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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Assessment and Collection)
of Regulatory Fees for)
Fiscal Year 1998)

MD Docket No. 98-36

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COMMENTS OF
BELLSOUTH WIRELESS DATA, L.P.

BellSouth Wireless Data, L.P. ("BellSouth WD"), formerly known as RAM Mobile Data USA Limited Partnership, by its attorneys, hereby submits these comments regarding the Notice of Proposed Rulemaking in the above-referenced proceeding. BellSouth WD operates mobile, data-only 900 MHz SMR systems.

DISCUSSION

In the NPRM, the Commission proposes again this year to categorize CMRS licensees either as CMRS Messaging Services (for which a fee of \$.04 per subscriber will be assessed) or CMRS Mobile Services (for which a fee of \$.29 per subscriber will be assessed). The distinguishing characteristic, the Commission has concluded, between the CMRS Mobile Services fee category and the CMRS Messaging Service fee category will be the bandwidth that the licensee is authorized to use. Licensees authorized to use so-called "broadband" spectrum will be subject to the CMRS Mobile Services fee and licensees authorized to use "narrowband" spectrum will be subject to the CMRS Messaging Services fee.

BellSouth WD has petitioned for reconsideration of this system of classification. Assessment and Collection of Regulatory Fees for Fiscal Year 1997, MD Docket No. 96-186, Petition for Reconsideration (filed July 28, 1997). As BellSouth WD explained in its petition, 900 MHz SMR licensees now are required to pay the CMRS Mobile Services fees even though no 900 MHz SMR licensee has anywhere near the amount of spectrum of the other services included within the CMRS Mobile Services category, nor do 900 MHz SMR licensees offer services that compete with true broadband systems.

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For example, BellSouth WD's SMR system provides mobile data services that are in no way comparable to cellular, PCS, or 800 MHz SMR systems providing real-time, two-way switched voice service. Categorizing these systems as "CMRS Mobile Services," as opposed to "CMRS Messaging Services," therefore, violates the principle of regulatory parity and imposes inordinate costs upon 900 MHz SMR licensees *vis-a-vis* their competitors. BellSouth WD suggested in its petition that the Commission instead classify only those systems authorized to use at least 42 channels and 2.1 MHz of spectrum as CMRS Mobile Services.¹

In the NPRM, the Commission invites further comment on this issue, but cautions that it tentatively has concluded that a "case-by-case determination of the appropriate fee for a particular SMR licensee would not serve the public interest due to the heavy resource burden it would require." NPRM ¶ 31.

The Commission has allocated 5 MHz of spectrum in each geographic region for 900 MHz SMR systems. In practice, this spectrum is licensed in 20 blocks, each consisting of 10 two-way 12.5 kHz paths, *i.e.*, 0.25 MHz per ten-channel block. See 47 C.F.R. § 90.613. Although some licensees might hold several ten-channel blocks in the same market, there is no single dominant system that approaches the 5 MHz allocation in any one area and few, if any, that hold the 2.1 MHz that the Commission has concluded is the minimum for 900 MHz SMR systems to compete with broadband services that offer real-time, two-way switched voice service. On this basis, the Commission should reclassify the entire 900 MHz SMR service as a CMRS Messaging Service based upon the predominate use of the band.

Alternatively, if the Commission is reluctant to re-classify 900 MHz SMR systems using "broadband" spectrum as CMRS Messaging Services, the Commission should create a third fee category for "CMRS Broadband Messaging Services." This category could include CMRS systems that operate in the 900 MHz SMR band and

¹ The Commission itself recognized in another context that SMR systems must have the ability to use at minimum 42 contiguous (two-way 25 kHz) channels and 2.1 MHz of contiguous spectrum to compete successfully with cellular and broadband PCS. Amendment of Part 90 of the Commission's Rules, 10 FCC Rcd 7970, 7984 (1994); see also Regulatory Treatment of Mobile Services, 9 FCC Rcd 7988, 8111 (1994) (terrestrial narrowband radio services excluded from the spectrum cap); Telephone Number Portability, 11 FCC Rcd 8433 (1996) (paging and other messaging services were excluded from telephone number portability obligations because "such services currently will have little competitive impact between providers of wireless telephony service or between wireless and wireline carriers").

possibly other services that are allocated no more than 5 MHz of spectrum, *e.g.*, 220 MHz SMR.

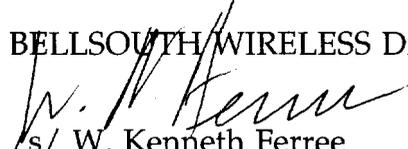
"Rough justice" demands, at minimum, that particular service bands should be governed by how they are, in fact, predominately licensed. In the case of 900 MHz SMR, it certainly is the case that this service is licensed in less than 2.1 MHz blocks. Service providers in this category should be assessed, therefore, a fee that is proportionately less than that of CMRS Mobile Services, *e.g.*, \$.05 per subscriber.

CONCLUSION

The principle of regulatory parity dictates that similar services should pay similar regulatory fees. 900 MHz SMR systems use only a small fraction of the spectrum used by the other services that have been categorized as CMRS Mobile Services. To remedy this disparity, 900 MHz SMR systems should be recategorized, either as CMRS Messaging Services or in a new third category of CMRS Broadband Messaging Services, and the regulatory fees assessed from 900 MHz SMR systems should be adjusted downward accordingly.

Respectfully submitted,

BELLSOUTH/WIRELESS DATA, L. P.


s/ W. Kenneth Ferree

Jonathan Wiener
W. Kenneth Ferree

GOLDBERG, GODLES, WIENER & WRIGHT
1229 Nineteenth Street, NW
Washington, DC 20036
(202) 429-4900

Its Attorneys

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