

(4) The petitioner's waiver applications are consistent with the minimal technical rules which the Commission proposes to adopt in redesignating the 28 GHz band so that video and other telecommunication services may be accommodated;

(5) Since the 28 GHz band is not being utilized as was found by the Commission, grant of petitioner's waiver applications would not be detrimental to "assigned users" as the Commission has erroneously and inconsistently found; and

(6) The Commission's denial of the petitioner's waiver applications is arbitrary, capricious and an abuse of discretion, not in accordance with law, and otherwise violates the Administrative Procedure Act, 5 U.S.C. §706.

Respectfully submitted,



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**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

United States Court of Appeals
For the District of Columbia Circuit

FREDERICK M. MYERS)
)
) Petitioner,)
)
) v.)
)
) FEDERAL COMMUNICATIONS)
) COMMISSION AND UNITED STATES)
) OF AMERICA)
)
) Respondents,)

FILED FEB 08 1993

**RON GARVIN
CLERK**

93-1152 RECEIVED

REC'D

OFFICE OF GENERAL COUNSEL

PETITION FOR REVIEW

Pursuant to Rule 15 of the Federal Rules of Appellate Procedure and Section 402 of the Communications Act, 47 U.S.C. §402, Frederick M. Myers hereby petitions the Court for review of the Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration ("Order") released by the Federal Communications Commission in Docket No. CC92-297 on January 8, 1993.

In said Order, the Commission concluded that the 28 GHz band should be redesignated to accommodate local multipoint technology that would provide consumers with additional options for video programming distribution, wideband video data, and other telecommunications services. In proposing such redesignation of spectrum, the Commission said that, while the 28 GHz band has been available for point-to-point microwave radio common carrier use

since 1959, very little, if any, use of this frequency band has been made since 1959.

At the time of said Order, petitioner had pending before the Commission applications to provide local multipoint distribution service for the respective service areas encompassing Tampa, Florida; and Portland, Oregon; accompanied by petitions for waiver of the current rules.

By said Order, the Commission denied petitioner's pending waiver applications. Petitioner intends to rely on the following reasons for this appeal:

(1) The Commission denied petitioner's pending waiver applications summarily, without benefit of the Commission's proposed rulemaking to amend the current Common Carrier Point-to-Point Microwave Service rules;

(2) The Commission erroneously found that petitioner's waiver applications did not satisfy the standard for a waiver;

(3) Contrary to the Commission's finding, the petitioner's waiver applications do satisfy the standard for a waiver;

(4) The petitioner's waiver applications are consistent with the minimal technical rules which the Commission proposes to adopt in redesignating the 28 GHz band so that video and other telecommunication services may be accommodated;

(5) Since the 28 GHz band is not being utilized as was found by the Commission, grant of petitioner's waiver applications would not be detrimental to "assigned users" as the Commission has erroneously and inconsistently found; and

(6) The Commission's denial of the petitioner's waiver applications is arbitrary, capricious and an abuse of discretion, not in accordance with law, and otherwise violates the Administrative Procedure Act, 5 U.S.C. §706.

Respectfully submitted,



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STATES COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

P.M.J. SECURITIES, INC.)
)
Petitioner,)
)
v.)
)
FEDERAL COMMUNICATIONS)
COMMISSION AND UNITED STATES)
OF AMERICA)
)
Respondents,)

United States Court of Appeals
For the District of Columbia Circuit

FILED FEB 08 1993

RON GARVIN
CLERK

93-1154

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PETITION FOR REVIEW

OFFICE OF GENERAL COUNSEL

Pursuant to Rule 15 of the Federal Rules of Appellate Procedure and Section 402 of the Communications Act, 47 U.S.C. §402, P.M.J. Securities, Inc. hereby petitions the Court for review of the Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration ("Order") released by the Federal Communications Commission in Docket No. CC92-297 on January 8, 1993.

In said Order, the Commission concluded that the 28 GHz band should be redesignated to accommodate local multipoint technology that would provide consumers with additional options for video programming distribution, wideband video data, and other telecommunications services. In proposing such redesignation of spectrum, the Commission said that, while the 28 GHz band has been available for point-to-point microwave radio common carrier use

since 1959, very little, if any, use of this frequency band has been made since 1959.

At the time of said Order, petitioner had pending before the Commission applications to provide local multipoint distribution service for the respective service areas encompassing Riverside, California; Oakland, California; Ft. Lauderdale, Florida; Indianapolis, Indiana; New Orleans, Louisiana; Providence, Rhode Island; Dayton, Ohio; Greensboro, North Carolina; Richmond, Virginia; West Palm Beach, Florida; Melbourne, Florida; Des Moines, Iowa; Pensacola, Florida; Fort Myers, Florida; and Sarasota, Florida; accompanied by petitions for waiver of the current rules.

By said Order, the Commission denied petitioner's pending waiver applications. Petitioner intends to rely on the following reasons for this appeal:

(1) The Commission denied petitioner's pending waiver applications summarily, without benefit of the Commission's proposed rulemaking to amend the current Common Carrier Point-to-Point Microwave Service rules;

(2) The Commission erroneously found that petitioner's waiver applications did not satisfy the standard for a waiver;

(3) Contrary to the Commission's finding, the petitioner's waiver applications do satisfy the standard for a waiver;

(4) The petitioner's waiver applications are consistent with the minimal technical rules which the Commission proposes to adopt in redesignating the 28 GHz band so that video and other telecommunication services may be accommodated;

(5) Since the 28 GHz band is not being utilized as was found by the Commission, grant of petitioner's waiver applications would not be detrimental to "assigned users" as the Commission has erroneously and inconsistently found; and

(6) The Commission's denial of the petitioner's waiver applications is arbitrary, capricious and an abuse

of discretion, not in accordance with law, and otherwise
violates the Administrative Procedure Act, 5 U.S.C. §706.

Respectfully submitted,



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