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September 6, 1994

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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BY HAND

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

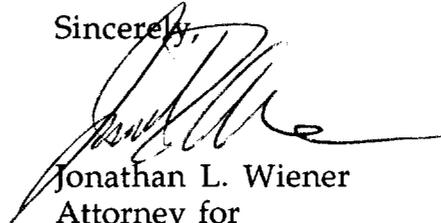
Re: GN Docket 93-252 (Implementation of Sections
3(n) and 332 of the Communications Act)
Ex parte Presentation

Dear Mr. Secretary:

On Tuesday, September 6, 1994, Steven T. Apicella, Vice President of RAM Mobile Data USA Limited Partnership ("RMD"); Charles Featherstun, General Attorney of BellSouth Corporation; and the undersigned met with James R. Coltharp, Special Advisor to Commissioner Andrew C. Barrett. 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. Coltharp 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 R. Coltharp

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FEDERAL COMMUNICATIONS COMMISSION
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**RAM Mobile Data USA
Fact Sheet
August 24, 1994**

Total Investment: over \$475 million
Total Employees: 499
Total Number of States
Where RAM Operates Today: 43 plus Washington, D.C.

Major Customers:

Public Safety

Washington D.C. Police
CRIS (Cuyahoga Regional
Information System)
REAS (Region Justice
Information Service)
Wake County, N.C. Police
California Highway Patrol

Field Service

GE Consumer Services
NCS (National Computer
Systems)
Southwest Gas
Kodak (Being Implemented)
Unleys (Being Implemented)

Transportation

Conrail
Guaranteed Overnight Delivery
Transus
Roadway Global Air

Wireless Credit Card

Verification

MasterCard
Datawave Vending

Financial Services

U.S. Equity Management
(Stock trading)

Wireless E-mail

Boston Edison
BASF
Chevron
Morrison's Restaurants
General Services
Administration

Service or Product Offerings:

RAM operates a nationwide wireless packet data network offering a variety of mobile data services. RAM has coverage in over 7500 cities and towns, representing 90% of the urban population.

RAM's mobile data service provides wireless access to virtually any computer application or information services. It enables mobile employees to access and exchange critical information anywhere, anytime within RAM's coverage area.

RAM Mobile Data provides wireless computer access to the "Information Highway" over its nationwide network. Information services that can be accessed via RAM include companies such as America On Line and CompuServ.

The service pricing is based on the number of characters in the message. The prices range from 3 cents for a short one line message to approximately 36 cents for a whole page of information. RAM also offers unlimited messaging for wireless e-mail for a flat \$135.00 per month.

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.

BRIEFING PAPER

FCC'S DECISION REGARDING 900 MHz SMR PHASE II LICENSING IN GN DOCKET 93-252

I. THE FCC'S DECISION REGARDING 900 MHz SMR PHASE II LICENSING COULD DESTROY EXISTING WIDE-AREA SYSTEMS ALREADY OPERATING ON THESE FREQUENCIES.

Over the past five years, pursuant to FCC authorization and encouragement, RMD has constructed and operated the nation's first commercial, nationwide two-way digital mobile data communications network.¹ Today service is already provided from over 850 sites with coverage of over two thirds of the nation's population, and nationwide system construction is still ongoing. RMD has immediate plans for an additional 200 sites in the next year and one half, with further construction and coverage contemplated in the future to respond to and serve demand for this nationwide service. Over \$475 million has been invested in this project; with another \$90 million earmarked for additional construction through 1996.

On August 9, 1994, however, the FCC announced a decision that, from what can be gleaned from the FCC's News Release, threatens to destroy the viability of RMD's existing operation and prevent the modification and growth of the network that is necessary for its long term survival. The News Release suggests that the 900 MHz frequencies on which RMD already is operating may be auctioned. Although the News Release states that existing licensees "generally" should be permitted to continue operating under their current authorizations, it is not clear that essential "secondary" channel authorizations will be protected.

The FCC has allowed only one primary site designation for each channel on which RMD has been licensed within a Designated Filing Area or "DFA."² Re-use

¹ In April 1989, the FCC authorized RMD (then AMDC) to construct a nationwide two-way mobile data communications network.

² A major underlying problem of the entire process is that the FCC never intended DFAs to comprise full market areas. Instead, they were narrowly defined geographic areas on a map drawn essentially for regulatory convenience so that initial Phase I licensing could proceed more quickly, with each individual authorization separated by at least 70 miles. Systems also were initially authorized and were contemplated as operating at single sites, without frequency reuse (footnote continued on next page)

of that channel within the DFA is, therefore deemed secondary by the FCC, but is essential to the operation of a wide-area network.³ Such secondary channels are used to extend or intensify coverage. They allow the most efficient use of very limited SMR spectrum, which would not otherwise be adequate to support customer requirements. In major urban areas, RMD's system could not function without such frequency reuse. Secondary channel licensing has also been employed for several years, with the Commission's blessing, to extend coverage to areas outside of DFAs, which is essential for RMD's nationwide system.⁴

Above and beyond the issue of protection of all primary and secondary channels, the Commission's decision threatens to freeze RMD's operation at its existing sites. Lacking the ability to grow and expand on already licensed frequencies, RMD would not be able to operate, change and expand system parameters in response to customer requirements — an essential feature of wide-area service providers.

The FCC's decision appears to give little weight to the investment that already has been made by RMD and others in constructing wide-area systems. It fails to devise a licensing process that is in accordance with and completes Phase I licensing, which has for so long been delayed. This auction proposal is not for spectrum or

(a mode of operation that was sufficient for dispatch-type services, which then predominated SMRs, but not for the kind of innovative wide-area mobile data digital network developed by RMD and embraced by the Commission). Phase II licensing intended to complete the market areas and, as its advantages were realized, to institutionalize wide-area use, was supposed to follow shortly after Phase I, but did not. Instead, for almost eight years, 900 MHz SMR licensees have been caught in a kind of regulatory no man's land. The FCC has solicited comments from the public on Phase II on no fewer than three separate occasions and had established a complete record supporting the rights of incumbents to expand long before it received auction authority from Congress.

³ Secondary sites are not protected from interference from other systems and are required to cease operating if they interfere with the primary operations of other systems. Because up to now the FCC authorized primary operations only within the DFAs and because of the mileage separation of the DFAs, secondary operation on a system's already licensed frequencies has proceeded without difficulty.

⁴ The Commission has recognized that the construction of secondary sites has been a necessary response by wide area systems that has served the public interest during the long period in which the Commission has delayed more comprehensive Phase II licensing. Over a year ago, the Commission stated: "Licensees constructing secondary sites have pursued the only avenue available to them in attempting to satisfy perceived demand for wide area service within and around the DFAs. Such licensees have attempted to fulfill the Commission's desire that areas in need of expected service do, in fact, receive service." First Report and Order and Further Notice of Proposed Rulemaking, PR Docket 89-553, 8 FCC Rcd. 1469, 1480 (1993).

markets previously unlicensed as to which new entrants and incumbents might make equal use, but bits and pieces of a licensing jigsaw puzzle that, for RMD, would require it to purchase each and every piece of the remaining puzzle on frequencies on which it has already built or else lose the efficacy of its entire network.

An auction process under which interstitial areas that could not be used to create a viable wide-area system would be licensed separately from other already licensed and constructed facilities on the same frequencies in the same MTA contradicts the goal of licensing these frequencies on a wide-area basis. These frequencies may well be sought by those whose competitive interests would be served by thwarting any effective wide-area service in 900 MHz SMR frequencies in the region.⁵

II. NECESSARY PROTECTION FOR THE ABILITY OF EXISTING WIDE-AREA SYSTEMS TO CONVERT THEIR LICENSES TO MTA-WIDE-AREA AUTHORIZATIONS COULD STILL BE CREATED WITHIN THE GENERAL FRAMEWORK OF THE DECISION ANNOUNCED BY THE COMMISSION.

As much as RMD is concerned with the direction to which the FCC appears to be headed, RMD believes that it would be possible, within the general framework of what the Commission has announced, to devise a plan that allows wide-area systems, such as RMD, to complete their wide-area networks, while at the same time allowing for much of the spectrum to be made available to new entrants on an auction basis. RMD suggests the following:

- (1) 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 wide-area licensed area, addition and modification of sites and changes in channelization plans would be permitted.

⁵ The Commission can still auction 900 MHz SMR ten channel blocks that have been returned to the Commission (in a majority of the DFAs, more than one-half of the ten channel blocks originally licensed by the Commission were taken back by the Commission for failure to construct), while not auctioning frequencies in MTAs on which wide area systems already operate.

- (2) If the aggregate coverage area defined in (1) covers an area of the MTA that encompasses more than 25% of the population of that MTA, the nature of the licensee's existing system would be deemed as an MTA wide-area system and the licensee would be permitted to convert its licensed authorizations into an MTA wide-area license, with rights to add, modify, etc., as available to other wide-area MTA licensees.

NB: 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.⁶ 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 would exist among applicants who would be capable of developing a wide-area network that could cover the MTA. When mutual exclusivity does not exist, the law does not permit auctions.

- (3) 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, the incumbents 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.
- (4) Incumbent licenses who convert their licenses to MTA wide-area would be subject to an ultimate coverage requirement, over time, of 75% of the MTA population, as would new MTA wide-area licensees.

⁶ 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.

- (5) 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.

Beyond the particulars of this or any Phase II proposal, Phase II licensing of 900 MHz SMR frequencies must proceed with fair consideration of the investment in innovative wide-area service and infrastructure that already has been made.

Those who have built systems at 900 MHz have taken tremendous risks to develop innovative systems and services that in most locations, at least until recently, the Commission could not give away because of the difficulties of creating a viable service in such limited spectrum on narrowband frequencies. In some markets like Oklahoma City and Columbus, of the twenty ten-channel license blocks to be awarded, RMD was the only one to be constructed.

Licensees of wide-area systems are not speculators. They have real systems with real requirements for expansion. They also have real customers who expect and demand that their service provider continue to build out the network. RMD cannot tell its customers that its existing system is all that there is or will be (much less say that even some existing service will be lost).

FRANK R. LAUTENBERG
NEW JERSEY

COMMITTEE
APPROPRIATIONS
BUDGET
ENVIRONMENT AND PUBLIC WORKS
SMALL BUSINESS
HELSINKI COMMISSION

United States Senate

WASHINGTON, DC 20510-3002

September 1, 1994

Mr. Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Dear Mr. Hundt:

I was recently informed of an August 9 news release by your agency announcing the Third Report and Order on commercial mobile radio services, including 900 megahertz (MHz) Specialized Mobile Radio (SMR). Because a constituent important to my State may be severely impacted by the Federal Communications Commission's (FCC) decision on the 900 MHz Phase II licensing proceeding, I respectfully request you to review this matter.

RAM Mobile Data USA Limited Partnership ("RMD"), based in Woodbridge, New Jersey, employs approximately 400 individuals in my State and has invested almost half a billion dollars in developing and operating a two-way digital mobile data communications network. RMD serves more than two thirds of the nation's population and thus, provides a vital link in our country's information infrastructure.

Although the news release stated that incumbent SMR licensees (such as RMD) generally should be permitted to continue operating under their current authorizations, the release does not address secondary channel authorizations or the ability of existing systems to complete the build-out of their systems. Existing secondary channels and further expansion are essential to the continuing wide-area operation of RMD's network because they enable the company to extend and intensify coverage. In major urban areas, RMD's system could not function without these secondary channels. Therefore, by allowing the frequencies upon which RMD operates to be open to competitive bidding, this decision may inadvertently thwart your stated goal of enhancing the ability of SMR providers to compete with cellular and PCS.

Thank you in advance for your consideration of this matter.

Sincerely,



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