

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
Implementation of Section 9 )  
of the Communications Act )  
Assessment and Collection of )  
Regulatory Fees for )  
Fiscal Year 1997 )

MD Docket 96-186

To: The Commission

COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"), pursuant to Section 1.415 of the Commission's Rules<sup>1</sup> and in response to the Commission's request for comments in the above-captioned docket,<sup>2</sup> hereby submits these comments on the issues raised therein.

RCA is an association representing the interests of small and rural cellular licensees providing commercial services to subscribers throughout the nation. Its member companies provide cellular service to predominantly rural areas in which, collectively, more than 6 million people reside. RCA offers comment on the Commission's proposal to require CMRS licensees to submit documentation concerning the basis for their fees, and

<sup>1/</sup> 47 C.F.R. § 1.415.

<sup>2/</sup> See In the Matter of Implementation of the Section 9 of the Communications Act - Assessment and Collection of Regulatory Fees for Fiscal Year 1997: Further Notice of Proposed Rulemaking, MD Docket No. 96-186 (rel. Jul. 18, 1997) ("Further Notice").

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opposes the Commission's plan to publish in the Federal Register the amount of the fee paid and the volume or units upon which the fee was based. In support thereof, the following is shown:

**I. THE COMMISSION SHOULD CONFIRM THAT REQUIREMENTS TO PROVIDE INFORMATION DO NOT REQUIRE THE GENERATION OF ADDITIONAL DOCUMENTATION BY CMRS PROVIDERS.**

The Commission has proposed that CMRS providers maintain and make available to the Commission upon 30 days notice documentation concerning the basis for their fee payments, stating that information on the number of units attributable to licensees is not available in the Commission's files.<sup>3</sup> RCA notes that CMRS providers alone will be required to produce confirming data upon request, and questions the equity of this approach.

With respect to the nature of the required documentation, the Commission states that it may include "reports to other government agencies, billing records, certified financial statements, or other records that demonstrate the accuracy of the fee payment."<sup>4</sup> The Commission notes that this documentation is likely prepared for licensees' use in calculating fee payments.<sup>5</sup> The Commission should confirm explicitly that any rules addressing this requirement will not operate to require a carrier to generate any new information or reports, or to provide information in a specified format. This confirmation is required to achieve the Commission's goal of ensuring that its actions are

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<sup>3/</sup> Further Notice at para. 2.

<sup>4/</sup> Further Notice at para. 3.

<sup>5/</sup> Id.

"the most effective available without imposing any undue burden on those subject to the payment of a regulatory fee."<sup>6</sup>

**II. PUBLICATION OF FEE PAYMENT INFORMATION IN THE FEDERAL REGISTER RISKS UNNECESSARILY THE DISCLOSURE OF PROPRIETARY INFORMATION.**

The proposal to publish in the Federal Register the amount of the fee paid and the volume or units upon which the fee payments are based risks disclosing proprietary information of fee-paying entities. The publication of this information discloses, through simple mathematical calculations, competitively sensitive, and therefore objectively confidential, information regarding the number of subscribers served by the provider.

The Commission states that its rationale for publishing fee payment information is to "enable fee payers to verify that their payments have been properly recorded and to bring errors to . . . [the FCC's] attention."<sup>7</sup> The Commission has also noted the need to ensure that Commission actions aim to be "the most effective available without imposing any undue burden on those subject to the payment of a regulatory fee."<sup>8</sup>

Fee payers, however, can already, without risking disclosure of proprietary information, verify that their payments have been properly recorded by telephoning the Commission. The Commission presents no explanation in the Further Notice as to how publication will facilitate or enhance the detection of errors by

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<sup>6</sup>/ Further Notice at para. 7.

<sup>7</sup>/ Further Notice at para. 6.

<sup>8</sup>/ Further Notice at para. 7.

carriers. The Commission also states that its objective is to reduce the burden on its fee verification process.<sup>9</sup> Although it is unclear whether the Commission seeks to reduce the burden of the fee-payer or the Commission itself, neither objective justifies the proposed requirement. The publication of competitively sensitive information imposes a significant burden on carriers, and should be avoided.

If the goal of the Commission is to reduce its administrative burden, then the Commission has not explained how its requirement outweighs the privacy interests of the providers. The Commission itself has recognized the fact that proprietary information may be divulged if its proposal is implemented, and has accordingly noted that carriers may request confidential treatment of proprietary information.<sup>10</sup> This antidote, however, is insufficient and administratively burdensome. The Commission should take official notice of the competitively sensitive nature of the information, automatically accord confidential treatment, and refrain from wholesale and indiscriminate publication.

### III. CONCLUSION.

RCA urges the Commission to adhere to its policies of implementing minimally burdensome requirements, while adhering to

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<sup>9</sup>/ Further Notice at para. 6.

<sup>10</sup>/ Id.

the Commission's duty to protect the proprietary interests of licensed entities.

Respectfully submitted,  
Rural Cellular Association

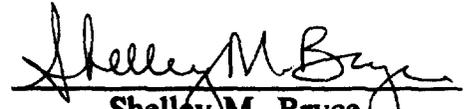
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DATED: August 14, 1997

**CERTIFICATE OF SERVICE**

I, Shelley M. Bryce, hereby certify that a copy of the foregoing "Comments of the Rural Cellular Association" was served on this 14th day of August 1997, by hand delivery to the following parties.

  
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