

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Amendment of Part 15 Subpart D of the
Commission's Rules Regarding Unlicensed
Personal Communications Service Devices in the
1920-1930 MHz Band

ORDER

Adopted: October 20, 2014

Released: October 20, 2014

By the Chief, Office of Engineering and Technology:

1. By this Order, and pursuant to the authority delegated by the Commission, we revise Part 15 Subpart D of the Commission's rules to remove and reserve Section 15.307. The practical effect of this decision is that applicants for certification of Unlicensed Personal Communications Service (UPCS) devices will no longer be required to be members of UTAM, Inc. (UTAM).

2. Section 15.307 has served, along with other Commission actions, to ensure that UTAM is reimbursed for the costs it incurred in clearing the 1910-1930 MHz band of incumbent microwave licensees. In a letter submitted to the Commission, UTAM indicated that this objective has been met. We agree, and conclude that the rule no longer serves its intended purpose. Moreover, because UTAM's board of directors has proposed to its membership a plan of dissolution and cessation of all corporate activities, we anticipate that it will soon become impossible for UPCS device manufacturers to satisfy Section 15.307's membership requirement. We briefly describe the history of the band, UTAM, and the rule section below.

3. In 1993, the Commission reallocated the 1910-1930 MHz band from the Private Operational Fixed Microwave Service (POFS) to UPCS use. As part of this reallocation, the Commission designated UTAM to manage the transition of the 1910-1930 MHz band from POFS to UPCS use. Under the

1 Part 15 Subpart D sets out the regulations for Unlicensed Personal Communications Service (UPCS) devices that operate in the 1920-1930 MHz band. UPCS devices typically consist of cordless phones, headsets, and other popular consumer devices. Section 15.307 requires that applicants for certification of Unlicensed Personal Communications Service (UPCS) devices submit with their application for equipment certification an affidavit from UTAM, Inc. (UTAM) certifying that they are a participating member of UTAM.

2 47 C.F.R. § 15.307. Under the Commission's equipment authorization rules, UPCS devices operated or marketed for use in the United States must be certified. 47 C.F.R. §§ 2.907, 15.305.

3 See Letter from Eric DeSilva, Counsel to UTAM, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, GEN Docket No. 90-314 (filed June 11, 2014) at 1-2 (UTAM Letter).

4 See id. at 2.

5 See Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Second Report and Order, 8 FCC Rcd 7700, 7738 ¶ 88 (Broadband PCS Second R&O) (1993).

6 See Broadband PCS Second R&O 8 FCC Rcd at 7738 ¶ 88, 7739 ¶ 91; Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Fourth Memorandum Opinion and

relocation funding plan approved by the Commission, UTAM would pay to relocate or agree to share the costs to relocate incumbent services in the band, and future UPCS device manufacturers would reimburse UTAM for their share of the incurred costs.<sup>7</sup> The UPCS device manufacturers would reimburse UTAM via a fee for each device sold (which UTAM subsequently eliminated), as well as a membership fee set by UTAM.<sup>8</sup> To ensure that UTAM received this reimbursement, the Commission required – via Section 15.307 – that each application for certification of UPCS equipment be accompanied by an affidavit from UTAM certifying that the applicant was a member of UTAM.<sup>9</sup>

4. In 2004, the Commission re-designated the 1910-1915 MHz and 1915-1920 MHz bands from UPCS use to Broadband PCS<sup>10</sup> and Advanced Wireless Service (AWS)<sup>11</sup> operations, respectively. As part of the 1910-1915 MHz band re-designation, the Commission determined that UTAM was entitled to a reimbursement from Nextel Communications, Inc. (the 1910-1915 MHz band licensee) for 25 percent – on a *pro rata* basis – of the total relocation costs it had incurred in clearing the 1910-1930 MHz band of

(Continued from previous page) \_\_\_\_\_  
*Order*, 10 FCC Rcd 7955, 7967 ¶ 38 (1995) (*Broadband PCS Fourth MO&O*); 47 C.F.R. § 15.307. UTAM was created in 1993 by representatives from a broad range of UPCS equipment manufacturers to facilitate the transition of the 1910-1930 MHz band from POFS to UPCS use. *See Broadband PCS Second R&O* 8 FCC Rcd at 7736 ¶ 83 n.74. UTAM has furnished biannual reports in ET Docket No. 90-314 that describe, *inter alia*, the status of the financial and band clearing plans, the extent of microwave relocation, and the extent of unlicensed PCS deployment.

<sup>7</sup> *See Broadband PCS Fourth MO&O*, 10 FCC Rcd at 7963 ¶ 25. Because some of the POFS operations in the 1910-1930 MHz band were paired with links in other spectrum assigned for licensed PCS operations, UTAM in some cases engaged in cost-sharing arrangements in which the PCS licensees assumed responsibility for relocating the paired POFS links and UTAM agreed to reimburse the PCS licensees a *pro rata* share for the spectrum cleared in the 1910-1930 MHz band. Similarly, where UTAM relocated a paired link that included spectrum outside the 1910-1930 MHz band, it was entitled to reimbursement from the PCS licensees operating in those frequencies. *See Reply Comments of UTAM, Inc.*, GEN Docket No. 90-314 (filed Sept. 9, 1994), at 3-6.

<sup>8</sup> *See UTAM Plan for Financing and Managing 2 GHz Microwave Relocation*, GEN Docket No. 90-314 (filed Aug. 1, 1994), at 34-38; *UTAM Report to the FCC*, GEN Docket No. 90-314 (filed Jan. 1, 2009) at 4. In 2008, UTAM suspended the fee per UPCS device sold but retained the UTAM membership fee. *See id.* at 4-5.

<sup>9</sup> 47 C.F.R. § 15.307. Thus, manufacturers would not be able to obtain certification for their UPCS equipment – and market such equipment – until after they had joined UTAM.

<sup>10</sup> *See Improving Public Safety Communications in the 800 MHz Band, Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, WT Docket 02-55, Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00-258, Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service, RM-9498, Petition for Rule Making of UT Starcom, Inc., Concerning the Unlicensed Personal Communications Service, RM-10024, Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile Satellite Service, ET Docket No. 95-18, *Report and Order, Fourth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, 15088 ¶ 227 (2004) (*800 MHz R&O*).

<sup>11</sup> *See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, ET Docket No. 00-258, Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service, RM-9498, Petition for Rule Making of UT Starcom, Inc., Concerning the Unlicensed Personal Communications Service, RM-10024, Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile-Satellite Service, ET Docket No. 95-18, *Sixth Report and Order, Third Memorandum Opinion and Order, and Fifth Memorandum Opinion and Order*, 19 FCC Rcd 20720, 20739-40 ¶¶ 40-41 (2004) (*AWS Sixth R&O*).

incumbent microwave stations.<sup>12</sup> In 2007, Sprint Nextel Corp. (successor to Nextel), reimbursed UTAM for these costs.<sup>13</sup>

5. Similarly, as part of the 1915-1920 MHz band re-designation, the Commission determined that UTAM was entitled to a reimbursement from the future AWS licensee(s) in the 1915-1920 MHz AWS-2 band for 25 percent – on a *pro rata* basis – of the total relocation costs it had incurred in clearing the 1910-1930 MHz band of incumbent microwave stations.<sup>14</sup> On May 29, 2014, DISH, the sole licensee in the 1915-1920 MHz band, reimbursed UTAM for these costs.<sup>15</sup>

6. Based on the reimbursements paid by Sprint and DISH, as well as the membership and device fees that have been paid by UPCS device manufacturers, UTAM has determined that it can satisfy all of its financial obligations associated with clearing the entire 1910-1930 MHz band. Accordingly, it has prepared a plan of dissolution and cessation of all corporate activities.<sup>16</sup> It has also asked us to suspend enforcement of Section 15.307 pending administrative action to eliminate the rule in its entirety.<sup>17</sup>

7. We find that there is good cause to eliminate the rule in its entirety. UTAM no longer needs the reimbursement funds that Section 15.307 is designed to provide, continued application of the rule imposes an unnecessary financial burden on UPCS device manufacturers who may seek to develop new and innovative products, and it will no longer be possible to comply with the rule once UTAM dissolves. We further determine that we can take action to eliminate the rule without notice and comment rulemaking procedures, pursuant to Section 553(b)(B) of the Administrative Procedure Act.<sup>18</sup> Among other things, Section 553(b)(B) establishes an exception to the notice-and-comment requirement for cases in which the Commission finds good cause for concluding that notice and comment are “unnecessary.”<sup>19</sup> We find that because Section 15.307 no longer has any purpose now that the relocation reimbursement obligations have been satisfied and UTAM is disbanding, the provisions of Section 553(b)(B) are applicable to this situation.

8. We remove and reserve Section 15.307, effective upon publication of a summary of this Order in the Federal Register. Until that time, and effective immediately, we stay the effectiveness of the rule. We take these actions under the delegated authority granted to OET.<sup>20</sup> Thus, upon release of this Order, it will no longer be necessary for applicants for equipment certification of UPCS devices to obtain

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<sup>12</sup> See *800 MHz R&O*, 19 FCC Rcd at 15093 ¶ 245. In the *800 MHz R&O*, the Commission assigned the 1910-1915 MHz band to Nextel as replacement spectrum for its operations being relocated from the 800 MHz band. See *800 MHz R&O*, 19 FCC Rcd at 15085 ¶ 223.

<sup>13</sup> See UTAM Report to the FCC, GEN Docket No. 90-314 (filed Jan. 4, 2008), at 4-5.

<sup>14</sup> See *AWS Sixth R&O*, 19 FCC Rcd at 20745-46 ¶¶ 53-55.

<sup>15</sup> See UTAM Letter at 2.

<sup>16</sup> See *id.* at 1-2.

<sup>17</sup> *Id.*

<sup>18</sup> See 5 U.S.C. § 553(b)(B).

<sup>19</sup> See *Utility Solid Waste Activities Group v. EPA*, 236 F.3d 749, 755 (D.C. Cir. 2001), citing *Texaco v. FPC*, 412 F.2d 740, 743 (3<sup>rd</sup> Cir. 1969).

<sup>20</sup> Under Section 0.31(i) of the Commission’s rules, the Office of Engineering and Technology has the duty and responsibility to administer Parts 2, 5, 15, and 18 of Chapter 47, including licensing, recordkeeping, and rule making. Under Section 0.241(i) of the Commission’s rules, the Chief of the Office of Engineering and Technology is delegated authority to make nonsubstantive, editorial revisions to the Commission’s rules and regulations contained in Parts 2, 4, 5, 15, and 18 of Chapter 47. See 47 C.F.R. §§ 0.31(i), 0.241(i).

and submit to the Commission certification of membership in UTAM pursuant to Section 15.307 of our rules.

## **I. PROCEDURAL MATTERS**

### **A. Regulatory Flexibility Certification**

9. Because this Order is being adopted without notice and comment, the Regulatory Flexibility Act<sup>21</sup> does not apply.

### **B. Paperwork Reduction Analysis**

10. This Order does not contain any new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.

### **C. Congressional Review Act**

11. The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

### **D. Further Information**

12. For further information, contact Patrick E. Forster, Senior Engineer, FCC Office of Engineering and Technology, Room 7-A266, 445 12<sup>th</sup> St., S.W., Washington, DC 20554, at 202-418-7061 or via the Internet at [Patrick.Forster@fcc.gov](mailto:Patrick.Forster@fcc.gov).

## **II. ORDERING CLAUSES**

13. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), that this Order is hereby ADOPTED.

14. IT IS FURTHER ORDERED that Part 15 of the Commission's rules IS AMENDED as set forth in Appendix A. This rule revision will take effect upon publication of a summary of the Order in the Federal Register.

15. IT IS FURTHER ORDERED that the application of Section 15.307 of the Commission's rules IS STAYED, effective upon the release of this Order.

16. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order to the Chief Counsel for Advocacy of the Small Business Administration.

17. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A). A copy of the Order (or a summary thereof) will also be published in the Federal Register.

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<sup>21</sup> 5 U.S.C. §§ 601, *et seq.*

18. This action is taken under delegated authority pursuant to Sections 0.31(i) and 0.241(i) of the Commission's rules, 47 C.F. R. §§ 0.31(i) and 0.241(i).

FEDERAL COMMUNICATIONS COMMISSION

Julius P. Knapp  
Chief, Office of Engineering and Technology

**APPENDIX A****Final Rules**

For the reasons discussed above, the Federal Communications Commission amends Title 47 of the Code of Federal Regulation, Part 15, to read as follows:

**Part 15 – RADIO FREQUENCY DEVICES**

1. The authority citation for Part 15 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544a.

**§ 15.307 [Removed and Reserved]**

2. Section 15.307 is removed and reserved.