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

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In the matter of	)	
	)	
Amendment of the Commission's	)	GEN Docket No. 90-314
Rules to Establish New Personal	)	
Communications Services	)	

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REPLY COMMENTS OF UTAM, INC.

UTAM, Inc. hereby submits its response to comments filed by PCIA in the above-captioned proceeding.[1] PCIA initially petitioned for partial reconsideration of the Memorandum Report and Order[2] proposing that the Commission mandate cost sharing of microwave relocation expenses among PCS licensees.[3] In later-filed comments on its own petition, PCIA offered guidelines for implementation of a cost sharing mandate that suggest cost sharing be extended to all "PCS interests who benefit from the relocation of incumbent microwave radio links."[4] As the entity charged with managing the microwave relocation process for the unlicensed PCS spectrum, UTAM should be included within the scope of affected PCS interests. For the reasons set out

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[1] UTAM's Response addresses matters presented in comments filed by PCIA on August 30, 1994 (hereinafter "PCIA Comments").

[2] Amendment of the Commission's Rules to Establish New Personal Communications Services, FCC 94-144 (June 13, 1994)(hereinafter "Memorandum Opinion and Order").

[3] PCIA's Petition for Partial Reconsideration was filed July 25, 1994.

[4] PCIA Comments at 3.

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below, UTAM supports the principles underlying PCIA's cost sharing proposal that would ensure a fair distribution of microwave relocation costs and facilitate the deployment of important new products and services.

A. BACKGROUND

In April 1994, UTAM filed comments in this docket recommending that the FCC consider requiring cost sharing between licensed and unlicensed PCS interests for mutually beneficial microwave relocation activities.[5] UTAM proposed that such cost sharing be based on the following principles. First, no licensed or unlicensed PCS provider would be expected to participate in cost sharing unless and until its PCS operations would have caused interference to the microwave link prior to its relocation. Second, no PCS provider would have to pay more than 50% of the actual documented costs incurred by the party relocating the link. Finally, in defining actual costs, premiums exceeding the costs of new microwave or alternative facilities and any non-cash benefits paid to the microwave licensee would not be included.

In its Memorandum Opinion and Order, the Commission did not address UTAM's proposal. In addition, nothing in the decision favored or prejudiced the idea of a cost sharing plan. Indeed, the failure to consider the cost sharing plan appears to be an oversight. While initially directed to licensed PCS cost sharing, PCIA has expanded its proposal to include unlicensed PCS along the lines originally outlined in

[5] Comments of UTAM, Inc., GEN Docket No. 90-314 (filed April 22, 1994).

this earlier UTAM cost sharing proposal. PCIA believes that this broadened plan would better serve the public interest.

B. PCIA'S COST SHARING PLAN

In its petition, PCIA cites the Commission's failure to act on UTAM's proposal as a basis for reconsideration. The cost sharing plan now espoused by PCIA is largely consistent with that suggested by UTAM.[6] In brief, PCIA urges that cost sharing be required, subject to the following principles:

> First, no PCS interest would be under any obligation to make any cost sharing payments for the relocation of a microwave system unless that entity's operations would have caused interference to the system's link path but for this prior relocation.
>
> Second, a PCS interest whose operations were benefitted by a relocation would be obligated to pay only a pro rata share of the documented relocation costs, excluding premiums or upgrades, to the party or parties who incurred those costs.
>
> Third, the obligation to pay would not arise until the time that interference would have been caused.[7]

UTAM continues to believe that a properly structured cost sharing plan consistent with these principles would be beneficial for all parties involved in the

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[6] See Ex Parte Filing, GEN Docket No. 90-314, from Columbia Spectrum Management (Jan. 12, 1994).

[7] PCIA Comments at 2. UTAM understands "pro rata" to mean that each PCS party benefitted by a relocation would pay an equal share of the allowable costs. Thus, if three parties would have caused interference to the relocated link, each would be responsible for one-third of the relocation expenses. UTAM would note, however, that Example 4 in Attachment 4 to the PCIA Comments appears to be inconsistent with this understanding.

transition of the 2 GHz band from microwave operations to PCS. Under the current rules, there is no assurance that the party first moving the link will ever receive a contribution to the relocation costs from the other industry beneficiaries. A mechanism to facilitate and enforce the sharing of these substantial expenses would benefit the PCS industry as a whole. Microwave licensees will benefit because there will be a mechanism for cooperation by PCS licensees and UTAM to coordinate relocations of microwave systems which fall in more than one license area or spectrum band, which will in many cases allow microwave licensees to negotiate with one party regarding the relocation of its links, rather than having to negotiate with the several PCS interests affected. Most importantly, the prospect of increasing the speed of relocations by removing disincentives to early action will enable PCS licensees and manufacturers to bring the benefits of PCS to the public as soon as possible.

To this end, UTAM believes that PCIA's proposed treatment of relocation premiums is appropriate. Entities not benefitted by the reason for payment of a premium, such as an early relocation, would not be required to contribute to it. But, all parties would remain free to negotiate voluntarily any division of relocation costs, including premiums, they might wish.

With respect to PCIA's "trigger event" for the initiation of cost sharing, it is also important to remember that UTAM stands in a somewhat different posture from that of PCS licensees. Particularly in the early years, UTAM will face substantial resource constraints as sales of coordinatable unlicensed PCS products -- which will be

assessed the clearing fees that will fund UTAM's relocation efforts -- ramp up.[8] Some accommodation to these financial limitations, such as a time payment option, likely will be necessary to permit UTAM to carry forward with implementation of its microwave relocation plan while accruing what could be significant cost sharing liabilities.

In its comments on PCIA's proposal, the Utilities Telecommunications Council (UTC) questions whether such a cost sharing plan would have negative effects on microwave relocation efforts.[9] UTC's concerns are not well-founded. Any difficulties involved in determining a third party PCS licensee's contribution are not likely to significantly affect microwave licensees. In many cases, by the time any dispute arises, the microwave link will have already been relocated. In addition, multi-party negotiations are likely to take place in any event because many microwave licensees, particularly UTC's members, have systems made up of more than one microwave link and will want to negotiate a comprehensive relocation plan, rather than relocating one link at a time. UTAM strongly believes that a properly structured cost sharing plan will promote cooperation between PCS interests and microwave licensees and facilitate all relocation efforts.

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[8] UTAM Plan for Financing and Managing 2 GHz Microwave Relocation, GEN Docket No. 90-314, att. D (filed Aug. 1, 1994).

[9] Comments of Utilities Telecommunications Council, GEN Docket No. 90-314 (filed Aug. 30, 1994).

C. CONCLUSION

For the foregoing reasons, UTAM urges the Commission to adopt a microwave relocation cost sharing requirement based upon principles articulated in UTAM's initial proposal and PCIA's more recent submissions in the reconsideration proceeding. UTAM recognizes that numerous financial and practical details associated with cost sharing still need to be worked out. Thus, UTAM intends to work with the Commission, PCIA, and the PCS industry to come up with workable consensus solutions for implementing PCIA's proposals. UTAM believes that such activities will minimize costs, promote efficient band clearing, and expedite the availability of new PCS products and services for the American public.

Respectfully submitted,

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September 9, 1994

CERTIFICATE OF SERVICE

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