that can only be satisfied through site-specific licensing. Competitive bidding entails large costs in obtaining spectrum, with much of the resulting geographic area unwanted by the private wireless user. Those costs must be passed on to customers of completely unrelated industries. Because the business of private wireless is not the telecommunications business, private wireless eligibles generally cannot compete in a spectrum auction with commercial wireless providers whose business plans include means of recouping such costs through charges to third-party subscribers.³⁴

The Band Manager concept offers an acceptable hybrid of competitive bidding with licensing suited to private wireless needs. Under this formula, those interested in managing spectrum may participate in the auction, becoming Band Manager licensees. The rest of the PMRS community then may acquire spectrum tailored to the individual business's specific needs, including such factors as power levels, coverage areas, numbers of channels and technology in use. The Band Manager remains responsible for managing the spectrum to avoid harmful interference among its lessees, many of which may be critical infrastructure entities operating systems that require enhanced protection and reliability.

An open auction, without doubt, will result in spectrum acquired almost exclusively, if not entirely, by commercial providers that are able to justify larger

³⁴ LMCC Comments in the Reallocation Proceeding at 5-6.

acquisition costs. Commercial providers offering yet another CMRS service to the general public – in an era of slowing CMRS growth -- are of no use in meeting the needs of industrial and business private wireless end users. Band Manager licensees, on the other hand, can tailor their business plans to meet a variety of voice and non-voice service needs at minimal cost, since the actual system build-out is carried out by lessees that know their own needs best. LMCC submits that this spectrum will be put to better use, faster, if the auction is limited to Band Managers.

B. UTC recommends that at least two licenses be created in this band in each of six regions.

In the NPR, the Commission suggests that one nationwide license be created in this band. NPR at ¶ 35. This plan makes it unlikely that the spectrum could be made available to a wide variety of applicants (see NPR at ¶¶31, 74); moreover, UTC submits that this particular frequency band would benefit greatly from the competition and variety of visions brought by multiple licensees. UTC recommends that this band be licensed in at least two licenses of 1.5 MHz, paired, each (for a total of 3 MHz per license), and that these licenses be made available in each of six regions.³⁵ This plan would create a total of only twelve licenses in the band across the country.

UTC notes that currently, there is no equipment available for the fixed and mobile use for which this spectrum has been re-allocated, and the likely future use of the spectrum is unclear. The FCC has past experience of auction winners

³⁵ For the regions, UTC suggests the Commission use the Regional Economic Area Groupings (REAGs) employed in the 220-222 MHz Phase II auction.

whose plans for new spectrum in such circumstances turn out to be less than prophetic. UTC and the private wireless community as a whole are concerned that a single, nationwide block licensed to one user might remain fallow for some years, should this entity fail to realize its business plan for any of a number of reasons. Thus, the only spectrum in this proceeding potentially available for private land mobile use may lie unused and unusable to those needing it. Limiting licensees to Band Managers makes this less likely, since the licensee itself would not necessarily be building a system; however, even in a Band Manager arrangement, likely lessees would benefit from competition and more than one spectrum plan per market.³⁶ Multiple business plans may also drive demand for a variety of equipment for this band, attracting more manufacturers and thus, reducing prices for system infrastructure.

The same reasoning lies behind LMCC's and UTC's recommendation of licensing across six regions. The resulting geographic areas are large enough that even large private wireless entities, such as multi-state utilities, would likely be able to negotiate leases with one licensee. Moreover, the number of licenses would remain small enough for FCC administrative convenience and a rapid auction. However, some competition is needed to attract licensees, equipment manufacturers and thus, users to a band far removed from previous fixed and mobile allocations. Twelve licenses of 1.5 MHz, paired, each, will offer enough spectrum per license for Band Managers to meet the needs of many lessees and many thousands of end users, regardless of the services chosen.

³⁶ To allow flexible business plans, UTC recommends that the FCC not specify channel bandwidths for this spectrum.

C. The FCC should adopt the 700 MHz Guard Band Manager rules for the 1392-1395/1432-1435 MHz band.

The Commission asks many questions in the NPR about possible rules for this spectrum in connection with its proposed use of Part 27 for an overall regulatory framework. UTC concurs that the flexibility offered in Part 27 generally is appropriate for this spectrum, given the uncertainty surrounding its likely use. For questions relating to rules surrounding Band Manager licensing in this band, UTC recommends that the FCC look to its rules for 700 MHz Guard Band Managers (47 C.F.R. §27.601 *et seq.*).³⁷

Significant consideration and effort went into the Guard Band Manager rules. Provisions such as the limitation on licensee build-out versus leasing to non-affiliated entities, information to be included in agreements between Band Managers and lessees, and means to ensure compliance with FCC Rules all are found in the 700 MHz Guard Band Manager framework and need not be re-created. These provisions have yet to be proved inadequate or unworkable, since the 700 MHz guard bands are just beginning to be used.³⁸ UTC is confident that, should problems arise with this regulatory framework, the FCC will move

³⁷ Since this spectrum will not serve as a “guard band” between incompatible uses, however, UTC does not see a need for the restriction on cellular configurations adopted in the 700 MHz band. See 47 C.F.R. § 27.2(b). While rules should provide for protection of government incumbents, the interference protections and coordination requirements adopted in the 700 MHz band for adjacent public safety users also appear unnecessary.

³⁸ UTC notes that, due to demand by non-commercial users and the nature of some Band Manager business plans, some of the guard band licenses in the troubled 700 MHz band may be the first put to real use across the entire 60 MHz allocation.

quickly to correct them. The same corrections would no doubt apply to this and any other Band Manager spectrum.

IV. CONCLUSION

UTC urges that the FCC work expeditiously to adopt rules for the reallocated federal government spectrum as recommended herein.

Respectfully submitted,

UNITED TELECOM COUNCIL

1901 Pennsylvania Avenue, Fifth Floor
Washington, DC. 20006
(202) 872-0030

A handwritten signature in cursive script, appearing to read "Jill M. Lyon", written over a horizontal line.

Jill M. Lyon
Vice President & General Counsel

Brett W. Kilbourne
Director of Regulatory Services

March 4, 2002