

**UTAM, Inc.**

**POLICY & PROCEDURES**

**(Version 2 – April 1, 2005)**

**UTAM, INC.**

P.O. Box 8126  
Bridgewater, NJ 08807  
Phone: (908) 526-3636  
Fax: (908) 781-2697  
[info@utam.org](mailto:info@utam.org)

INDEX

	<u>Page</u>
1. Introduction – What is UTAM?	3
2. FCC Product Registration Process	4
3. Fee Structure	4
4. UTAM Audit	5
5. UTAM Affidavit	5
6. Subscriber Agreement	5
7. UTAM Membership	6
8. Reports to the FCC	6
9. UTAM Closure	6
ATTACHMENT – UTAM SUBSCRIBER AGREEMENT	7

**DISCLAIMER**

*The following manual is intended as a reference document for UTAM members regarding the operational policies procedures of UTAM, Inc. The information contained herein is, to the best of UTAM's knowledge, current and correct. However, this information may be superseded by regulatory developments or changes in UTAM policy. Before taking action based on the information set forth in this manual, it is advisable to contact UTAM at (908) 526-3636 or via email at [info@utam.org](mailto:info@utam.org), or take other steps to ensure that such action is based on the most current set of policies or documents.*

## 1. INTRODUCTION – WHAT IS UTAM, INC.

In 1995 the FCC allocated spectrum for new licensed Personal Communications Services (PCS) to compete with and compliment cellular service. At the same time, enterprise equipment manufacturers were lobbying the FCC for an allocation of unlicensed spectrum for use in accommodating a new wave of wireless products that were in development, but required clear spectrum to operate. When the FCC allocated spectrum for licensed PCS they also allocated 20 MHz for unlicensed use. 1910 – 1920 MHz was allocated for the use of asynchronous devices and 1920 – 1930 for isochronous use. However, in order for this unlicensed band to be used, over 1,100 point-to-point microwave systems had to be relocated in order to clear the band.

The industry proposed that an organization be established for the Unlicensed Transition and Management (UTAM) of the proposed band and to coordinate the relocation of the microwave facilities. In order to pay for the cost of the relocation, manufacturers deploying product in the UPCS band would pay UTAM a fee, which in turn, would be used to pay for the cost of relocating the microwave facilities. The FCC agreed with the proposal and in it's Fourth Memorandum Opinion and Order, designated UTAM as the frequency coordinator for the UPCS band. In this capacity, UTAM is responsible for overseeing the deployment of UPCS devices, to coordinate the relocation of the incumbent microwave facilities and to insure that deployment of any unlicensed devices did not interfere with any microwave facilities in the course of the transition.

In order to insure that no interference was caused to the operational microwave facilities, UTAM established stringent rules that required manufacturers to enter information of installations into a database to insure that the initial installation would not cause any interference. Manufacturers also had to design their systems in such a way so that they could not be relocated without the manufacturer insuring that the new location would also not cause any interference. While the rules were stringent, they were not overly onerous and no instances of interference ever occurred.

On April 5, 2005, while over 99% of the links had been relocated, the rules for any of the remaining microwave links changed. After that date, any microwave system still in operation in the UPCS band lost its primary status and there was no longer a need to be concerned with interference. Without the concern for interference, manufacturers could then begin to deploy what UTAM referred to as nomadic devices. Products that are no longer fixed to a location and can be moved at will, such as cordless telephones, wireless controllers, walkie-talkies, etc. Unfortunately, since there was no use of the 1910 – 1920 MHz band by asynchronous devices, the FCC reallocated that band for alternate uses, limiting the UPCS band to 1920 – 1930 MHz.

UTAM's intent is not to be an impediment, or a watchdog for the industry, but to keep this process as simple as possible. Our commitment is to finalize the clearing of the band, pay off the financial obligations that have been incurred in doing so and then close down the entity and in so doing eliminate any clearing fees going forward.

## 2. FCC PRODUCT REGISTRATION PROCESS

UTAM does not get directly involved in the FCC product registration, or product testing processes. Products that operate in this band must adhere to the FCC Part 15 rules. As part of the documentation for the FCC product registration process under those rules, the FCC will require an affidavit from UTAM stating that the manufacturer is participating in the cost of clearing the band, otherwise the registration will be denied. (See Section 5 – Affidavit)

## 3. FEE STRUCTURE

In the course of the transition to a clear the UPCS band, UTAM expended nearly \$50M to administer and clear the band. A significant portion of that is still owed to the PCS carriers who relocated numerous microwave facilities in order to deploy licensed services. Like the UPCS band, the licensed band that the FCC awarded to PCS carriers for licensed services also required thousands of microwave links to be relocated before the carriers could begin to offer service in any geographic area. Many of those links were co-channel to the UPCS band and their operating spectrum spanned across both unlicensed and licensed spectrum. Under a cost sharing arrangement established by the FCC, anyone who benefited by the relocation of a microwave facility by another entity is obligated to reimburse that entity for a portion of the expense. The UPCS band was a beneficiary of many of those relocations and UTAM must continue to recover the costs and pay for clearing the band through the imposition of a clearing fee.

Once UTAM's financial obligations are paid off, it will close down and clearing fees will no longer be imposed.

Initially, the clearing fee imposed on manufacturers for utilization of the band was \$20.00 per radiating device. Recognizing that most of the new products that will be deployed in the band after the April 5, 2005 date will be consumer oriented, with a much lower price point, UTAM lowered the fees to \$0.50 per radiating device effective April 1, 2005. The increased volume generated by the lower fee structure, combined with the changes made to the FCC's Part 15 rules have allowed UTAM to pay down its financial obligations. Its obligations are now equal to the amount of money UTAM expects to recover from the auction of the 1915 – 1920 MHz band that UTAM had cleared and that was reallocated by the FCC for Advanced Wireless Services. However, the time frame for that auction has yet to be scheduled. Until UTAM can recover those fees and pay off its financial obligations, it will continue to operate, but its expenses are anticipated to be much lower. As a result, effective January 1, 2008 UTAM lowered its per radiating device fee from \$0.50 to \$0.05 until such time as when all financial obligations are met. So, for example, a cordless telephone with one handset and one base would be assessed a fee of \$0.10. A system with two handsets and one base would be \$0.15, and so on. In addition, new users will be assessed a \$50,000 one time fee to help recover a minor portion of the costs expended to get the band to its current clear state.

The fees will be imposed upon each manufacturer, or distributor, who applies for an FCC registration of their product. The \$50,000 fee will only be imposed once to any manufacturer, or distributor.

## UTAM, Inc.

### Fee Structure (Effective 1/1/08)

Up Front Membership Fee	\$50,000.00
Per Radiating Device Fee	\$0.05

**All fees must be delivered to UTAM by the 21st of each month for each UPCS Radiating Part shipped during the previous month. These monthly clearing fees should be directed to:**

UTAM, Inc.,  
Department 3465  
Washington, DC 20042-3465

The one time fee of \$50,000, along with two (2) copies of the signed Subscriber Agreement (see Section 5 - Subscriber Agreement) should be sent to:

Via U.S. Mail  
UTAM, Inc.  
P.O. Box 8126  
Bridgewater, NJ 08807

Via Overnight Mail  
UTAM, Inc.  
822 Dow Rd.  
Bridgewater, NJ 08807

#### 4. UTAM AUDIT

Each year, every member paying clearing fees will be subject to a UTAM audit. Since the monthly clearing fees are, for the most part, paid on an honor system, the annual audit is the only mechanism to insure that all members are in compliance with the Subscriber Agreement. The audit will verify the accuracy of the clearing fees paid based on the number and the date of radiating units shipped. An outside auditor, selected by UTAM, will conduct the audit and the expense of the audit will be borne by the member.

The audit will result in an "Independent Accountant's Report on Applying Agreed Upon Procedures" of which you will receive a copy. Any reconciliation will be based on the results of this report. Please be assured that any information obtained during the course of this examination will be held in the strictest of confidence.

#### 5. UTAM AFFIDAVIT

Upon receipt of a signed Subscriber Agreement and an up front fee of \$50,000, UTAM will provide the manufacturer with an affidavit stipulating that the manufacturer is a participating member of UTAM, Inc. in good standing for purposes of Section 15.307(b) of the FCC rules.

#### 6. SUBSCRIBER AGREEMENT

In order for UTAM to issue the affidavit required by the FCC, the manufacturer will have to sign a Subscriber Agreement which is a legal contract that stipulates that each manufacturer will pay their respective fees in a timely manner. In addition, amongst other things, it stipulates that each manufacturer is subject to an annual audit by a third

## UTAM, Inc.

party auditor, selected by UTAM and paid for by the manufacturer. This is UTAM's only mechanism to insure compliance with fee payments. Failure to comply with the principals of the agreement could result in the loss of the manufacturers FCC product registration.

*(Subscriber Agreement Attached)*

### **7. UTAM MEMBERSHIP**

General membership in UTAM is open to any companies, associations, or other entities with a material interest in the manufacture, sale, or distribution of UPCS devices; entities engaged in the manufacture, operation, planning, engineering, or installation of microwave systems; and users of UPCS products or systems.

Voting membership is available to any individual, partnership, corporation, or other entity planning to manufacture, sell, or distribute UPCS products or systems. Entities shall be eligible for voting membership once they have:

- Made an initial one time only fee to UTAM in an amount to be established by the Board of Trustees (currently \$50,000) which will be applied toward the cost of clearing the UPCS band; this fee is non-refundable.

### **8. UTAM REPORTS TO THE FCC**

As part of the FCC oversight UTAM is required to make a bi-annual report to the FCC. The report will include the following:

- An executive summary;
- Organizational and Financial Status, which provides an overview of the current level of UTAM membership and any activities that may have an impact on the UPCS band.
- Outreach Activities, which demonstrates UTAM's commitment to educating the industry on UTAM current activities.

### **9. UTAM CLOSURE**

Once UTAM's financial obligations are paid off, all of it's legal commitments finalized, UTAM will close down and clearing fees will no longer be imposed.

## 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; 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 making 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) "UPCS Frequency Spectrum" means the band from 1920-1930 MHz designated for UPCS operation.

**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 model number and number 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

## UTAM, Inc.

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.* Prior to shipping any UPCS Radiating Parts, Subscriber shall pay UTAM an initial fee of \$50,000. 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. For all UPCS Radiating Parts shipped after April 5, 2005, the fee shall be \$0.50 per UPCS Radiating Part. All UPCS fees paid shall be final and non-refundable. All payments due under this agreement 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 use. 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.~~

**Section 56.** *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 affidavit by UTAM that Subscriber is a participating member of UTAM is a prerequisite for FCC equipment authorization. Subscriber is responsible for obtaining such UTAM affidavit at Subscriber's cost and expense.

## UTAM, Inc.

**Section 67.** *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.

**Section 78.** *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.

**Section 89.** *Investigations and Inquiries.* Subscriber shall reasonably assist UTAM in the conduct of any investigation or inquiry concerning interference and 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 919.** *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

## UTAM, Inc.

written notice to Subscriber, assign and delegate its rights and obligations hereunder to such successor.

**Section 104.** *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 112.** *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

## UTAM, Inc.

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 1213.** *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 134.** *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

## UTAM, Inc.

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.

# UTAM, Inc.

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

UTAM, INC.

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

Name: Michael Stima

Title: Managing Director

***Return this document to:***

Address: UTAM, INC.  
~~991 Rt. 22 - Ste. 104~~  
P.O. Box 8126  
Bridgewater, NJ 08807

Formatted

NAME OF SUBSCRIBER: \_\_\_\_\_

STATE OF INCORPORATION: \_\_\_\_\_

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

Name \_\_\_\_\_

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

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

\_\_\_\_\_

\_\_\_\_\_

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

# UTAM, Inc.

## APPENDIX A

	<u>Primary Contact</u>	<u>Secondary Contact</u>
Name:	_____	_____
Address:	_____	_____
City, State:	_____	_____
Zip Code:	_____	_____
Phone:	_____	_____
Email:	_____	_____