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DEC 30 1993

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of)
Imposition of Forfeiture Against)
Capitol Radiotelephone Inc.)
d.b.a. Capitol Paging)
Former Licensee of Station WNSX-646)
in the Private Land Mobile Radio)
Services)

PR Docket No. 93-231

DOCKET FILE COPY ORIGINAL

and)

Revocation of License of)
Capitol Radio Telephone Inc.)
d.b.a. Capitol Paging)
Licensee of Station WNDA-400 in the)
Private Land Mobile Radio Services)

and)

Revocation of License of)
Capitol Radio Telephone Inc.)
d.b.a. Capitol Paging)
Licensee of Station WNWW-636 in the)
Private Land Mobile Radio Services)

and)

Revocation of License of)
Capitol Radiotelephone Company, Inc.)
Licensee of Station KWU-373 in the)
Public Mobile Radio Service)
and)

Revocation of License of)
Capitol Radiotelephone Company, Inc.)
Licensee of Station KUS-223 in the)
Public Mobile Radio Service)

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and)
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 Revocation of License of)
)
 Capitol Radiotelephone Co., Inc.)
)
 Licensee of Station KQD-614 in the)
 Public Mobile Radio Service)
)
 and)
)
 Revocation of License of)
)
 Capitol Radiotelephone Company, Inc.)
)
 Licensee of Station KWU-204 in the)
 Public Mobile Radio Service)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Administrative Law Judge
Joseph Chachkin

**PRIVATE RADIO BUREAU'S CONSOLIDATED REPLY
TO OPPOSITIONS TO MOTION TO ENLARGE THE ISSUES**

1. On December 17, 1993, RAM Technologies, Inc. ("RAM") filed an opposition to the Private Radio Bureau's Motion to Enlarge the Issues filed December 9, 1993. On December 22, Capitol Radiotelephone Company, Inc. ("Capitol") filed an opposition to the motion to enlarge as well. The Bureau submits the following consolidated reply.

2. The Bureau sought enlargement of the issues to add an

abuse of process issue against Capitol and RAM. The basis of the requested issue is the execution, on November 30, 1993, of a self-styled settlement agreement between Capitol and RAM whereby RAM's continued participation as a party would cease.

3. In its opposition, RAM urges dismissal of the Bureau's motion because it did not include a sworn statement from someone with personal knowledge of the facts. This argument is clearly disingenuous. RAM does not dispute the fact that it entered into the so-called settlement agreement. Moreover, it is at best unclear what purpose would be served by a personal knowledge affidavit.

4. RAM also objects to what it terms the Bureau's "sudden[] and inexplicabl[e]" opposition to an attempt to achieve the settlement which the Bureau once sought. Furthermore, both RAM and Capitol cite the Commission's policy in favor of settlements. In making these arguments, RAM and Capitol are missing the point. The settlement sought and agreed to by the Bureau was rejected by the Presiding Judge. Nowhere in the cases cited by RAM, or in any case of which the Bureau is aware, has the Commission looked with favor upon parties implementing terms of a settlement agreement rejected by the Presiding Judge.

5. RAM states that the Bureau has no reason to suspect that

RAM's cooperation will be less than forthcoming. RAM's letter to Charles E. Dziejic, dated December 10, 1993, attached as Exhibit 3 to the opposition, however, suggests otherwise. Specifically, counsel for RAM terms the Bureau's enlargement motion "an affront which [he] will not soon forget," and an act which "will most assuredly color [his] firm's dealings with [the Bureau's] attorneys from now on." The letter goes on to mandate that if the Bureau's attorneys wish to make any request from RAM's attorneys, they must be in writing and will be responded to "appropriately." Further, the letter states that if the Bureau's motion "was intended to intimidate [counsel for RAM], [the Bureau's attorneys] will soon discover that they have sorely misjudged [counsel for RAM]." Finally, the letter concludes with the observation that "there is absolutely nothing to be gained from assisting" the Commission. Another letter from counsel for RAM, dated December 17, 1993, a copy of which is attached, hints at some unspecified action by RAM should the Bureau fail to withdraw its motion. This is hardly indicative of the level of cooperation suggested by RAM in opposing enlargement of the issues. In fact, both letters seem designed to impugn the integrity of Bureau counsel. Indeed, it is impossible to discern an intended purpose for the letters that is consistent with any motive other than a bizarre and pathetic attempt at intimidation.

6. We dispute Capitol's suggestion, at Pp. 4-5 of its

Opposition, that the instant proceeding will not be impacted because all regulatory mechanisms are left intact. Capitol references the Bureau's concern that the settlement agreement could potentially interfere with the level of inquiry in this proceeding and terms this concern as "palpably false." Yet Capitol does not state how the Bureau's claim is "palpably false."

7. Capitol is simply wrong when it interprets the Bureau's statement as implying that RAM is "the keeper of the government's entire case." Of course, the Bureau never suggested any such thing in its motion. Capitol also argues that the Bureau's concern is that, without RAM's participation, the Bureau "has little left to offer" and that the Bureau "will have to do more work." This argument is not only offensive and inaccurate, it belies both parties' insistence that RAM's nonparticipation will have little effect upon this proceeding. Likewise, when Capitol describes the settlement agreement, at p. 6, as "nothing more than an attempt to streamline this case for trial" Capitol is conceding the impact of RAM's retreat. Here, the "streamlining" has the potential of impairing the ability to compile a full and complete record.

8. The Bureau reiterates its view that further inquiry is needed to determine whether RAM and Capitol have attempted to abuse the Commission's processes. The plain fact is that both

parties entered into a settlement agreement with terms which the Presiding Judge found to contravene "the provisions of Section 1.93 of the Rules, is prohibited by Commission case precedent...." Memorandum Opinion and Order, FCC 93M-722, released November 22, 1993. Accordingly, we request that our Motion to Enlarge the Issues be granted.

Respectfully submitted,
Ralph A. Haller
Chief, Private Radio Bureau

By:



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Federal Communications Commission
2025 M Street N.W.
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December 30, 1993

JOYCE

ATTACHMENT



JACOBS

ATTORNEYS AT LAW

December 17, 1993

Carol Fox Foelak, Esq.
Land Mobile & Microwave Division
Private Radio Bureau
Federal Communications Commission
2025 M Street, NW, Rm. 5202
Washington, DC 20554

Re: RAM Technologies/Capitol Radiotelephone

Dear Carol:

By now, you should have received RAM Technologies, Inc.'s Opposition to the Bureau's Motion to Enlarge. I trust that this pleading convinces the Bureau that there was nothing nefarious about RAM's partial settlement with Capitol. Now that both sides have had their opportunity to ventilate about this matter, I also trust that we can agree that this case will be much harder on everyone, and much harder for the Bureau to prosecute, if RAM and the Bureau are not "on the same team."

If there are questions remaining that our Opposition has not addressed, I would gladly respond to them (which, of course, I would have done prior to the filing of the Bureau's Motion if anyone had called me). But, if you agree that our Opposition satisfactorily responds to any speculative concerns the Bureau harbored with regard to that settlement agreement, then I propose that the Bureau voluntarily withdraw its Motion before we receive a ruling from the ALJ. Absent the withdrawal of that Motion, and regardless of the ALJ's ruling, we must assume that the Bureau is not on our side, and we must act accordingly. However you wish to proceed, we will honor the settlement agreement with Capitol, unless we are informed that it is unenforceable as a matter of law.

Sincerely,

Frederick M. Joyce
Counsel for RAM Technologies, Inc.

FMJ/gs

cc: Robert A. Moyer, Jr., Pres.

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CERTIFICATE OF SERVICE

I, Rosalind M. Bailey, a secretary with the Private Radio Bureau, hereby certify that on this 30th day of December, 1993, copies of the foregoing **Private Radio Bureau's Consolidated Reply to Oppositions to Motion to Enlarge the Issues** were served, by first-class U.S. mail, upon the following:

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* denotes hand delivery