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January 11, 1996

HAND DELIVERY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

RECEIVED

JAN 11 1996

FEDERAL COMMUNICATIONS COMMISSION

Re: *Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use*
-- *ET Docket No. 94-32*

Dear Mr. Caton:

On September 8, 1995, The Wireless Cable Association International, Inc. ("WCAI") petitioned the Commission for reconsideration of the *Second Report and Order* in the above-referenced proceeding. Among other things, WCAI urged the Commission to utilize Rand McNally & Company ("Rand McNally") Basic Trading Areas ("BTAs"), rather than Department of Commerce Economic Areas ("EAs") as the geographic area for General Wireless Communications Service ("GWCS") licenses. WCAI demonstrated that because the GWCS was likely to be utilized in conjunction with other services licensed on a BTA basis, it would be most efficient to license GWCS on a BTA-by-BTA basis also. WCAI's proposal drew absolutely no opposition.

To alleviate any concerns regarding the copyright issues associated with the use of BTAs, WCAI indicated in its petition that it had reached an agreement in principle with Rand McNally on the terms of a licensing agreement that would permit the use of BTAs in licensing GWCS facilities. I am writing to advise the Commission that a formal agreement has been entered into between Rand McNally and WCAI. A copy of that agreement is attached. Thus, any copyright concerns that may have led the Commission to employ EAs have been eliminated.

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Listed Below

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William F. Caton
January 11, 1996
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Should you have any questions regarding this development, please contact the undersigned.

Respectfully submitted,



Paul J. Sinderbrand

Counsel to the Wireless Cable
Association International, Inc.

Attachment

cc: Hon. Reed Hundt
Hon. James Quello
Hon. Andrew Barrett
Hon. Susan Ness
Hon. Rachelle Chong
Michele Farquhar

CONDITIONAL LICENSE AGREEMENT

THIS CONDITIONAL LICENSE AGREEMENT is made as of the 21st day of September, 1995, by and between Rand McNally & Company, 8255 North Central Park, Skokie, Illinois 60076 ("RMC") and the Wireless Cable Association International, Inc., 1140 Connecticut Avenue, N.W., Suite 810, Washington, D.C. 20036 ("WCA").

1. DEFINITIONS

- a. "Agreement" shall mean this License Agreement.
- b. "Licensed Material" shall mean the BTA listings contained in Attachment I hereto and the MTA Map.
- c. "MTA Map" shall mean the map contained on pages 38-39 of the 1992 version of RMC's Commercial Atlas & Marketing Guide, which graphically depicts the BTA listings contained in Attachment I hereto.
- d. "License" shall mean the conditional license described in Section 2 hereof.

2. LICENSE

a. Subject to the terms and conditions of this Agreement, including without limitation Section 4 hereof, RMC conditionally grants to WCA, and all other interested persons (collectively referred to as "Licensees") a non-exclusive license to reproduce, create derivative works from, publicly distribute and publicly display the Licensed Material and derivative works created therefrom, provided however that such rights may be exercised solely for the purposes set forth in Attachment II hereto. The License shall cease to be conditional upon the final decision of the Federal Communications Commission (the "Commission") to reconsider its decision to license the General Wireless Communications Service in the 4660-4685 MHz band ("GWCS") on the basis of Economic Areas developed by the Department of Commerce and, instead, to license GWCS on the basis of BTAs, with five 5 MHz Commission-issued GWCS licenses available in each BTA. Notwithstanding the foregoing, and assuming the Commission decides to license GWCS on the basis of BTAs and, therefore, the License ceases to be conditional, initial GWCS BTA licensees ("BTA Licensees") may remain Licensees hereunder only upon payment to RMC of the requisite License Fee, as defined in Section 3 hereof. If a BTA Licensee fails to pay the requisite License Fee

within the time period set forth in Section 3(b) hereof, the License granted hereunder to such BTA Licensee shall be null and void *ab initio* until such payment is received.

b. As a condition of the License, Licensees shall include:

(i) on any reproduction of all or any substantial portion of the Licensed Material the following legend:

Copyright © 1992 Rand McNally & Company. Rights granted pursuant to a license from Rand McNally & Company (through an arrangement with the Wireless Cable Association International, Inc.) to all interested parties for use solely in connection with the licensing, building, marketing and operation of General Wireless Communications Services.

(ii) on any reproduction of all or any substantial portion of any derivative work based on the BTA listings or the MTA Map (including but not limited to any official Commission version of geographic boundaries based on such listings), the following legend:

Based on Material Copyrighted © 1992 by Rand McNally & Company. Rights granted pursuant to a license from Rand McNally & Company (through an arrangement with the Wireless Cable Association International, Inc.) to all interested parties for use solely in connection with the licensing, building, marketing and operation of General Wireless Communications Services.

For purposes of this subparagraph 2(b), a reference to twenty-five (25) or less of the BTA listings in the Licensed Material shall not constitute a "substantial portion" of the Licensed Material or of any derivative work based thereon.

c. Subject to the rights granted to the Licensees hereunder, the Licensed Material and all copyright and other proprietary rights therein are and remain the property of RMC.

3. PAYMENT TO RMC

a. As consideration to RMC, each BTA Licensee seeking to become a Licensee hereunder shall make a one-time payment to RMC in the amount of \$425.00 per each Commission-issued GWCS BTA 5 MHz license of which said BTA Licensee is the grantee (the "License Fee"). By way of example, if a BTA Licensee is the grantee of four (4) Commission-issued GWCS BTA 5 MHz licenses, the requisite License Fee would be U.S.\$1,700.00. Once a License Fee has been paid for a given Commission-

issued GWCS BTA 5 MHz license, no further License Fee shall be required from any future entity that becomes the licensee of any or all of the frequencies covered by such Commission-issued license within the applicable BTA that were the subject of the GWCS license auction.

b. License Fee(s) shall be made in U.S. funds by wire transfer or in the form of a certified bank check payable to Rand McNally & Company which shall be transferred or delivered to RMC within 10 business days after the date that a BTA Licensee's GWCS BTA license(s) is issued by the Commission.

c. Upon receipt of the License Fee from a BTA Licensee, RMC shall include in Attachment IV, hereto, the BTA(s) covered by such BTA Licensee's License Fee.

3A. DEPOSIT

Within ten (10) days of the date that the License is no longer conditional in accordance with Section 2(a), above, WCA shall make a good faith deposit with RMC of U.S.\$10,000.00 (the "Deposit"). The first U.S.\$10,000.00 of License Fees that RMC collects hereunder shall be used to reimburse WCA for the Deposit (the "Deposit Reimbursement"). The Deposit Reimbursement shall be made in U.S. funds by wire transfer or in the form of a certified bank check payable to the Wireless Cable Association International, Inc., which shall be transferred or delivered to WCA within 10 business days after the date that RMC collects the first of U.S.\$10,000.00 of License Fees.

4. TERM AND TERMINATION

a. The License granted hereunder shall extend for the entire term of copyright in the Licensed Material, subject to earlier termination as provided herein.

b. RMC may terminate the License as against any particular Licensee for a material breach by such Licensee of the terms of the License described herein, if such breach is not cured within 30 days after such Licensee receives notice of the breach. This right of termination is in addition to, and not in lieu of, any other remedies RMC may have for breach of this Agreement. It is understood and agreed that WCA and the Licensees shall have no obligations hereunder to enforce the terms of this Agreement against persons or entities not a party hereto or as between themselves, and, furthermore, that any breach of the terms of the License by a

Licensee other than WCA shall not be deemed a breach of this Agreement by WCA or the non-breaching Licensees nor shall it impair WCA's rights or the non-breaching Licensees' rights hereunder. Notwithstanding the foregoing, to the extent WCA's or a Licensee's willful conduct in violation of this Agreement causes or results in a breach of the License by another Licensee, such willful conduct shall constitute a breach of the License by WCA or the Licensee that causes another Licensee to breach, as applicable.

c. This Agreement and the License granted hereunder shall terminate and be of no further force and effect if, at any time following the date that the License ceases to be conditional and prior to the date that the Commission commences BTA licensing of GWCS licenses, the Commission elects to use geographic boundaries for such auction that are not based on the Licensed Material, provided that WCA so notifies RMC within 60 days after the Commission's decision. Within 10 business days after receiving such notification, RMC will refund the Deposit to WCA.

d. This Agreement and the License granted hereunder shall terminate automatically and be of no further force and effect if, on or before July 1, 1996, the Commission expressly declines to license, or fails to license, GWCS on the basis of BTAs, with five 5 MHz Commission-issued GWCS licenses available in each BTA.

5. OBLIGATIONS OF RMC

a. Upon receipt of the Deposit, RMC shall provide to WCA: (1) The 1993 version of RMC's Trading Area System MTA Diskette, which is an electronic version of the BTA listings contained in Attachment I hereto, and (ii) three (3) copies of each of the BTA listings comprising Attachment I hereto and the MTA Map.

b. Upon receipt of the Deposit, RMC shall provide to the Commission two copies of the Licensed Material in hard copy form for use by Licensees in accordance with the terms and conditions of this Agreement.

c. For a period of three (3) months after receipt of the Deposit, RMC shall, upon request therefor, make available to individual Licensees additional copies of the Licensed Material (excluding the MTA Map), which shall include the alterations and enhancements made by the Commission that are summarized in the Second Report and Order, GEN Docket No. 90-314, 8 FCC Rcd 7700 (1993), in hard copy and

electronic form, at the fees summarized in Attachment III hereto. RMC shall have no obligation to (i) make any other alterations or enhancements to the Licensed Material that may be made by the Commission or any other Licensee, or (ii) include any alterations or enhancements whatsoever in any version of its Commercial Atlas & Marketing Guide.

6. RESERVATION OF RIGHTS BY RMC

a. RMC reserves its right to alter the Licensed Material or any part thereof in the future. Any modifications to the Licensed Material shall not be included in the Licensed Material under this Agreement, unless the parties agree otherwise in a signed writing.

b. RMC reserves all rights with respect to the Licensed Material not expressly granted herein, including but not limited to rights in respect of use of the Licensed Material or any part thereof for purposes other than those described on Attachment II hereto. The purposes for which the Licensed Material may be used may be expanded (*e.g.*, to provide for use in connection with future Commission proceedings relating to GWCS, including the allocation of additional spectrum to GWCS licensees or making such licensees eligible to use additional spectrum) solely with the prior written authorization of RMC and upon payment of additional compensation to RMC by an appropriate party, in an amount to be negotiated with such party.

7. REPRESENTATIONS AND WARRANTIES OF RMC

a. RMC represents and warrants that (i) it is the owner of the Licensed Material and any and all copyright rights therein, (ii) it has all rights necessary to enter into this Agreement and to grant the License granted herein, and (iii) the Licensed Material constitutes "work made for hire," as such term is defined under the Copyright Act of 1976, as amended.

b. RMC shall indemnify and hold harmless WCA and each Licensee, as applicable, from and against any losses, damages, liabilities, actions, judgments, settlements, costs and expenses (including reasonable attorneys' fees) arising from any assertion against WCA or a Licensee that the Licensed Material used within the scope of this Agreement infringes or violates any rights of any third party, provided that: (i) WCA or the Licensee, as applicable, promptly notifies RMC of any such assertion; (ii)

RMC has sole control over the defense of such claim, including any related settlement negotiations; and (iii) WCA or the Licensee, as applicable, cooperates with RMC in the defense of such claim (at no cost to WCA or the Licensee). This indemnity shall not apply to any modification or adaptation of the Licensed Material if use of the Licensed Material alone would not be infringing.

8. GENERAL

a. **Waiver.** The failure or delay by any party to enforce any term of this Agreement shall not be deemed a waiver of such term or of the right to enforce such term in the future. No waiver shall be binding unless in a writing signed by the party making the waiver. RMC's waiver of breach by one Licensee shall not be deemed a waiver of breach by another Licensee.

b. **Complete Agreement.** This Agreement, including the Attachments hereto, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous communications, representations, understandings or agreements between the parties with respect to the subject matter hereof. It may be modified only in a writing signed by the parties.

c. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the other provisions of this Agreement shall continue in full force and effect notwithstanding such holding.

d. **Notices.** Notices relating to this Agreement shall be in writing and sent by reliable air courier service, or by registered or certified mail addressed to the parties at the addresses set forth above. Any notice to RMC shall be sent to the attention of Deborah Lipoff, Esq. Any notice to WCA shall be sent to the attention of The President (with a copy, which shall not constitute notice, to Paul J. Sinderbrand, Esq., Sinderbrand & Alexander, 888 Sixteenth Street, N.W., Fifth Floor, Washington, D.C. 20036). The address to which any notice may be given may be changed upon written notice as provided above.

e. **CONTROLLING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED UNDER THE SUBSTANTIVE LAWS OF THE STATE OF ILLINOIS, AS APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN ILLINOIS.

f. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original and both of which together shall constitute one and the same instrument.

g. Publicity. The parties hereto agree to issue a mutually acceptable press release regarding this Agreement or the License granted hereunder.

h. Successors. This Agreement shall be binding on and shall inure to the benefit of any successors or assigns of the parties, provided that no assignment of this Agreement shall relieve either party of its obligations to the other party.

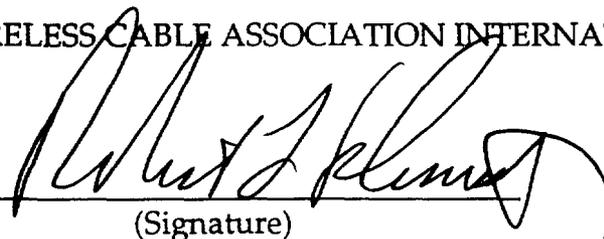
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective authorized representatives.

RAND McNALLY & COMPANY

By: _____
(Signature)

NAME: Henry Feinberg
TITLE: President, Publishing Group

WIRELESS CABLE ASSOCIATION INTERNATIONAL, INC.

By: 
(Signature)

NAME: Robert L. Schmidt
TITLE: President

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective authorized representatives.

RAND McNALLY & COMPANY:

By: [Handwritten Signature]
(Signature)

NAME: Henry Feinberg
TITLE: President, Publishing Group

WIRELESS CABLE ASSOCIATION INTERNATIONAL, INC.

By: _____
(Signature)

NAME: Robert L. Schmidt
TITLE: President

ATTACHMENT I

BTA Listings

ATTACHMENT II

Statement of Purposes For Which the Licensed Material May be Used

The Licensed Material may be used:

(i) In any documents prepared in connection with proceedings before the Commission relating to 5 MHz FCC-issued General Wireless Communications Service ("GWCS") BTA licenses granted in connection with a GWCS BTA license auction in the 4660-4685 MHz band.

(ii) In any documents or other materials prepared in connection with the licensing, building, marketing and operation of General Wireless Communications Services ("GWCS") in connection with 5 MHz FCC-issued GWCS BTA licenses granted in connection with a GWCS BTA license auction in the 4660-4685 MHz band.

ATTACHMENT III

Schedule of Fees for Additional Copies of Printed Listings

Print Listing of Licensed Materials	\$25/copy
MTA Diskette	\$25 for first copy; \$5 for each additional copy*

* Additional charge for Federal Express.

ATTACHMENT IV

BTA(s) For Which License Fees Have Been Fully Paid