

LAW OFFICES
GOLDBERG, GODLES, WIENER & WRIGHT
1229 NINETEENTH STREET, N.W.
WASHINGTON, D.C. 20036

HENRY GOLDBERG
JOSEPH A. GODLES
JONATHAN L. WIENER
HENRIETTA WRIGHT
MARY J. DENT
DANIEL S. GOLDBERG
THOMAS G. GHERARDI, P.C.
COUNSEL

EX PARTE OR LATE FILED

(202) 429-4900
TELECOPIER:
(202) 429-4912

September 1, 1994

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BY HAND

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

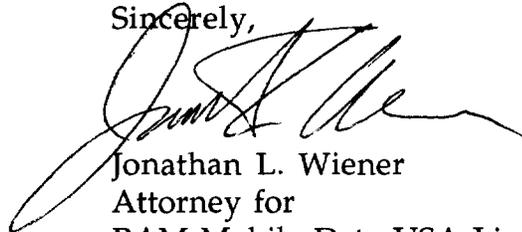
Re: GN Docket 93-252 (Implementation of Sections
3(n) and 332 of the Communications Act)
Ex parte Presentation

Dear Mr. Secretary:

On Thursday, September 1, 1994, M. Michael Kulukundis, Chairman and Chief Executive Officer, and Steven T. Apicella, Vice President, of RAM Mobile Data USA Limited Partnership ("RMD"); Ben G. Almond, Executive Director-Federal Regulatory, and Charles Featherstun, General Attorney, of BellSouth Corporation; and the undersigned met with James L. Casserly, Senior Legal Advisor to Commissioner Susan Ness. At the meeting, RMD's concerns regarding the fate of 900 MHz SMR Phase II licensing in the above proceeding were discussed. The matters addressed are reflected in pleadings and other documents that have already been submitted by RMD to the public record.

Copies of materials that were given to Mr. Casserly at this time are submitted with this letter. If there are any questions in this regard, please contact the undersigned.

Sincerely,



Jonathan L. Wiener
Attorney for
RAM Mobile Data USA Limited Partnership

cc: James L. Casserly

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September 1, 1994
Ex Parte Presentation
GN Docket 93-252

FEDERAL COMMUNICATIONS COMMISSION
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**AUCTIONS SHOULD NOT APPLY TO AN ALREADY
CONSTRUCTED NATIONWIDE MOBILE DATA NETWORK**

Years of Prior Investment and Operation Under FCC Authorization Should Be Taken Into Account. Since 1989, RMD has invested nearly half a billion dollars; it serves over 7,500 cities and towns, 90% of the U.S. urban population, more than two thirds of the population nationwide. The network cannot function without secondary sites, which were built with the Commission's blessing, nor can service be maintained without completing the build out of the network.

The auction of the frequencies on which RMD operates would give RMD a Hobson's choice: attempt to buy back the frequencies on which it is already operating (and which in almost every case, it had to purchase from lottery winners) or lose the viability of all that it has built because of its inability to provide the nationwide coverage on which its service has been predicated from inception.

Auctions Don't Work When So Much Existing Investment Has Already Been Made. At an auction, RMD's investment becomes a handicap. RMD cannot pull back the money it has spent on constructing infrastructure and spend it on auctions. Competitors of RMD can bid MTA by MTA; they only have to block RMD in one location to prevent its system from being nationwide, at worst, they will force RMD to use the investment it has earmarked for further construction on auction fees. Speculators in spectrum, also not saddled to sunken investment in existing infrastructure, could purchase frequencies to make the completion of RMD's system impossible and force the existing network to be sold at pennies on the dollar.

Auctioning Frequencies On Which RMD's System Operates Would Be Contrary to Policy. Ordinarily, auctions are seen as revenue generating and communications policy neutral. All participants are new entrants; the winner is presumed to be the one who will make the best use of the spectrum; the losers lose nothing and are able to invest elsewhere. Even those who have previously made application for spectrum ordinarily may be able to claim little tangible loss. But here, there is nationwide infrastructure, 500 jobs, almost \$500 million in investment, other businesses who use and benefit from the service and who have made their own investment in associated equipment, related equipment vendors and network integrators. There is better part of a decade of work on a highly innovative, spectrally efficient communications network that all lies in the balance.

Auctions Are Not Required by Statute and Would Be Contrary to Legislative Intent. The Commission is not required by statute to auction the frequencies on which RMD operates. Threshold qualifications are supposed to be used to avoid auctions and mutual exclusivity when possible. 47 U.S.C. § 309(j)(6)(E). The Act is intended to encourage "the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without . . . delays." 47 U.S.C § 309(j)(3)(A). Effecting an auction policy that could result in the dismantling of a nationwide network that has been the single most effective use of the spectrum in question does not serve this purpose.

**WIDE-AREA SYSTEMS CAN BE ALLOWED TO CONVERT THEIR
LICENSES TO MTA-WIDE-AREA AUTHORIZATIONS, WHILE STILL
ALLOWING FOR MOST OF THE SPECTRUM TO BE AUCTIONED**

It is possible to allow wide-area systems, such as RMD, to complete their wide-area networks, while at the same time allowing for much of the 900 MHz SMR spectrum to be made available to new entrants on an auction basis, as follows:

Protect What Is Built. All primary and secondary channels licensed as of August 9, 1994, should be protected. In each MTA, incumbent licensees should be allowed to convert their licenses to a wide-area license within an area defined by the aggregate contour of the co-channel protection areas of their primary and secondary channels. Within this area, addition and modification of sites and changes in channelization plans would be permitted.

Don't Create Mutual Exclusivity or Auctions on Frequencies In Which a Wide-Area System Already Exists and No Other Could Be Created. If the aggregate coverage area defined above encompasses more than 25% of the population of that MTA, the licensee's existing system would be deemed as an MTA wide-area system and the licensee could convert its licenses to an MTA wide-area license, with rights to add, modify, etc., as available to other wide-area MTA licensees. In addition to being a fair measure of initial wide-area implementation, the 25% is relevant to the extent that the Commission employs a 75% ultimate population coverage requirement (after ten years of construction) for the MTA, as it has for narrowband PCS.¹ If a new entrant would be precluded from achieving 75% population coverage on the ten channel blocks in question, there is no basis for granting such an entity a wide-area MTA license on those frequencies. Accordingly, no mutual exclusivity as to that channel block would exist among applicants who could develop an MTA wide-area network. When mutual exclusivity does not exist, the law does not permit auctions.

In limited instances in which more than one incumbent has 25% coverage in the same MTA and on the same ten-channel block and each seeks to expand, they would be required to frequency coordinate for future expansion on co-channel frequencies within the MTA; if they could not agree, the two incumbents would bid against each other for expansion rights.

Incumbent licenses who convert to MTA wide-area licenses would be required, over time, to cover 75% of the MTA population, as would new MTA licensees.

Auction All Frequencies in All Locations on Which Wide-Area Systems Do Not Already Operate. Ten channel blocks which: (i) have been returned to the Commission, (ii) are licensed to systems that do not already have 25% coverage, or (iii) for which the incumbent licensee does not elect to convert to MTA licensing would all be available for new entry, subject to auction.

¹ The narrowband PCS rules have an alternative test of 50% geographic coverage, but such an area coverage test would not make sense if it does not include major population centers, as would be the case on 900 MHz SMR systems on frequencies in which systems have already been built by and licensed to others in the major urban DFA areas.