

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

In the Matter of	)	
	)	
Expanding Access to Broadband and Encouraging	)	GN Docket No. 13-114
Innovation through Establishment of an Air-	)	RM-11640
Ground Mobile Broadband Secondary Service	)	
for Passengers Aboard Aircraft in the	)	
14.0-14.5 GHz Band	)	

COMMENTS OF THE UTILITIES TELECOM COUNCIL AND  
WINCHESTER CATOR, LLC

The Utilities Telecom Council and Winchester Cator, LLC (“UTC/Winchester”) submit these Comments with respect to the Commission’s *Notice of Proposed Rulemaking*<sup>1</sup> in the above-captioned proceeding in which the Commission essentially adopts as its own a Petition for Rulemaking filed by Qualcomm<sup>2</sup> to open up the 14.0-14.5 GHz band to allow additional spectrum for leisure passenger airline travel air-to-ground communications services. UTC/Winchester’s Comments incorporate by reference their Application for Review<sup>3</sup> of the Commission’s Bureaus’ Order<sup>4</sup> that denied UTC/Winchester’s Petition for Rulemaking requesting that the same spectrum that is

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<sup>1</sup> *In the Matter of Expanding Access to Broadband and Encouraging Innovation through Establishment of an Air-to-Ground Mobile Broadband Secondary Service for Passengers Aboard Aircraft in the 14.0-14.5 GHz Band*, Notice of Proposed Rulemaking, RM-11640, FCC 13-66 (May 9, 2013) (“*Notice*”).

<sup>2</sup> Qualcomm, Petition for Rulemaking, RM-11640, filed Jul. 7, 2011.

<sup>3</sup> UTC/Winchester, Application for Review, RM-11429 (filed Jun. 14, 2013). UTC/Winchester also incorporate by reference their Reply submitted in the same proceeding. UTC/Winchester, Reply, RM - 11429 (filed Jul. 11, 2013).

<sup>4</sup> *In the Matter of Utilities Telecom Council and Winchester Cator, LLC*, Order, RM-11429, DA 13-1093 (Chiefs OET, Wireless Telecommunications, and International Bureaus) (rel. May 15, 2013) (“*Order*”).

subject to the pending Notice be made available for critical infrastructure industry fixed service operations.

As demonstrated in their Application for Review, the disparate treatment of the two Petitions without reasoned explanation was arbitrary and capricious. Faced with comparable technical proposals to use the same spectrum, each accompanied by detailed technical analysis, reasoned decision-making required a serious and consistently applied analysis of the two Petitions. Mere conclusory statements, accepting one proposal with no greater analysis than the assertion that the Commission believes that a “threshold case” has been made, while rejecting the other proposal saying little more than the Bureaus “are not convinced,” do not satisfy this fundamental APA requirement.

UTC/Winchester requested in their Application for Review that their Petition be reinstated and be included in a further notice of proposed rulemaking that would allow consideration, side-by-side with the Qualcomm Petition. UTC/Winchester repeats that request in this proceeding and further requests that, if and to the extent that this proceeding goes forward on its separate path, any decision in this proceeding be made subject to the outcome of UTC/Winchester’s pending Application for Review.

Respectfully submitted,

**UTILITIES TELECOM COUNCIL**

**WINCHESTER CATOR, LLC**

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