

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

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In the Matter of)
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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.
IN SUPPORT OF PETITION FOR RECONSIDERATION

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

By: 

Alan Shark, President
1150 18th Street, N.W., Suite 250
Washington, D.C. 20036
(202) 331-7773

Of Counsel:

Elizabeth R. Sachs, Esq.
Lukas, McGowan, Nace & Gutierrez
1111 Nineteenth Street, N.W. - 12th Floor
Washington, D.C. 20036
(202) 857-3500

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October 31, 1997

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.429(f) of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations,¹ respectfully submits these Comments in support of the petition for reconsideration filed by RAM Mobile Data USA Limited Partnership ("RMD")² in response to the Report and Order establishing Regulatory Fees for Fiscal Year 1997.³ AMTA joins with RMD in requesting that the Commission reconsider its decision to establish regulatory fee categories based on the type of spectrum authorized. Instead, as suggested by RMD, the FCC should categorize Commercial Mobile Radio Service ("CMRS") licensees for purposes of regulatory fee classification with those CMRS licensees with whom they compete. Specifically, AMTA asks the Commission to place all data messaging services in the CMRS Messaging Services category.

I. INTRODUCTION

1. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry.⁴ The Association's members include trunked and conventional 800 MHz and 900 MHz SMR operators, licensees of wide-area SMR systems,

¹ 47 C.F.R. § 1.429(f).

² RAM Mobile Data USA Limited Partnership, Petition for Reconsideration, MD Docket No. 96-186 (filed July 28, 1997)("RMD Petition").

³ Report and Order, MD Docket No. 96-186, FCC 97-215, 12 FCC Rcd ___ (rel. June 26, 1997)("FY 1997 Regulatory Fee Report and Order"). AMTA notes that it filed a Petition for Partial reconsideration in this proceeding on August 11, 1997 in which it asked the Commission to reconsider the requirement that Specialized Mobile Radio ("SMR") systems classified as CMRS submit "standard" regulatory fees for all units operating on the system(s) without regard to whether such units are interconnected. The comments submitted herein should be considered as a supplement to that filing.

⁴ These entities had been classified as private carriers prior to the 1993 amendments to the Communications Act. See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312, 392 ("Budget Act").

and commercial licensees in the 220 MHz band. These members provide commercial wireless services throughout the country. Those that offer any interconnection capability on their systems are classified as CMRS, rather than Private Mobile Radio Service ("PMRS"). Thus, the Commission's decision to classify all SMR licensees as "CMRS Mobile Services" has a significant impact on many of the Association's members.

II. COMMENTS

2. By the FY 1997 Regulatory Fee Report and Order, the FCC revised its schedule of regulatory fees and established a CMRS Messaging Service fee category to replace the CMRS One-Way Paging fee category.⁵ The established Messaging Services fee category includes "narrowband" CMRS services,⁶ while the CMRS Mobile Services category includes "broadband" CMRS services.⁷ The classification of a particular CMRS license is premised solely on whether the spectrum is considered "broadband" or "narrowband". A licensee authorized to provide service on what the Commission has labelled "broadband" spectrum falls within the CMRS Mobile Service category regardless of the actual amount of spectrum licensed to it. Similarly a licensee authorized to provide service on what has been classified as "narrowband" spectrum is considered to be providing a CMRS Messaging Service irrespective of its actual spectrum position.

⁵ 1997 Regulatory Fee Report and Order at ¶ 60.

⁶ 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 ("PCS") one-way and two-way paging.

⁷ 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) are included in the CMRS Mobile Services Category.

3. On July 28, 1997, RMD filed a petition for reconsideration of the 1997 Regulatory Fee Report and Order in which it asked the Commission to reconsider the classification scheme. RMD argued that the Commission should classify only those systems authorized to use at least 42 channels and 2.1 MHz of spectrum as CMRS Mobile Services -- the amount of spectrum previously identified by the Commission as the bare minimum for broadband services.⁸ According to RMD, the inclusion in the CMRS Mobile Services category of systems authorized for lesser amounts of spectrum is contrary to the principles of regulatory parity and imposes inordinate costs on licensees like RMD relative to its competitors.

4. The Association supports RMD's petition to the extent that it asks the Commission to classify all licensees which operate exclusively two-way mobile data systems under the CMRS Messaging Services category, whether those systems operate on 12.5 kHz 900 MHz SMR frequencies like RMD, on 25 kHz 800 MHz SMR frequencies like Ardis, or on other channels, including 25 kHz paging frequencies. The Commission's current CMRS Mobile Services regulatory fee classification is over-inclusive. As explained by RMD, the existing definitional distinctions results in inconsistent regulatory treatment of operators providing comparable, competitive services.

5. AMTA has detailed in numerous proceedings the importance of the FCC making issue-specific determinations as to the regulatory treatment of CMRS providers.⁹ These systems

⁸ First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making, PR Docket No. 93-144, 11 FCC Rcd 1463, 1489 (1995).

⁹ See, e.g., First Report and Order, CC Docket No. 94-54, 11 FCC Rcd ___ (rel. July 12, 1996) ("Resale Order"); Report and Order, CC Docket No. 94-102, 11 FCC Rcd ___ (Rel. July 26, 1996) ("E911 Order"); First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, 11 FCC Rcd ___ (rel. July 2, 1996)("Number Portability Order"); and

often have distinct, distinguishable characteristics that should be reflected in the FCC's treatment of them. In this instance, it is clear that not all CMRS SMR systems should be classified as CMRS Mobile Services. Data systems such as those operated by Ardis and RMD compete with narrowband messaging services, not with the mobile telephone services offered by broadband PCS and cellular. They should be classified as messaging services. To do otherwise would be to regulate "substantially similar" services differently, in direct conflict to the fundamental tenet of the Budget Act¹⁰ in which Congress directed the FCC to adopt rules whereby such services would be regulated in an even-handed fashion.

6. As detailed in the RMD Petition, SMR operators like RMD and Ardis do not deploy the multi-site channel reuse and seamless interconnected handoff system that enable cellular and PCS operators to target a consumer-oriented, mass market. Instead, as RMD notes, it offers mobile data services which are far more consistent with those of the services grouped in the CMRS Messaging Services category. RMD's competitors include 220-222 MHz Land Mobile systems, narrowband PCS, and paging services. However, under the FCC's regulatory fee provisions, these "substantially similar" services are classified as CMRS Messaging Services, while RMD's service is classified as a CMRS Mobile Service. The CMRS Mobile Services regulatory fee is \$.24 per unit; the CMRS Messaging Services fee is \$.03 per unit. Thus, these licensees will be paying regulatory fees eight times those of their competitors. Such disparity

Report and Order, ET Docket No. 93-62, 11 FCC Rcd ___ (rel. Aug. 1, 1996) ("RF Order"). AMTA has filed a Petition for Declaratory Ruling in reference to the "covered SMR" definition adopted in each of these proceedings. See, AMTA Petition for Declaratory Ruling, CC Docket No. 94-54 (filed Dec. 16, 1996).

¹⁰ See, n.4.

is contrary to the principal of regulatory parity and should be remedied.

III. CONCLUSION

7. For the reasons stated herein, AMTA supports the RMD Petition and urges the Commission to reconsider the criteria it adopted to classify services as "CMRS Mobile Services" for purposes of determining the applicable regulatory fee. This category is over-inclusive. The principle of regulatory parity dictates that similar services should pay similar regulatory fees. The wide disparity between the regulatory fees due from licensees in the CMRS Mobile Service fee category and licensees in the CMRS Messaging Service fee category require that the Commission draw precise distinctions between the two. Not all SMR systems should be classified in the CMRS Mobile Service fee category. The Commission should grant RMD's Petition and classify all data services under the CMRS Messaging Services regulatory fee category.

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 31st day of October, 1997, directed to be hand carried, a copy of the foregoing Comments to the following:

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Dan Pythyon, Acting Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Gerald Vaughn, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Rosalind K. Allen, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Karen Gulick, Associate Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

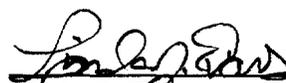
David Furth, Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2100 M Street, N.W., 7th Floor, Room 24
Washington, D.C. 20554

Sandra Danner, Deputy Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2100 M Street, N.W., 7th Floor
Washington, D.C. 20554

Ramona Melson, Chief
Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2100 M Street, N.W., 7th Floor, Room 101A
Washington, D.C. 20554

*Matthew J. Whitehead II
Secretary and General Counsel
ARDIS Company
300 Knightsbridge Parkway
Lincolnshire, IL 60069

*Goldberg, Godles, Wiener & Wright
1229 Nineteenth St., N.W.
Washington, D.C. 20036
Counsel for RAM Mobile Data USA
Limited Partnership


Linda J. Evans

*Via First Class Mail