

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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) DOCKET FILE COPY ORIGINAL
896-901 MHz and the 935-940 MHz Bands)
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

**COMMENTS OF RAM MOBILE DATA USA LIMITED PARTNERSHIP ON
PETITIONS FOR RECONSIDERATION AND CLARIFICATION**

RAM Mobile Data USA Limited Partnership ("RMD") hereby submits the following comments with regard to the petitions for reconsideration and clarification submitted by a number of parties to the Commission's Second Report and Order in the above-referenced proceeding (the "Second Report").

A. OVERVIEW.

Before addressing some of the particular issues that are raised, RMD offers three general comments: First, the various petitions, while differing in detail, sound one consistent theme: the rules should be modified and clarified to ensure that existing systems have adequate protection and operational flexibility effectively to operate on a wide area basis. Second, the relief requested can be granted without encroachment on the "white area" spaces that the Commission seeks to auction; as demonstrated by RMD in its Petition,¹ this should not be viewed as a "zero sum game," with any protection or right granted to incumbents being seen as reducing what is left for auction. And, third, much of the relief requested is analogous to the

¹ Petition for Reconsideration and Clarification of RAM Mobile Data USA Limited Partnership, PR Docket 89-553 et.al. (June 5, 1995) ("RMD Petition")

relief granted just last month by the Commission to incumbent MMDS operators.² Similar consideration for the legitimate requirements of existing 900 MHz SMR systems effectively to function on a wide area basis is requested here.

B. WIDE AREA AUTHORITY, THE RIGHT TO MODIFY FACILITIES AS LONG AS AUTHORIZED INTERFERENCE CONTOURS ARE NOT EXTENDED, AND FIXED MILEAGE PROTECTION FOR EXISTING SYSTEMS SHOULD BE GRANTED.

The petitions of RMD, AMTA,³ and Geotek⁴ all demonstrate the need for the Commission to give incumbent licensees greater freedom of operation within boundaries that are defined by the outer 22 dBu interference contours of existing licenses and to establish fixed areas of protected service within which new MTA licenses should not be permitted to encroach.

In addition to the arguments presented, RMD urges the Commission to consider the approach recently taken with respect to existing MMDS licensees who were granted protected service areas that exponentially extend existing licensed coverage areas and who will be allowed to provide service outside even these areas, as long as authorized interference contours are not extended. Among other things, this order emphasizes that allowing such protection and system modification rights is crucial to the ability of existing MMDS Systems to compete with established cable services and is necessary to avoid unnecessary disputes between existing systems and MTA licensees as to authorized service areas.⁵ These exact same considerations should apply for 900 MHz SMR systems that are desperately trying to compete, with far less spectrum, against more established cellular, 800 MHz SMR, paging systems and new PCS services that have access to far greater spectrum than available in the entire 900 MHz SMR band.

² Second Order on Reconsideration, Gen. Docket No. 90-54, et.al., FCC 95-231 (June 21, 1995) ("MDS Decision")

³ See Petition for Partial Reconsideration and Clarification of American Mobile Telecommunications Association, Inc. ("AMTA Petition"), at 10-12.

⁴ Petition for Reconsideration of Geotek Communications, Inc., (June 5, 1995) ("Geotek Petition"), at 2-6.

⁵ MMDS Decision at ¶ 9.

C. LOADING RULES SHOULD BE ELIMINATED; RULES REGARDING SITE "DECONSTRUCTION" SHOULDNT APPLY TO WIDE AREA SYSTEMS.

RMD agrees with AMTA⁶ PCIA,⁷ CelSMer,⁸ Advanced Mobilecomm,⁹ and the entire SMR industry that loading rules should be eliminated for all 900 MHz SMR systems. There is simply no basis in a regulatory system that places so much emphasis on parity to impose these burdensome requirements on one segment of the SMR industry, while cellular, 800 MHz SMR, paging services of all kind, PCS, 900 MHz SMR MTA licensees, and every other FCC licensed service are not subject to such a requirement.

With respect to the rules regarding the deconstruction of sites that are discussed in the petitions filed by AMTA¹⁰ and Nextel,¹¹ RMD urges that the broader approach urged in its Petition, that wide area systems be permitted freely to add, modify, and move individual channels and sites without any impact (increase or decrease) on their protected areas of service is the better one, and also addresses the concerns expressed by AMTA and Nextel. As demonstrated in RMD's Petition, wide area licensing, where licensees are able to continue to modify and upgrade their facilities to serve their customers, is the only regulatory basis under which wide area systems can effectively operate and is how all other competitive wide area CMRS systems will be regulated. Whether a multiple site wide area system "deconstructs" a particular site at a particular location should be transparent for licensing purposes, at least as long as substantial service to the overall licensed area --but not every inch and certainly not with every channel--is maintained (or, in the case of a change of system, is restored within a reasonable period).

⁶ AMTA Petition at 6-9.

⁷ Petition for Partial Reconsideration of the Personal Communication Industry Association, (June 5, 1995) ("PCIA Petition"), at 2-6.

⁸ Petition for Reconsideration of CelSMer (June 5, 1995), at 2-3.

⁹ Petition for Partial Reconsideration of Advanced Mobilecomm, Inc. (June 5, 1995) ("Advanced Mobilecomm"), at 5-9.

¹⁰ AMTA Petition at 12-13.

¹¹ Petition for Partial Reconsideration or Clarification of Nextel Communications, Inc. (June 5, 1995), at 2-4.

D. MTA POPULATION COVERAGE REQUIREMENTS SHOULD BE RELAXED, BUT SHOULD CONTINUE TO BE BASED ON THE ENTIRE MTA REGION.

RMD shares the concerns expressed by PCIA¹² and Advanced Mobilecomm¹³ that the MTA population coverage requirements are too stringent and would prefer to see the lesser requirements of 25% in three years and 33% in five years, as previously proposed by RMD and others. RMD also understands that there is some "rough justice" in the boundaries of the MTAs, which do not always correspond to the initial "DFAs,"¹⁴ and believes that the Commission should favorably consider, on a waiver basis, joint requests by existing systems each already licensed on the same block for different portions of an MTA to partition on MTA between them, much in the way that partitioning would be available to rural telephone companies.

All of this said, RMD urges that the Commission should not adopt coverage requirements for the MTAs based solely on remaining "white area," among other reasons, because this would invite the fragmentation of the MTA markets into economically inefficient areas that in many cases would be too small to support a competitive service, as the Commission found was the case with the DFAs.¹⁵

E. THE RULES SHOULD BE CLARIFIED TO ENSURE THAT INCUMBENTS DO NOT HAVE TO RISK THEIR EXISTING INVESTMENT WHEN SEEKING MTA LICENSES.

As urged by both Geotek and RMD, incumbents should not be discouraged from bidding for MTA licenses by rules that, if not clarified, could be read to mean that a failure to meet MTA coverage requirements would result in a loss even of existing licensed service areas. Imposing such a risk puts existing systems who seek to expand, but face a very uncertain market and stiff MTA coverage requirements, in an almost impossible situation. It will also likely result in less coverage in rural areas, not more, because those best able to serve such areas will be reluctant to take

¹² PCIA Petition at 6-7.

¹³ Advanced Mobilecomm Petition at 2-4.

¹⁴ In some cases, there is more than one DFA (e.g., the New York MTA includes three DFAs) in an MTA; in other cases, there are no DFAs in an MTA (e.g., the El Paso-Albuquerque), although there are existing protected operations in all of the MTAs. RMD previously proposed (and would still support as did the rest of the SMR industry) the use of "Modified MTAs," to better tailor the new wide area "MTA" licensing regions to the already licensed DFAs. See, e.g., RMD's Comments in PR Docket No. 89-553 (April 23, 1993).

¹⁵ Report and Order, PR Docket 92-17, 7 FCC Rcd. 4914, 4914-15 (1992).

the risk to try to do so. No other licensed entity in any other service is faced with such an all or nothing risk in seeking the ability to expand its service and RMD urges that such a draconian result should not apply here.

F. CONCLUSION.

When this proceeding began more than half a decade ago, its focus was on how systems initially licensed in fragmentary DFAs could expand to market boundaries and how a regulatory system based on an even then antiquated site by site licensing scheme and outdated loading rules might be replaced by a wide area licensing system.

RMD urges that, even as the Commission prepares for auctions of unlicensed areas within the band, it not lose site of these goals and, at least where doing so would not do violence to the auction concept, that the rules be modified and clarified to facilitate the continued wide area operation of existing systems.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comments of Ram Mobile Data USA Limited Partnership on Petitions for Reconsideration and Clarification was sent by first-class mail, postage prepaid, this 27th day of July, 1995, to each of the following:

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