

**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
)	

REPLY COMMENTS OF UTAM, INC.

UTAM, Inc. (“UTAM”) herewith submits its reply to comments on the above-captioned Notice of Proposed Rulemaking and Notice of Inquiry.¹ In its original comments, UTAM noted that several proposed scenarios in the *Notice* would result in a reduction of the market value for the 1915-1920/1995-2000 MHz (“H Block”) band, and argued that DISH Network (“Dish”), as the beneficiary of 2 GHz Mobile Satellite Service (“MSS”) band changes, should bear the risk of any such devaluation. Specifically, UTAM argued that Dish should be responsible for the band clearing costs associated with the lower H Block, a \$12.7 million obligation that results in

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*”).

UTAM being forced to remain in existence and continuing administrative burdens for unlicensed manufacturers.

UTAM notes that a number of commenters, including the DECT Forum,² have advocated reallocation of the lower H Block to unlicensed use. While UTAM is clearly a proponent of unlicensed use, UTAM's members have rejected such a reallocation because existing manufacturers are not in a position to reinstate a per device fee on UPCS devices in order to pay the remaining \$12.7 million clearing obligation. If the FCC had never reallocated the H Block from unlicensed, in all likelihood the obligation would have been repaid by now. However, the FCC reallocated the band away from unlicensed use almost a decade ago.³ In the intervening time, UTAM's members have fully satisfied the clearing costs associated with the 1920-1930 MHz band and, as a direct result, eliminated the per device fee. That action was taken in reliance on the FCC's stated position that it would require the new licensee of 1915-1920 MHz to pay the balance of the clearing costs to UTAM upon licensing. The action was also viewed as necessary given the prevailing economic conditions and the very, very low margins on consumer electronics.

UTAM's members have concluded that reinstating a per device fee would not be economically feasible. As UTAM has noted, the unlicensed product market is highly competitive and margins on equipment are very, very low. Retailers of such devices, which tend

² Comments of the DECT Forum, WT Docket No. 12-70, ET Docket No. 10-142, and WT Docket No. 04-356 (May 17, 2012).

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, 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*").

to be larger electronics chains, would be highly unlikely to accept a price increase in devices already being marketed as a result of this unforeseen regulatory development. As a result, a per device fee is not a tax that could be spread evenly to users of the band, but rather would be a cost borne entirely by manufacturers. Many of UTAM's members might not be able to survive such a change in the 2 GHz business model.

The irony is that, if the FCC had never reallocated the band from unlicensed, the types of premium devices being sold a decade ago probably could have continued to bear a per-device fee without consumer repercussions. There is, however, a great difference between not eliminating a per device fee—with the effect that product costs are not *decreased*—and reinstating a new per device fee with the effect that product costs *increase*. The industry could have dealt with the former; it cannot deal with the latter.

While UTAM's members obviously would not object to the allocation of additional unlicensed spectrum, UTAM believes a reallocation to unlicensed must meet the same basic criteria as licensing of the spectrum to any other party—a precondition should be the repayment of the \$12.7 million to UTAM to permit UTAM to discharge its obligations. While an industry mechanism could then conceivably be created—or UTAM repurposed—to apply an industry cost-sharing mechanism to then compensate parties that have provided seed capital for the 1915-1920 MHz band, that obligation should be separate and apart from the current cost-sharing rules for the 1920-1930 MHz band. The reallocation of 1915-1920 MHz from AWS-2 to unlicensed is, legally and substantively, a new allocation of spectrum. UTAM's members, which voluntarily committed to clear what is now limited to the 1920-1930 MHz band, should not be involuntarily forced to take on a financial obligation for what is a completely new unlicensed band.

In sum, UTAM continues to believe that changes to the 2 GHz band that adversely financially impact the H Block should result in Dish, which stands to gain considerably, bearing the risk of devaluation. If the H Block is reallocated to unlicensed use—whether as a result of a policy decision to create additional unlicensed spectrum or as an outgrowth of the need to provide a guard band for PCS licensees—a new mechanism outside of UTAM must be created to address cost sharing for the lower H Block. It would not be good policy or legally permissible to require UTAM members to shoulder a financial obligation they have not agreed to bear .

Respectfully submitted,

/s/ Michael Stima

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