

ORIGINAL

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

RECEIVED

JAN 11 1996

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the matter of )  
 )  
Amendment of the Commission's )  
Rules to Establish New Personal )  
Communications Services )

GEN Docket No. 90-314

DOCKET FILE COPY ORIGINAL

UTAM REPORT TO THE FCC

Sandy Abramson  
President  
UTAM, Inc.  
1155 Connecticut Avenue, N.W.  
Suite 401  
Washington, D.C. 20036  
(202) 429-6565

January 11, 1996

FILED  
JAN 11 1996

024

TABLE OF CONTENTS

	<u>Page</u>
I. EXECUTIVE SUMMARY . . . . .	2
II. DEPLOYMENT ACTIVITIES . . . . .	3
A. Subscriber Agreement . . . . .	4
B. Coordinatable Equipment Certification . . . . .	4
C. UPCS and Microwave Database Development . . . . .	5
D. County Classifications . . . . .	6
E. Prior Coordination Notice ("PCN") . . . . .	6
F. Prime Frequency Coordinator ("PFC") . . . . .	7
G. Policies and Procedures Manuals . . . . .	7
H. Commencement of Deployment . . . . .	8
III. RELOCATION ACTIVITIES . . . . .	8
A. Clearing Priorities . . . . .	8
B. Test Relocation . . . . .	9
C. Rulemaking Regarding Cost Sharing . . . . .	9
IV. ORGANIZATION AND FINANCIAL STATUS . . . . .	11
A. Membership and Staffing . . . . .	11
B. Funding . . . . .	12
C. Tax Exemption . . . . .	12
V. OUTREACH ACTIVITIES . . . . .	12
VIII. CONCLUSION . . . . .	14

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

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

**UTAM REPORT TO THE FCC**

UTAM, Inc. ("UTAM"), the frequency coordinator for unlicensed Personal Communications Services ("UPCS"), hereby submits its second report on progress achieved in implementing the UTAM Plan for Financing and Managing 2 GHz Microwave Relocation.<sup>1</sup> As detailed below, UTAM has continued to fulfill its obligations and has made significant advances in facilitating the deployment of UPCS. UTAM is pleased to announce not only that parties have executed Subscriber Agreements with UTAM, but also that the deployment of UPCS devices has commenced. UTAM is encouraged by the substantial progress it has made in

---

<sup>1</sup> UTAM Plan for Financing and Managing 2 GHz Microwave Relocation, GEN Docket No. 90-314 (filed Aug. 1, 1994)[hereinafter "UTAM Plan"]. On April 19, 1995, the Commission formally approved UTAM as the UPCS frequency coordinator. As part of its responsibilities, UTAM was charged with submitting biannual progress reports to update: (a) the financial and band-clearing plans; (b) projections of future band clearing; (c) the extent of incumbent microwave relocation; (d) the extent of UPCS device deployment; and (e) any difficulties encountered in implementing the UTAM Plan. Amendment of the Commission's Rules to Establish New Personal Communications Services, 10 FCC Rcd 7955 (1995)(Fourth Memorandum Opinion and Order). UTAM submitted its first report on July 3, 1995. This report was due on January 2, 1996. Because the Commission was closed on that date, this report is being submitted on the first day the Commission is open following the budgetary shutdown.

developing procedures for deploying UPCS and strongly believes that it will continue to expedite the path to full deployment, while protecting the interests of incumbent microwave licensees.

## **I. EXECUTIVE SUMMARY**

As UTAM has explained in the UTAM Plan and its first report, under the Federal Communication Commission's ("FCC") rules, no UPCS system or device may be sold, marketed, distributed or deployed until several important conditions are met. First, a Subscriber Agreement with UTAM must be executed.<sup>2</sup> Second, UTAM must certify that the system or device complies with the location verification and disablement requirements of the UPCS regulations. Third, and separate from UTAM approval, FCC equipment authorizations must be obtained. Fourth, UPCS deployment must be consistent with coordination procedures established by UTAM to ensure that when activated, systems or devices will not cause harmful interference to microwave licensees.

In assessing its achievements and progress as UPCS frequency coordinator, UTAM is pleased to report that the following tasks have been accomplished:

- The Subscriber Agreement has been finalized, and UTAM has begun accepting executed agreements.
- UTAM has completed the Disablement Test Suite and Location Verification Process ("LVP").

---

<sup>2</sup> See Section II.A.

- UTAM has succeeded in classifying each county in the U.S. as either Zone 1 (deployment limited by a power cap) or Zone 2 (site-specific coordination only).
- UTAM has issued 128 Zone 1 prior coordination notices ("PCNs").
- UTAM has retained Comsearch as the Prime Frequency Coordinator, responsible for issuing all Zone 1 PCNs and overseeing Zone 2 site-specific coordinations.
- UTAM has selected Communications Certification Laboratory to test unlicensed PCS products to determine if they comply with the FCC's rules.
- The UTAM database for deployment and relocation information has been completed and is operational.
- The deployment of UPCS products has commenced.

UTAM has made great strides in meeting its obligations as the UPCS frequency coordinator. UTAM's membership has grown, its infrastructure is now largely in place, and it has sufficient operational funding. UTAM will continue working to facilitate the rapid deployment of UPCS to the public, while simultaneously protecting incumbent microwave licensees from interference and making possible the generation of sufficient revenue to finance the clearing of the unlicensed band.

## **II. DEPLOYMENT ACTIVITIES**

UTAM is pleased to report that its efforts to establish the processes and procedures necessary to permit the deployment of UPCS products have been successful and have resulted in the commencement of UPCS sales to the public. To ensure that

the deployment process is as rapid and successful as possible, UTAM is continuing to refine some of its procedures.

**A. Subscriber Agreement**

All manufacturers<sup>3</sup> intending to seek FCC equipment authorization must sign a Subscriber Agreement with UTAM acknowledging their responsibility to comply with FCC rules and UTAM requirements regarding the deployment of unlicensed devices and systems. Upon execution of the Subscriber Agreement, manufacturers may begin the equipment authorization process.

After extensive discussions concerning the issues facing unlicensed PCS manufacturers, UTAM has finalized the Subscriber Agreement. A copy of the Subscriber Agreement is attached as Appendix A. In addition, UTAM has begun accepting such agreements and anticipates that additional manufacturers will submit completed agreements over the next several months.

**B. Coordinatable Equipment Certification**

The FCC has mandated that coordinatable UPCS equipment deployed before the unlicensed spectrum is fully cleared be subject to disablement requirements that will protect incumbent microwave systems from interference from such deployments. Consequently, for a manufacturer to obtain FCC certification for an unlicensed PCS

---

<sup>3</sup> The term "manufacturer" is used herein to represent any individual, partnership, corporation or other entity that manufactures, sells or distributes UPCS products or systems.

device, UTAM must ensure that the device complies both with UTAM's certification procedures and its location verification and disablement requirements.<sup>4</sup> UTAM has developed Certification Procedures that outline the methods for testing equipment.<sup>5</sup> With the assistance of Communications Certification Laboratory ("CCL"), an independent laboratory specializing in certification, UTAM has finalized the Disablement Test Suite and Location Verification Process which describe the requirements that unlicensed products must satisfy to show compliance with the FCC's rules.<sup>6</sup>

### **C. UPCS and Microwave Database Development**

UTAM's database management system ("DBMS"), which is designed to organize the large amounts of data relating to microwave relocation, deployment, power levels within different counties, fee payments, etc., is now operational. The system will generate reports for the UTAM staff indicating the level of UPCS deployment in all areas and new Zone 1 areas. These reports will allow UTAM to monitor deployment and ensure that no interference is caused to incumbent microwave operations. In addition, manufacturers will have limited access to the database,

---

<sup>4</sup> "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." See 47 C.F.R. § 15.307(c).

<sup>5</sup> A copy of the Certification Procedures is attached as Appendix B.

<sup>6</sup> A copy of the Disablement Test Suite and Location Verification Process is attached as Appendix C.

allowing them to obtain information on which counties are Zone 1 or Zone 2 and on their own deployments. UTAM has built in significant protections to the database to ensure that manufacturers do not have access to information regarding other manufacturers' deployments.

**D. County Classifications**

UTAM has completed the classifications for all counties in the United States based on a two-zone coordination system. Zone 1 counties, those distant from existing microwave operations, are precoordinated and the maximum power deployable in the county is calculated based on the most current version of TIA Bulletin 10. UTAM will aggregate the power of the unlicensed devices as they are installed and activated to ensure that the maximum permitted power levels are not exceeded. Zone 2 counties have microwave receivers nearby or in the county, and all deployment in those areas must be done with site-specific coordination.

**E. Prior Coordination Notice ("PCN")**

UTAM has developed PCN procedures using the most current version of TIA Bulletin 10 and the National Spectrum Managers Association ("NSMA") guidelines. To verify the procedures, UTAM successfully used its PCN process in four counties: Washington, D.C., Montgomery County, MD, Prince George's County, MD, and Arlington County, VA. After the successful completion of these PCNs, UTAM issued additional PCNs to 124 possible Zone 1 counties. UTAM is continuing to identify

Zone 1 counties for the issuance of PCNs in 1996. After Zone 1 PCNs are successfully completed, UTAM updates the information in its database.

**F. Prime Frequency Coordinator ("PFC")**

UTAM has finalized its contract with its Prime Frequency Coordinator, Comsearch. As PFC, Comsearch will issue all Zone 1 PCNs. In addition, Comsearch will oversee the Zone 2 site-specific coordinations to ensure that proper procedures are used.

**G. Policies and Procedures Manuals**

The Policies and Procedures Manual for Unlicensed Frequency Coordination ("Manual") is currently under review to ensure that it is complete and easy-to-understand. UTAM will make the Manual available to any interested parties, potential UTAM subscribers, and those intending to coordinate Zone 2 deployment of unlicensed devices.<sup>7</sup> The Manual is intended to serve as a step-by-step roadmap explaining the submissions to UTAM and other approvals necessary to secure deployment authorization. As part of this Manual, UTAM is including a section which simplifies the process and procedures for deploying UPCS for those unfamiliar with UTAM. This section may be particularly helpful in providing a less technical overview of UPCS procedures. UTAM strongly believes that making the process easy to understand will facilitate the expeditious delivery of UPCS to the public.

---

<sup>7</sup> UTAM will charge a fee for the Manual to cover its production costs.

## **H. Commencement of Deployment**

UTAM has begun coordinating the deployment of UPCS devices. With the sale of UPCS products, UTAM has also started collecting clearing fees, which will be used to finance the relocation of microwave incumbents. UTAM will continue its coordination efforts as more and more UPCS devices are deployed.

## **III. RELOCATION ACTIVITIES**

In an effort to fulfill its primary obligation -- clearing the unlicensed PCS spectrum -- UTAM has developed formal methods and procedures for relocating microwave links. UTAM completed the first step in the relocation process by identifying all of the incumbents in the band, their locations, and the details of their systems. UTAM is now in the process of establishing the order in which microwave links will be relocated.

### **A. Clearing Priorities**

UTAM has developed a clearing strategy that combines several approaches. First, to generate the large amounts of revenue needed, UTAM determined that segment self-financing, by which the clearing revenues generated by a band segment will be used to clear that segment, was necessary. This strategy will allow UTAM to clear faster the markets in which there is the greatest demand for products. This approach, in turn, will allow for increased sales, greater clearing revenues, and faster clearing of the entire band. At the present time, funds have been pledged by

manufacturers to begin clearing both the asynchronous and isochronous bands. To further accelerate the generation of revenue, UTAM will clear the links within each band segment based upon the greatest gain in business population that would be added to the unlicensed PCS market in that band segment for every relocation dollar spent. To facilitate the band clearing process, UTAM will coordinate its relocation efforts with PCS licensees also involved in the relocation of 2 GHz fixed microwave incumbents.

**B. Test Relocation**

UTAM is conducting an analysis to select an incumbent microwave link for its first relocation. UTAM has identified and contacted several possible candidates. Once the analysis is complete, UTAM will select the candidate most amenable to relocation. After relocating the first link, UTAM will continue to relocate links as it collects sufficient funds to complete each relocation. UTAM will not begin a relocation until it has available all funds necessary to complete the process.

**C. Rulemaking Regarding Cost Sharing**

UTAM has filed comments on the Commission's Notice of Proposed Rulemaking regarding cost sharing and microwave relocation.<sup>8</sup> UTAM supports the adoption of a cost sharing mechanism that would benefit microwave licensees and the

---

<sup>8</sup> Notice of Proposed Rulemaking, WT Docket No. 95-157 (Oct. 12, 1995) ("Notice").

PCS industry as a whole, subject to several important clarifications to address the unique nature of unlicensed PCS.

Because of its status as a non-profit frequency coordinator, UTAM believes that it must be able to control when and if the organization will assume specific financial liabilities. UTAM should contribute to relocation expenses when and if unlicensed PCS products benefit from a relocation. To best meet these objectives, UTAM believes that its cost sharing obligations should be triggered when: (1) a county is cleared of microwave links in the unlicensed PCS allocation and UTAM raises a Zone 1 power cap as a result of third-party relocation activities or (2) a county is cleared of microwave links in the unlicensed allocation and UTAM reclassifies a Zone 2 county to Zone 1 status, which could not have been done without third-party relocation activities.

In its comments, UTAM also recommends that it be afforded flexibility in its payment terms so that it can be assured of the ability to meet its obligations. Because UTAM's revenues are so limited and difficult to predict, UTAM suggests that it have the discretion to select one of two options for each cost sharing obligation: (1) to pay using the FCC's deferred payment option or (2) to pay by dedicating the clearing fees raised from the additional deployment permitted as a result of the third-party's relocation activities.

UTAM generally supports other aspects of the Notice that seek to prevent abuses of the relocation process. However, UTAM strongly believes that there should be no additional primary or secondary licensing in the 2 GHz band, since these

operations will inevitably require termination to allow full deployment of UPCS, including nomadic devices. UTAM particularly supports the FCC's proposed definition of good faith bargaining and comparable facilities to give parties a basis around which to form an agreement. Finally, UTAM welcomes the FCC's statement that legal and consulting fees and upgraded equipment are not included within the concept of a comparable system.

#### **IV. ORGANIZATION AND FINANCIAL STATUS**

##### **A. Membership and Staffing**

Since the submission of its first report to the FCC, unlicensed device manufacturers have continued to participate actively in UTAM. UTAM now has eleven voting members and numerous associate members. Voting members include: AT&T Corp.; Ericsson Inc.; Harris Digital Telephone Systems; Motorola, Inc.; NEC America; NorTel; Omnipoint Corporation; PCSI; Siemens Rolm Communications, Inc.; Sony Corporation of America; and SpectraLink Corporation.<sup>9</sup> With manufacturers and distributors of different sizes and producing a variety of product lines, UTAM represents a diverse cross-section of the UPCS industry.

The day-to-day operations of UTAM are handled by a Managing Director and full-time consultant. UTAM also has established several subcommittees which meet each month and report their recommendations to the Board of Trustees. Subcommittee

---

<sup>9</sup> A complete list of the UTAM Board of Trustees and members is attached as Appendix D.

membership is open to any interested party, and both members and nonmembers have participated. A list of these subcommittees and their responsibilities is included as Appendix E.

### **B. Funding**

As explained in both the UTAM Plan and the first report to the FCC, UTAM will fund the relocation of the incumbent microwave users in the band through the clearing fees charged on coordinatable devices. UTAM has begun collecting these clearing fees with the deployment of UPCS. Prior to the sales of coordinatable devices, UTAM's operations were funded by advance clearing fees from UTAM members planning to deploy in the band. UTAM's members have together pledged several million dollars to fund UTAM's administrative expenses until clearing fees generate sufficient revenue to support UTAM's activities.

### **C. Tax Exemption**

The Internal Revenue Service granted UTAM Federal tax-exempt status as a business league under § 501(c)(6) of the Internal Revenue Code in September of 1995. UTAM is currently in the process of filing an application to obtain tax-exempt status in the District of Columbia.

## **V. OUTREACH ACTIVITIES**

In an effort to keep abreast of the changes in the PCS industry as well as to share its own experience and expertise with other industry groups concerned with

UPCS, UTAM maintains a liaison with several industry groups. UTAM has a liaison with ANSI C63.7, the ANSI Subcommittee charged with developing testing procedures for ensuring compliance with the unlicensed device etiquette. In addition, UTAM maintains a liaison with both TR41, a subcommittee of the Telecommunications Industry Association, and JTC, a joint PCS standards-setting body. Finally, UTAM has a liaison on NSMA, a voluntary association comprised of microwave licensees, manufacturers, and consultants. UTAM has reviewed NSMA's coordination procedures, some of which were developed by UTAM, and made presentations concerning UTAM's proposed coordination procedures. UTAM has also worked with the Personal Communications Industry Association's (PCIA) Microwave Relocation Task Force to develop cost sharing proposals and discuss microwave relocation issues.

### VIII. CONCLUSION

UTAM's completion of many of the challenging tasks facing UPCS has made the deployment of such products a reality. UTAM has developed extensive procedures for deployment and is currently refining its plans for relocating microwave links. UTAM is pleased that its efforts have launched the delivery of UPCS and welcomes the opportunity to continue bringing the benefits of UPCS to the public.

Respectfully Submitted,

UTAM, INC.

By:   
Sandy Abramson  
President  
1155 Connecticut Avenue, N.W.  
Suite 401  
Washington, D.C. 20036  
(202) 429-6565

January 11, 1996

# **APPENDIX A**

## SUBSCRIBER AGREEMENT

THIS SUBSCRIBER AGREEMENT (this "Agreement") is made as of the date set forth on the signature page hereof between UTAM, Inc., a Delaware corporation ("UTAM"), and the subscriber set forth on the signature page hereof ("Subscriber").

### RECITALS:

WHEREAS, UTAM is authorized by the Federal Communications Commission ("FCC") to manage the transition of the unlicensed personal communications services ("UPCS") frequency spectrum from use by microwave stations to use by UPCS devices and systems;

WHEREAS, the FCC requires all those who seek FCC equipment authorization for UPCS devices or systems to enter into an agreement with UTAM to share the costs associated with such transition;

WHEREAS, all persons seeking FCC equipment authorization for UPCS devices or systems are required to comply with all FCC product disablement, installation and other rules for the deployment of UPCS devices and systems; and

WHEREAS, Subscriber intends to secure FCC equipment authorization for UPCS devices or systems.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, UTAM and Subscriber agree as follows:

**Section 1. Definitions.** As used herein, the following terms have the following meanings: (i) "UPCS Radiating Part" means intentional radiator equipment requiring a Part 15.311 FCC label and subject to UTAM clearing fees, the operation of which makes use of any part of the UPCS frequency spectrum; (ii) "Customer" means an end-user or other operator of a UPCS Radiating Part; and (iii) "Frequency Coordination Activities" is the process of insuring that no UPCS deployment shall cause interference to licensed fixed microwave facilities.

**Section 2. UPCS Device Information.** Subscriber shall deliver to UTAM reports containing information requested by UTAM which is necessary for the performance of UTAM's frequency coordination responsibilities for the UPCS frequency spectrum, including where required the number, output power level, location of installation, bandwidth used, and band(s) of operation of all UPCS Radiating Parts shipped by Subscriber, together with any supporting documentation ("Reports"). The timing and delivery requirements of such Reports shall be as specified by UTAM from time to time. If Subscriber certifies to UTAM in writing that it has discontinued all manufacture, sale, distribution and activation of UPCS Radiating Parts, then Subscriber shall not be obligated to deliver Reports for any period thereafter during which Subscriber does not manufacture, sell, distribute or activate a UPCS Radiating Part.

**Section 3. UPCS Fees.** In addition, Subscriber shall pay UTAM a fee in an amount determined by UTAM for each and every UPCS Radiating Part shipped by the Subscriber. Such fees shall

be published by UTAM, and each subscriber shall be charged the same fee per UPCS Radiating Part. The initial fee shall be \$20 per UPCS Radiating Part. UTAM will consult with the FCC prior to making any changes in the initial fee. All UPCS fees paid shall be final and non-refundable. A payment of \$20.00 must be delivered to UTAM by the 21st of each month for each UPCS Radiating Part shipped during the previous month.

**Section 4. FCC Rules and UTAM Requirements.** Subscriber shall comply with (i) all applicable FCC rules and regulations and (ii) all requirements established and instructions given from time to time by UTAM to all UTAM subscribers with respect to UPCS spectrum frequency coordination, location verification procedures, testing (including UPCS equipment testing and certification procedures), and related customer agreement requirements. Subscriber shall not directly or indirectly sell, distribute or activate a UPCS Radiating Part, except in compliance with such rules, regulations, requirements and instructions.

**Section 5. Customer Agreement.** Subscriber shall not sell, distribute or activate a UPCS Radiating Part unless the Customer has acknowledged and agreed in writing that the use and operation thereof will comply with all applicable FCC rules and regulations and UTAM requirements and instructions, including without limitation, rules with respect to interference and relocation. Each Customer agreement between Subscriber and a Customer shall include the following provision:

[Customer] hereby acknowledges that the use and operation of any intentional radiator equipment requiring a Part 15.311 FCC label and subject to UTAM clearing fees, the operation of which makes use of any part of the unlicensed personal communications services (“UPCS”) frequency spectrum (“UPCS Radiating Part”), is subject to FCC rules and regulations and UTAM requirements and instructions including without limitation rules, regulations, requirements and instructions with respect to interference to licensed fixed microwave facilities and to the relocation of any such UPCS Radiating Part. [Customer] agrees that [its] use or operation of any UPCS Radiating Part shall comply with all such rules, regulations, requirements and instructions.

**Section 6. FCC Equipment Authorization.** Following execution of this Agreement, Subscriber may, if it elects and is otherwise qualified, apply for FCC equipment authorization for its UPCS devices or systems. UTAM does not warrant FCC approval of any such application. An affirmative determination by UTAM that each UPCS Radiating Part meets the FCC requirements in Part 15.307(d), (e) and (h) is a prerequisite for FCC equipment authorization. Subscriber is responsible for obtaining such UTAM approval (including the filing of all applications and execution of all liability waivers and other agreements required by UTAM) at Subscriber's cost and expense (including the payment by Subscriber of all fees and other costs and expenses of UTAM's Certification Laboratory) and UTAM does not warrant such approval.

**Section 7. Coordination Activities.** Following compliance with FCC certification of the UPCS Radiating Part and execution of this Agreement, Subscriber may begin performing or contracting for the execution of site specific coordinations. As part of these Frequency Coordination Activities, the Subscriber is responsible for notifying UTAM's designated Prime Frequency

Coordinator and complying with any procedural requirements as published by UTAM at Subscriber's cost and expense.

**Section 8. UTAM Voting Membership.** Entities which execute this Agreement, and which participate in the mechanism for and recovery of the costs of clearing the UPCS frequency spectrum, relocating incumbent licensees, and achieving UTAM's other purposes, will become eligible for voting membership in UTAM if they are otherwise eligible under, and comply with, the membership provisions of UTAM's Certificate of Incorporation and Bylaws. Upon becoming voting members of UTAM, Subscribers will be entitled to the rights and privileges and be bound by the obligations of such members. Without limiting the foregoing, voting membership in UTAM is limited to those who seek or intend to seek FCC equipment authorization for UPCS devices or systems. Consequently, if a Subscriber who is a voting member of UTAM gives written notice that it will no longer be manufacturing or deploying UPCS devices, it will no longer be eligible for voting membership in UTAM.

**Section 9. Audit.** UTAM shall have the right to audit annually Subscriber's records relating to shipments of UPCS Radiating Parts. All audits will be conducted by a third party auditor, selected by UTAM, who shall provide to subscriber reasonable notice of the date and time that such audit will occur. For such audits, Subscriber shall make its books and records relating to such shipments available during normal business hours to enable UTAM to verify the number and type of UPCS Radiating Parts shipped by Subscriber. The cost of all annual audits shall be paid by Subscriber. Except as required by the FCC or as otherwise required by law or compulsory legal process or to enforce UTAM's rights hereunder, such books and records shall remain confidential and the information contained therein shall not be disclosed by UTAM to any other subscriber or to any third party. It is the understanding of the parties that under current FCC reporting requirements, UTAM will be required to disclose only aggregate information with respect to UPCS Radiating Parts sold and UTAM revenues from subscribers. UTAM shall have the right to conduct an audit in addition to the annual audit provided for herein if, based on the number of UPCS Radiating Parts reported to UTAM through Subscriber's location verification procedures, the amount of UPCS fees owed to UTAM under this Agreement is discrepant with the amount that has been paid.

**Section 10. Investigations and Inquiries.** Subscriber shall reasonably assist UTAM in the conduct of any investigation or inquiry concerning interference to fixed microwave operations or with regard to compliance with UTAM requirements. The costs of any such investigation or inquiry shall be paid for by Subscriber unless the investigation reveals no errors in Subscriber's compliance with UTAM's requirements.

**Section 11. Term.** The term of this Agreement shall commence on the date set forth on the signature page hereof and shall continue in effect until the date UTAM's FCC designation to manage the transition of the UPCS frequency spectrum expires; provided however, should a successor to UTAM be designated by the FCC, UTAM will, upon written notice to Subscriber, assign and delegate its rights and obligations hereunder to such successor.

**Section 12. Remedies.** If Subscriber fails to comply with any covenant or agreement of Subscriber set forth in this Agreement or makes a material misrepresentation to UTAM or omits

material information required by UTAM, then UTAM, after written notice to Subscriber of such failure, misrepresentation, or omission which is not corrected within 30 days, may suspend or terminate Subscriber's right to sell, distribute, and activate any UPCS Radiating Parts. Upon any such suspension or termination, the provisions of this Agreement shall otherwise remain in full force and effect. Any such failure to comply or misrepresentation could result in the revocation by the FCC of any equipment authorization then held by Subscriber and other penalties under the Communications Act of 1934, as amended, and the rules, regulations and policies of the FCC. If Subscriber fails to comply with any covenant or agreement of Subscriber set forth in this Agreement, then, in addition to any other remedies available to UTAM at law or in equity, UTAM shall be entitled to immediate court ordered injunctive relief to prevent or restrain any such failure, it being understood and agreed that UTAM would suffer irreparable harm in the event of any such failure and that the remedy at law for such failure would be inadequate. If Subscriber does not comply with UTAM's fee requirements in a timely manner for one or more UPCS Radiating Parts, as required by Section 3, then Subscriber shall pay UTAM an amount equal to the fee Subscriber would have paid under Section 3 had it complied therewith plus interest on such amount from the date of noncompliance until paid in full at a rate per annum (the "Default Rate") equal to the highest prime rate published in The Wall Street Journal during the period of noncompliance plus 6%. Subscriber shall also pay UTAM on demand the costs of enforcing UTAM's rights under this Agreement, including reasonable attorneys' fees and costs, plus interest thereon from the date incurred by UTAM until paid in full by Subscriber at the Default Rate. The rights and remedies of UTAM under this Agreement are cumulative and shall be in addition to and not exclusive of any other right or remedy set forth herein or otherwise available to UTAM.

**Section 13. Indemnification.** Subscriber shall indemnify, defend and hold UTAM harmless from and against any and all loss, claim, damage, liability and expense (including reasonable attorneys' fees) arising from (i) Subscriber's negligence or willful misconduct in any act or omission of Subscriber, including without limitation the manufacture, sale, distribution or activation of UPCS devices or systems or the use thereof provided, however, that Subscriber shall not be obligated to indemnify UTAM for losses, claims, damages, liabilities and expenses resulting from compliance with UTAM requirements where such Subscriber negligence or willful misconduct is not present, or (ii) any failure by Subscriber to comply with any covenant or agreement of Subscriber set forth herein or any misrepresentation made by Subscriber to UTAM. The provisions of this section shall survive and remain in full force and effect following the expiration or termination of this Agreement.

**Section 14. Arbitration.** Any controversy or claim arising out of or relating to this Agreement or the breach hereof shall, upon the written request of either party, be settled by arbitration in Washington, D.C. in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware.

**Section 15. Miscellaneous.** Subscriber shall provide the Subscriber information identified in Appendix A. Notices hereunder shall be effective when delivered personally or by overnight courier or registered mail, return receipt requested, to Subscriber at its address as set forth in

Appendix A or to such other address as may be specified by Subscriber by written notice to UTAM at its address specified on the signature page of this agreement or to such other address as may be specified by UTAM by written notice to Subscriber. All UPCS fees to be paid to UTAM pursuant to this Agreement shall be delivered to: UTAM, INC., Department 3465, Washington, DC 20042-3465. This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings and communications relating thereto. This Agreement and the rights and obligations hereunder may not be assigned or delegated by either party without the prior written consent of the other, except that UTAM may, upon written notice to Subscriber, assign and delegate its rights and obligations hereunder to any successor designated by the FCC to perform UTAM's functions. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. The invalidity of any provision of this Agreement shall not affect the validity of any other provisions. The failure by either party to insist upon the performance of any provision of this Agreement shall not be construed as a waiver of such performance or any future performance.

IN WITNESS WHEREOF, UTAM and Subscriber have executed this Agreement as of the date written below.

UTAM, INC.

By: \_\_\_\_\_

Name:

Title:

Address:

UTAM, INC.

1155 Connecticut Avenue, N.W., Suite 401

Washington, D.C. 20036

NAME OF SUBSCRIBER:

\_\_\_\_\_

STATE OF INCORPORATION:

\_\_\_\_\_

By: \_\_\_\_\_

Name \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

DATE: \_\_\_\_\_

Appendix A

Primary Contact

Secondary Contact

Name: \_\_\_\_\_

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

City, State: \_\_\_\_\_

\_\_\_\_\_

Zip Code: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

\_\_\_\_\_

Fax: \_\_\_\_\_

\_\_\_\_\_

Should this information change, please contact UTAM headquarters at (202)429-6565 immediately.

## **APPENDIX B**

# **Certification Procedures**

**Issue 1.0a**  
**June 29, 1995**