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

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 BELL ATLANTIC NYNEX MOBILE, INC.

Bell Atlantic NYNEX Mobile, Inc. ("BANM"), by its attorneys, hereby opposes the proposals in the Further Notice of Proposed Rulemaking in this proceeding ("Notice") concerning regulatory fee payments by licensees in the Commercial Mobile Radio Services (CMRS).[1] BANM holds CMRS licenses to provide cellular radiotelephone service in numerous markets nationwide and would be adversely affected by the proposed new rules.

The Notice is a solution in search of a problem. Its proposals would impose new recordkeeping obligations on CMRS providers and require public disclosure of subscriber data. The Notice supplies no rational basis for imposing these requirements on CMRS providers alone, nor does it show why they are necessary at all. Worse, the rules would conflict with the Commission's effort (and statutory obligation) to reduce paperwork burdens on licensees, and would also force it to devote resources to addressing numerous requests for confidentiality.

[1]Further Notice of Proposed Rulemaking, MD Docket No. 96-186, FCC 97-254, released July 18, 1997.

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The first proposal (Notice at ¶¶ 2-3) would impose new recordkeeping requirements on CMRS providers, but on no other class of licensees paying fees based on units or subscribers. This disparity alone undercuts the proposal. In any event, there is no demonstrated need for imposing this new burden on CMRS providers. The Notice asserts that the new obligations would enable the Commission to "assure that fee payments are accurately prepared and reliable." But when it adopted the regulatory fees program in 1994, the Commission imposed no such recordkeeping obligations, nor has it done so in any of the subsequent revisions to those rules.[2] The Notice does not supply any examples or situations involving the incorrect submission of CMRS fees which could now justify this change of course.

The Commission has repeatedly sought to minimize and reduce paperwork burdens on licensees pursuant to its obligations under the Paperwork Reduction Act. The Notice goes in the opposite direction by proposing to adopt mandatory forms of documentation CMRS providers would be required to keep. This is entirely unnecessary. CMRS providers must already maintain whatever records they need to calculate the correct regulatory fees owed. Should the Commission question a particular licensee's fee payment, it can request the licensee to supply

[2]Although the Commission imposed no recordkeeping requirements, it voiced no concern over its ability to ensure that correct payments were made. It noted, for example, that using an end-of-year date for collecting subscriber-based fees from CMRS and cable systems "will facilitate both an entity's computation of its fee payments and our verification that the correct fee payment has been submitted." Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, MD Docket No. 94-19, Report and Order, 9 FCC Rcd 5333, 5350 (1994).

the basis for its calculation. The regulatory fee rules contain numerous enforcement provisions to ensure that the rules are complied with.[3] Licensees already have the responsibility to be able to document fee calculations. The Commission does not need to saddle the industry with additional, mandatory recordkeeping rules.

Many FCC application forms and required reports other than regulatory fee submissions rely on information provided by the licensee, but do not dictate which underlying or supporting information must be kept. Rather, the Commission leaves it up to the licensee to determine precisely what documents to maintain and for how long. The Notice fails to explain or justify departing from this long-standing policy. Adoption of the recordkeeping rules would thus be inconsistent and arbitrary agency action.[4]

The second proposal (Notice at ¶ 6) is even less warranted. The Commission intends to publish in the Federal Register the fee information supplied to the Commission by CMRS providers (but not by other FCC licensees). The Notice suggests that publication would "enable fee payers to verify that their payments have been properly recorded and to bring errors to our attention." Were this a

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[3]See, e.g., 47 C.F.R. § 1.1164 ("Penalties for late or insufficient regulatory fee payments").

[4]The proposal is particularly unjustified given the Commission's decision to require licensees to certify on their fee submission forms that the fee payment is accurate and supported by the firm's accounting records. Notice at n. 1. A specific recordkeeping requirement would be pointless and would conflict with FCC policy toward other certifications on application forms which leave to the licensee how to demonstrate compliance.

valid justification, it would warrant publishing fee payments by all licensees, but the Notice singles out only CMRS providers. This alone renders the proposal arbitrary and invalid.

Moreover, the above-stated justification for publication (which is the only one the Notice offers) does not indicate that CMRS providers have complained about such "errors" in Commission recordkeeping, let alone why Federal Register publication would address that problem even if it existed. If the Commission believes that a payment may be incorrect, it should notify the licensee and resolve the matter directly. There is no reason for the licensee to question the payment it itself has made. Publication of a licensee's payment would serve no conceivable purpose.

The Notice (at ¶ 6) acknowledges that regulatory fee submissions may be entitled to confidential treatment. A rule which requires Federal Register publication of the "units" (i.e., subscribers) used to calculate CMRS regulatory fees would effectively publish the fee submissions, and release information that many CMRS carriers do not publicly disclose. For example, fee submissions must be made for each system licensee, but many CMRS providers with interests in multiple systems and licensees do not publicly reveal information which is broken down in that form. A rule mandating publication would unquestionably result in hundreds of requests for confidentiality, further burdening CMRS providers and the Commission's resources.

For these reasons, the Notice's proposals for new rules governing regulatory fee payments by CMRS providers should not be adopted.

Respectfully submitted,

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