

DOCKET NO. 07-100
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MEMORANDUM

FILED/ACCEPTED

MAY 24 2007

Federal Communications Commission
Office of the Secretary

TO: John Muleta
cc: M. Wilhelm; J. Knapp; I. Keltz; N. McGinnis

FROM: Henry Goldberg

RE: Interpretation of WMTS rules

DATE: February 22, 2005

07-100

As you suggested, the following is a brief memorandum on the background of the wireless medical telemetry service ("WMTS") issue that we discussed the other, as well as various approaches for a "fix."

Background

One portion of the 1427-1432 MHz band is allocated to general telemetry stations that are licensed under Part 90 of the rules and the other portion is allocated WMTS stations that are licensed by rule under Part 95 of the rules. The impetus for this arrangement was a joint proposal for a band plan that was submitted to the Commission by Itron, representing Part 90 telemetry interests, and the American Hospital Association Task Force on Medical Telemetry ("AHA"), representing the WMTS community. A copy of that plan is attached.

As you can see, a key feature of the band plan (see Section IV. B) is that Part 90 telemetry stations would be able to operate on a secondary basis on the WMTS frequencies and WMTS stations would be permitted to operate on a secondary basis on the Part 90 telemetry frequencies. This was intended to maximize efficiency and spectrum flexibility for each of the radio services and Itron and AHA proposed

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operating conditions that would minimize the potential for interference to primary stations.

When the Commission adopted a Report and Order in the allocation phase of the 1.4 GHz rulemaking, it explicitly created a secondary allocation for Part 90 telemetry stations operating in the WMTS portion of the band. Although it expressed no disagreement with the Itron/AHA proposal for secondary operations in both directions, however, it did not explicitly establish a corresponding secondary allocation for WMTS stations operating in the Part 90 telemetry portion of the band. Similarly, the Commission's Report and Order in the service rules phase of the rulemaking made no explicit provision for WMTS stations, to operate on a secondary basis in the non-WMTS portion of the band, stating only that WMTS operators had the option of applying for Part 90 licenses if they wanted to use that portion of the band.

It appears that the failure to provide explicitly for such operation of WMTS stations was inadvertent and, given, Itron's and AHA's clearly stated intent, the parties did not think it necessary to seek reconsideration to have the Commission make explicit that such WMTS usage **is** permissible.

Requiring WMTS operators to license their operations in the Part 90 portion of the band is impractical; would deny them the flexibility that the WMTS rules are intended to provide; and would preclude other licensed Part 90 operations that would not be precluded if WMTS were permitted to operate on a secondary basis as Itron and AHA had proposed. In this regard, there seem to be the following alternatives available to fix this problem.

Possible "Fixes":

- *Initiate a new rulemaking:* While certainly possible, this would preclude relief for health care providers in any reasonable period of time and would not be an efficient use of either the Commission's or the health care industry's resources.
- *Interpret the rules:* In response to a letter, the WTB could issue a formal declaratory ruling or an informal interpretation of the rules. This approach could be done expeditiously and would permit health care providers immediate access to the band on a secondary basis.
- *Waive the rules:* In response to a formal waiver request, the WTB could waive the rules to permit the WMTS usage that was originally intended. Such a waiver would not create a precedent, since there are unlikely to

¹ In consideration the fixes, bear in mind that, as best as we can determine, the service rules docket - WT Docket No. 02 - 8 - has not been terminated.

be similarly situated parties in other frequency bands. A waiver proceeding, however, may be more formal and time-consuming than necessary in these circumstances.

- *Clarification:* The Commission could, “*sua sponte*,” clarify the intent of the existing rules in the on-going WT Docket No. 02 - 8 proceeding. Knowing that this is the Commission’s intention, health care providers would have immediate access to the band on a secondary basis. This, of course, would be the simplest approach.

JOINT STATEMENT OF POSITION BY THE
AMERICAN HOSPITAL ASSOCIATION
TASK FORCE ON MEDICAL TELEMETRY AND ITRON, INC.

- I. This Joint Statement of Position expresses the intent of the undersigned parties to adopt a sharing plan for the assignment of licenses in the 1427-1432MHz band, to present the plan to the Federal Communications Commission ("FCC"), to propose the adoption of this band sharing plan and its codification into regulations by the FCC in ET Docket No. 00-221, and to take additional actions in furtherance of such plan.
- II. The parties to this Joint Statement of position are the American Hospital Association Task Force on Medical Telemetry ("AHA Task Force") acting in the interests of users and manufacturers of medical telemetry devices and systems and Itron, Inc. ("Itron") acting in the interests of users and manufacturers of utility telemetering devices and networks in the electric, gas, and water utility industries.
- III. Itron and several electric and gas utilities presently hold licenses to operate on a secondary basis in the 1427-1432MHz band to provide utility telemetry, including automated meter reading ("AMR"). The FCC has allocated the 1429-1432 MHz band on a primary basis to the Wireless Medical Telemetry Service ("WMTS").
- IV. The FCC has issued a Notice of Proposed Rulemaking in ET Docket No. 00-221 (the "NPRM") seeking comment on alternative allocation proposals for the 1427-1432 MHz band. The parties have determined that it serves the parties whose interests they represent for the FCC to allocate the 1427-1432 MHz band exclusively for "Utility Telemetry", being AMR and other utility industry telemetry use on the one hand, and for WMTS use, on the other, with priority of use and technical characteristics set forth below. Therefore:
 - A. The parties agree that each will propose in its filings regarding the NPRM, and cooperate to support during the course of the proceeding in Docket 00-221, that the 1427-1432 MHz band will be allocated to WMTS and Utility Telemetry on a co-primary basis *vis-à-vis* other uses. The parties further will propose that the FCC codify into the FCC rules the Frequency Management Plan, setting forth the primary and secondary status of WMTS and **Utility** Telemetry *vis-à-vis* one another throughout the United States, and the technical characteristics that will govern such use, all as set forth below.

B. Frequency Management Plan:

1. Except as set out in subsection B.3. below, licensees for Utility Telemetry will have primary status in 1429.5-1432MHz ("Utility Band"). Licensees for WMTS may operate in this band only on a secondary, non-interference basis to Utility Telemetry.
2. Except as set out in subsection B.3. below, licensees for WMTS will have primary status in 1427-1429.5MHz ("WMTS Band"). Licensees for Utility Telemetry may operate in this band only on a secondary, non-interference basis to WMTS.
3. Notwithstanding the frequency designations set out above, in the following geographic areas ("Utility Defined Areas"), in each of which Utility Telemetry have systems operating on or before February 1, 2001, the Utility Band will be the bands 1427-1429MHz and 1431.5-1432MHz and the WMTS band will be the band 1429-1431.5MHz:
 - a. Areas in which Utility Telemetry systems will continue to use the 1427-1429 band indefinitely:
 - i. Pittsburgh, Pennsylvania market (Westmoreland, Washington, Beaver, Allegheny, and Butler counties)
 - ii. Springfield, Virginia market (Montgomery, Prince William, Fairfax, Prince George's, and Charles counties, Alexandria City, District of Columbia)
 - iii. Richmond, Virginia market (Goochland, Powhatan, Hanover, and Henrico counties, Richmond City)
 - iv. Norfolk, Virginia market (Hampton City, Virginia Beach City, Chesapeake City, Portsmouth City, and Suffolk City)
 - v. Austin and Georgetown, Texas market (Williamson and Travis counties)
 - vi. Battle Creek, Michigan market (Calhoun County)
 - vii. Detroit, Michigan market (Oakland county)
 - viii. Spokane, Washington market (Spokane county)

b. Areas in which **Utility** Telemetry Systems will continue to use the 1427-1429 band on a primary basis until February 1, 2006. Such systems may not expand outside of the designated areas or add channels or frequencies. During this period, licensees for WMTS may operate in this band on a secondary, non-interference basis to such Utility Telemetry Systems, subject to the provisions described in subsection B.4 below. After February 1, 2006, such Utility Telemetry Systems shall be treated as secondary users in the WMTS Band, subject to the provisions described in subsection B.4 below, and WMTS licensees shall be treated as primary.¹

i. Baltimore, MD

Base Station A located at 39.308731N, -76.564498W, 139' above the ground, with 1 watt EIRP; service area #1 is a one mile radius centered around 39.2934N -76.5756W; service area #2 is a one mile radius centered around 39.3268N -76.5497W.

Base Station B located at 39.336944N -76.733333W, 284' above the ground, with 1 watt EIRP; service area is a one a one mile radius centered around 39.2969N -76.7391W.

ii. Santa Ana, CA.

Base Station located at 33.706669N - 117.789068W, 125' above the ground, with 1 watt EIRP; service area is a one mile radius centered around 33.69187N - 117.78234W.

iii. Long Island, N.Y.

Base Station located at 40.608778N - 73.762433W, 150' above the ground with 1 watt EIRP, service area is a one mile radius centered around 40.60249N - 73.76198W.

4. Co-channel use of the Utility Band by WMTS Licensees and co-channel use of the WMTS Band by Utility Telemetry Licensees will be permitted on a secondary, non-interference basis to any existing or future primary licensee of that band, as follows:

a. The co-channel **users** must be located at a sufficient distance apart to maintain a field strength of $< 150 \mu\text{V}/\text{m}$, H and V,

¹ Within 90 days of the date of execution of this joint statement of position, Itron will provide a list of the exact frequencies used in these Utility Telemetry Systems.

measured over any 1MHz with an averaging detector as measured at the interfered site.

- b. In the event of any dispute between the primary and secondary users, such dispute shall be resolved by reference to an industry-standard propagation study conducted at the expense of the secondary user and approved by the frequency coordinator/manager specified in Section III.C. below.

- 5. The maximum transmitter output power for Utility Telemetry shall be no greater than 1 watt EIRP in the 1429.5-1430.5MHz band, no greater than 10 watts EIRP in the 1430.5-1431.5MHz band, and no greater than 100 watts EIRP in the 1431.5-1432MHz band, *provided, however*, that in the Utility Defined Areas set out above, the maximum transmitter output power for Utility Telemetry shall be no greater than 100 watts EIRP in the 1427-1428MHz band, 10 watts in the 1428- 1428.5band, 1 watt in the 1428.5-1429 MHz band, and 10 watts in the 1431.5-1432 MHz band. The maximum transmitter output power (expressed in field strength) for WMTS shall be not greater than those limits specified in Part 95 of the FCC rules 740mV/m at 3 meters over 1MHz (160mW EIRP). The maximum level of "out-of-band" emissions between Utility Telemetry use and WMTS use and between WMTS use and Utility Telemetry use shall be no greater than 150uV/m, H and V, measured over any 1MHz with an averaging detector as measured at the interference site.

C .In accordance with the Frequency Management Plan set forth in Section B above, specific assignments in the Utility Band will be subject to prior frequency coordination by the designated Utility Telemetry frequency coordinator. Registration of licensed WMTS users in the WMTS Band into the frequency coordination database for the WMTS will be implemented through the American Society of Health Care Engineers ("ASHCE). Secondary uses of the bands must be coordinated/registered with the appropriate frequency coordinator/ manager prior to installation and operation. The parties shall urge the Commission to require ASHCE and the utility coordinator to provide access to each others data bases and to encourage communication and cooperation between them in carrying out their duties.

D. The parties agree to cooperate in proposing this band plan to the FCC and to take such additional actions as may be reasonably necessary in connection with seeking FCC adoption and codification of the band plan and frequency management plan described above, and to take such other action as shall not

prejudice either party's ability to retain the primary rights to at least 2.5 MHz of spectrum in the 1427-1432MHz band. Neither party will seek to implement other sharing of these channels with users and for uses not contemplated in this joint statement of position, without discussing it with the other party and giving such party the opportunity to participate fully in such discussions. . The parties agree to negotiate in good faith concerning any additional terms that may be required to implement the understandings in this joint statement of position.

E. This joint statement of position may be executed in multiple counterparts. Each counterpart shall be deemed an original, and collectively the counterparts shall constitute a single instrument

IN WITNESS WHEREOF, the parties have executed this joint statement of position as of this 8th day of March, 2001.

Itron, Inc.

American Hospital Association
Task Force on Medical Telemetry

By: /s/ Russ Fairbanks
Russ Fairbanks
Vice President & General Counsel

By: /s/ Mary Beth Savary Taylor
Mary Beth Savary Taylor
Director
Executive Branch Relations