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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 5, 1992

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via Hand Delivery

Donna R. Searcy, Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: **CC Docket No. 92-115**
Notice of Proposed Rulemaking

Dear Ms. Searcy:

Transmitted herewith, for Joyce & Jacobs, Attorneys at Law, please find the original and five copies of their comments on the Commission's proposed revision of Part 22 of its Rules.

If you have any questions or require additional information regarding this matter, please communicate directly with the undersigned.

Sincerely,

Frederick M. Joyce

FMJ/id
Enclosures

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)
)
Revision of Part 22) CC Docket No. 92-115
of the Commission's)
Rules Governing the Public)
Mobile Services.)
)
)
)
To: The Commission

COMMENTS

JOYCE & JACOBS, Attorneys at Law, pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, hereby submit these Comments in the Commission's above-captioned Notice of Proposed Rulemaking proceeding ("Notice"), released June 12, 1992.¹

I. Statement of Interest.

Joyce & Jacobs represents the legal needs of small to large radio common carrier service providers. Some of these entities will be filing comments in these proceedings; others will be watching the development of the proposed rule revisions with interest. The comments of this law firm do not necessarily represent the opinions of all or any of these companies, rather, they are the opinions of attorneys who have worked with Part 22 of the Rules for more than a decade.

¹ The period for filing comments in this proceeding was extended by the Commission to October 5, 1992.

II. Summary of Notice.

The Notice proposes several rule changes intended to make the rules "consistent" with one another, to eliminate "obsolete and unnecessary" regulations, and to keep pace with "substantial changes" in technology. Notice at ¶¶ 3-5. The revisions are also intended to "allow licensees greater flexibility in providing service to the public." Id. at ¶ 1.

III. Summary of Comments.

The FCC's Notice proposes sweeping changes to the rules governing the paging and cellular radiotelephone industries. Though some of the proposed rule changes may indeed reduce the regulatory burdens on the businesses represented by this firm, others may prove to be a substantial burden to the operation of paging and cellular businesses. Also, since this may be the last major rewrite of Part 22 this Century, the FCC may want to consider expanding the scope of this proceeding to address relevant technological advances that could aid it in regulating these industries.

IV. First Come, First Served.

The Commission has proposed a "first come, first served" process for new applications. Notice at ¶ 9. Only those applications for the same service area that happen to be received the same day would be considered "mutually exclusive," as compared to the current 60-day period for mutually exclusive applications.

The proposal raises some unfortunate possibilities. For

instance, someone could file on a licensee's frequency just outside that licensee's service area. Since it would be unlikely that the licensee would know of that filing until after the fact, the licensee would be precluded from filing a mutually exclusive application to expand its existing service area. This very likely scenario seems eminently unfair to the incumbent licensee, and an inefficient way to allocate scarce spectrum.

If the trade-off is a savings of 60 days in the processing of applications, it is difficult to imagine many paging and cellular operators who would be willing to trade that brief delay for the very real possibility that a planned wide area service could be stopped "at the border" without prior notice. The proposal has obvious advantages for "greenmailers" and application mills, but relatively modest advantages for service providers.

V. Conditional Grants.

When the FCC grants a radio license, licensees assume that the FCC has made the necessary interference studies in advance. Interference can occur when the FCC's records are in error, or due to intentional or unintentional operations of a licensee. Under the current rules, no licensee is required to "shut down" until the FCC has made formal findings that the licensee in question is to blame for harmful interference.

The proposed revisions would change this. All licenses would be issued on a "conditional grant" basis. If someone complained about interference, and the FCC suspected that the interference was

due to "errors or omissions" in that licensee's application, the FCC could order the licensee to shut down, without a prior hearing, until the interference was resolved.

The proposal departs from the "innocent until proven guilty" standards that currently prevail under the FCC's rules. Unless the FCC has evidence that the current method of resolving interference complaints has been unsuccessful, the cure seems more dangerous than the disease. For instance, if an alleged interference problem was caused by just one transmitter on a wide-area system, service to thousands of customers could be shut-down by an FCC order until further investigations determined the cause of the problem. If subsequent investigations determined the complaint to be false, or if the FCC's application records were not in order, or if the problem could have been swiftly remedied, the damage caused to the licensee's business and service reputation from that shut-down could be permanent and irreparable.

VI. Elimination of Fill-In Notices.

The FCC has proposed eliminating the requirement that licensees notify the Commission of the construction of fill-in stations, as well as minor modifications. The FCC's statutory duty to guard licensees from harmful electrical interference may be undermined by this proposal. In our experience, it is important from an interference-avoidance perspective to know precisely where a co-licensee or adjacent channel licensee's transmitters are located. This rule revision would eliminate the FCC's Public Files

as a source for keeping track of those transmitters.

Certainly, the proposal eliminates some paperwork for licensees who build fill-in sites. On balance, however, the public interest may warrant an accurate accounting of all Part 22 transmitters nationwide. The only way to obtain that information would be to continue to require licensees to file a simple one-page notice with the FCC.

VII. Termination of Authorizations.

The FCC has stated that "there appears to be some confusion" as to when a license terminates for failure to "commence service" in the time required by the rules. Notice at ¶ 19. To avoid any confusion, the FCC has proposed an "automatic cancellation" policy whereby, if a station is not "placed in service" within the 12 month construction period, even if timely constructed, the license automatically expires.

This is, as the FCC admits, a "tough policy." Notice at ¶ 20. This rule could cause many problems for licensees who have timely constructed their stations, but are a few months away from having that first subscriber sign-up. As a practical matter, there is little difference between a constructed system with one or two on-air subscribers, and a constructed system with no subscribers. If the FCC's objective is to deter "frequency hoarders," the more direct approach would be to make it costly for licensees to under-utilize these frequencies.

An earlier FCC proposal to charge an annual user fee would

have made it costly for someone to construct a station and allow the frequency to remain underutilized. That proposal seemed to strike a fair balance between the needs of those who "have" and those who "have not" with respect to scarce frequencies. If the alternative to user fees is auctions, then the industry groups that opposed user fees in the past may be inclined to look more favorably on the idea the second time around.

VIII. Issues not Addressed.

If history is the guide, then one should not expect such a major revision of Part 22 to be forthcoming for another eight to ten years. If that is so, perhaps there is reason to broaden the already broad scope of the Notice to anticipate changes in the method and manner in which Part 22 applications should be processed in the next Century. If the cost of addressing these issues now is to delay the progress of this proceeding, the long term savings in time, energies, and efficiencies may be worth the wait.

One glaring anachronism in the regulation of the high technology paging and cellular industries is that these computer-intensive industries are licensed using two "technologies" that date back to the ancient Pharaohs and the turn of the century: paper and microfiche. It is time for Part 22 to join the computer age.

Surely every RCC company in the nation must now have some computer capabilities; indeed, it is fair to say that, due to the nature of the business, the capabilities of these communications

companies are enormous. Word processing, document "scanning," on-line information services, electronic mail, modem and network communications, laser imaging -- these are but a few of the capabilities used daily in most of the companies regulated under Part 22.

Few would question that the employment of these computer technologies at the FCC would accelerate the processing of applications, ease storage and filing problems, and increase the productivity of all Commission employees. Unfortunately, it is well-known in the industry that, due to budgetary constraints, the FCC has been unable to acquire the same computer technologies that drive the industries it regulates. The implications of those shortcomings for the agency that is to lead the U.S. communications industry into the 21st Century should be matters of grave concern in the U.S. Congress.

The FCC and the industries it regulates can ill afford to await the arrival of a more enlightened legislature to solve this problem. If the FCC simply does not have the financial ability to keep pace with developing technologies, it should be incumbent upon everyone involved in this industry -- service operators, consultants, trade associations, and agency alike -- to find a way to "upgrade" the agency's computer capabilities, operating within the given financial constraints. Such efforts have previously been undertaken; these efforts must be redoubled. The Rules should be revised to force everyone, Congress included, to find a solution to this problem.

For instance, the Rules could be revised to forbid the filing of paper and microfiche applications after a date certain, by which time "on-line" applications would be mandatory. To much the same extent as when the FCC accepts applications for new and experimental radio services before the equipment is readily available, the industry and the FCC would be forced to work together to meet these mandatory processing goals. These are critical regulatory concerns, and they should be addressed now, in what may be the last major rewrite of Part 22 before the end of the Century.

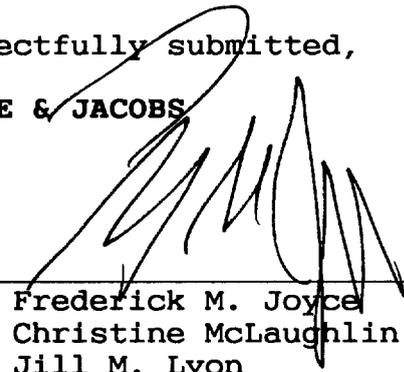
CONCLUSION

Emerson said, "if a man's reach does not exceed his grasp, then what's a heaven for?" To a certain extent, a decennial review of the FCC's Rules should be equally ambitious. The Notice is obviously a formidable undertaking, yet, in some respects, the FCC's Notice could reach further than it has. Mandatory use of computer technologies to streamline application processing, and a more pragmatic approach to spectrum allocations are areas that warrant additional consideration. For its part, this firm is interested to see what ideas the commenters have concerning the shape of Part 22 for the next century of public mobile radio communications.

Respectfully submitted,

JOYCE & JACOBS

By _____


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October 5, 1992

CERTIFICATE OF SERVICE

I, Jill M. Lyon, Esq., do hereby certify that on this 5th day of October, 1992, copies of the foregoing Comments were mailed, postage prepaid, to the following:

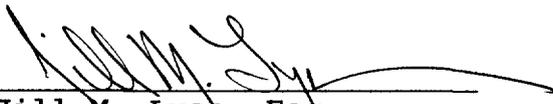
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