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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

December 6, 1993

Via Hand Delivery

William F. Caton, Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: **Capitol Radiotelephone, Inc.**
PR Docket No. 93-231

Dear Mr. Caton:

Transmitted herewith, on behalf RAM Technologies, Inc., please find the original and six (6) copies of its Motion for Withdrawal in the above-referenced proceeding.

If you have any questions or require additional information concerning this matter, kindly contact the undersigned.

Sincerely,

Frederick M. Joyce

FMJ/id
enc.

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DEC - 6 1993

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of)
)
Application of)
)
CAPITOL RADIOTELEPHONE, INC.)
d/b/a, CAPITOL PAGING)
)
For a Private Carrier Paging)
Facility on the 152.48 MHz)
Frequency at Huntington/Charleston,)
West Virginia;)
)
Imposition of Forfeiture Against)
)
CAPITOL RADIOTELEPHONE, INC.)
d/b/a, CAPITOL PAGING)
)
Former Licensee of Station WNSX-646)
in the Private Land Mobile)
Services;)
)
Revocation of License of)
)
CAPITOL RADIOTELEPHONE, INC.)
d/b/a, CAPITOL PAGING)
)
Licensee of Stations WNDA-400 and)
WNWW-636 in the Private Land)
Mobile Services;)
)
Revocation of License of)
)
CAPITOL RADIOTELEPHONE COMPANY,)
INC.)
)
Licensee of Stations KWU373,)
KUS223, KQD614, and KWU204 in)
the Public Mobile Radio Service.)

PR Docket No. 93-231

To: Hon. Joseph Chachkin, Administrative Law Judge

MOTION FOR WITHDRAWAL

RAM Technologies, Inc. ("RAM"), by its attorneys and
pursuant to Sections 1.221 (d) and (e) of the Commission's Rules,
47 C.F.R. § 1.1221 (d), (e), hereby moves the Presiding Officer
for leave to withdraw as a party or, in the alternative, to

withdraw from appearing at the hearing to be held on the above-captioned matters. In support whereof, the following is respectfully shown:

RAM's Interest in the Proceedings

RAM is the licensee of Private Carrier Paging ("PCP") facilities operating on the 152.480 MHz frequency throughout various locations in Kentucky, West Virginia, and Ohio. For more than three years, RAM asked the FCC to resolve an interference complaint that it had lodged against a co-channel applicant/licensee, Capitol Radiotelephone Company, Inc. Throughout that period of time, RAM spent tens of thousands of dollars on legal and engineering fees, lost considerable man-hours of labor, and suffered considerable sales losses, while attempting to resolve the recurring interference problems.

When RAM's allegations, among other issues, were finally taken up by the Commission, the Commission designated RAM as a party. RAM noted its appearance in these proceedings for the sake of protecting its 152.480 MHz paging customers from harmful interference, and to protect its considerable plant investment in its PCP station. The other issues in these proceedings, the allegations of lack of candor, misrepresentation, and character qualifications, were obviously matters of unique concern to the FCC, not RAM.

Changed Circumstances

On or around November 30, 1993, Capitol informed RAM in

writing that it intended to request dismissal of its pending 152.480 PCP application. Capitol filed its motion to dismiss its application with the Commission on or around December 3, 1993. Though that action presumably does not dispense with all of the issues pending against Capitol, it does dispose of the only issue in these proceedings that would have a material impact on RAM: Capitol would no longer be in a position to cause harmful interference to RAM's 152.480 MHz PCP customers.

In light of Capitol's intent to dismiss its PCP application, and in an effort to simplify the discovery process in these proceedings, Capitol and RAM mutually agreed that they would withdraw and suspend discovery requests of each other in these proceedings. Appropriate motions have already been filed by Capitol, and will shortly be filed by RAM.

The other issues in this case have to do with alleged violations of FCC rules and regulations, matters for which RAM has no standing to complain. Nevertheless, even if RAM were not a party to this hearing, it would respond to any agency requests for information concerning these alleged rule violations, thus serving its duties as an FCC licensee and as the informal complainant in this matter.

In light of these changed circumstances, and in light of the substantial expenses that RAM has already incurred, and would continue to incur if it were to further participate in these proceedings, RAM requests that it be allowed to withdraw from these proceedings.

Relevant Authorities

Relevant Commission precedents have allowed withdrawal of a party under less compelling circumstances. For instance, in Jefferson Standard Broadcasting Co., 20 RR 2d 830 (1970), the modification application of a VHF-TV station was designated for hearing to determine its impact on UHF television service in the local area. Id. at 830-831. The FCC, on its own motion, had designated a local UHF-TV station ("WEAL") as a party; another VHF station ("Southern") had apparently intervened.

WEAL had informed the FCC that, due to financial considerations, it did not want to participate in the proceedings. Id. at 831. The Hearing Examiner certified the question of withdrawal to the Commission. Id. at 830. Over Southern's objections, the FCC dismissed WEAL as a party.

The FCC observed that "implicit in the power to specify a party to a hearing ... is the power to dismiss parties if the public interest warrants." Id. at 831. Said the Commission, "even if WEAL, Inc. is not a party to the proceeding, relevant evidence, records and witnesses could be secured by subpoenas pursuant to Section 1.331 et seq. of the Rules." Id. In light of those facts, and the FCC's "affirmative duty" to prove its case, the Commission did not believe that it should require WEAL to continue as a party "in the face of its stated desire not to participate in this proceeding." Id.

For the same reasons, this Motion should be granted. In light of Capitol's expressed desire to stay off the 152.480

frequency, RAM no longer has an "adverse interest" in these proceedings. Unlike the withdrawing party in Jefferson Standard, here, the very reason for RAM's standing as a party has been eliminated prior to the hearings.

Moreover, RAM has already spent tens of thousands of dollars, and would likely spend tens of thousands more if it were required to participate in these proceedings. For the same reasons as WEAL, the financial burden, RAM would like to withdraw from these proceedings.

RAM's previous Notice of Appearance for this hearing was voluntary, under Section 1.221(e) of the Rules. Thus, even if the Commission were to deny this request to withdraw as a party, the Rules do not compel RAM to avail itself of the "opportunity to be heard" at the hearings. Cf. 47 C.F.R. 1.92(a)(2), and, 47 C.F.R. 1.221(e). In light of the changed circumstances, RAM no longer believes that its presence at the hearings will be necessary.

As was the case in Jefferson Standard, there are several means by which the remaining parties could obtain whatever relevant evidence RAM could provide. RAM is not an essential party to these proceedings: the FCC can continue to prosecute its case whether or not RAM withdraws. If allowed to withdraw, RAM would honor any evidentiary requests made by the FCC in these proceedings. Thus, RAM's withdrawal would not prejudice the FCC's prosecution of its case.

Conclusion

For all the foregoing reasons, RAM respectfully requests that this Motion be granted.

Respectfully submitted,

RAM TECHNOLOGIES, INC.

By

Frederick M. Joyce
Christine McLaughlin

Its Attorneys

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December 6, 1993

CERTIFICATE OF SERVICE

I, Glenda Sumpter, a secretary with the law firm of Joyce & Jacobs, hereby certify that on this 6th day of December, 1993, copies of the foregoing Motion for Withdrawal were served, by first-class U.S. mail, postage prepaid, upon the following:

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Administrative Law Judge
Federal Communications Commission
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* denotes hand delivery.