

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

In the Matter of)	
)	
Amendment of Part 2 of the Commission's Rules)	ET Docket No. 00-258
To Allocate Spectrum Below 3GHz for Mobile and)	
Fixed Services to Support the Introduction of New)	
Advanced Wireless Systems, including Third)	
Generation Wireless Systems)	
)	
Amendment of Section 2.106 of the Commission's)	ET Docket No. 95-18
Rules to Allocate Spectrum at 2GHz for Use)	
By the Mobile-Satellite Service)	
)	
The Establishment of Policies and Service Rules)	IB Docket No. 99-81
For the Mobile-Satellite Service in the 2GHz Band)	
)	
Petition for Rule Making of the Wireless)	RM-9498
Information Networks Forum Concerning the)	
Unlicensed Personal Communications Service)	
)	
Petition for Rule Making of UTStarcom, Inc.,)	RM-10024
Concerning the Unlicensed Personal)	
Communications Service)	
)	

Comments of TCA, Inc.

Telcom Consulting Associates, Inc. (TCA) hereby submits these comments in the above-captioned proceedings regarding reallocating the 1910-1920 MHz UPCS band for operation of licensed community wireless networks in rural areas, including underserved and unserved populations.

TCA is a management consulting firm providing financial and regulatory services for over fifty small, rural local exchange carriers (LECs) throughout the United States.

TCA's clients include tribal-owned carriers and carriers providing wireless services in rural areas.

I. TCA supports any effort to make available spectrum in rural areas.

TCA supports UTStarcom's Petition for Rulemaking¹, as TCA supports any effort to make more spectrum available to rural LECs, who currently serve their local communities. The suggested application – low power, wireless voice and data networks – would provide a competitive alternative to national wireless networks. In the large majority of rural communities, such a network would be the only wireless choice.

Many factors have contributed to the current lack of wireless service in rural communities. Chief among these factors are the generally large geographic license size, buildout requirements that allow licenseholders to offer services only to the heavily populated areas and an almost non-existent secondary market for the public resource of spectrum. These factors combine to force a current reality on most rural consumers – Unless you live next to a major transportation route, you cannot access wireless services from your community. This reality is also in force for rural carriers who serve these customers with wireline services.

These carriers, which continue to serve the less lucrative market of rural communities, highly desire to provide wireless services to their customers. However, rural carriers are blocked from obtaining needed spectrum by the same set of factors that

block wireless service to rural customers. The Commission has attempted to rectify the situation with “entrepreneur” and “designated entity” programs. Auction credits have also been offered for wireless service buildout over tribal lands. A review of FCC records demonstrates that few licenseholders, if indeed any, have taken advantage of the auction credit and have built out service over tribal lands. Due to the large size of the license areas, the entrepreneur auctions are dominated by small businesses designed on paper to meet the Commission’s eligibility requirements, but may access far greater financial resources than a typical small entity. Efforts made by rural carriers to obtain spectrum in the secondary market are largely met with disinterest and rejection. Again, a review of FCC records will find few partition agreements or other license transfers.

A community wireless network, as proposed in UTStarcom’s Petition, could also aid in bringing telephone service to areas that are currently unserved. As UTStarcom alludes to in its Petition, there currently exist rural areas in this country, many encompassing tribal lands, which simply are not served by either wireline or wireless providers. The Commission has made itself well aware of this issue through a variety of proceedings.² Some of these inequities are being addressed through federal and state proceedings to establish carriers on these lands. However, this “solution” is generally one externally imposed. If the Commission were to grant UTStarcom’s Petition, these

¹ See In the Matter of Amendment of the Commission’s Rules for Community Wireless Telecommunications Networks, *Petition for Rulemaking of UTStarcom*, filed November 6, 2000 (UTStarcom’s Petition).

² See In the Matter of Extending Wireless Telecommunications Services to Tribal Lands, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 99-266 (rel. June 30, 2000). See also In the Matter of Federal-State Joint Board on Universal Service, Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, CC Docket No. 96-45 (rel. June 30, 2000).

communities, either by working with the rural carrier or establishing telecommunications entities, could provide an internal communications solution, generating local economic development.

Congress, when it gave the Commission spectrum auction authority, had concerns that competitive bidding would bring about the very situation now faced in the wireless industry – the public resource of spectrum parceled out to only a few large carriers resulting in an inequitable distribution of wireless service.³ To guard against this occurrence, Congress mandated that the Commission establish safeguards “to protect the public interest in the use of the spectrum...”⁴ Further, in Section 309 of the Communications Act, Congress established objectives for the Commission to meet as it decided upon how best to regulate this public resource. Three of those objectives have relevance in this proceeding. The Commission was to consider spectrum policy that would promote:

- (A) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including *those residing in rural areas...*
- (B) economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including

³ H.R. Report 103-111, 103rd Congress, 1st Session, pp. 254-255.

⁴ 47 U.S.C. §309(j)(3).

small businesses, *rural telephone companies*, and businesses owned by members of minority groups and women;
...(D) *efficient* and intensive use of the electromagnetic spectrum...⁵

Any examination of the wireless industry as it currently exists may easily determine that the objectives so plainly set out by Congress have not been met. The Commission may begin to set this right by allowing rural LECs the opportunity to provision wireless services to their customers.

II. The 1910 – 1920 MHz Band should remain unlicensed spectrum.

UTStarcom's Petition requests that the Commission re-allocate the 1910-1920 MHz band on a licensed basis.⁶ However, in its Reply Comments filed in support of its Petition, UTStarcom expresses support for a "coordinated unlicensed approach"⁷ in order to bring these needed wireless services to rural communities. TCA supports retaining the current unlicensed aspect of this band and utilizing the current infrastructure of UTAM as the frequency coordinator.

Retaining the unlicensed aspect of the band would mean rural carriers, and those communities wishing to provide wireless services to their local citizens, could avoid the combination of factors noted above and begin to offer services normally only found in urban areas. Such services could be offered on an immediate basis after the

⁵ 47 U.S.C. §309(j)(3) (A), (B) and (D).

⁶ UTStarcom's Petition, p. 2.

⁷ See In the Matter of Amendment of the Commission's Rules for Community Wireless Telecommunications Networks, *Reply Comments of UTStarcom*, filed January 31, 2001, p. 3.

Commission issues its decision, rather than after considerable delay implied by the auction process.

Retaining the current unlicensed allocation could further aid the Commission in meeting another statutory goal set out by Congress in the Communications Act. Congress, in addition to the objectives discussed above, required the Commission to:

ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and for such purposes, consider the use of tax certificates, bidding preferences, and *other procedures*.⁸

While Congress is discussing regulations governing the auction process, its intent is quite clear: Rural telephone companies were to be given true opportunity to utilize this public resource and provide necessary services to their customers. The Commission should rectify the current lack of opportunity by retaining this spectrum on an unlicensed basis.

III. The 1910-1920 MHz Band is unencumbered and Part 15 rules could be modified to accommodate other requests before the Commission.

The Commission, in its call for comments in this proceeding, requests comment regarding changes to its Part 15 rules that govern, in part, the 1910-1920 MHz band, proposed by Wireless Information Networks Forum (WINForum) in its own Petition for

⁸ See 47 U.S.C. §309(j)(4)(D), emphasis added.

Rulemaking also before the Commission.⁹ WINForum is requesting the Commission to change Part 15 rules to allow for only isochronous use of the spectrum.

As the 1910-1920 band is generally unencumbered and Part 15 rules have, in the past, adequately governed the unlicensed use of a variety of devices using the spectrum, TCA sees no conflict between UTStarcom's Petition and WINForum's Petition. In its most recent report to the Commission, UTAM states that 88% of the country is available for unencumbered deployment within the 1910-1920 MHz band.¹⁰ It also reports that no incidents of microwave interference have been encountered in the six years of band availability.¹¹ Clearly, the 1910-1920 MHz band is currently being underused, at a time when unencumbered spectrum is a rarity. Further, the current requirements in Part 15 could easily be accommodated to permit community wireless networks, without the usual difficulties presented by clearing the band or from technical interference with incumbent users.

TCA would support the modifications to the Part 15 rules as expressed by UTStarcom in its *ex parte* filing with the Commission.¹² UTStarcom states in its *ex parte* letter that the proposed changes to Part 15 would allow community wireless

⁹ See In the Matter of Amendment of the Commission's Rules for Unlicensed Personal Communications Services, *Petition for Rulemaking*, filed January 8, 1999.

¹⁰ See In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, *UTAM Report to the FCC*, GEN Docket No. 90-314, filed July 1, 2001, p. 2.

¹¹ *Ibid.*, p. 1.

¹² See Letter to Julius Knapp, Chief, Policy & Rules Division, Office of Engineering & Technology, Federal Communications Commission, from Henry Goldberg, Goldberg, Godles, Wiener & Wright, filed May 23, 2001 (*ex parte* letter).

networks and “satisfy other requests [including WINForum’s Petition] regarding the band that have been submitted to the Commission over the past few years.”¹³

IV. Conclusion.

TCA strongly supports the call for community wireless networks in rural areas and tribal lands. Such services, if provisioned on an unlicensed basis, would allow rural carriers opportunity to participate in this economically significant industry and begin to fulfill the promise made by Congress to rural areas, including the carriers that serve them, within the Communications Act.

Respectfully submitted,
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¹³ *Ibid.*, p.1.