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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Redevelopment of Spectrum to)
Encourage Innovation in the)
Use of New Telecommunications)
Technologies)

ET Docket No. 92-9

To: The Commission

**UTAM COMMENTS ON
PETITION FOR RECONSIDERATION**

UTAM, Inc. hereby submits its comments on the Petition for Reconsideration of the Commission's Memorandum Opinion and Order filed by certain public safety interests in the above-captioned docket.¹ The Public Safety Licensees seek reinstatement of their prior exemption from mandatory relocation out of the Emerging Technologies Spectrum. As the conditionally designated frequency coordinator for the unlicensed PCS spectrum (1910-1930 MHz),² UTAM wishes to apprise the

¹ Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, 9 FCC Rcd 1943 (1994) (hereinafter "Memorandum Opinion and Order"). The Petition for Reconsideration was filed on May 25, 1994 by: the Public Safety Microwave Committee, the Association of Public-Safety Communications Officials-International, Inc., the County of Los Angeles, and the Forestry-Conservation Communications Association (hereinafter the "Public Safety Licensees").

² See Amendment of the Commission's Rules to Establish New Personal Communications Services, 8 FCC Rcd 7700, 7738 (1993) (hereinafter "Second Report and Order"); Amendment of the Commission's Rules to Establish New Personal Communications Services, FCC 94-144 at ¶ 217 (released June 13, 1994) (hereinafter "PCS Memorandum and Order").

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Commission of the potential implications of the Petition for Reconsideration for unlicensed PCS deployment.

I. INTRODUCTION

In its PCS orders, the Commission has designated UTAM as the entity responsible for managing the microwave relocation process for the unlicensed PCS band. UTAM's responsibilities include: relocating incumbent microwave systems consistent with the requirements established in ET Docket 92-9; addressing in the first instance concerns from fixed microwave systems about interference from unlicensed PCS; determining which unlicensed PCS devices and systems are coordinatable;³ and coordinating the deployment of coordinatable unlicensed PCS systems and devices prior to full band clearing.⁴ UTAM is also under an obligation to expedite the deployment of nomadic PCS devices.⁵ Before nomadic PCS devices can be deployed in the unlicensed band, however, all microwave licensees must be relocated in order to avoid interference to microwave operations.

In its Memorandum Opinion and Order, the Commission on its own motion eliminated the exemption from mandatory relocation that had been afforded public

³ PCS Memorandum Opinion and Order at ¶ 220-21.

⁴ PCS Memorandum Opinion and Order at App. A at 7 (to be codified at 47 C.F.R. § 15.307(a)).

⁵ PCS Memorandum Opinion and Order at ¶ 209.

safety licensees in its earlier decision.⁶ As the Commission noted, PCS operations and fixed microwave service will interfere with each other if they use the same frequency. Because of the large number of public safety licensees in some urban areas -- approximately 20% to 25% -- PCS licensees may be unable to begin providing service even in a 30 MHz allocation if public safety incumbents are exempt from relocation.⁷ The Commission also feared that unlicensed PCS devices would not have sufficient room to operate with the large number of public safety licensees in the 2 GHz band.⁸

In response to these concerns, the Commission substituted a four year voluntary negotiation period and a one year mandatory negotiation period for those public safety licensees who had been previously exempt from relocation. The Commission concluded that relocated public safety operations would not be disrupted by this change because the lengthened negotiation period, and the relocation requirements imposed on PCS interests generally would ensure that they obtained full cost compensation, comparable alternative facilities, and sufficient time to plan, test, and relocation to the new facilities.⁹

⁶ Memorandum Opinion and Order at ¶ 34.

⁷ Memorandum Opinion and Order at ¶ 32.

⁸ Id. at ¶ 34.

⁹ Id. at ¶ 35.

II. BECAUSE UNLICENSED PCS CANNOT SHARE SPECTRUM WITH MICROWAVE LINKS, RESTORING THE PUBLIC SAFETY PERMANENT EXEMPTION WOULD IMPEDE UNLICENSED PCS DEPLOYMENT.

As the record in this docket indicates, the highly nomadic nature of many planned unlicensed PCS products renders it impossible for them to share spectrum with microwave systems.¹⁰ One of the anticipated benefits of unlicensed PCS is that it will provide highly portable consumer devices, such as PDAs and improved cordless phones, which are in great demand. However, it will be impossible to control the deployment of some of these products, particularly in the residential or "personal" market. As a result, neither PCS interests nor protected microwave operations can be confident that harmful interference would not result from the distribution of these devices prior to full band clearing, and the FCC has prohibited any such sales.¹¹

It follows that, although coordinatable PCS devices and systems and microwave operations can share spectrum in the short term during the relocation process, sharing spectrum is not a long term solution. This is generally understood to be the case by

¹⁰ See, e.g., Comments of Alcatel Network Systems, Inc., GEN Docket No. 90-314, at 5 (filed Nov. 8, 1993) (all incumbent microwave stations must be cleared before the unlicensed PCS products can be deployed); Opposition to Petition for Reconsideration of AT&T, ET Docket No. 92-9, at 3 (filed Nov. 8, 1993) ("spectrum must be clear of all fixed microwave incumbents for the viable long-term use of [nomadic] unlicensed devices"); Comments of Microsoft Corporation, GEN Docket No. 90-314, at 2 (filed Nov. 8, 1993) (nomadic devices require completely cleared spectrum).

¹¹ Second Report and Order at 7739.

both the PCS and microwave industries, as was confirmed in the PCS Task Force hearings.¹² Failure to clear all microwave users from the unlicensed band -- whether resulting from microwave licensees' refusals to move or the inability of unlicensed PCS manufacturers to bear the increased costs of premiums to convince them to move -- will prevent the deployment of nomadic equipment contrary to the FCC's policy goal and the fulfillment of UTAM's obligation to expedite the deployment of nomadic devices. Accordingly, the Commission's removal of the permanent exemption was consistent with expediting availability of unlicensed PCS throughout the country.

III. THE REVISED FCC TRANSITION RULES STRIKE AN APPROPRIATE BALANCE AMONG IMPORTANT PUBLIC POLICY GOALS.

UTAM expects that, under the existing transition rules, it will be able to reach voluntary agreements for relocation with most incumbent microwave licensees, including those qualifying for public safety designation. Initially, as the FCC stated in its Memorandum Opinion and Order, all microwave licensees, including public safety incumbents, have their operations fully protected by the rules already in place:

¹² See, e.g., Statement of AirTouch Communications, GEN Docket 90-314, at 4 (filed Apr. 7, 1994) ("PCS operators will require clear spectrum to provide a commercial, high quality system"); Statement of Apple Computer, GEN Docket 90-314, at 2-3 (filed Apr. 7, 1994) (unlicensed data PCS requires complete band clearing); Statement of Comsearch, GEN Docket 90-314, at 5-6 (filed Apr. 7, 1994) ("The Original Belief that PCS can Co-exist with Microwave is Being Replaced by Spectrum Sharing as a Stoppag Accommodation While Prioritizing Relocations").

- All relocation costs will be paid entirely by the emerging technology licensee. These costs include all engineering, equipment, and site costs and FCC fees, as well as any reasonable additional costs.
- Relocation facilities must be fully comparable to those being replaced.
- All activities necessary for placing the new facilities into operation must be completed before relocation, including engineering and frequency coordination.
- The new communications system must be fully built and tested before the relocation itself commences.
- Should the new facilities in practice prove not to be equivalent in every respect, within one year the public safety operation may relocate back to its original facilities and stay there until complete equivalency (or better) is attained.¹³

Moreover, the rules include sufficient incentives, such as the prospect of tax certificates, to discourage resort to the involuntary relocation procedures. Finally, and perhaps most importantly, the FCC has fully accommodated the greater transition concerns of public safety licensees by establishing a four year voluntary negotiation period to allow for orderly planning and transfer of their operations to new facilities. This lengthened negotiation period, combined with the strict relocation rules which give microwave licensees the right to return to their original frequency if their new facilities are not satisfactory, will ensure that the important communications operations of public safety licensees are not disrupted.

¹³ Memorandum Opinion and Order at ¶ 35.

In contrast, restoring the absolute exemption from mandatory relocation will pose severe, and in some cases insurmountable, problems for deployment of unlicensed

PCS products:

- First, nomadic unlicensed PCS products, which require clear spectrum in which to operate, could likely never be deployed.
- Second, manufacturers of coordinatable unlicensed PCS equipment would continue to be burdened by the costs of compliance with the coordinatable device rules.
- Third, sales forces would remain limited by geographic deployment restrictions which disrupt distribution channels and generally inhibit the market for unlicensed PCS.
- Fourth, UTAM would out of necessity continue to exist as a cost center for the unlicensed PCS industry because its coordination obligations would never sunset.
- Finally, and most importantly, the additional costs and the deployment and use restrictions imposed upon coordinatable systems and devices would prevent the public -- and the U.S. economy -- from ever enjoying the full benefits promised by these exciting new unlicensed PCS products.

Accordingly, permanently exempting public safety licensees from any relocation obligation will seriously undermine the unlicensed PCS marketplace with no countervailing benefits for the public interest.

IV. CONCLUSION

For the foregoing reasons, UTAM urges the Commission to retain its current transition rules.

Respectfully submitted,

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June 29, 1994

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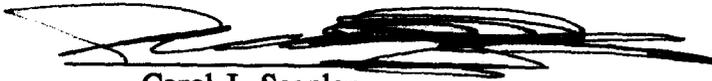
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