

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUN 28 2001

No action necessary

OFFICE OF
MANAGING DIRECTOR

96-285

Louis A. Cartwright
President
Cartwright Communication Technology, Inc.
Data Lane
Knoxville, Tennessee 37932

Re: Cartwright Communication Technology, Inc.
Fiscal Year 1997 Regulatory Fees
Fee Control No. 9709228835178003

Dear Mr. Cartwright:

This is in response to your request dated September 12, 1997 (and reiterated in a letter dated September 29, 1998), filed on behalf of Cartwright Communication Technology, Inc. for a waiver, refund, and clarification of the fiscal year 1997 regulatory fees associated with Stations WNMG356 and WPAD665.

You claim that Stations WNMG356 and WPAD665 were incorrectly classified as providing commercial mobile radio services (CMRS) for purposes of the fiscal year 1997 regulatory fees. In this regard, you maintain that Stations WNMG356 and WPAD665 have never been interconnected with the public switched telephone network and that Station WNMG356 received interconnect authorization without your request or knowledge. You state that you realized that Station WNMG356 had received interconnect authorization only after learning that its designation as a "C" class station on the station's license indicated such authority. You assert that Stations WNMG356 and WPAD665 are narrowband services that qualify as "CMRS Messaging Services" under section 1.1152(6) of the Commission's regulatory fee rules (*see infra* footnote 2) and that you "have filed as such." You state that you are one of the original Specialized Mobile Radio Services (SMRS) providers, that you primarily provide voice or data communication between vehicles and fixed stations, and that you want to continue being a "simple dispatch service provider" and have no wish to provide mobile phone service. You request an explanation as to how Stations WNMG356 and WPAD665 received interconnected mobile phone service authorization.

On August 10, 1993, Congress amended section 332 of the Communications Act of 1934 (the Act) to establish a new framework for the regulation of mobile radio services. *See Omnibus Budget Reconciliation Act of 1993*, Pub. L. No. 103-66, Title VI §6002(b), 107 Stat. 312, 392 (1993). As a result of this legislation, certain categories

of private land mobile radio services became subject to reclassification as commercial mobile radio services. Section 332 of the Act defines CMRS as any mobile service that is provided for profit and makes interconnected service available to the public or to a substantial portion of the public. The Commission determined that licensees providing SMRS were subject to reclassification as CMRS providers if the service the licensee provided met the definition of CMRS under section 332 of the Act. The Commission, in relevant part, reclassified a particular station as a CMRS station if the licensee held an SMRS license and the station classification authorized the licensee to provide interconnected service and to operate on a for-profit basis. The Commission presumed an SMRS provider was a CMRS provider based on the station classification unless the licensee modified its station classification to conform to the service provided by the licensee.¹ For purposes of the fiscal year 1997 regulatory fees, CMRS licensees authorized to provide interconnected broadband mobile services (including licensees formerly providing SMRS) were subject to the CMRS Mobile Services regulatory fee (which was \$0.24 for each mobile or cellular unit assigned to its customers, *see* 47 C.F.R. §1.1152(5) (1997)), regardless of the services offered on the broadband spectrum by the licensee.²

The Commission may waive, reduce, or defer regulatory fees only upon a showing of good cause and a finding that the public interest will be served thereby.³ Our records reflect that as of October 1, 1996 (i.e., the relevant date for purposes of determining a licensee's authorized services for purposes of the fiscal year 1997 regulatory fees), the Commission had reclassified Stations WNMG356 and WPAD665 as CMRS stations pursuant to section 332 of the Act and Cartwright had not filed an amendment to

¹ *See Assessment and Collection of Regulatory Fees for Fiscal Year 1997, Report and Order*, 12 FCC Rcd 17,161, Attachment H at paras. 14-15 (1997) (*Report and Order*); *see also Public Notice, Information for Part 90 Licensees Subject to Reclassification as Commercial Mobile Radio Service Providers on August 10, 1996 - Wireless Bureau Answers Frequently Asked Questions Regarding CMRS Status*, 11 FCC Rcd 9267, Item E (WTB 1996) (licensees who are authorized to provide interconnected service but intend to provide only non-interconnected dispatch service to their subscribers may amend their licenses to authorize non-interconnected service only) (*Public Notice*).

² *See Report and Order*, 12 FCC Rcd 17,161, paras. 60-61, Attachment H (paras. 14-15) ("CMRS Mobile Services will include: Specialized Mobile Radio Services"). CMRS licensees authorized to provide narrowband services were subject to the CMRS Messaging Services regulatory fee of \$0.03 per unit. *See id.* and 47 C.F.R. §1.1152(6) (1997).

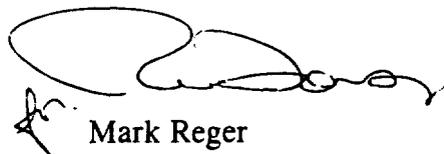
³ *See* 47 U.S.C. §159(d); 47 C.F.R. §1.1166; *see also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *on recon.*, *Memorandum Opinion and Order*, 10 FCC Rcd 12,759, para. 12 (1995) (regulatory fees may be waived, deferred, or reduced on a case-by-case basis in extraordinary and compelling circumstances upon a clear showing that a waiver would override the public interest in reimbursing the Commission for its regulatory costs).

modify the stations' classification. As stations providing CMRS and authorized to provide interconnected broadband mobile services, Stations WNMG356 and WPAD665 were subject to the regulatory fee for CMRS Mobile Services under section 1.1152(5) of the rules.

Although you may not have been aware of or fully understood the Communications Act or the Commission's rules regarding the reclassification of licenses under section 332 of the Act, Commission licensees are expected to know and understand the requirements and rules governing their licenses. The fact that Stations WNMG356 and WPAD665 were not interconnected to the public switched telephone network and may have been providing a "narrowband service" (as you allege) does not justify a waiver of our fee rules given that the stations were authorized to provide interconnected service on broadband spectrum as of October 1, 1996.⁴ Apart from designating broadband and narrowband services as warranting different categories of fee payment (as discussed above), the Commission does not consider the use a licensee makes of its authorized spectrum for purposes of determining the relevant regulatory fee category. *Report and Order* at para. 61. We therefore find that you have neither demonstrated that the public interest clearly overrides the interests of the parties involved here nor otherwise established that the public interest would be served by a grant of your waiver request in conflict with the congressionally-mandated schedule of fees.

Accordingly, we find no basis to support your request for a waiver and refund of the 1997 fiscal year regulatory fees associated with Stations WNMG356 and WPAD665. **We therefore deny your request.** If you have any questions concerning this matter, please contact the Revenue & Receivables Operation Group at (202) 418-1995.

Sincerely,



Mark Reger
Chief Financial Officer

⁴ We note that you state in your September 29, 1998 letter that you "removed interconnect authorization from the systems" after filing your September 12, 1997 waiver request. The modification of authorization was not timely because, as discussed above, October 1, 1996 was the relevant date to determine a licensee's authorized services for purposes of the fiscal year 1997 regulatory fees.