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
W. KENNETH FERREE

THOMAS G. GHERARDI, P.C.
COUNSEL

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

EX PARTE OR LATE FILED

March 28, 1995

RECEIVED

MAR 28 1995

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

DOCKET FILE COPY ORIGINAL

Re: PR Docket No. 89-553, 93-144 and GN Docket No. 93-252
Ex parte Presentation

Dear Mr. Secretary:

The letter reports that representatives of RAM Mobile Data USA Limited Partnership (M. Michael Kulukundis, Chairman and Chief Executive Officer; Steven T. Apicella, Vice President; and Henry Goldberg, counsel) and BellSouth Mobile Data (Michael Harrell, President; and Charles P. Featherstun, General Attorney, BellSouth D.C., Inc.) met today with Rudolfo Baca, Legal Advisor to Commissioner Quello, to discuss issues relating to future technical and auction rules for the 900 MHz specialized mobile radio service. The parties' presentation is reflected in a written submission, a copy of which was provided today to Mr. Baca. Two copies of said submission are attached hereto, in accordance with 47 C.F.R § 1.1206(a)(1), for inclusion in the public record in this proceeding.

If there are any questions in this regard, please contact the undersigned.

Respectfully submitted,

Henry Goldberg
Attorney for
RAM Mobile Data USA Limited Partnership

cc: Rudolfo Baca
M. Michael Kulukundis
Steven T. Apicella
Michael Harrell
Charles P. Featherstun

March 28, 1995
PR Docket Nos. 89-553, 93-144
and GN Docket No. 93-252
Ex Parte Presentation

DISCUSSION POINTS REGARDING 900 MHz SMR TECHNICAL AND AUCTION RULES

I. BACKGROUND.

- In 1989, RMD began construction of an innovative, nationwide wireless packet data network to provide a variety of mobile data services, principally to business customers. After constructing hundreds of primary sites within DFAs[1], RMD constructed a large number of secondary sites, both within and outside of DFAs, necessary to meet its customers' demand for a truly nationwide network.

- As the Commission has recognized, RMD effectively had no choice but to proceed even before the FCC adopted rules for "Phase II" licensing (*i.e.*, licensing outside of the top 50 DFAs); its system was predicated on nationwide coverage and it could not stop half-way, even while Phase II licensing remained stalled at the Commission for the better part of a decade.

- Today, having invested nearly half a billion dollars constructing roughly 1000 sites, RMD's network covers more than 7500 cities and towns — 90% of the U.S. urban population and roughly two-thirds of the population nationwide.

- RMD is pleased the FCC is finally adopting Phase II rules to permit further licensing and urges the FCC to bear two objectives in mind regarding RMD's and other licensees' existing systems: first, their substantial investments in wide area networks must be protected; and second, they should not be prejudiced in seeking to expand their systems.

- The views expressed herein are also consistent with those expressed by the two major trade associations representing 900 MHz SMR providers (*i.e.*, the American Mobile Telecommunications Trade Association and the Personal Communications Industry Association), as well as the other principal 900 MHz SMR operator (*i.e.*, Geotek Communications, Inc.).

II. EXISTING LICENSEES REQUIRE OPERATIONAL FLEXIBILITY WITHIN THE AGGREGATE PROTECTED CONTOURS OF AREAS DEFINED BY LICENSES ISSUED AND LICENSE APPLICATIONS FILED AS OF AUGUST 9, 1994.

- Existing licensees must be allowed to add and modify sites, as long as 22 dBu contours do not extend outside of 70 (105) mile protection areas

[1] Designated Filing Areas, which were used by the Commission for Phase I SMR licensing.

that would be applicable to any individual license issued, or application filed, by August 9, 1994, whether inside or outside of DFA borders. This gives incumbent licensees the necessary flexibility to operate on wide-area basis, without unduly impinging on any new licensee operating on the same frequency.

- Wide-area systems cannot function when limited to site-specific licenses because sites and particular frequencies in use change all the time. It is not possible, practical, or necessary for a wide-area system to employ all frequencies at all sites and none does — not RMD, not ESMR, not cellular, and not anticipated PCS.

- As long as RMD meets construction standards, as it did, (*i.e.*, each licensed channel constructed at least at one location), no new construction standard should be applied to narrow its license protection to locations where individual channels may be operating at any single point in time. Any channel-by-channel protection approach would be chaotic as systems cannot operate interwoven with each other on the same frequency block.

III. MTA LICENSEE COVERAGE REQUIREMENTS OF 1/4 POPULATION IN 3 YEARS, 1/3 POPULATION IN 5 YEARS WOULD BE REALISTIC.

- Business-oriented services have more modest coverage requirements; coverage requirements for consumer-oriented cellular and wide based PCS services have no applicability.

- MTAs are not equal: New York and Boston can support higher coverage, but Spokane and Little Rock cannot — the "1/4 in 3 years, 1/3 in 5 years" standard imposes realistic coverage requirements on disparate MTAs.

- As a nationwide system, RMD needs a presence in all MTAs, but unrealistic coverage requirements effectively would preclude an effective presence, if construction dollars are spread thinly to meet regulatory requirements rather than customer needs. In RMD's case, its overall nationwide coverage, depth of coverage in urban areas, and, quite simply, dollars spent shows the best commitment to service.

IV. AUCTION RULES SHOULD NOT GIVE NEW ENTRANTS AN ADVANTAGE OVER INCUMBENT OPERATIONS IN EXPANSION AREAS.

- To the extent frequencies on which incumbents operate are to be auctioned, bidding credits should not be awarded to designated entities to bid against incumbents on encumbered frequency blocks. Allowing such credits would be an open invitation to "green mail" and would be of little value to designated entities.

- If the FCC determines that credits must apply to most densely populated MTAs where no unencumbered channel blocks exist, credits should apply only to three least encumbered blocks in each MTA.

- In light of low expected license values and relatively small capital requirements to construct SMR systems, "small business" should be defined narrowly (*e.g.*, net worth not in excess of $6 million with average net income for the two preceding years not in excess of $2 million) and bidding credits should be modest (*i.e.*, no more than 10%).

- Auction rules should make clear to bidders what frequencies are encumbered and require bidders to specify particular frequencies on which they will bid. Mutual exclusivity should not be presumed.

V. THE COMMISSION SHOULD FACILITATE THE AGREEMENT THAT HAS BEEN REACHED BETWEEN RAND MCNALLY AND 900 MHz SMR INDUSTRY REPRESENTATIVES.

- Although it may not be a perfect solution, all industry participants think it is workable, but need the Commission to facilitate the agreement (still in final draft form, waiting for an FCC response) by notifying prospective licensees of the need to obtain appropriate MTA copyright licenses from Rand McNally.

VI. THE INDUSTRY UNANIMOUSLY OPPOSES THE CONTINUED APPLICATION OF LOADING REQUIREMENTS TO 900 MHz SMRS.

- These requirements should be eliminated, as they have been for all other services.