

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D C 20554

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In the Matter of)
)
Amendment of Parts 2 and 90 of the) PR Docket No. 89-553
Commission's Rules to Provide for the)
Use of 200 Channels Outside the)
Designated Filing Area in the)
896-901 MHz and the 935-940 MHz Bands) DOCKET FILE COPY ORIGINAL
Allotted to the Specialized Mobile Radio Pool)
)
Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act —)
Competitive Bidding)
)
Implementation of Sections 3(n) and 332) GN Docket No. 93-252
of the Communications Act)

To: The Commission

**PETITION FOR RECONSIDERATION AND CLARIFICATION
OF RAM MOBILE DATA USA LIMITED PARTNERSHIP**

RAM Mobile Data USA Limited Partnership ("RMD") hereby submits this Petition for Reconsideration and Clarification (the "Petition") of the Commission's Second Report and Order in the above-referenced proceeding (the "Second Report") adopting final technical rules for the 900 MHz specialized mobile radio ("SMR") service.

The technical rules adopted in the Second Report reflect the underlying tension between the Commission's objectives in this proceeding: that of ensuring that existing 900 MHz SMR operators have the protection and operational flexibility required to continue to operate their systems and serve their customers; and that of allowing for auctions of the "white area" portions of each MTA, in which existing systems are not licensed, without further limiting the ability of new entrants to operate because of protection that must be given to existing systems.

Although RMD and most other commenting parties have urged that greater weight be given to the requirements of existing systems, RMD understands that the Commission regards the latter goal of preserving white areas for auction as having equal weight and that to seek further reconsideration on this point would be fruitless. That said, there are aspects of the Second Report that unnecessarily restrict

the operation of existing systems without offering any countervailing benefit to new MTA licenses. These are the aspects, which RMD believes are inconsistent with the Commission's overall intent in this proceeding, that are the focus of this Petition.

I. INCUMBENTS SHOULD BE GRANTED WIDE-AREA LICENSES.

As the Commission has recognized in this and other proceedings, customer requirements, innovative and effective use of frequencies, and parity with other services all require that land mobile services be permitted to be provided on a wide-area basis. Site-by-site licensing is inconsistent with this wide-area concept, creates unnecessary burdens on wide-area systems and the Commission's administrative staff, and creates the potential for disputes when existing systems seek to relocate sites and/or particular channels within their area of operation or when adjacent licensees seek to "short space" sites.

To avoid this result and to give existing licensees necessary flexibility to operate within their protected areas, RMD urges that incumbent, wide-area licensees be permitted to be licensed on a wide-area basis, such area to be demarcated by the aggregate of the 40 dBu contours around each of the incumbent's contiguous sites operating in the same ten-channel block. Under such an approach, an incumbent could trade in its site specific licenses for a wide-area license reflecting the aggregate 40 dBu contours of such sites. MTA licensees would be required to afford interference protection to an incumbent's licensed service area (which would remain static even as the existing system added, modified or relocated individual sites or channels). The incumbent, moreover, would be permitted to construct, modify, or relocate sites within its protected service area, so long as interference contours are not expanded from the originally-licensed site contours.

RMD believes that this is what the Commission intended to accomplish in the Second Report. Thus, in defining the existing service area of incumbent systems, the Second Report states that the Commission's "objective is to allow incumbents to continue existing operations without harmful interference and to give them flexibility to modify or augment their systems so long as they do not encroach on the MTA licensee's operations

¹ Second Report at ¶ 47

Notwithstanding this objective, because incumbent sites would continue to be licensed on a site-specific basis, the effect of newly-adopted § 90.663(b), which provides that an MTA licensee's co-channel obligations to an incumbent site cease upon the termination or revocation date of the license covering such site, if left unclarified, could be read to require that an incumbent would lose a portion of its protected service area each time it relocated an existing site on the perimeter of its system.² RMD believes that this would be an unnecessarily harsh result that would be inconsistent with the overall intent reflected in the Second Report, and should be modified explicitly to recognize the ability of existing systems to operate on a wide-area basis and to be regulated accordingly on a licensed-area basis instead of a licensed-site basis.

II. INCUMBENTS SHOULD BE PERMITTED TO ADD SITES SO LONG AS THEY DO NOT ENCROACH ON MTA LICENSEES' OPERATIONS.

RMD agrees with the Commission's conclusion that incumbents should have the, "flexibility to modify or augment their systems so long as they do not encroach on the MTA licensee's operations."³ In light of this conclusion, RMD does not understand the Commission's decision to reject the proposal of RMD and Geotek Communications, Inc. ("Geotek") to permit an incumbent to construct, modify or relocate sites within its protected service area provided that its 22 dBu contour (a site's interference contour) does not extend beyond the aggregate 22 dBu contours of its originally-licensed sites, a proposal supported by the American Mobile Telecommunications Association and Motorola.⁴ Such an approach enhances an incumbent's operational flexibility and ability to serve more effectively customers within its service area without impinging upon the permissible operations of adjacent MTA licensees. This approach is also fully consistent with Commission precedent providing that FCC licensees are not protected from interference from new sites as long as the interference contours of such sites are within the interference contours of existing sites.⁵

² Incumbents are often required to relocate sites when leases for a given site's location expire and cannot be renewed.

³ Second Report at ¶ 47.

⁴ Id. at ¶ 45.

⁵ See, e.g., PacTel Paging, Inc., 6 FCC Rcd 5054 (1991) (multiple site paging system licensee may modify its system such that the composite service contour was increased as long as the composite interference contour was not expanded); RAM Communications of Massachusetts, Inc., 4 FCC Rcd 8741 (1989), relying on RAM Communications of Michigan, 1 FCC Rcd 145 (1986).

It appears that the Second Report may be based on the mistaken conclusion that "it would be difficult to expand the 22 dBu contour without also expanding the 40 dBu contour."⁶ In fact, as demonstrated in the attached Engineering Statement and as illustrated in the diagram associated with such statement, there are many instances in which the addition of a new site to an existing system will allow it to intensify coverage of areas already served (and, therefore, allow a 900 MHz licensee to fill-in coverage holes within its service area, e.g., valleys, tunnels, underpasses) with some often unavoidable extension of 40 dBu contours but without increasing its interference contour. Denying existing systems the ability to add such sites will significantly hamper their ability to provide effective service and clean up dead spots in coverage in existing service areas as every wide area system must do, without any corresponding benefit to the operations of adjacent MTA licensed systems.⁷

III. SECONDARY SITES SHOULD CONTINUE TO BE PERMITTED.

Notwithstanding the fact that the text of the Second Report was silent on the issue, the recently-adopted § 90.667(b) provides that secondary sites will no longer be granted once an MTA licensee has been selected. In light of the Commission's objective to provide incumbent licensees with the requisite flexibility to continue to operate their existing systems, such a prohibition seems unwarranted. The ability to construct these sites is necessary to ensure that incumbents can meet their customers' needs, particularly given the uncertainty whether the ultimate MTA licensee will be committed to building-out systems in all areas. Additionally, as the Commission recently noted when it lifted the temporary freeze on the licensing of secondary sites, because such sites are not entitled to interference protection, continuing to grant authorizations for secondary sites will not create additional co-channel protection obligations for future MTA licensees and, therefore, will not compromise the MTA licensing process.⁸

Accordingly, RMD asks the Commission to reconsider its decision to halt the licensing of secondary sites. Continuing to license such sites after MTA licenses are

⁶ Second Report at ¶ 46.

⁷ RMD recognizes that, because incumbents are only to be afforded interference protection for the aggregate 40 dBu contours of their originally-licensed sites, to the extent that the 40 dBu contour of a new site extended beyond the originally-licensed service contour, MTA licensees would not be required to afford interference protection to any portion of a new site's 40 dBu contour that extended past the incumbent's original service contour.

⁸ Order on Reconsideration, 10 FCC Rcd 1568 (1994) at ¶ 5

granted will provide incumbents with the flexibility they need to respond to their customers' requirements without jeopardizing future MTA operations or the MTA licensing process and, therefore will advance the public interest.

IV. INCUMBENT SYSTEMS SHOULD NOT BE SUBJECT TO FORFEITURE IN EXISTING LICENSED AREAS IF THE INCUMBENT ACQUIRES THE APPLICABLE MTA LICENSE AND THEN FAILS TO SATISFY THE COVERAGE REQUIREMENTS.

Under the recently-adopted § 90.665(b), an entity that acquires an MTA license will be issued a single license covering all of the licensee's stations located in the MTA and operating within the same channel block, including stations the licensee constructed prior to the issuance of the MTA license (*i.e.*, incumbent sites). Section 90.665(d) states that MTA licensees who fail to satisfy the applicable coverage requirements will forfeit their entire MTA license. Taken together, while probably unintended, an incumbent who fails to satisfy the coverage requirements for an MTA it acquired would lose its new service area won at auction as well as the area authorized prior to the issuance of the MTA license.

RMD urges that the above result would be counterproductive. Rather than encouraging incumbents to participate in the spectrum auctions to acquire the rights to build-out their existing systems (the very entities the Commission expects to participate⁹), incumbents are discouraged from acquiring MTA licenses and would be punished disproportionately relative to new entrants for failing to satisfy the coverage requirements. Existing services in which not only the licensees but their customers have made substantial investment would be sacrificed, without countervailing public benefit. In this regard, even if existing licensed coverage areas are protected, existing systems would stand the risk of losing their auction investment if broader MTA coverage requirements are not met — the same risk that confronts new entrants — so they are under an equal disincentive not to acquire MTA licenses without reason to believe that they can meet coverage requirements.

RMD urges that this is a particular problem because of what appear to be very high coverage requirements based upon a vision of an expanded consumer market that the Commission suggests "may" materialize,¹⁰ but for which there is no record

⁹ *Id.* at ¶ 4.

¹⁰ Second Report at ¶ 41

support or history in the SMR market to substantiate. Unless the rules are clarified, incumbents are on the horns of a dilemma: sit-out the auctions and forego the expansion of their systems or participate in the auctions and risk losing their substantial existing investments for failure to meet coverage requirements that may prove to be unrealistic. For the reasons stated above, RMD believes that confronting existing system licensees with such a dilemma is inconsistent with the overall purpose of this proceeding and that the rules be modified so as not to create such an unintended result.

CONCLUSION

The rules governing existing systems and new MTA licensees need not be viewed as a "zero sum game." Facilitating the continued effective operation of existing systems does not necessarily limit the ability of new entrants to construct their own systems in unencumbered areas. In this regard, RMD urges that adoption of the clarifications and changes suggested above will enhance the operational flexibility of existing systems and encourage those who wish to expand their networks to participate in auctions without risking all that has already been invested, while at the same time not impinging on the future operations of MTA licensees.

Respectfully submitted,

RAM MOBILE DATA USA
LIMITED PARTNERSHIP

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ENGINEERING STATEMENT

I am the Vice President of Networks and Facilities for RAM Communications Consultants, Inc., and, as such, am primarily responsible for site acquisition, radio system and facilities engineering for many radio system operators including the RAM Mobile Data USA Limited Partnership ("RMD") 900 MHz specialized mobile radio ("SMR") nationwide system.

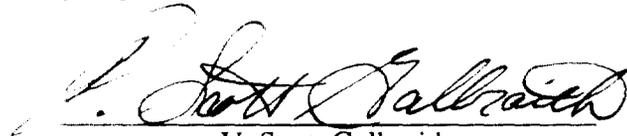
Coverage holes (areas with an inadequate grade of service) exist within the service areas of almost any type of wide area land mobile system, including 900 MHz SMR. Typically these result from terrain and man-made blockages and physical restrictions at or near existing base stations, common examples of which include buildings, hills and highway overpasses. Often, while general grades of service are adequate, signal strength is not sufficient for in-building coverage without the addition of localized sites. Anyone who has used a cellular phone is likely to have experienced the problem of dropped calls in areas that fall well within the theoretical coverage area of a cellular system. The same type of coverage problems exist for SMR systems.

In order to serve the areas obscured by blockages or restrictions, it is necessary to construct additional sites within a system's service area as it is defined by the aggregate 40 dBu contours of the sites located on such a system's perimeter. Sometimes, as a result, although a new site cannot be added without expanding the system's original 40 dBu contour (the service contour), it is possible to extend service to an obscured area without increasing the overall interference contour (defined by the aggregate 22 dBu contours of the sites located on a system's perimeter) of the system.

To illustrate this concept, attached to this Statement is a diagram with a number of hypothetical sites, including their respective 40 and 22 dBu contours, in a 900 MHz SMR wide area system. The hypothetical is representative of typical real-life situations where an additional site is needed to fill-in an area not served by existing sites. The hypothetical shows a highway which falls within the 40 dBu contours of existing sites A and B, as well as such sites' 22 dBu contours. While theoretical coverage may exist, poor coverage may exist at the edge of the contours where actual signal strength is inadequate. To remedy this degraded level of service, a new site, site C, is added to improve the coverage within the problem area. As reflected in the diagram, while the aggregate 40 dBu contours of sites A, B and C are greater than the aggregate 40 dBu contours of sites A and B alone, the addition of site C does not expand the aggregate 22 dBu contours of A and B. Thus, while the system's service contour (40 dBu contour) is extended, its interference contour (22 dBu contour) is not.

I declare under penalty of perjury that the foregoing is true and correct.

Date: June 2, 1995


V. Scott Galbraith

TYPICAL SITES
PALM BEACH CO., FL
40 dBa Service
72 dBa Interference

