as discussed in Section A, a fatal flaw in their investigatory methodology is that they never competently identified a Capitol transmitter as the source of the "dummy" pages on 152.48 MHz. (Peters Tr. 1096, 1116-17, 1253-54). Even if Capitol were the source of the transmissions on 152.48 MHz, a saboteur would have been able to cause the retransmissions without Capitol's knowledge, by tapping into its system with a computer terminal via a dial-up phone line which Capitol maintained for other purposes. (Raymond Tr. 814-18; 989-1010). Witness Peters is of the view, however, that the evidence submitted by the RAM-affiliated witnesses points to another transmitter entirely, a "pirate" transmitter that was connected to a Hark Verifier and a personal computer programmed with relatively simple instructions. (Peters Tr. 1091, 1115-19).

114. It is also entirely implausible that Capitol would have engaged the conduct alleged by the RAM-affiliated witnesses. By the time this type of retransmission started, Capitol had just been hit with a $20,000 NALF alleging "egregious misconduct" for "malicious[] interfere[nce]" to RAM. (PRB-12). Capitol has been an FCC licensee for 30 years; it has "a very healthy respect for the FCC, if not an outright fear;" and it knew it was being closely watched by RAM. (CAP-01 at pp. 1-2; Peters Tr. 1116; Raymond Tr. 1019-20).

115. Furthermore, the nature of the transmissions themselves belie any inference that Capitol was at their root. They did not occur while RAM was transmitting, i.e., they did not "walk" on RAM's pages. Instead, they were held until air time was available. Moreover, to the extent PRB-16 is fairly representative of the character of the transmissions, they were all digital pages and never had more than half a dozen or so pages batched together in the same transmission. Thus, the "dummy" transmissions were never more than a few seconds long before relinquishing the channel -- a period of time that Witness Bobbitt admitted would not have a significant adverse impact on RAM's service.

116. Even assuming arguendo that Capitol desired to disrupt the operations of its competitor RAM (which it did not), it is absolutely impossible to believe that it would have elected to do so by engaging in this type of retransmission. The retransmissions were so subtle and so limited that they were totally ineffective as any form of competitive disruption to RAM. Accordingly, it is simply impossible to believe that Capitol could have been the cause of them.

117. On the other hand, if some sort of explanation is required in this case, the most plausible explanation is that someone at RAM caused them in order to "frame" Capitol with another violation, which, if successful, presumably would have resulted in revocation of Capitol's license. As

noted above, RAM's unexceptioned practice in its campaign against Capitol has been to rachet its tactics up a notch whenever the previous tactic did not produce the desired result.

118. In this case, Capitol had been hit with a $20,000 NALF, but the Private Radio Bureau had not initiated license revocation proceedings. It is entirely plausible and consistent with RAM's previous conduct that RAM would have then racheted its tactics up another notch by devising this retransmission scheme. It is also entirely plausible that RAM would have had its technicians "discover" the retransmissions and report them to the Commission. Under the circumstances, RAM would have reasoned, this discovery surely would have pushed the Bureau over the edge, and would have brought about the initiation of license revocation proceedings against Capitol. What is most disturbing, of course, is that if this scenario is accurate, RAM called it exactly right.

K. HDO Issue No. 8 -- Capitol did not Misrepresent Facts to or Lack Candor With the Commission.

119. The final substantive issue is the HDO inquiry as to whether, in its dealings with the Commission, Capitol misrepresented facts to the Commission or was lacking in

candor. Again, the evidence overwhelmingly requires resolution of this issue in favor of Capitol.[16]

120. Insofar as misrepresentation is concerned, the HDO identifies two matters in which misrepresentation allegedly may have occurred: (1) representations about the existence and number of Capitol's PCP paging subscribers, and (2) representations about the Greenup County Rescue Squad. With respect to Greenup County Rescue Squad, Capitol's testimony affirming the existence and nature of that relationship is uncontradicted. (CAP-01 at pp. 27-28; CAP-22).

121. With respect to Capitol's PCP paging subscribers, the most that the evidence might show is that there may have been some minor inconsistency in the precise identification of Capitol's PCP subscribers at the various times and places in responding to the Commission's different questions. (CAP-01 at pp. 24-27). If so, they were simply honest mistakes resulting from the difficulty in determining precise answers from Capitol's records. (Id.). In fact, the thrust of Capitol's response in each case was that its PCP station was attempting to serve subscribers, but that it had no more than a relative handful at the times inquired about by the Commission, due to the various difficulties it had been experiencing. Such response was truthful and could not

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[16] HDO Issue Nos. 9-13 (HDO at ¶¶28.i through 28.m) are derivative issues which depend upon the resolution of the preceding issues. Since all of those preceding issues should be resolved in Capitol's favor, as shown above, there is no need to separately discuss Issue Nos. 9-13 herein.

have mislead the Commission in any respect.[17] Accordingly, there is no basis for finding any misrepresentation by Capitol in this proceeding.

122. There is similarly no basis for finding lack of candor. Again, the Bureau did not introduce any evidence of lack of candor in this case, and ¶20 of the HDO is the only source by which Capitol can glean the reasons for including the issue in the proceeding. As discussed above, the evidence is overwhelming that Capitol's PCP operations were bona fide at all times, including the times it was engaged in testing, and that the representations Capitol made to the Commission in response to RAM's complaints were entirely truthful and accurate. Therefore, there is no basis for finding lack of candor by Capitol with respect to any of these three matters.

123. The allegations in the HDO relating to Capitol's "inhibitor" in fact turn out to have resulted in an investigatory error by the Commission's inspectors. The fact of the matter is that they simply jumped to an erroneous conclusion about the operation of the inhibitor without ade-

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[17] The Commission has repeatedly affirmed that the core of misrepresentation and lack of candor is "deceit". E.g., Character Qualifications, supra, 102 F.C.C.2d at 1196. Whether Capitol had two or five customers at any given time, or whether a customer was REMC or Pioneer Home Improvement, is wholly irrelevant to the issues in this case and could not possibly have had any adverse impact on the Commission's exercise of its statutory responsibilities. There is thus no reason to equate a mistake in compiling Capitol's customer lists with a "misrepresentation" to the Commission.

quate investigation or analysis, probably because they went into the inspection with the predisposition that Capitol was a "bad guy[]". (See Walker Tr. 163, 1480; CAP-21).

124. Similarly mistaken are the allegations in the HDO concerning Capitol's computerized record capability. Evidently, someone in the Private Radio Bureau jumped to the erroneous conclusion that Exhibit PRB-05, pp. 2-3, was the product of a routine report generated by Capitol's business computer. In fact, it was manually compiled and produced on a word processor or typewriter. (Raymond Tr. 983). Again, this very serious allegation of misconduct, like all of the others in this case, turn out to have no basis in fact.

CONCLUSION

125. For the reasons stated above, the Hearing Designation Order in this case was erroneously and improvidently entered; Capitol's good name and reputation should be restored in all respects; and this proceeding should be terminated forthwith.

Respectfully submitted,

CAPITOL RADIOTELEPHONE COMPANY,
INC. d/b/a CAPITOL PAGING

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April 8, 1994

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of April, 1994, served the foregoing Proposed Findings of Fact and Conclusions of Law upon the Federal Communications Commission by hand delivery of a true copy thereof to Administrative Law Judge Joseph Chachkin, 2000 L Street, N.W., Room 226, Washington, D.C. 20554, to Carol Fox Foelak, Esquire, Private Radio Bureau, 2025 M Street, N.W., Room 5202, Washington, D.C. 20554, and to Y. Paulette Laden, Esquire, Mass Media Bureau, 2025 M Street, N.W., Room 7212, Washington, D.C. 20554, and upon RAM Technologies, Inc. by hand delivery of a true copy thereof to its attorney, Frederick M. Joyce, Esquire, Joyce & Jacobs, 2300 M Street, N.W., Suite 130, Washington, D.C. 20037.

Kenneth E. Hardman