

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Assessment and Collection)
of Regulatory Fees for)
Fiscal Year 1997)

MD Docket No. 96-186

Comments of ARDIS Company

In accordance with Section 1.429(f) of the Commission's Rules, ARDIS Company ("ARDIS") hereby submits these comments in support of the petition for reconsideration filed by RAM Mobile Data USA Limited Partnership ("RMD") on July 28, 1997, in the above-captioned proceeding.¹ ARDIS concurs in RMD's request that the Commission reconsider that portion of the *1997 Regulatory Fees First Report and Order* placing all CMRS Specialized Mobile Radio Service ("SMR") licensees in the CMRS Mobile Services fee category regardless of the amount of spectrum held by such licensees or the type of service provided.

As detailed below, ARDIS agrees with RMD that the Commission's decision to include all CMRS SMR licensees in the CMRS Mobile Services fee category violates Congress's mandate that competing mobile service providers be subject to comparable regulatory requirements. ARDIS supports RMD's request that, rather than simply classifying all CMRS

¹ RAM Mobile Data USA Limited Partnership ("RMD"), Petition for Reconsideration, MD Docket No. 96-186 (filed July 28, 1997) [hereinafter *RMD Petition for Reconsideration*]. See also *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, MD Docket No. 96-186, FCC 97-215 (released June 26, 1997) [hereinafter *1997 Regulatory Fees First Report and Order*]. The petitions for reconsideration of the *1997 Regulatory Fees First Report and Order* were published in the Federal Register on October 16, 1997.

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SMR operators in the CMRS Mobile Services category, the Commission inquire further as to whether a particular SMR licensee has the practical ability to compete in the broadband marketplace.

I. The Commission's Decision To Include All CMRS SMR Licensees In The CMRS Mobile Services Fee Category Solely Because SMR Spectrum Is Considered "Broadband" Spectrum Violates Congress's Mandate That Competing Mobile Services Be Subject To Comparable Regulatory Requirements.

In the *1997 Regulatory Fees First Report and Order*, the Commission amended its fee schedule and created two CMRS fee categories – the CMRS Mobile Services category, which includes broadband CMRS services,² and the CMRS Messaging Services category, which includes narrowband CMRS services.³ The classification of a particular CMRS offering in either of these categories is premised solely on whether the spectrum is considered “broadband” or “narrowband.” Licenses authorizing CMRS operations on *broadband* spectrum are subject to the CMRS Mobile Services fee regardless of the amount of spectrum held or service offered on such spectrum, and licenses authorizing the provision of CMRS services on *narrowband* spectrum are subject to the CMRS Messaging Services fee regardless of the amount of spectrum held or

² The CMRS Mobile Services category includes Specialized Mobile Radio Services (Part 90), Personal Communications Services (Part 24), Public Coast Stations (Part 80), Public Mobile Radio (Cellular, 800 MHz Air-Ground Radiophone, and Offshore Radio Services regulated under Part 22).

³ The CMRS Messaging Services category includes private paging, interconnected Business Radio Services, 220-222 MHz Land Mobile Systems, Public Mobile One-Way Paging, and licensees of Personal Communications Services one-way and two-way paging.

services offered.⁴ The CMRS Mobile Services fee is \$.24 per unit; the CMRS Messaging Services fee is \$.03 per unit.

In its petition for reconsideration, RMD notes that, as a result of this system of classification and the FCC's prior determination that SMR services are offered on "broadband" spectrum, all CMRS 900 MHz SMR licensees are required to pay the CMRS Mobile Services fee of \$.24 per unit despite the fact that the pattern of licensing and actual spectrum usage in the 900 MHz SMR service are far more consistent with the services grouped in the CMRS Messaging Services category.⁵ RMD contends that inclusion of 900 MHz SMR licensees in the CMRS Mobile Services fee category without regard to the amount of spectrum a particular licensee holds is, therefore, contrary to the principles of regulatory parity and imposes inordinate costs on RMD relative to its competitors.⁶

RMD's concerns are equally applicable to ARDIS. Although ARDIS holds 800 MHz as opposed to 900 MHz SMR licenses, ARDIS, like RMD, does not have access to anywhere near the amount of spectrum necessary to compete with other "broadband" licensees in the CMRS Mobile Services fee category. Most of ARDIS's 800 MHz SMR licenses are site-specific and offer access to a single 25 kHz channel pair. By comparison, 25 MHz of spectrum are available to cellular carriers and 10 MHz or 30 MHz are available to PCS carriers included in the CMRS Mobile Services fee category. Even if a site-specific 800 MHz SMR operator, such as ARDIS, is able to secure a license for more than one channel, the quantity of spectrum available to cellular

⁴ *1997 Regulatory Fees First Report and Order*, ¶¶ 60-61.

⁵ *RMD Petition for Reconsideration*, at 2-3.

⁶ *Id.* at 4.

and broadband PCS operators is an order of magnitude greater – ten 25 kHz channel pairs still yield only 2 percent of the spectrum assigned to each cellular provider.

Because of these spectrum constraints, the mere fact that SMR spectrum is defined as “broadband” cannot be understood to imply that all CMRS SMR systems are capable of competing with other broadband CMRS offerings. ARDIS, RMD, and other SMR systems at both 800 MHz and 900 MHz face spectrum limitations that make the services they offer more like the narrowband services included in the CMRS Messaging category. Indeed, like RMD, ARDIS competes with 220 MHz, narrowband PCS, interconnected Business Radio Service, and paging offerings included in the CMRS Messaging Services category. ARDIS does not directly compete with cellular or broadband PCS services.

The spectrum limitations faced by site-specific SMR licensees significantly reduce the amount of data these operators are able to transmit and the number of customers they can serve.⁷ As a result, most site-specific SMR operators target their services toward specialized niche markets. For example, ARDIS offers a number of niche applications including: (1) instant checking of drivers’ records by law enforcement officers; (2) ordering of parts, machine histories, and billing information by field service personnel; and (3) processing of data for the pick-up and delivery of rental cars by customer service personnel. These offerings are much more closely akin to those provided by licensees in the CMRS Messaging Services category than those offered by cellular or broadband PCS entities. Cellular and broadband PCS data

⁷ Indeed, while cellular and broadband PCS systems can devote several hundred channels to data-based applications, in many markets, the entire ARDIS system is limited to a single pair of 25 kHz channels.

applications are typically targeted to much broader markets because they can be bundled in a single package with voice and other offerings.

For these reasons, ARDIS agrees with RMD that the inclusion of all CMRS SMR licensees in the CMRS Mobile Services fee category – without regard to the amount of spectrum held by such entities or their ability to compete with other broadband CMRS offerings – violates Congress’s mandate that competing mobile service providers be subject to comparable regulatory requirements.⁸ In particular, the Commission’s decision imposes an eight times greater per unit regulatory fee on site-specific CMRS SMR operators vis-a-vis their competitors simply because SMR systems happen to be licensed on “broadband” as opposed to “narrowband” spectrum. To avoid this result, ARDIS agrees with RMD that the Commission should not simply classify all CMRS SMR licensees as CMRS Mobile Services for regulatory fees purposes but, instead, should inquire further as to whether the licensee in question has the practical ability to compete in the broadband marketplace.⁹

⁸ See *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, 9 FCC Rcd 7988, 7993 (1994) (citing the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(d)(3), 107 Stat. 312, 392 (1993)). As noted by RMD in its petition for reconsideration, the Commission has expressly recognized that the “principles of regulatory parity dictate that fees for similar services be equivalent.” See *RMD Petition for Reconsideration*, at 2 (quoting *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, 9 FCC Rcd 7988, 8129 (1994)).

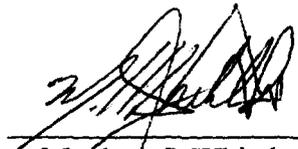
⁹ ARDIS has submitted its regulatory fees for fiscal year 1997 in accordance with the classificatory scheme established in the *1997 Regulatory Fees First Report and Order*. If ARDIS’s classification is changed on reconsideration, ARDIS requests a refund of the amount overpaid.

II. Conclusion

For the reasons set forth above, ARDIS supports the petition for reconsideration filed by RMD asking the Commission to reconsider that portion of its decision in the *1997 Regulatory Fees First Report and Order* classifying all CMRS SMR licensees as CMRS Mobile Services for purposes of determining the applicable regulatory fee. This classification is inappropriate as applied to numerous SMR systems that lack the spectrum capacity to compete with other broadband services included in the CMRS Mobile Services fee category. Furthermore, the Commission's decision directly contravenes Congress's mandate that competing mobile services be subject to comparable regulatory requirements by imposing a \$.24 per unit regulatory fee on SMR licensees, such as ARDIS, that compete with narrowband entities classified as CMRS Messaging Services and that are subject to a fee of \$.03 per unit.

Respectfully submitted,

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Dated: October 31, 1997

CERTIFICATE OF SERVICE

I, Robin Walker, hereby certify that on this 31st day of October, 1997, a true copy of the attached "Comments of ARDIS Company" has been served, via first class, postage prepaid mail, on the following persons:

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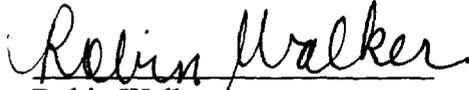
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