

Before the  
**Federal Communications Commission**  
Washington DC 20554

|  |   |          |
|--|---|----------|
| In the Matter of                           | ) |          |
|  | ) |          |
| Utilities Telecom Council and Winchester   | ) |          |
| Cator, LLC                                 | ) |          |
|  | ) |          |
| Petition for Rulemaking to Establish Rules | ) | RM-11429 |
| Governing Critical Infrastructure Industry | ) |          |
| Fixed Service Operations in the 14.0–14.5  | ) |          |
| GHz Band                                   | ) |          |

**COMMENTS OF THE  
FIXED WIRELESS COMMUNICATIONS COALITION**

The Fixed Wireless Communications Coalition, Inc. (FWCC)<sup>1</sup> files these Comments in support of the Application for Review of Utilities Telecom Council and Winchester Cator, LLC (UTC/Winchester Cator).<sup>2</sup>

UTC/Winchester Cator filed a petition for rulemaking on May 6, 2008, seeking secondary terrestrial use of the 14.0-14.5 GHz band by critical infrastructure industries.

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<sup>1</sup> The FWCC is a coalition of companies, associations, and individuals interested in the fixed service—i.e., in terrestrial fixed microwave communications. Our membership includes manufacturers of microwave equipment, fixed microwave engineering firms, licensees of terrestrial fixed microwave systems and their associations, and communications service providers and their associations. The membership also includes railroads, public utilities, petroleum and pipeline entities, public safety agencies, cable TV providers, backhaul providers, and/or their respective associations, communications carriers, and telecommunications attorneys and engineers. Our members build, install, and use both licensed and unlicensed point-to-point, point-to-multipoint, and other fixed wireless systems, in frequency bands from 900 MHz to 95 GHz. For more information, see [www.fwcc.us](http://www.fwcc.us).

<sup>2</sup> Application for Review of Utilities Telecom Council and Winchester Cator, LLC in RM - 11429 (filed June 14, 2013).

Following a pendency of five years, the Commission denied the petition on the ground that it “plainly does not warrant further consideration.”<sup>3</sup>

We are troubled by the Commission’s abrupt resolution and lack of reasoned analysis of the issues it mentions on the way to dismissal: possible auction requirements for the band,<sup>4</sup> the proposed coordination method for protection of fixed satellite uplinks,<sup>5</sup> and supposed availability of alternate spectrum and wired infrastructure for critical infrastructure applications.<sup>6</sup> Also troubling for its omission from the *Order* is any mention of another application for use of the same spectrum for air-ground service, proposed less than a week before release of the *Order*,<sup>7</sup> even though that application has issues in common with the UTC/Winchester Cator petition and competing public interest considerations.

These are all complex matters having too many facets for summary resolution. An informed decision on each, including the relative merits of the UTC/Winchester Cator proposal vs. air-ground service, will require the more thorough public airing and comment afforded by a Notice of Proposed Rulemaking.

The Commission adds: “The existing record does not support the creation of a secondary fixed service in the 14.0-14.5 GHz band as proposed by UTC-Winchester.”<sup>8</sup> We disagree.

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<sup>3</sup> *Utilities Telecom Council and Winchester Cator, LLC*, RM-11429, Order, DA 13-1093 at ¶ 14 (released May 15, 2013) (*Order*).

<sup>4</sup> *Order* at ¶ 5.

<sup>5</sup> *Order* at ¶¶ 6-10.

<sup>6</sup> *Order* at ¶¶ 11-13.

<sup>7</sup> *Air-Ground Mobile Broadband Secondary Service for Passengers Aboard Aircraft in the 14.0-14.5 GHz Band*, GN Docket No. 13-114, Notice of Proposed Rulemaking, FCC 13-66 (released May 9, 2013).

<sup>8</sup> *Order* at ¶ 14.

Although the satellite industry ganged up in force against the petition, and so may account for the largest block of comments, the record also includes significant support from utilities and fixed service interests. Among the record's omissions is a showing as to the suitability of alternative spectrum or facilities for wired infrastructure.<sup>9</sup> The record, moreover, is stale; comments and replies were filed back in 2008.

The *Order* denying the petition cites Section 1.401(e) of the Commission's rules, which reads in full:

Petitions which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.<sup>10</sup>

The petitions typically disposed of under Section 1.401(e) are indeed frivolous or repetitive, and we would add, uninformed. The UTC/Winchester Cator petition is none of these, but is a well-reasoned, well-founded proposal. It deserves a better fate than a five-year delay followed by summary dismissal.

Even after developing the more complete record afforded by an NPRM, the Commission might still choose not to adopt the UTC/Winchester Cator proposal. The Commission should make that decision, whichever way it goes, on the basis of a fresh and complete record.

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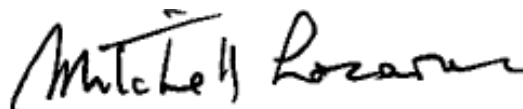
<sup>9</sup> Order at ¶¶ 11-13.

<sup>10</sup> 47 C.F.R. § 1.401(e), cited in *Order* at ¶ 15.

## CONCLUSION

We urge the Commission to reverse the *Order* and issue a Notice of Proposed Rulemaking based on the UTC/Winchester Cator petition.

Respectfully submitted,

A handwritten signature in black ink that reads "Mitchell Lazarus". The signature is written in a cursive style with a prominent initial "M".

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July 1, 2013

## CERTIFICATE OF SERVICE

I, Deborah N. Lunt, a secretary with the firm of Fletcher, Heald & Hildreth, PLC, hereby state that true copies of the foregoing Comments of the Fixed Wireless Communications Coalition were sent this 1st day of July 2013, by first class mail, postage prepaid to the attached service list, except to persons listed at the FCC in Washington, DC, which were hand delivered.

A handwritten signature in black ink, appearing to read 'D. Lunt', with a long horizontal flourish extending to the right.

Deborah N. Lunt

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