

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Implementation of Section 9)	MD Docket No. 96-186
of the Communications Act)	
)	
)	
Assessment and Collection of Regulatory Fees)	
For Fiscal Year 1997)	
)	

To: The Commission

COMMENTS OF THE
RURAL TELECOMMUNICATIONS GROUP

The Rural Telecommunications Group ("RTG") hereby files Comments in response to the Federal Communications Commission's ("FCC" or "Commission") Further Notice of Proposed Rule Making, MD Docket 96-186, FCC 97-254, released July 18, 1997 regarding the assessment and collection of regulatory fees in 1997.¹ For the reasons discussed below, RTG opposes that portion of the *NPRM* in which the Commission proposes to publish in the *Federal Register* the fees that commercial mobile radio service ("CMRS") providers have paid and the volume or units upon which the payments were based. *NPRM* at 2.

¹ In the Matter of Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1997, *Further Notice of Proposed Rule Making*, MD Docket 96-186, FCC 97-254, released July 18, 1997, 62 Fed. Reg. 40036, July 25, 1997 ("*NPRM*").

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I. Statement of Interest

RTG is a group of concerned rural telephone companies who have joined together to promote the efforts of all rural telephone companies to speed the delivery of new, efficient and innovative telecommunications technologies to the populations of remote and underserved parts of the country. RTG especially advances the interests of rural telephone companies in wireless technologies. RTG's members include CMRS licensees and applicants for CMRS licenses.

II. Comments

According to the *NPRM*, the Commission is attempting to increase the accuracy and timeliness of its regulatory fee payments by revising its rules regarding those payments. *Id* at 1. The Commission proposes to require all CMRS licensees to maintain and make available to the FCC within 30 days of a request by the Commission documentation regarding the basis for a CMRS licensee's regulatory fee payment. In the *NPRM*, the Commission proposes that licensees maintain records regarding the number of pagers, cellular phones and PCS units that the licensee serves, as well as keeping copies of reports the licensee makes to other government agencies, billing records, financial statements and other records. Further, the Commission is proposing to publish in the *Federal Register* the amount that each regulatory fee payor pays along with the volume of units on which that fee payment is based. *Id.* at 2. According to the Commission, publication in the *Federal Register* of the fees paid and the volume of units will allow fee payors to verify the proper recording of their regulatory fee payments.

A. Publication in the Federal Register of regulatory fees paid and the volume of units the fees were based upon is competitively harmful to small market licensees.

The Commission's proposal to publish regulatory fee payments and volume of units in the *Federal Register* will have a disproportionate, adverse effect on the many small, rural companies which operate in only one or two markets. Publication of the regulatory fee paid by these licensees will provide a tremendous amount of information to the licensee's competitor(s) (*i.e.* the number of subscribers on the small licensees system). This information can be used to monitor churn rate and whether a competitor is successfully marketing competing services. While the Commission permits a licensee to request confidential treatment of information contained in its regulatory fee filing, it is not clear whether the Commission's proposal to publish the information in the *Federal Register* would supercede the confidentiality request. To the extent that the *NPRM* is unclear, RTG insists that the Commission refrain from publishing any information for which it has received a confidentiality request pursuant to Section 0.459 of the Rules. As discussed below, there are less onerous methods the Commission could use to have licensees verify their regulatory fee payments. Subjecting small licensees to competitive harm is not an acceptable method.

B. The requirement that CMRS licensees maintain excessive records imposes an unnecessary burden on small CMRS licensees.

RTG does not oppose keeping records that the FCC could review to support the regulatory fees paid by CMRS licensees. RTG's members generally retain business records for

three to five years. Thus, documentation regarding billing and sales and other similar information should be generally available should the FCC require documentation to support the regulatory fees paid by a CMRS provider. RTG members, however, do not maintain, and RTG opposes the proposed requirement that CMRS licensees maintain, *additional* records, other than normal business records, for purposes of documenting the regulatory fees its members pay. Such a requirement would be anathema to the provisions of the Paperwork Reduction Act and pose an excessive burden on smaller companies which do not have the staff time nor facilities to maintain extensive records.

The Commission can achieve its goal of ensuring more accurate fee payments by conducting random audits of fee payors, rather than publishing the information in the *Federal Register*. Fee payors themselves have their canceled checks which act as verification that the fee has been paid. A requirement that fee payors check the *Federal Register* for verification becomes an additional, unnecessary burden. Audits will keep fee payors honest, allowing FCC staff to rely on the information filed without causing licensees to have to seek out and monitor the *Federal Register*. The *Federal Register* is not readily accessible in many rural areas and for licensees in such areas a monitoring requirement would require such licensees to subscribe to the *Federal Register*, thereby incurring an unnecessary and burdensome expense.

Regardless of which records the FCC requires to be retained, the Commission should refrain from specifying in any way the form in which the records are kept. For example, if a CMRS provider keeps all of its back records on optical disk storage, or on paper, or on

microfiche, the Commission should allow those records to be submitted in the form in which they are kept, rather than requiring the licensee to have to present the information in a form designated by the FCC.

C. The Commission's proposal violates the Regulatory Flexibility Act by imposing an undue burden on small companies when there are less burdensome alternatives.

The Regulatory Flexibility Act requires the FCC to consider less burdensome alternatives before imposing additional regulatory burdens on small businesses. 5 U.S.C. §601 et. seq. Under §603 of the Regulatory Flexibility Act, each Initial Regulatory Flexibility Analysis ("IRFA") should contain: (a) a description of the reasons why action by the agency is being considered, (b) a succinct statement of the objectives of, and legal basis for, the proposed rule, and (c) a description of the projected reporting, record keeping and other compliance requirements. "The IRFA should also have a description of significant alternatives which will accomplish the same objectives and which minimize the impact on small entities." 5 U.S.C. § 603(c). The FCC's stated need for and objectives of the Proposed Rules is spartan: "to help assure increased accuracy and timeliness of regulatory fee payments." The rest of the IRFA refers to a companion Final Regulatory Flexibility Analysis ("FRFA") in a recent Report and Order², without tailoring the analysis to the licensees affected by the new rules. Accordingly, the IRFA is inadequate; the FCC did not estimate the level of resources or time that small entities would have to devote to doing the Commission's work to verify payments.

² In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1997, *Report and Order*, MD Docket No. 96-186, FCC 97-215, released June 26, 1997 ("*Report and Order*").

The FRFA from the *Report and Order* released June 26, 1996 provides no support for the action proposed in the *NPRM*. The FRFA contained in the *Report and Order* only addresses the need for fee filers to count the units their fees are based upon and to file FCC Form 159 with the fee. See *Report and Order* at para 60. The Commission did not analyze the additional burden it was placing on licensees in requiring licensees to monitor and review the *Federal Register*. Additionally, in the FRFA in the *Report and Order*, the Commission did not address significant alternatives to the new burdens put on licensees. Moreover, the very real danger of the Commission overlooking confidentiality requests and inadvertently publishing sensitive information concerning the number of subscribers in a market, is of paramount concern to small licensees and has not been considered or addressed.

As the Commission acknowledged in its *NPRM*, many small businesses will be affected by these rules. Each of those businesses will have to dedicate scarce staff time to reviewing the *Federal Register* -- which may not be easily and affordably available to that small company -- to verify payments made to the FCC under the new fee proposals. The burden of verification is being shifted to CMRS licensees so that the FCC can reduce the need to have staff verify payments and record those payments correctly. *NPRM* at 2.

Licensees seeking confidentiality will need to closely monitor their requests for confidentiality to ensure that the FCC does not inadvertently expose it to competitive harm. Therefore, the Commission is proposing an approach which will minimize administrative processing for some of its staff while increasing the burden on other staff. In the process, it will

be imposing a significant burden on small business CMRS licensees which will be harmed by the proposed rules. This hardly seems to be the least regulatory restrictive alternative, especially compared to the rules as currently written. The Commission has never presented an explanation of why it needs to burden small businesses with these new proposals other than its desire for administrative convenience, which it has failed to balance against the burdens it is creating for itself and small businesses. Thus, the Commission has yet to show that the proposed rule is the least restrictive alternative.

III. Conclusion

For the foregoing reasons, RTG respectfully opposes the Commission's proposal to publish the amount of regulatory fees paid by commercial mobile radio service providers and to publish the volume of customers or units on which those fees were based.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Caroline Hill, an employee of the Law Offices of Bennet & Bennet, PLLC certify that on this 14th day of August, 1997, I hand delivered a copy of the foregoing Comments to:

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