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

In the Matter of	)	
	)	
Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool	)	PR Docket No. 89-553
	)	
Implementation of Sections 3(n) and 322 of the Communications Act	)	GN Docket No. 93-252

DOCKET FILE COPY ORIGINAL

COMMENTS ON PETITIONS FOR RECONSIDERATION

RAM Mobile Data USA Limited Partnership ("RMD") hereby submits these Comments in response to the Petitions for Reconsideration filed jointly by CelSMer and CMH, Inc. (collectively referred to herein as "CelSMer") and by Pittencrieff Communications, Inc. ("PCI") with respect to the Commission's "Third Order on Reconsideration"[1] in the above referenced proceeding.

RMD shares the concern of PCI and CelSMer about the Commission's reaching out, on its own motion, after a proceeding has been concluded to change its policies without seeking further comment from interested parties. In this case, RMD believes that it may have been useful to have some clarification of the Commission's policies regarding the ability of MTA licensees to use resale to meet their coverage requirements.[2] Unfortunately, however, the Commission went

[1] Third Order in Reconsideration, FCC 95-429, PR Docket 89-553 (rel. October 20, 1995).
[2] This situation is somewhat different than the issue of the Commission's "Second Erratum," which also is being contested. See RMD's Application for Review, PR Docket No. 89-553 et at., Nov. 20, 1995 ("Application for Review"). Unlike the case of coverage requirements, which were the subject of a clear and unambiguous rule, the application of resale to meeting coverage requirements was addressed,

No. of Copies rec'd 0+10
List ABCDE

further than the limited clarification that was necessary and jeopardized arrangements that had been made among existing licensees and potential MTA licensees to combine their system operations and extend their coverage through resale arrangements.

At the same time the Third Order on Reconsideration gutted the previous policy that "an MTA licensee must satisfy its coverage requirements regardless of the extent of the presence of incumbents within its MTA block."[3] The suggestion that MTA licensees might satisfy coverage requirements by what the Third Order on Reconsideration refers to as "niche services" completely reverses this position. Coupled with the "Second Erratum,"[4] the Commission has, for all practical purposes, totally abandoned coverage requirements for non-incumbent MTA licenses, which were set out in previously announced rules and policies, all without explanation of the rationale for the changes. This was done, moreover, without public notice (except of the decision as a *fait accompli*) or opportunity for comment.

The lack of any public proceeding regarding the changes in the Commission's rules and policies for 900 MHz service makes it difficult to determine the rationale for these changes. Nevertheless, to the extent that the Commission's intended to clarify the circumstances under which resale of an incumbent's services would be considered for purposes of meeting the MTA licensee's coverage requirements, RMD believes that something more modest would satisfy both the need for clarification and the concerns raised by the petitioners.

---

only in passing, in the text of the Commission's order, with perhaps some room for interpretation of what was intended. See Second Report and Order and Second Further Notice of Proposed Rulemaking ("Second Order"), 10 FCC Rcd 6884, 6899 (1995).

[3] Id.

[4] See Note 1 supra.

RMD suggests that whether resale agreements with incumbent licensees will count toward meeting the MTA licensee's coverage requirements should be based on whether or not the resale agreement specifically allows the MTA licensee to claim the area for coverage purposes. If so, regardless of the ownership of base stations, the resale agreement reflects a joint system approach for which joint coverage may be claimed. If not, the resale reflects nothing more than one entity reselling what another has built and should not be claimed for coverage. This approach would permit the economic arrangements described by PCI and CelSMer to go forward. The approach, however, would not allow MTA licensees simply to claim coverage by virtue of a resale agreement that any one of a number of entities might enter without regard to service in other parts of the MTA.

Another advantage to this approach is that it does not discourage incumbent licensees from generally permitting resale nor does it open up the possibility of prejudice to incumbents if, for other reasons, the Commission elects to make resale mandatory.[5] This approach also is fully consistent with the thrust of the Second Order, the essence of which permits, but does not require, incumbents to reach agreements with MTA licenses to give the latter rights to serve, and claim coverage for, incumbent-served areas.[6]

With this clarified, RMD urges that abandon the concept of unserved area "niche" services, which may have been adopted only to compensate for the unavailability of resale as a means of complying with the coverage requirement. As discussed above, the "niche" services concept is completely at odds with the Commission's very clear statements of rule and policy, which require MTA

---

[5] PCI makes a similar point at Note 9 of its Petition. Rather than limiting resale during construction periods, as suggested by PCI, the approach suggested simply would limit the circumstances in which resale might be claimed for coverage.

[6] Second Order, supra, 10 FCC Rcd at 6899.

licensees to obtain the right from incumbent licensees to provide coverage in their service areas, if sufficient unencumbered spectrum is not available to meet coverage requirements. The "niche" service concept simply cannot be squared with the Commission's statement that:

> an MTA licensee must satisfy its coverage requirements regardless of the extent of the presence of incumbents within its MTA block. We believe that this will also serve to discourage applicants who have a limited ability to provide coverage within an MTA from seeking MTA licenses for anti-competitive reasons.[7]

Unlike the matter of resale, there was absolutely no ambiguity here. The Commission's pronouncements in the Third Order on Reconsideration on this subject amount to nothing more than an unexplained reversal of prior policy, which the Administrative Procedures Act does not allow, without adequate notice and opportunity for comment.[8]

Respectfully submitted,

RAM MOBILE DATA USA LIMITED PARTNERSHIP

By: _____
Henry Goldberg
Jonathan Wiener

GOLDBERG, GODLES, WIENER & WRIGHT
1229 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 429-4900

Its Attorneys

January ~~8~~ 11, 1996

---

[7] Id.
[8] See RMD's Application for Review at 9-7.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comments on Petitions for Reconsideration was sent by U.S. mail, postage prepaid, this ~~8th~~ 12th day of January, 1996, to each of the following:

* David Furth
Acting Chief, Commercial Wireless Division
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554

* Rosalind Allen
Associate Bureau Chief, WTB
Federal Communications Commission
2025 M Street, N.W., Room 7002-B
Washington, D.C. 20554

Russell H. Fox
Gardner, Carton & Douglas
1301 K Street NW Suite 900 East Tower
Washington, DC 20005
Counsel to PCI

David J. Kaufman, Esq.
Scott C. Cinnamon, Esq.
Brown Nietert & Kaufman, Chartered
1920 N Street, N.W., Suite 660
Washington, D.C. 20036
Counsel to CelSMer and CMH

Dawn Hottinger

/s/Dawn Hottinger
Dawn Hottinger

* By Hand