

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MD Docket No. 96-186

To: The Commission

COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

By:



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August 14, 1997

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its Comments in the above-entitled proceeding.¹ In the Notice, the FCC has proposed to modify its collection procedures for regulatory fees with the objective of increasing the accuracy and timeliness of those payments.

As detailed below, AMTA is concerned that adoption of the proposals in the Notice may result in the use of regulatory fee information as a basis for anti-competitive complaints that will embroil the Commission in protracted litigation. The Association also is concerned that the procedures proposed will lead to the disclosure of what currently is confidential information. For these reasons, AMTA opposes adoption of the approach proposed in the FNPR.

I. INTRODUCTION

1. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz Specialized Mobile Radio ("SMR") operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz and 450-512 MHz bands. These members provide commercial wireless services throughout the country. Those whose systems are interconnected with the Public Switched Network ("PSN") are classified by the FCC as Commercial Mobile Radio Service ("CMRS"), 47 C.F.R. § 20.3, and,

¹ Further Notice of Proposed Rule Making, MD Docket No. 96-186, FCC 97-254 (rel. July 18, 1997) ("FNPR" or "Notice").

therefore, are subject to payment of CMRS regulatory fees.² Thus, AMTA and its members have a significant interest in the outcome of this proceeding.

II. THE FEDERAL REGISTER PUBLICATION PROCEDURES PROPOSED SHOULD NOT BE ADOPTED.

2. The Notice recommends several modifications to the FCC's regulatory fee collection procedures. First, it proposes to require CMRS licensees to maintain and make available to the FCC upon request documentation concerning the basis for their fee payments. To ensure that the necessary information will be available if requested, the Notice proposes that the filing entity retain appropriate records for a period of three years.

3. AMTA supports that aspect of the FNPR. The Association agrees that licensees must collect the necessary information when calculating their regulatory fee obligations, and that retention of those records for the period specified would not be unduly burdensome.

4. The Association has noted an apparent discrepancy between the FNPR and the recent Public Notice regarding payment of Fiscal Year 1997 Regulatory Fees.³ The Public Notice states that the Commission is considering a proposal to require CMRS licensees to submit documentation concerning the basis for their fee payments, and indicates that, if the proposal

² To the extent that they provide interconnection at all, most AMTA members offer only limited interconnect capability. The vast majority of units on systems operated by AMTA members are limited to dispatch service with no ability to access the PSN. For this reason, and because the Commission has not yet determined how to address systems that provide a mix of CMRS and Private Mobile Radio Service ("PMRS") offerings, the Association has urged the FCC in numerous previously-filed comments in this proceeding to limit CMRS regulatory fee obligations to those units with interconnection capability. To date, the Commission has declined to do so.

³ Public Notice, FY 1997 Commercial Wireless Regulatory Fees, FCC No. 75516 (rel. Aug. 1, 1997) ("Public Notice").

is adopted, a separate Public Notice will be published specifying what documentation must be submitted, as well as when and where it is to be filed. The clear implication in the Public Notice is that supporting documentation would need to be submitted routinely, rather than upon request as stated in the FNPR. AMTA would not support such an approach since, unlike the FNPR proposal, it would constitute an unnecessary burden on both licensees and the FCC.

5. The Association also opposes the proposal in the Notice to publish annually in the Federal Register the amount of CMRS regulatory fee paid by each CMRS licensee and the number of units upon which the fee payments were based. The FNPR states that publishing this information would enable paying parties to verify that their payments have been recorded properly and to bring errors to the FCC's attention. Although AMTA agrees that CMRS licensees may find it beneficial to confirm proper recordation of their payments and, if necessary, to correct errors, the Association sees no reason why they cannot do so through cancelled checks, verification of transferred funds, or other means typically employed in such circumstances. AMTA is not aware that there is some unique issue in the payment of regulatory fees that would necessitate a different approach.

6. Moreover, AMTA is concerned that the procedure proposed by the FCC could be used as a vehicle for anti-competitive practices that would tax the Commission's limited resources severely. Publication of the regulatory fees paid by individual licensees is likely to prove an irresistible invitation for competitors to challenge one another's payments through informal objections and other procedural vehicles. Since a discrepancy of even one unit theoretically constitutes non-compliance on the part of the payer, and since systems may serve thousands, tens of thousands, or even hundreds of thousands of units which churn on an

unfortunately frequent basis, the Commission will inevitably find itself embroiled in reviewing voluminous documentation similar to that previously required to support SMR loading information when the loading count was questioned by a competitive licensee. Those disputes were rarely resolved promptly or without extensive FCC involvement. It should not be anticipated that challenges to regulatory fee payments would be disposed of more easily.

7. In fact, the result in terms of numbers of disputed filings and difficulty of resolution is likely to mirror the Commission's Finder's Preference program that, for the most part, has been eliminated.⁴ That program was limited to allegations of failures to construct and discontinuance of service, factual matters that the FCC believed would prove relatively easy to assess. The reality proved otherwise. Many of those proceedings have been pending for years, and have produced voluminous records. The FCC has been forced to devote a level of resources to the review and attempted resolution of Finder's Preference filings that is considered by many disproportionate to the value of the results achieved. It would be unfortunate if, as AMTA anticipates, adoption of the instant proposal produces a similar result.

8. On balance, therefore, the Association is concerned that the problems likely to be engendered by this FCC proposal outweigh the Commission's desire to ensure that the data provided by its licensees, as well as the regulatory fees themselves, accurately reflect the number of units on each system. AMTA believes that the better approach is for the Commission to rely

⁴ 47 C.F.R. § 90.173(k); Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639 (1995); First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995); Notice of Proposed Rulemaking, 11 FCC Rcd 13,016 (1996).

on the representations of its licensees, as it must do in most other instances, with appropriate penalties for misrepresentation.

9. Finally, the Association is concerned that the public disclosure of the information at issue could compromise the interests of the numerous CMRS licensees that are organized as sole proprietorships, partnerships and privately held companies. Unlike publicly held companies, information about the size of or fluctuations in their customer bases would not normally be a matter of public record. Although the Notice states that certain types of proprietary information may be entitled to confidential treatment, AMTA is far from confident that the information proposed to be disclosed in the Federal Register would qualify as confidential under the FCC's rules. See 47 C.F.R. § 0.459. Moreover, if it would, then the very purpose of the Commission's proposal would be defeated since it would be withheld from the public scrutiny anticipated by the FCC.

III. CONCLUSION

10. AMTA believes that the proposal to publish regulatory fee information in the Federal Register is ill-advised and should be rejected for the reasons described above. The Association further asks the FCC to clarify that, as stated in the Notice, but contrary to the recent Public Notice, the Commission does not intend to require the submission of supporting documentation with each regulatory fee payment. If the proposal outlined in the Public Notice is accurate, AMTA opposes it.

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 14th day of August, 1997, directed to be hand carried, a copy of the foregoing Comments to the following:

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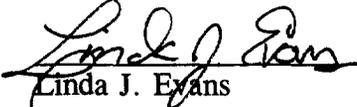
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