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

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 1997	)	MD Docket No. 96-186

PETITION FOR RECONSIDERATION OF RAM MOBILE DATA USA LIMITED PARTNERSHIP

RAM Mobile Data USA Limited Partnership ("RMD"), by its attorneys, hereby petitions the Commission to reconsider one aspect of the Report and Order issued in the above-referenced proceeding (the "Report and Order").

DISCUSSION

In the Report and Order, the Commission has made a series of changes to its regulatory fee schedule. One change, in particular, is of concern to RMD. In response to a proposal by Destineer, Inc., the Commission has created a CMRS Messaging Service fee category to replace the CMRS One-Way Paging fee category.[1] The distinguishing characteristic, the Commission explained, between the CMRS Mobile Services fee category and the CMRS Messaging Service fee category will be the "bandwidth" that the licensee is authorized to use.[2] Thus, licenses authorizing operations on so-called "broadband" spectrum will be subject to the CMRS Mobile Services fee, regardless of the services offered on that spectrum by the licensee and licenses authorizing the provision of service on "narrowband" spectrum will be subject to the CMRS Messaging Services fee, regardless of the service offered on that spectrum.[3]

As a result of this system of classification and the Commission's previous determination that 900 MHz SMR services are offered on "broadband" spectrum, 900 MHz SMR licensees will be required to pay the CMRS Mobile Services fee even

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1 Report and Order ¶ 60.
2 Id.
3 Id. ¶ 61.

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though not a single 900 MHz SMR licensee of which RMD is aware has anywhere near the amount of spectrum of the other "broadband" services included within the CMRS Mobile Services category. On the contrary, the pattern of licensing in this service and the actual spectrum usage of particular licensees is far more consistent with that of the services grouped in the CMRS Messaging Services category. RMD therefore requests reconsideration of the current system of classification.

I. Licensees That Are Authorized To Use Only A Small Fraction Of The Amount Of Spectrum Allocated To Other CMRS Mobile Service Licensees Should Not Be Grouped With These Other Licensees For Regulatory Fee Purposes.

The Report and Order, as currently drafted, would include within the CMRS Mobile Services fee category 900 MHz SMR systems.[4] The consequences of this inclusion in terms of regulatory fees are significant. Whereas licensees in the CMRS Messaging Service fee category are required to pay an annual regulatory fee of $.03 per unit, licensees in the CMRS Mobile Service fee category are required to pay an annual regulatory fee of $.24 per unit.[5] That is, the annual fee for CMRS Mobile Services is eight times that for licensees in the CMRS Messaging Services.

Given the wide disparity between the amount of regulatory fees due from CMRS Mobile Services and CMRS Messaging Services, the Commission should be careful to draw with precision the distinction between the licensees included within each category. Moreover, the "principles of regulatory parity dictate that fees for similar services be equivalent."[6] The Report and Order fails in this regard.

As a technical matter, no single 900 MHz SMR licensee is authorized to use the minimum number of channels or spectrum to offer a competitive "broadband" service. Subject to possible partial assignment, 900 MHz SMR frequencies are licensed in ten-channel blocks, each channel consisting of two-way 12.5 kHz paths, *i.e., 0.25* MHz per ten-channel block.[7] In total, 900 MHz SMR systems have been allocated 5 MHz of spectrum in each geographic region. By way of comparison, each cellular licensee has been allocated 25 MHz of spectrum, and broadband PCS licensees are authorized to use up to 30 MHz of spectrum.

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[4] See id. Attachment H, ¶¶ 14-15.

[5] Id.

[6] Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 7988 ¶ 315 (1994).

[7] See 47 C.F.R. § 90.613.

As the Commission itself has recognized, "SMR systems must have the ability to use (and reuse) a large number of channels, preferably on contiguous frequencies, to compete successfully with cellular and broadband PCS."[8] In another context, the Commission concluded that 42 contiguous (two-way 25 kHz) channels and 2.1 MHz of contiguous spectrum is the minimum needed to construct an SMR system that could compete with cellular and PCS services.[9]

To RMD's knowledge, no single 900 MHz SMR licensee has this "critical mass" of contiguous channel (84 12.5 kHz channels) and spectrum capacity in one location.[10] RMD, for example, does not have close to the amount of spectrum identified by the Commission has the bare minimum necessary to compete with broadband services. RMD operates its mobile data systems using a small fraction of the spectrum available for 900 MHz SMRs, much less the amount available for cellular or broadband PCS services. Indeed, RMD's systems, and most or all 900 MHz SMR licensees, are not authorized to use as much spectrum as "narrowband" PCS licensees, which have been grouped in the CMRS Messaging Services category.[11] As a result, RMD's systems cannot offer any competitive service that approximates a real-time, two-way switched voice service like those offered by true broadband technologies.[12]

Nonetheless, because of the broad brush approach adopted in the Report and Order, any licensee authorized to provide service in what otherwise has been deemed "broadband spectrum" is considered a CMRS Mobile Service. As a result, the Report and Order mistakenly groups RMD's 900 MHz SMR systems with broadband systems that provide wholly different types of service using far greater portions of spectrum.

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8 In re Amendment of Part 90 of the Commission's Rules, 10 FCC Rcd 7970, 7984 (1994).

9 Id.

10 Because of interleaved 900 MHz band allocations for Public Safety and Industrial and Land Transportation services, 900 MHz SMR licensees cannot aggregate more than 10 contiguous 12.5 kHz channels.

11 See Report and Order, Attachment H, ¶¶ 14-15.

12 Indeed, because RMD's systems do not compete with cellular, broadband PCS, or other systems that provide real-time, two-way switched voice service, the Commission has expressly excluded 900 MHz SMR systems providing only mobile data services from its definition of "covered SMR" systems for purposes of the CMRS resale (CC Docket No. 94-54), number portability (CC Docket No. 95-116), enhanced-911 (CC Docket No. 94-102), CMRS roaming (CC Docket No. 94-54), and RF emissions hazards (ET Docket No. 93-62) rules. See, e.g., In re Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, First Report & Order (rel. July 12, 1996) ¶ 19.

This mis-categorization violates the principle of regulatory parity and imposes inordinate costs upon RMD relative to its competitors. Whereas RMD's systems have been classified as CMRS Mobile Services and required to pay $.24 per unit in regulatory fees, the services with which they compete — 220 MHz SMR, narrowband PCS, and paging services — are classified as CMRS Messaging Services and required to pay only $.03 per unit.

II. To Promote Regulatory Parity, The Commission Should Consider Not Only The Band Of Spectrum In Which A Service Is Licensed, But Also The Total Amount Of Spectrum Allocated To A Particular Licensee.

Based on all of the foregoing, it is evident that the Commission should not include RMD's 900 MHz SMR systems, and similar systems, within the CMRS Mobile Service fee category; finer distinctions need to be drawn between the CMRS Mobile Service and CMRS Messaging Service fee categories. 900 MHz SMRs have been included with the CMRS Mobile Services fee category because the 5 MHz of spectrum allocated to all 900 MHz services has been classified as "broadband spectrum." In fact, in the case of 900 MHz SMR systems, such as those of RMD, each licensee typically will have only a small sliver of this spectrum and thus lack the ability to aggregate sufficient amounts of contiguous spectrum to offer "broadband" services. This distinction is important and, for regulatory parity purposes, utterly central to the integrity of the Commission's regulatory fee regime.

Upon reconsideration, therefore, the Commission should classify CMRS providers as either CMRS Mobile Services or CMRS Messaging Services on a licensee-by-licensee basis. As the Commission already has concluded, SMR systems require at least 42 contiguous channels and approximately 2.1 MHz of contiguous spectrum to offer service comparable to other "broadband" services. Indeed, even this may not be enough because certain broadband technologies (*e.g.*, code division multiple access and groupe special mobile protocol technologies) may require significantly more than the 2.1 MHz previously identified by the Commission as the bare minimum for broadband services.[13]

Thus, it is not enough to consider only the band of spectrum used by a licensee to provide a service (*i.e.*, so-called "broadband" and "narrowband" spectrum). To promote regulatory parity the Commission should consider instead

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[13] In re Amendment to Part 90 of the Commission's Rules, 11 FCC Rcd 1463, 1489 (1995).

whether a particular licensee has the practical ability to compete in the broadband markets (*i.e.*, whether it is authorized to use in any particular location at least 42 contiguous channels and 2.1 MHz of contiguous spectrum). Only with this "critical mass" of spectrum and channel capacity can a system begin to compete with true broadband services.[14]

CONCLUSION

The principle of regulatory parity dictates that similar services should pay similar regulatory fees. In addition, the wide disparity between the regulatory fees due from licensees in the CMRS Mobile Service fee category and licensees in the CMRS Messaging Service fee category require that the Commission draw distinctions between the two with precision. Most or all 900 MHz SMR systems are allocated only a small fraction of the spectrum allocated to other services that have been categorized as CMRS Mobile Services. Accordingly, not all 900 MHz SMR systems should be classified in the CMRS Mobile Service fee category. The Commission should, instead, classify only those systems authorized to use at least 42 channels and 2.1 MHz of spectrum as CMRS Mobile Services.

Respectfully submitted,

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[14] In practice, this change would result in the grouping of most or all 900 MHz SMR licensees in the CMRS Messaging Service fee category. The Commission could, therefore, simply reclassify the entire 900 MHz SMR service as a CMRS Messaging Service, subject to annual review of this classification. In the event that licensing patterns change in the service such that large blocks of licenses become consolidated in a single entity, the Commission could institute the licensee-by-licensee approach advocated above.