

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Assessment and Collection of Regulatory Fees) MD Docket No. 04-73
For Fiscal Year 2004)

To: The Commission

**REPLY COMMENTS OF THE
RURAL TELECOMMUNICATIONS GROUP, INC.**

The Rural Telecommunications Group, Inc. (“RTG”),¹ by its attorneys, hereby submits reply comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) *Notice of Proposed Rulemaking* (“*Notice*”) seeking comment on the collection of regulatory fees for Fiscal Year 2004 (FY 2004).² Specifically, RTG supports comments filed in this proceeding seeking clarification of the Commission’s proposal to utilize information provided in the FCC’s *Numbering Resource Utilization Forecast* (“NRUF”) report for the purpose of collecting Commercial Mobile Radio

¹ RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education in a manner that best represents the interests of its membership. RTG’s members have joined together to speed delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG’s members provide wireless telecommunications services, such as cellular telephone service and Personal Communications Services, among others, to their subscribers. RTG’s members are small businesses serving or seeking to serve secondary, tertiary and rural markets. RTG’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies.

² *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, MD Docket No. 04-73, Notice of Proposed Rulemaking, FCC 04-66 (rel. March 29, 2004).

Service (“CMRS”) regulatory fees.³ RTG also supports comments recommending that the Commission reclassify Local Multipoint Distribution Service (“LMDS”) as a microwave service for the purpose of regulatory fee collection.⁴

I. The FCC Should Clarify How it Intends to Use the NRUF Report in Assessing CMRS Regulatory Fees.

RTG supports comments filed in this proceeding seeking clarification of the Commission’s proposed use of the NRUF report for assessing CMRS regulatory fees.⁵ Without such clarification and absent providing CMRS carriers with a mechanism to adjust their NRUF reports to accurately reflect their total number of “units,” the Commission should continue to assess regulatory fees based on carriers’ own reports of units in service.

In its *Notice*, the Commission proposes for FY 2004, to determine the number of “units” attributed to CMRS operators from “data from the NRUF report.”⁶ As commenters in this proceeding aptly point out, utilizing such a mechanism to determine the number of subscribers, units or circuits held by a specific CMRS carrier will create uncertainty and confusion throughout the industry, and will likely force CMRS operators to remit regulatory fees for units that have been pooled, ported or are no longer or not yet in service.⁷ Accordingly, the imposition of the proposed requirement will result in the payment of additional, baseless, regulatory fees, thus posing significant hardships on

³ See Comments of Cingular Wireless LLC (“Cingular Comments”); Comments of Rural Cellular Association (“RCA Comments”); and Comments of the Cellular Telecommunications & Internet Association (“CTIA Comments”).

⁴ See Comments of XO Communications, Inc. (“XO Comments”).

⁵ CTIA Comments at 5; Cingular Comments at 1.

⁶ *Notice* ¶20.

⁷ See generally CTIA Comments, Cingular Comments.

small, rural CMRS operators—operators already feeling a cash crunch from smaller customer bases and dwindling roaming revenues.

As CTIA and RCA set out in their comments, the Commission’s *Notice* does not describe which categories of numbers contained in the NRUF report (consisting of “Assigned,” “Intermediate,” “Reserved,” “Aging,” and “Administrative”) will be utilized for the purpose of regulatory fee assessment.⁸ While CTIA asserts that it “should be obvious that only the number reported as ‘Assigned,’ for NRUF purposes can be counted towards a CMRS carrier’s ‘subscriber, unit or circuit, count,’” it notes that even the units reported as “Assigned” “may include some numbers that are not yet ‘working in the Public Switched Telephone Network.’”⁹ Cingular adds that the data contained in the “Assigned” category in the NRUF report “is not likely to yield a useful number or unit count for regulatory fee assessment, because these numbers do not adequately reflect subscriber units or telephone numbers in use by the reporting carrier.”¹⁰ RTG agrees with Cingular’s analysis that data contained in the NRUF report not only routinely contains numbers that are out of service, but will also contain numbers that have been ported to another carrier, and numbers which have been “contaminated” (*i.e.* numbers that have been previously ported as a result of thousand block number pooling).¹¹ Accordingly, because there is “no...clear connection between a carrier’s reported assigned numbers from its NRUF [report] and its actual...number of units in service,”

⁸ CTIA Comments at 4, RCA Comments at 5.

⁹ CTIA Comments at 4.

¹⁰ Cingular Comments at 6.

¹¹ Cingular Comments at 5.

RTG agrees that the record demonstrates that further clarification is required prior to the adoption of this proposed assessment mechanism.¹²

Finally, should the Commission not provide additional clarification on how it intends to utilize the NRUF report for the collection of CMRS regulatory fees, and should it decline to provide an opportunity for carriers to review and revise information contained in the NRUF report prior to remitting regulatory fees, the Commission should, as Cingular suggests, continue to base regulatory fee “unit” amounts on carriers’ own reports.¹³ RTG supports Cingular’s view that “carriers can derive current units or number counts from their billing systems” and agrees that allowing carriers to use their own records when disclosing unit information will provide the most accurate means of assessing regulatory fees on CMRS operators.¹⁴

II. The FCC Should Classify LMDS as a Microwave Service for the Purposes of Regulatory Fee Assessment

RTG supports comments filed by XO urging that the Commission classify LMDS as a “microwave service” for the purpose of assessing regulatory fees.¹⁵ XO notes that “the regulatory fees imposed on LMDS are too high in relationship to the FCC’s administrative burden in overseeing the LMDS service.” XO adds that because LMDS is

¹² *Id.* Additionally, even if the Commission provides clarification on how the NRUF report will be used to assess regulatory fees for CMRS carriers, RTG agrees that such operators should be provided with an opportunity to review and revise their previously-filed NRUF data prior to the Commission assessing its final regulatory fee amount. This will help carriers reconcile the number of “units” disclosed in their NRUF report (which compiles data for the preceding six months) with the number of “units” actually in service as of December 31. *See* CTIA Comments at 1; RCA Comments at 7.

¹³ Cingular Comments at 9.

¹⁴ *Id.*

¹⁵ [Cite]

more “operationally, functionally and legally similar to the 24 GHz and 39 GHz services” than it is to Multipoint Distribution Service (“MDS”) licenses, LMDS should be treated as a similar “upperband” service for the purpose of assessing regulatory fees.

RTG agrees with XO’s analysis. Because of the similarities of the “upperband” services, and the Commission’s longstanding policy preference for regulatory parity and competitive neutrality in its regulations, the FCC should treat all “upperband” services similarly. Unfortunately, the Commission’s regulatory fee scheme unjustifiably places LMDS at a competitive disadvantage. The 24 GHz and 39 GHz services are included in the microwave regulatory fee category and licensees in these services pay only a nominal regulatory fee at the time of licensing or license renewal. By including LMDS in the MDS category, the Commission requires LMDS licensees to pay significant annual regulatory fees—fees more than five times those of similar upper band services—without providing a rational basis for the inconsistency. In the Commission’s *FY 2003 Regulatory Fee Order*, this same issue was raised by FCC Commissioner Adelstein, who noted that he was “unable to agree with the conclusion that the LMDS service requires different regulatory activities than those associated with other Part 101 Fixed Microwave services [because] two other services that share very similar characteristics with LMDS—24 GHz and 39 GHz—are also regulated under Part 101 and subject to the microwave regulatory fees.”¹⁶

Finally, RTG notes that because many LMDS licensees are small and rural companies that utilize this spectrum for point-to-point links and for CMRS backhaul, the assessment of such an enormous annual regulatory fee (when compared to similar

¹⁶ *Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Report and Order* ¶9 (rel. July 25, 2003), Statement of Commissioner Adelstein.

services) will unduly harm such licensees, licensees that have invested significant sums in this service and who are, thus far, seeing little return on their investments.

Accordingly, even if the FCC decides to retain a separate fee category for LMDS, RTG agrees with XO's notion that the Commission "should strive to create regulatory parity and competitive neutrality in its regulations by imposing the same regulatory fees that are imposed on other microwave licensees."¹⁷

III. Conclusion

RTG strongly supports comments filed in this proceeding urging the Commission to clarify how it intends to use the NRUF report to assess CMRS regulatory fees and comments asking once again that the Commission classify LMDS as a "microwave" service for the purposes of regulatory fee collection. By providing additional clarification regarding the Commission's use of its NRUF report, and by re-classifying LMDS as "microwave" service, the Commission will ensure that regulatory fees are assessed against all licensees in a fair and equitable manner.

Respectfully submitted,

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¹⁷ XO Comments at 5.

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