

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

In the Matter of)	
)	
Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands)	WT Docket No. 12-70
)	
Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz)	ET Docket No. 10-142
)	
Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands)	WT Docket No. 04-356
)	

COMMENTS OF UTAM, INC.

I. INTRODUCTION AND BACKGROUND

UTAM, Inc. (“UTAM”) herewith submits its comments in response to the above-captioned Notice of Proposed Rulemaking and Notice of Inquiry.¹ In this Notice, the Commission proposes to increase the Nation’s supply of spectrum for mobile broadband by allowing for flexible use of spectrum currently assigned to the Mobile Satellite Service (“MSS”) in the 2 GHz band. If the Commission adopts the proposed rules, DISH Network (“Dish”) will be able to use its S Band licensed spectrum for both terrestrial and

¹ Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands, WT Docket No. 12-70, Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz, ET Docket No. 10-142, Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands, WT Docket No. 04-356, *Notice of Proposed Rulemaking and Notice of Inquiry*, FCC 12-32 (March 21, 2012) (“*Notice*”).

satellite use. The Commission recognizes that reclassifying the S Band will create the potential for interference to services in adjacent bands.² As discussed herein, S Band interference could drastically affect UTAM's recognized interest in the H Block and any modifications to the 2 GHz band for the benefit of Dish should impose on Dish the potential risk of devaluation of the H Block. Therefore, the FCC should require, as a condition of any terrestrial license awarded to Dish, that Dish be required to pay the \$12.7 million owed to UTAM from future H Block licensees and step into UTAM's shoes with respect to future reimbursement.

UTAM is the non-profit, FCC-designated frequency coordinator for the unlicensed Personal Communications Service ("UPCS") band. UTAM was created by a coalition of UPCS device manufacturers, in cooperation with the FCC, as a novel regulatory experiment to facilitate a joint clearing of microwave users from the UPCS band and maximize deployment of UPCS devices. As a result of UTAM's efforts over the past 16 years, no incumbent microwave users lawfully operate in the 1910-1930 MHz band, a testament to the FCC's successful policies and the significant efforts of the UPCS industry.

To date, the cost of clearing incumbents from the PCS band has totaled \$50.8 million. Originally, UTAM's costs for clearing the 1910-1930 MHz band were envisioned to be recovered from membership fees and per-device fees associated with the sale of the sale of UPCS products that operate in the 1.9 GHz band. However, the FCC reallocated the 1910-1920 MHz band from UPCS in 2004.³ The 1910-1915 MHz band,

² Notice ¶¶ 34-5.

³ Improving Public Safety Communications in the 800 MHz Band, Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channel, WT Docket 02-55, et al, *Report and Order*,

along with the 1990-1995 MHz band, became the “G Block” and was licensed to Sprint in exchange for its rebanding of the 800 MHz band.⁴ The 1915-1920 MHz band, in conjunction with the 1995-2000 MHz band, became the “H Block,” which the Commission planned to license at a later date.⁵ Because the 1910-1920 MHz licensees would benefit from UTAM’s band-clearing efforts, the Commission determined that the clearing costs should be divided between UTAM and the licensees *pro rata*. UTAM would be responsible for 1/2 of the cost, since its members would retain use of 10 MHz of the original 20 MHz UPCS band, or \$25.2 million. And, the G and H Block licensees would each reimburse UTAM for 1/4 of the cost of clearing, or \$12.7 million per block. Indeed, the Commission conditioned Sprint’s receipt of the G Block license upon its reimbursing UTAM in this amount.

Currently, UTAM has a number of longer term fixed financial obligations and an offsetting expectation of future revenue from the H Block licensees. In fact, the amounts owed by H Block licensees would fully cover all outstanding UTAM payment obligations. Unfortunately, UTAM cannot satisfy such liabilities unless the H Block auction occurs. UTAM has been at “net zero” for a number of years, merely waiting to be reimbursed for clearing the H Block before it can close down. UTAM’s members have paid the *pro rata* cost of clearing the 1920-1930 MHz block, which is the portion of

Fourth Report and Order, Fourth Memorandum Opinion and Order, and Order, FCC No. 04-168 (released August 6, 2004) (“800 MHz R&O”); Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00-258, et al, *Sixth Report and Order, Third Memorandum Opinion and Order, and Fifth Memorandum Opinion and Order*, FCC 04-219 (September 22, 2004) (“UPCS R&O”).

⁴ 800 MHz R&O.

⁵ UPCS R&O.

the band that is still available for unlicensed products. Once UTAM receives the H Block payment, it will close down, thereby freeing its members from the administrative costs and processes associated with complying with UTAM requirements.

II. ANY MODIFICATIONS TO THE 2 GHZ BAND FOR THE BENEFIT OF DISH MUST ADDRESS THE POTENTIAL DEVALUATION OF THE H BLOCK

The 1915-1920 MHz band (the “lower H Block”) is paired with the 1995-2000 MHz band (the “upper H Block”). Because these two bands are paired, any devaluation to the upper H Block band equally devalues the lower H Block. To ensure fairness to UTAM members and creditors, the Commission’s current proposals for MSS spectrum should either provide substantial protection to the upper H Block, or recognize that the H Block is being devalued to benefit the licensee in another band.

The essential problem, as noted by the Commission, is that converting the 2000-2020 MHz band from an MSS uplink to a terrestrial uplink will create “potential harmful electromagnetic interference” with the adjacent terrestrial downlink — the upper H Block.⁶ Unless the Commission protects the upper H Block and requires out-of-band attenuation of Dish signals to $70 + 10 \log P$ (at minimum) at the 2000 MHz band edge, interference will render the upper H Block practically useless. Indeed, the benefit of flexible use of the S band that Dish will receive under this proposed rulemaking will come at the expense of any future H Band licensee.

The FCC should recognize that modification of a band in a manner that inures to the benefit of another licensee is no different than sacrificing the interests of future H

⁶ Notice ¶ 36, (“Given this statutory directive and and considering that the 1995-2000 MHz block is adjacent to existing broadband PCS downlink operations, it is likely that [the 1995-2000 MHz] band will be used for terrestrial downlink operations. This will exacerbate the existing potential for harmful interference between downlink operations below 2000 MHz and uplink operations above 2000 MHz.”)

Block licensees — in which UTAM has an interest — in order to increase the utility of Dish’s spectrum. As the Commission mentioned in the Notice, the National Broadband Plan states that the “[e]xercise of [the option to reallocate the S-Band] should be conditioned on . . . appropriate consideration for the step-up in the value of the affected spectrum.”⁷ While UTAM does not take a position on the public interest benefits of increasing the utility of Dish’s spectrum, the Commission should recognize that this use reallocation will increase the value of Dish’s spectrum, to the detriment of a future H Block licensee and UTAM.

The devaluation of the H Block could in fact, render the upper H Block into no more than a guard band for Dish, as opposed to scenarios where Dish is required to implement an internal guard band using its own spectrum. The Commission noted that “commenters to the 2 GHz Public Notice have suggested that a guard band of 5 MHz or more would be necessary to prevent interference between downlink operations in the 1930-1995 MHz and uplink operations in 2000-2020 MHz.”⁸ And, if the upper H Block is unusable, the lower H Block will be also. In that case, the H Block will remain unlicensed, and UTAM will not be repaid for the expense of clearing the lower H Block. The Commission should recognize the increased utility Dish will receive from the ability to employ the full 40 MHz in the S Band.

To ensure that UTAM and its creditors are treated fairly, should the Commission adopt changes to the 2 GHz band resulting in any step-up in value to Dish, Dish should be required to step into the shoes of future H Block licensees with respect to

⁷ Notice ¶ 13.

⁸ Notice ¶ 36.

reimbursement of UTAM. The Commission should condition the grant of Dish's flexible-use license on Dish's *pro rata* repayment of the H Block clearing costs to UTAM. To the extent that Dish, or any other party, believes value still persists in the H Block, the Commission could provide for a right of reimbursement against the future H Block licensee — presuming that the license remains marketable. This solution places the risk of future marketability appropriately upon Dish, not UTAM.

III. CONCLUSION

In sum, UTAM has a substantial interest in the viability of the H Block. It is dependant on a successful H Block auction to repay its original funding members and PCS licensees for costs associated with clearing the UPCS band. The reallocation of the S Band to terrestrial use, without adequate out-of-band attenuation, will devalue the H Block, and thereby thwart UTAM's ability to make its creditors whole. Because Dish will benefit from the devaluation of the H Block, it should step into the shoes of the future H Block licensee and make UTAM whole. To that end, the Commission should condition the reallocation of the S Block on Dish compensating UTAM *pro rata* for the clearing of the lower H Block band.

Respectfully submitted,

/s/ Michael Stima

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