

demonstrate compliance with the rules. UTAM's Disablement Test Suite is included as Attachment F.

c. Interference Resolution

UTAM is committed to making every effort to create a process whereby the probability for interference to the incumbent community is reduced to a minimum. However, UTAM recognizes that in spite of all these efforts to prevent instances of interference, there may be occasions when an incumbent microwave user will experience interference and will suspect that U-PCS is the cause.

To deal with this issue, UTAM will take the following steps:

1. Disseminate information to the incumbent microwave community on the market areas where coordinatable unlicensed-PCS devices are being deployed.
2. Set up a hot line and a resolution process to deal with cases of suspected interference.

3. Manufacturer Deployment Procedures

The following section provides a guide to the steps a manufacturer must take in order to deploy unlicensed PCS devices and systems before the band has been cleared:

- First, the manufacturer must contact UTAM.
- Second, the manufacturer must sign a Subscriber Agreement which states that the manufacturer agrees to provide UTAM with all necessary information on disablement and location verification procedures, pay the required fees, and follow the three step UTAM deployment process:
 - 1) No devices may be activated before location verification;

- 2) The mobile portion of the device must disable when it is moved out of the coordinated zone; and
 - 3) The fixed part of the system must be disabled when it is relocated until the Location Verification Process is repeated.
- Next, the manufacturer must take the UTAM certification and approval documents to the FCC and obtain equipment authorization.
 - The manufacturer must then arrange with UTAM to buy labels for its equipment.
 - Once a sale is proposed, the manufacturer must determine if the location is in a Zone 1 or Zone 2 area.
 - If the customer is in a Zone 1 area, the manufacturer must determine from UTAM if the sale of this equipment will exceed the power thresholds set for that area, following the recommendations of TIA Bulletin 10-F. If it does not, then the sale can proceed. The manufacturer is also responsible for performing the location verification procedures before activating the equipment.
 - To deploy in a Zone 2 area, the manufacturer must perform a site specific coordination using a UTAM certified subcontractor. These results must be reported to UTAM for its review. If these results are approved, the equipment may be sold, the location verification procedures performed, and the system or device activated.
 - As required by the location verification procedures and the Subscriber Agreement, the manufacturer must provide UTAM with: the area in which the system is located, the number of units, the power levels per unit, and the spectrum used (asynchronous or isochronous or both).

VIII. PROTECTION OF PROPRIETARY INFORMATION

As part of the coordination and clearing fee process for coordinatable devices, UTAM will need to receive confidential information on individual companies' sales and customer

installations. UTAM recognizes the proprietary and competitively sensitive nature of this information and will employ appropriate measures to prevent its unauthorized disclosure or use. UTAM staff members and its attorneys will have access to such information only as necessary to ensure the accurate collection of clearing fees and coordination with microwave incumbents. The use of a bonded third party to hold this information is being investigated. Upon dissolution of UTAM, this information will be destroyed.

IX. DISPUTE RESOLUTION

UTAM anticipates that performance of its obligations under FCC rules and this plan inevitably will give rise to various types of disputes and controversies that will need to be addressed. Disputes could arise between UTAM and its members over such things as payment of clearing fees or coordination of unlicensed PCS equipment deployments. Other disputes could involve UTAM and microwave licensees, such as failure of relocation negotiations, inadequacy or failure of relocated facilities, and interference complaints. Finally, members of either of these groups or others may have concerns about UTAM's compliance with the terms of this plan as approved or with the FCC's rules themselves. In addressing any such matters, UTAM will be guided by the principle that reliance on the FCC for dispute resolution will be the last resort.

Each of these categories of potential disagreements presents unique issues that may merit differential treatment as part of any dispute resolution process. For example, disputes over the payment of clearing fees due to UTAM from a manufacturer typically should not require FCC intervention. The relationship between UTAM and its members will be governed by a formal contract. If negotiations and possible mediation fail, UTAM will seek binding arbitration under the rules of the American Arbitration Association, if the contract so provides, or look to the courts to enforce the contract. In contrast, should a manufacturer complain about the inability of UTAM to coordinate a deployment of FCC-certified unlicensed PCS equipment consistent with the rules, UTAM or the manufacturer may have no choice but to petition the Commission for relief.

UTAM recognizes that the Commission has established incentives such as the availability of tax certificates to encourage the prompt conclusion of relocation negotiations with microwave licensees. The FCC has further suggested that it may take serious actions if a licensee unreasonably withholds its agreement. Nonetheless, it is possible that relocation negotiations could break down for a number of technical, financial, or other reasons.

UTAM commits that it will conduct all relocation negotiations in good faith and will scrupulously comply with the FCC's requirements for full cost compensation and the

provision of comparable alternative facilities. In addition, if bilateral discussions with licensees fail, UTAM will with the consent of the licensee engage in mediation or other procedures that may be available to promote the conclusion of an agreement. Only if such alternative dispute resolution processes fail will UTAM seek Commission intervention. UTAM will follow the same approach for addressing disputes that might arise after the conclusion of relocation negotiations, such as the inadequacy of the new facilities during the one year test period to which licensees are entitled.

Potential interference complaints represent a separate and distinct category of disputes. If the source of interference is an unlicensed PCS equipment deployment coordinated by UTAM, UTAM will use its best efforts to find a solution. If such attempts fail, the parties would be remanded to the Commission for application of the governing rules. UTAM will also undertake to identify sources of unlicensed PCS interference with protected microwave systems even if they do not appear to be caused by coordinated deployments. To the extent an interference source is making unapproved use of proprietary UTAM insignia such as equipment labels, UTAM will enforce its right to control such use through the courts. In the absence of any such enforceable rights, however, it will remain to the affected licensee to seek redress with the agency.

Finally, it is possible that some parties may take issue with UTAM's compliance with the rules or with the requirements of this Plan as ultimately approved by the FCC. Examples of such disputes could be dissatisfaction with UTAM's efforts to coordinate a desired equipment deployment or disagreement with UTAM's implementation of its microwave relocation strategies. In all such cases, UTAM will first attempt to resolve the problems through negotiations and any available alternative dispute resolution mechanisms such as mediation. Only if these efforts prove unsuccessful will UTAM bring the dispute to the Commission's attention for appropriate action.

X. UTAM WIND UP AND DISSOLUTION

As UTAM represented to the FCC in its initial proposal for establishment of an industry entity, UTAM's existence will be "temporary."⁶⁴ UTAM's coordination role will end and it will be dissolved upon the occurrence of two events:

- "[T]he unlicensed spectrum is cleared or it can be shown that there is little risk of interference to the remaining incumbents;"⁶⁵ and
- The costs of microwave relocation are fully recovered.

Establishment of such a "sunset" requirement ensures that UTAM does not outlive its usefulness and become an administrative or economic burden to the unlicensed PCS industry.

⁶⁴ See Second Report and Order, 8 FCC Rcd at 7736.

⁶⁵ Id. at 7738-39.

Band Clearing. The FCC has provided that UTAM's frequency coordination functions will cease when its participation is no longer deemed necessary to avoid interference with licensed microwave systems. At such time, deployment of fully nomadic unlicensed PCS systems and devices will be permitted. Consistent with the Second Report and Order, this will occur when either (1) the band is fully cleared of incumbent microwave systems, or (2) it can be demonstrated that there is "little risk of interference" to any remaining microwave systems. UTAM will be required to seek official FCC approval of any such determination.⁶⁶

In the first case, the band would be deemed "cleared" one year after the relocation of the last microwave link to different frequencies or alternative media. Because microwave licensees have a right to be returned to their original facilities if they demonstrate that the new facilities are not comparable, the one year delay is necessary to ensure

⁶⁶ See Second Report and Order, 8 FCC Rcd at 7793 (to be codified at 47 C.F.R. § 15.307):

(c) An application for certification of a PCS device that is deemed by UTAM, Inc. to be noncoordinatable will not be accepted until the Commission announces that a need for coordination no longer exists; [and] . . .

(f) At such time as the Commission deems that the need for coordination between unlicensed PCS operations and existing Part 94 Private Operational-Fixed Microwave Services ceases to exist, the disabling mechanism required by paragraph (e) of this section will longer be required.

that all relocated licensees have satisfactorily completed their one year test periods for their new facilities. The microwave database compiled by UTAM will be the authoritative reference for the identification of all incumbent microwave links in the band.

In the second case, the band would be declared cleared by the FCC upon a demonstration by UTAM that any remaining microwave systems in the band would not be materially threatened with harmful interference from the deployment of nomadic unlicensed PCS devices. This could potentially be established, for example, by a showing that those microwave systems are located in such remote geographic areas or are so well shielded that they will not experience interference. Of course, any determination in this regard would be subject to the interference protection rights of incumbent microwave systems set out in the FCC's rules.

Close Out of Finances. The second criterion for dissolution of UTAM is full recovery of all relocation costs. This would include reimbursement of all advance payments of clearing fees with interest, payment of all of UTAM's administrative expenses, and retirement of all outstanding debts and obligations of UTAM, Inc. It would also require final resolution of all disputes to which UTAM is a party.

UTAM's Certificate of Incorporation specifically contemplates the dissolution of the corporation once its objectives have been achieved and all debts and obligations

have been retired. As required under Delaware corporate law, the Certificate of Incorporation stipulates that the corporation will be dissolved only with the approval of the Board of Trustees and the membership, or if all of the members approve in writing. The dissolution will become effective upon the filing of a certificate of dissolution with the Secretary of State of Delaware.

Under Delaware law, however, UTAM will continue as a body corporate for three years after dissolution for the purpose of bringing or defending any lawsuit or administrative action and to dispose of any remaining assets. (This period may be extended if a Delaware court deems it necessary). During this time, the corporation will take steps to notify any potential claimants or creditors of its dissolution and make reasonable provision for any possible claims and pay any judgments against it. Any assets remaining after the satisfaction of all liabilities will be distributed in accordance with a plan of distribution approved by the members. This plan could provide for a pro rata distribution to the members, unless the corporation becomes a tax-exempt organization under Section 501(a) of the Internal Revenue Code. If UTAM is tax-exempt, any remaining assets must be distributed to other organizations created to achieve "similar" purposes, broadly defined. Alternatively, a court could decide to distribute UTAM's remaining assets to organizations pursuing general charitable purposes.

XI. CONCLUSION

UTAM, Inc. has developed this plan in response to the FCC's mandate in the Second Report and Order and the Memorandum Opinion and Order in this docket. In addition to satisfying the requirements of that Order, UTAM believes that this plan is fair to the all the parties involved in the unlicensed PCS deployment process, including large and small PCS manufacturers of both asynchronous and isochronous equipment and the microwave licensees that will be relocated. It will also permit expeditious deployment of nomadic devices consistent with the transition and coordination rules. The members of UTAM are convinced that this plan will be successful and request that the FCC expedite approval so that UTAM can begin making unlicensed PCS a reality.

Respectfully submitted,

UTAM, INC.

By: R. Michael Senkowski

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of

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Its Attorneys

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ATTACHMENT A

Voting Member Companies

AT&T/NCR
PCSI
Northern Telecom
Motorola
Sony
Ericsson
ROLM
Omnipoint Corporation

Associate Member Companies

Alcatel Network Systems
American Personal Communications
American Association of Railroads
Andrew Corporation
BellSouth Wireless
California Microwave Telecom
Cellular Holding, Inc.
Columbia Spectrum Management
CTP Systems
Digital Microwave Corporation
Digital Wireless Corporation
Harris Corporation
Hitachi
Industrial Telecommunications Association
LOCATE
Metrocall
Moffett, Larson & Johnson, Inc.
NEC America
NABER
North American Telecommunications Association
Pacific Bell
Personal Communications Industry Association
PTI Communications
Rockwell International
Southwestern Bell
Spectra Link
Sprint
Thomson Consumer Electronics
Utilities Telecommunications Council
Wise Communications, Inc.



ATTACHMENT B

State of Delaware
Office of the Secretary of State

I, WILLIAM T. QUILLEN, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "UTAM, INC." FILED IN THIS OFFICE ON THE TWENTIETH DAY OF JULY, A.D. 1993, AT 9 O'CLOCK A.M.

A CERTIFIED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO NEW CASTLE COUNTY RECORDER OF DEEDS FOR RECORDING.

* * * * *



William T. Quillen

William T. Quillen, Secretary of State

AUTHENTICATION: *3990509

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 incumbents 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 licenses, 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 AddressWiley, 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.



ATTACHMENT C

BY-LAWS

OF

UTAM, Inc.

(A Delaware Corporation)

ARTICLE I.
NAME

The name of this non-profit, membership corporation shall be UTAM, Inc. (the "Corporation").

ARTICLE II.
PURPOSES

The purposes of the Corporation are to coordinate and 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 consistent with the rules and regulations of the Federal Communications Commission.

ARTICLE III. **MEMBERSHIP**

Section 1. Criteria for voting membership. Voting membership in the Corporation shall be limited to businesses or other entities that participate in the mechanism devised to recover the costs of clearing the spectrum, relocating incumbent licensees, and achieving the Corporation's other purposes. Voting membership in the Corporation is available to any individual, partnership, corporation or other entity planning to manufacture, sell or distribute unlicensed PCS products or systems, or engaging in the manufacture, sale or distribution of unlicensed PCS products or systems (an "eligible entity"), or any entity that owns or controls an eligible entity (a "parent company"), except that if two or more eligible entities are under common ownership or control, only one such entity shall be eligible for voting membership. At no time shall any eligible entity together with any other entity under common ownership and control with such entity be entitled to more than one membership.

Section 2. Associate membership. Any associations, coalitions of companies or other entities with a material interest in the manufacture, sale or distribution of unlicensed PCS devices, entities engaged in the manufacture, operation, planning, engineering or installation of microwave systems, users of unlicensed PCS products or systems and incumbent licensees are eligible for membership as non-voting associate members. The Executive Committee, if it deems it necessary or desirable, shall establish classification of associate membership and their appurtenant privileges and obligations. The Board of Trustees shall have the discretion to determine whether or not Associate Members must pay a membership fee and, if so, the amount, manner and frequency of payment of any such fee.

Section 3. Admission to membership. Entities shall be eligible for voting membership once they have either (a) made an initial advance payment of fees to the Corporation in an amount to be established by the Board of Trustees; (b) delivered an unconditional letter of intent to pay membership fees and no more than one general or special meeting of the membership has occurred since such delivery; or (c) begun paying fees to the Corporation in connection with the marketing or sale of unlicensed PCS devices or systems. Admission of associate members is subject to the approval of the Executive Committee pursuant to such policies and procedures as it may establish from time to time.

Section 4. Frequency coordination and relocation cost fees. Fees paid to the Corporation shall be used to cover all costs of the Corporation, including the recovery of the costs of relocating existing microwave licensees. The Board of Trustees shall determine the method of calculating such fees, as well as the specific timing and mechanics of payment.