

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Special Access for Price Cap Local Exchange Carriers;	)	WC Docket No. 05-25
	)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	)	RM-10593
	)	

**COMMENTS OF THE UTILITIES TELECOM COUNCIL**

Pursuant to Section 1.405 of the Commission’s Rules, the Utilities Telecom Council (“UTC”) hereby files its comments in support of the petition for reconsideration by the Blooston Private Microwave Licensees (“Petitioners”) in the above-referenced matter.<sup>1</sup> UTC agrees with Petitioners that the Commission should categorically exclude Part 101 private and non-common carrier microwave licensees from the data collection requirements for special access services. In addition, the Commission should also categorically exclude non-common carriers that are licensed under Part 90 in the Wireless Broadband Services frequency band, 3650-3700 MHz.<sup>2</sup> UTC agrees with Petitioners that the Commission should treat similarly situated entities similarly and that requiring private licensees to contribute to the Commission’s special access data collection would result in inconsistent and arbitrary regulations that would represent an undue burden for these licensees, which will not substantially advance the Commission’s goals.

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<sup>1</sup> Petition for Reconsideration of the Blooston Private Microwave Licensees in WC Docket No. 05-25 (filed Dec. 6, 2013)(hereinafter “Petition”). *See also* Special Access for Price Cap Local Exchange Carriers, *Report and Order*, WC Docket No. 05-25, 28 FCC Rcd. 13544 (2013)(“*Report and Order*”).

<sup>2</sup> *But see Report and Order* at ¶13 (excluding “Private land mobile radio service authorization holders regulated under Part 90 of the Commission’s rules except for holders of authorizations under Part 90 for the provision of point-to-point fixed microwave services and authorizations in the Wireless Broadband Services frequency band, 3650-3700 MHz), *emphasis added*.

## **I. Introduction.**

UTC is the global trade association for the telecommunications and information technology interests of electric, gas and water utilities, pipeline companies and other critical infrastructure industries (CII). Its members own, manage or control extensive communications networks that they use to support the safe, reliable and efficient delivery of essential energy and water services to the public at large. As such, these communications networks are used to provide private internal communications.

UTC's members would be directly and adversely affected if the Commission requires that they contribute to the special access information collection. Utilities have literally thousands of licenses in the Part 101 fixed point-to-point services, and in addition they have a very large and growing number of licenses in the Part 90 Wireless Broadband Services. These Part 101 fixed point-to-point microwave and Part 90 Wireless Broadband Services licenses are used for internal communications. For example, utilities use Part 101 fixed point-to-point microwave licenses to support supervisory control and data acquisition (SCADA) systems that are used to monitor and control the operation of substations and electric transmission and distribution infrastructure. In addition, utilities use Part 90 Wireless Broadband Services in the 3650-3700 MHz band to support advanced metering and smart grid applications. Thus, UTC's members are not *Providers, Purchasers*, or entities that provide *Best Efforts Business Broadband Internet Access Services* in a price cap area, and should not be required to contribute to the special access information collection.

## **II. The Commission Should Not Require Licensees of Private Microwave or Wireless Broadband Services to Contribute to the Special Access Information Collection.**

UTC supports the Petition for Reconsideration. Petitioners observe that when the Commission listed the entities that are categorically excluded from contributing to the special access data collection it did not list private fixed point-to-point microwave licensees. Moreover, Petitioners observe that the Commission explained that:

. . . we point out that these categorical exclusions do not include common carriers (wired or wireless), mobile wireless service providers, cable system operators even if they only provide video program services, international service providers, satellite service providers, or entities that

hold authorizations issued by the Federal Communications Commission (FCC) for the provision of fixed point-to-point microwave services.<sup>3</sup>

Petitioners ask that “if the Commission intended to exclude such entities under the above-quoted language because they do not hold their Part 101 licenses ‘for the provision of fixed point-to-point microwave services,’ it is respectfully requested that the Bureau clarify this intent.”<sup>4</sup> Alternatively, Petitioners ask that “[i]f the Bureau instead intended to impose the reporting requirement on all Part 101 microwave licensees, it is respectfully submitted that the Bureau should reconsider this decision,” because it would result in inconsistent regulations that would represent an undue burden on private microwave licensees, which would not substantially advance the Commission’s goals.<sup>5</sup>

UTC agrees with Petitioners that the Commission should either clarify that it did not intend to require private microwave licensees to contribute to the special access information collection, or alternatively the Commission should reconsider its decision to impose the reporting requirement on all Part 101 microwave licensees, as explained more fully below. In that regard, UTC observes that when the Commission listed the entities that are excluded from contributing to the special access information collection, it excluded “[p]rivate land mobile radio service authorization holders regulated under Part 90 of the Commission’s rules except for holders of authorizations under Part 90 for the provision of point-to-point fixed microwave services and authorizations in the Wireless Broadband Services frequency band, 3650-3700 MHz.”<sup>6</sup> Not only does this indicate that all point-to-point microwave licensees are required to contribute, but that all Wireless Broadband Service licensees in the 3650-3700 MHz band are required to contribute, as well. For many of the same reasons that Petitioners oppose requiring private microwave licensees to contribute to the special access information collection, UTC also believes that the Commission should not impose these reporting requirements on Wireless Broadband Services licensees

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<sup>3</sup> Petition at 4, *citing* Report and Order at ¶13, *emphasis added*.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 4-6. Note that the Commission’s Rules for point-to-point fixed microwave services are provided under Part 101 and that the Commission incorrectly refers to “holders of authorizations under Part 90 for the provision of point-to-point fixed microwave services.”

<sup>6</sup> *Report and Order* at ¶13.

that use their facilities for private internal communications. Therefore, UTC requests clarification or reconsideration, so that Part 90 Wireless Broadband Service licensees at 3650-3700 MHz, as well as Part 101 private microwave licensees, are not required to contribute to the special access information collection.

In its *Report and Order*, the Commission explained that it would categorically exclude certain entities in order to *narrow* the scope of the special access information collection.<sup>7</sup> It did not intend to capture entities that “happened to engage in an unrelated activity that subjects it to the Commission’s jurisdiction.”<sup>8</sup> It did not intend to include “the potentially hundreds of thousands of entities” that would fall under the Commission’s jurisdiction, just because they held a license.<sup>9</sup> The Commission recognized that requiring these entities to contribute to the special access information collection would “not contribute substantially to the economic analysis.”<sup>10</sup> Finally, the Commission recognized that the benefit would be outweighed by the burden of requiring these entities to contribute to the special access information collection.<sup>11</sup>

The same rationale for excluding these entities applies with equal force with regard to excluding Part 101 private microwave licensees and Part 90 Wireless Broadband Service licensees. First, Part 101 private microwave and Part 90 Wireless Broadband Service licensees are similarly situated with other entities that are categorically excluded. Like these other entities, they should not be required to contribute just because they happened to engage in an unrelated activity that subjects them to the Commission’s jurisdiction. To paraphrase the Commission’s own words, “a [utility] that purchases a DS-1 to operate its business would be required to comply with the collection if it holds a private [microwave] license for communications with its drivers (and is therefore “subject to the Commission’s jurisdiction”).

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<sup>7</sup> *Report and Order* at ¶12.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

But if instead of holding its own wireless license the same [utility] purchases a commercial mobile radio service (CMRS) for those communications, and does not otherwise engage in an activity that would cause it to fall within the Commission’s jurisdiction, it would not be required to comply with the data collection.”<sup>12</sup> Therefore, the Commission should categorically exclude Part 101 private microwave and Part 90 private Wireless Broadband Services, because including them “would result in the non-uniform treatment of certain consumer categories,” in this case Part 101 private microwave and Part 90 private Wireless Broadband Services licensees.<sup>13</sup>

By the same token, including them would dramatically increase the number of reporting entities – far beyond the FCC’s intent. The pool of respondents was only estimated at 6500 by the Commission.<sup>14</sup> If Part 101 microwave licensees and Part 90 private Wireless Broadband Service licensees were included, there would be many more thousands of respondents that would be swept within the special access information collection.<sup>15</sup> Therefore, including Part 101 private microwave and Part 90 private Wireless Broadband Services licensees would dramatically expand the scope of the special access information collection, contrary to the intent of the Commission to *narrow* it.<sup>16</sup>

Including Part 101 private microwave licensees and Part 90 private Wireless Broadband Services licensees would also not contribute substantially to the economic analysis because they are *Purchasers* rather than *Providers* of special access services.<sup>17</sup> Whatever information they could provide would not

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<sup>12</sup> *Id.* at ¶11.

<sup>13</sup> *Id.* at ¶12.

<sup>14</sup> *Id.* at n. 37, citing *Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested*, 78 Fed. Reg. 9911 (Feb. 12, 2013) (providing an initial estimate of 6,386 respondents).

<sup>15</sup> A search of the Universal Licensing System (ULS) database shows that there are 57397 active regular licenses in the microwave Industrial/Business and Public Safety pools. In addition, there are 1731 active regular licenses in the Wireless Broadband Services at 3650-3700 MHz.

<sup>16</sup> See *NPRM* at ¶12, citing *Special Access Data Collection Order*, 27 FCC Rcd at 16408-09, App. B, para. 70 (listing “price cap regulated incumbent LECs, competitive LECs, interexchange carriers, cable operators, and companies that provide fixed wireless communications services” in addition to some entities providing “best efforts” services among those required to contribute to the special access data collection.)

<sup>17</sup> *Id.* (explaining that “the analysis of the collected data will rely more heavily on the data obtained from *Providers*,

be as beneficial as the information that would be provided by commercial telecommunications providers that are providers of special access services. Moreover, as the Petitioners point out, they “have not heretofore been required to collect such data in the detail and categories required by the Commission,” and therefore “would not contribute substantially to the Commission's ultimate analysis of price cap special access prices, terms and conditions.”<sup>18</sup> Therefore, UTC agrees with Petitioners that private microwave licensees and private Wireless Broadband Service licensees would not substantially advance the Commission’s economic analysis of the special access market.

Finally, any benefit would be outweighed by the burden of requiring these entities to contribute to the special access information collection. Private microwave licensees and private Wireless Broadband Services licensees at 3650-3700 MHz would need to go to substantial expense and effort to collect the information that is required under the collection. Conversely, the information that they provide would be marginally beneficial to analyzing the special access market. The information from commercial service providers of special access services would provide far more beneficial information, and commercial service providers have easy access to that information. Therefore, the Commission should not require private microwave licensees or private Wireless Broadband Services licensees at 3650-3700 MHz to contribute to the special access information collection, because doing so would represent an undue burden.

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*e.g., Locations served and prices charged at the circuit-level, than the limited information on terms and conditions obtained from Purchasers.”) See also Special Access Data Collection FNPRM, 27 FCC Rcd at 16346, para. 68 (proposing to undertake econometric modeling to develop panel regressions on special access prices by taking into account, among other things, the number of facilities-based competitors and the characteristics of purchased service).*

<sup>18</sup> Petition at 5.

## **CONCLUSION**

WHEREFORE, UTC respectfully requests that the Commission provide clarification or reconsideration so that licensees that use point-to-point microwave and Wireless Broadband Services at 3650-3700 MHz for private internal communications are not required to contribute to the special access information collection. Application of the information collection requirements on these licensees would result in non-uniform application of regulations on similarly situated entities; would dramatically increase the number of entities that would be required to report; would represent an undue burden on these licensees who do not currently collect this information; and would not substantially advance the Commission's economic analysis of the special access market. Therefore, on behalf of its utility and CII members who hold thousands of licenses in the private microwave and Wireless Broadband Services at 3650-3700 MHz band, UTC opposes imposing the special access information collection requirements on them.

Respectfully submitted,

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