

Moreover, it is simply unrealistic to suspect that UTAM may be seeking some type of advantage for unlicensed PCS devices. Many UTAM members intend to deploy both licensed and unlicensed PCS. While the Committee was formed for the sole purpose of dealing with problems unique to the latter, it is counterintuitive to suggest that many of its members would act against their own economic interests by advocating establishment of a regulatory environment that would inhibit deployment of licensed PCS.

Perhaps most importantly, it is clear that unlicensed PCS and licensed PCS are addressing fundamentally different markets. For example, unlicensed PCS will be deployed in an environment that historically has avoided usage charges for transmission capabilities. In contrast, licensed PCS is expected to be offered on a traditional air time service charge basis. There simply can be no justification for delaying the availability to the public of either of these exciting new technologies.

V. CONCLUSION

The record before the Commission provides compelling support for UTAM's proposals concerning unlicensed PCS. Manufacturers and 2 GHz microwave licensees are virtually unanimous in endorsing the proposal to establish an open industry entity as a Section 332 frequency coordinator. In

addition, UTAM has presented a carefully crafted program for allowing unlicensed PCS to move forward consistent with the interference rights of microwave licensees. Accordingly, the Commission should promptly adopt the industry consensus proposals set forth in UTAM's Report and Recommendations as modified in these reply comments.

Respectfully submitted,

UNLICENSED PCS AD HOC COMMITTEE
FOR 2 GHZ MICROWAVE TRANSITION
AND MANAGEMENT

By 

R. Michael Senkowski
Robert J. Butler
Nicolle R. Lipper

WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Its Attorneys

Date: July 20, 1993

CERTIFICATE OF INCORPORATION

OF

UTAM, Inc.

The undersigned, for the purpose of forming a corporation pursuant to Section 101 of the General Corporation Law of the State of Delaware, hereby certifies that:

FIRST. The name of the Corporation is UTAM, Inc.

SECOND. The location of the registered office of the Corporation within the State of Delaware is at 1013 Centre Road, City of Wilmington, County of New Castle 19805. The resident agent at this address is CORPORATION SERVICE COMPANY.

THIRD. The purposes of the Corporation are to manage the transition of the 2 GHz band of the radio spectrum from use by existing microwave stations to use by unlicensed Personal Communications Services ("PCS") systems and devices; to manage the relocation of existing microwave stations in a manner that provides full cost compensation and comparable alternative facilities to satisfy microwave licensee concerns; to secure funding for the substantial costs associated with relocating existing microwave stations; to ensure that any deployment of unlicensed PCS devices prior to complete band clearance will not cause interference to existing microwave licensees; to provide a centralized forum for addressing interference or compensation disputes between unlicensed PCS providers and incumbent microwave licensees; and to assure equitable unlicensed PCS industry participation in the funding and management of these tasks. The Corporation is authorized to engage in any lawful acts or activities necessary, desirable or proper to achieve these purposes.

FOURTH. The Corporation shall cease to exist on such date as fixed by resolution of the Board of Trustees and approved by the membership following the achievement of the Corporation's purposes, or on an earlier date set by the membership. The Corporation's dissolution and the winding up of its affairs shall occur as soon as is practicable following full band clearing, full recovery of relocation costs, retirement of all debt, reimbursement of all capital contributions, and the completion of other tasks undertaken to accomplish to these objectives.

FIFTH. The Corporation shall have no power to issue shares of stock nor to declare nor pay any dividends.

SIXTH. The Corporation shall not be organized for profit, and no part of its net earnings shall inure to the benefit of any private member or individual, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its objectives and purposes.

SEVENTH. Voting membership in the Corporation shall be limited to businesses or other entities, particularly entities planning to manufacture, sell or distribute unlicensed PCS devices or systems, that participate in the mechanism devised to recover the costs of clearing the 2 GHz radio spectrum band, relocating incumbent microwave licensees, and achieving the Corporation's other purposes. Associations or coalitions of companies with an interest in the manufacture, sale or distribution of unlicensed PCS devices and entities and associations of entities engaged in the

manufacture, operation, planning, engineering or installation of microwave systems are eligible for membership as non-voting Associate Members.

EIGHTH. Each voting member must contribute to all costs of the Corporation, including the recovery of the costs of relocating existing microwave licensees, by paying membership fees to the Corporation in the manner and in the amounts and manner specified in the Bylaws of the Corporation. Associate Members may or may not be required to pay a membership fee, as provided in the Bylaws, and shall not be entitled to vote on issues submitted to the membership.

NINTH. The affairs of the Corporation shall be managed by an Board of Trustees comprised of Trustees elected at large by the voting members in the manner specified in the Bylaws of the Corporation.

TENTH. The number of Trustees of the Corporation shall be eleven (11). Trustees must be duly authorized officers, directors, employees or agents of a member.

ELEVENTH. Except as otherwise set forth in the Bylaws, on all issues that come before the membership, each voting member shall be entitled to cast one vote per issue. At any meeting of the membership, a majority of the voting members shall constitute a quorum. When the membership votes at a meeting at which a quorum is present on any resolution of the Board of Trustees or any proposal other than the election of Trustees, a vote of two-thirds (2/3) in favor of the voting members present shall be required to adopt the resolution or proposal.

TWELFTH. The name and post office address of the incorporator signing this Certificate of Incorporation is as follows:

Incorporator

R. Michael Senkowski, Esq.

Post Office Address

Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

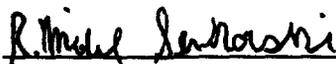
THIRTEENTH. The Corporation shall, to the full extent permitted by Section 145 of the Delaware General Corporation Law, as amended from time to time, indemnify all persons whom it may indemnify pursuant thereto. No Trustee shall be personally liable to the Corporation or its members for monetary damages or for any breach of fiduciary duty by such Trustee as a Trustee. Notwithstanding the foregoing sentence, a Trustee shall be liable to the full extent provided by applicable law (i) for breach of the Trustee's duty of loyalty to the Corporation or its members; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) pursuant to Section 174 of the Delaware General Corporation Law, or any amendment or successor provision thereto; or (iv) for any transaction from which the Trustee derived an improper personal benefit.

FOURTEENTH. In the absence of fraud, no contract or transaction between this Corporation and any other association or corporation shall be affected by the fact that any of the Trustees or officers of this Corporation are interested in, or are directors or officers of such other association or corporation, and any Trustee or officer of this Corporation, individually, may be a party to or may be interested in any such contract or transaction of this Corporation; and no such contract or transaction of this Corporation with any person or persons, firm, association or corporation shall be

affected by the fact that any Trustee or officer of this Corporation is a party to or interested in said contract or transaction, or in any way connected with such person or persons, firm, association or corporation, provided that such contract or other transaction shall be authorized or ratified by the vote of a sufficient number of the Trustees of this Corporation not so interested; and each and every person who may become a Trustee or officer of this Corporation is hereby relieved from any liability that might otherwise exist from his contract with this Corporation for the benefit of himself or any person, firm, association or corporation in which he may be in any way interested.

FIFTEENTH. The Corporation reserves the right to amend, alter or repeal any provisions contained in this Certificate of Incorporation, and all rights conferred on members or Trustees herein are granted subject to this reservation. Any amendments to this Certificate of Incorporation will require both a recommendation approved by a vote in favor thereof of two-thirds (2/3) of the Board of Trustees then in office and a vote in favor of such amendment by at least two-thirds (2/3) of all voting members.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 20th day of July, 1993.


R. MICHAEL SENKOWSKI, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of July, 1993, I caused copies of the foregoing "Reply Comments of UTAM" to be mailed via first-class postage prepaid mail to the following:

Benn Kobb
Executive Director
The Wireless Information Networks Forum, Inc.
1101 Connecticut Avenue, N.W., #700
Washington, D.C. 20036

David Means, Chief
Federal Communications Commission
Office of Engineering and Technology
FCC Laboratory
Authorization and Evaluation Division
7435 Oakland Mills Road
Columbia, MD 21046

Julius Knapp, Chief
Federal Communications Commission
FCC Laboratory
Authorization and Evaluation Division
7435 Oakland Mills Road
Columbia, MD 21046

*David R. Siddall
Federal Communications Commission
2025 M Street, N.W.
Room 7120
Washington, D.C. 20554

*Robert Bromery
Deputy Chief
Federal Communications Commission
2025 M Street, N.W.
Room 7118
Washington, D.C. 20554

*Richard Engelman
Chief
Federal Communications Commission
2025 M Street, N.W.
Room 7122
Washington, D.C. 20554

International Transcription Services
2100 M Street, N.W.
Suite 140
Washington, D.C. 20037


DeMara A. Magruder

*Via Hand Delivery