



August 10, 2009

*VIA ELECTRONIC FILING*

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington DC 20554

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

Dear Ms. Dortch:

The National Spectrum Management Association (“NSMA”), pursuant to §1.405 of the Commission’s Rules, hereby submits this written *ex parte* in further response to the Petition for Rulemaking in the above-captioned proceeding.<sup>1</sup> NSMA is a voluntary international association of microwave radio/wireless and satellite frequency coordinators, licensees, manufacturers and regulators.<sup>2</sup> Established in 1984, the Association provides a forum to develop industry guidelines for efficient use and management of the frequency spectrum by the wireless telecommunications community.<sup>3</sup>

In this petition, the Utilities Telecom Council (“UTC”) and Winchester Cator request that the FCC commence a proceeding to amend Parts 2 and 101 of the

<sup>1</sup> In the Matter of Utilities Telecom Council and Winchester Cator, LLC Petition for Rulemaking to Establish Rules Governing Critical Infrastructure Industry Fixed Service Operations in the 14.0-14.5 GHz Band, RM-11429, *Petition for Rulemaking* (filed May 6, 2008).

<sup>2</sup> The National Spectrum Management Association, <http://www.nisma.org>. (Mar. 20, 2009).

<sup>3</sup> *Id.*

Commission's Rules to permit shared, secondary terrestrial fixed service use of the 14.0 - 14.5 GHz band for critical infrastructure industry communications.

The rules regarding critical infrastructure industries ("CII") when promulgated were well-suited and appropriate. However, the definition of CII is too narrow for the present time and needs reform. Under Section 90.7, "Critical Infrastructure Industry (CII)" is defined as "State, local government and non-government entities, including utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments, and not-for-profit organizations that offer emergency road services, providing private internal radio services provided these private internal radio services are used to protect safety of life, health, or property; and are not made commercially available to the public."<sup>4</sup> This definition fails to recognize wireless and satellite services and virtually all radio service—disregarding the critical role these services provide in support for public, emergency, and government data; for these reasons these services should be considered as CII.

Many other federal agencies and at least one Act have taken the reasonable step of incorporating telecommunications (including wireless) as industries critical to infrastructure. For example, the Department of Agriculture, citing a 1998 Presidential Directive, defined "critical infrastructure" as "those physical and cyber-based systems essential to the minimum operations of the economy and Government. Critical infrastructures include, but are not limited to, *telecommunications*, banking and finance, energy, transportation, and essential Government services."<sup>5</sup> Moreover, in July 2001 the Government Accounting Office noted that telecommunications was a "critical operation...and infrastructure..."<sup>6</sup>

In 2003, the White House released its *National Strategy for the Physical Protection of Critical Infrastructures and Key Assets*, in which it listed

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<sup>4</sup> 47 C.F.R. § 90.7. The definition was adopted in 2004.

<sup>5</sup> U.S. Department of Agriculture Office of Inspector General Audit Report, Office of Procurement and Property Management Physical Critical Infrastructure, *Protection Program*, at 1-2 (Oct. 2001) (*emphasis added*).

<sup>6</sup> Critical Infrastructure Protection, Significant Challenges in Developing Analysis, Warning, and Response Capabilities, General Accounting Office, GAO-01-1005T, at 2 (July 25, 2001) (noting that widespread Internet interconnectivity has increased risks to "the critical operations and infrastructures that these systems support, such as telecommunications, power distribution, national defense, and essential government services.").

“telecommunications” as one of the country’s critical infrastructures. The report noted that “[b]ecause the government...rel[ies] heavily on the public telecommunications infrastructure for vital communications services, the sector’s protection initiatives are particularly important.”<sup>7</sup> The report went on to note the growing importance of wireless networks, stating that “[w]ireless telecommunications providers transmit messages using an infrastructure of base stations and radio-cell towers located throughout the wireless provider’s service area.”<sup>8</sup>

The Homeland Security Presidential Directive 7, issued in December 2003, identified 17 critical infrastructure and key resources (“CIKR”) sectors.<sup>9</sup> The Communications Sector is one of the CIKR sectors considered “an integral component of the U.S. economy as it underlies the operations of all businesses, public safety organizations, and government.”<sup>10</sup> The Department of Homeland Security (“DHS”) added that the communications sector includes the communications industry that delivers services via terrestrial, satellite, and wireless transmission systems and it specifically noted that the “transmission of these services has become interconnected; satellite, wireless, and wireline providers depend on each other to carry and terminate their traffic and companies routinely share facilities and technology to ensure interoperability.”<sup>11</sup> The directive further provides that the DHS Secretary must coordinate protection activities for the critical infrastructure sectors, including telecommunications.<sup>12</sup>

The Critical Infrastructures Protection Act of 2001 defines “critical infrastructure” as “systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.”<sup>13</sup> Microwave radio/wireless and satellite telecommunications systems,

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<sup>7</sup> The National Strategy for the Physical Protection of Critical Infrastructures and Key Assets, The White House, at 35, 47 (Feb. 2003).

<sup>8</sup> *Id.* at 48.

<sup>9</sup> See Communications Sector: Critical Infrastructure and Key Resources, Dept. of Homeland Security, available at [http://www.dhs.gov/xprevprot/programs/gc\\_1189102978131.shtm](http://www.dhs.gov/xprevprot/programs/gc_1189102978131.shtm).

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

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

<sup>12</sup> Homeland Security Presidential Directive-7, Critical Infrastructure Identification, Prioritization, and Protection, at § 13 (Dec. 2003) available at [http://www.dhs.gov/xabout/laws/gc\\_1214597989952.shtm#1](http://www.dhs.gov/xabout/laws/gc_1214597989952.shtm#1).

<sup>13</sup> 42 U.S.C. § 5195c(e).

which support public safety networks, e911 calls, and commercial mobile networks which serve governments, hospitals, and other essential services, certainly seem to fall into this category.

Finally, if this spectrum is made available it should be in a transparent and methodical manner to the benefit of all providers. Although UTC is requesting immediate action, the Administrative Procedure Act requires a complete investigation before a decision can be made. We submit that a more thorough review must consider the issues discussed above.

*Conclusion*

Thus, for all of the foregoing reasons, NSMA requests the Commission consider refreshing its definition for critical infrastructure service providers, especially in relation to including systems that support essential services, prior to making spectrum available for said services.

Respectfully Submitted,

**THE NATIONAL SPECTRUM MANAGEMENT ASSOCIATION**

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