

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, DC 20554

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

**COMMENTS OF PRIMECO PERSONAL COMMUNICATIONS, L.P.**

PrimeCo Personal Communications, L.P. ("PrimeCo"), an A and B Block licensee, hereby files comments in response to the Commission's *Further Notice of Proposed Rule Making* in the above-referenced proceeding.<sup>1</sup> PrimeCo opposes the Commission's ill-conceived proposal to publish in the Federal Register the amount of fees paid and the volume or units upon which the fee payments were based for CMRS licensees who have paid a regulatory fee for the preceding fiscal year.<sup>2</sup> There is no need to publish this commercially sensitive information, and the Commission has other available means to ensure compliance with its regulatory fee collection requirements.

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<sup>1</sup> PrimeCo is a limited partnership comprised of PCSCO Partnership (owned by NYNEX PCS, Inc. and Bell Atlantic Personal Communications, Inc.) and PCS Nucleus, L.P. (owned by AirTouch PCS Holding, Inc. and U S WEST PCS Holdings, Inc.). PrimeCo is the broadband PCS licensee or is the general partner/majority owner in the licensee in the following MTAs: Chicago, Milwaukee, Richmond-Norfolk Dallas-Fort Worth, San Antonio, Houston, New Orleans-Baton Rouge, Jacksonville, Tampa-St. Petersburg-Orlando, Miami and Honolulu.

<sup>2</sup> *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 No. 96-186, FCC 97-254, ¶ 6 (released July 18, 1997) ("*Further Notice*").

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**BACKGROUND**

In the *Further Notice*, the Commission requests comment on its proposal to publish annually in the Federal Register lists of licensees that have paid a regulatory fee for the preceding fiscal year, including the amount of the fee paid and the volume or units upon which the fee payments were based.<sup>3</sup> The Commission posits that “[t]his will enable fee payers to verify that their payments have been properly recorded and to bring errors to [its] attention, thereby reducing the burden on our fee payment verification process.”<sup>4</sup> The Commission also states that certain types of proprietary information *may* be entitled to confidential treatment.<sup>5</sup> The Commission requests comment on this and alternative processes and procedures “to help assure that [its] actions are the most effective available without imposing any undue burden on those subject to the payment of a regulatory fee.”<sup>6</sup>

**DISCUSSION**

The Commission’s proposal invites mischief and possible commercial damage, particularly in the CMRS context. Wireless companies do not customarily release this information to the public, and often request that regulatory fee information currently included on the Form 159 be afforded confidential treatment. Assuming that the Commission does not grant a CMRS provider’s confidentiality request, publishing its

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* (emphasis in original).

<sup>6</sup> *Id.* ¶ 7.

total mobile units would offer competitors a snapshot picture of its subscriber base.<sup>7</sup> Similarly, even if only the fee amount is published in the Federal Register, it would not be difficult for a CMRS provider's competitors to calculate its subscriber base.<sup>8</sup> By advertising this information to the public, the Commission would not promote self-verification, but would remove the obstacle of a FOIA request for competitors to obtain commercially sensitive information.<sup>9</sup>

The Commission notes that "certain types of proprietary information may be entitled to confidential treatment."<sup>10</sup> As noted above, CMRS providers *already* request confidential treatment for the information disclosed on the Form 159. PrimeCo submits that in part because the wireless industry is highly competitive, such requests from CMRS providers should be routinely granted.<sup>11</sup> Ironically, however, the likelihood — and necessity — that such information will be afforded confidential treatment would

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<sup>7</sup> In addition, while confidential treatment may be routinely afforded this information, it will not be possible to fully safeguard the privacy of this business data, and possible inadvertent disclosure to the public would be problematic.

<sup>8</sup> Under the Commission's rules, broadband PCS and other CMRS providers must pay an annual regulatory fee of \$0.24 per unit for each mobile or cellular unit. Competitors can calculate a fee payer's subscriber base using elementary arithmetic.

<sup>9</sup> See 47 C.F.R. §§ 0.457(d), 0.459(h), 0.461.

<sup>10</sup> *Further Notice* ¶ 6,

<sup>11</sup> See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Second Report*, FCC 97-75, at 42-51 (released March 25, 1997) (discussing competition between cellular, broadband PCS and ESMR providers).

thwart the Commission's purported basis for publishing such information in the first place.<sup>12</sup>

The Commission's publication proposal clearly will not serve the objective of "reducing the burden on [the Commission's] fee verification process." Carriers will continue to require confidential treatment of the information in their Form 159 submissions, and those whose information is afforded confidential treatment will not enjoy the purported benefits — *i.e.* self verification — of publication. Moreover, PrimeCo is not concerned with the fee verification issue. The filing of a Form 159, which includes a typed-in fee amount, and the submission of the licensee's appropriate fee payment should ensure that the accurate amount is submitted and credited to the licensee. Form 159 fee filings are routinely made with the Commission, and PrimeCo is unaware of significant problems encountered with the proper and accurate crediting of sums paid.<sup>13</sup>

Finally, the Commission already has authority to conduct random audits to enforce compliance with the regulatory fee payment requirements and this authority, combined with its ability to assess forfeitures, will be sufficient to ensure compliance.<sup>14</sup>

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<sup>12</sup> For broadband PCS licensees, who started with a subscriber base of zero two years ago, disclosure of mobile unit totals would reveal much about the success of marketing strategies, market penetration and other indicators of performance.

<sup>13</sup> If there is a real documented problem in this area as to accurate recording of fees paid, the Commission could perhaps mail a receipt to the licensee indicating the amount recorded and requesting a return response if there is an error in recording the payment.

<sup>14</sup> See 47 C.F.R. § 1.1157(c).

**CONCLUSION**

For the reasons discussed herein, the Commission should not publish the fee payment amounts of regulatory fee payers or the reported mobile units of CMRS providers.

Respectfully submitted,

**PRIMECO PERSONAL COMMUNICATIONS, L.P.**

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