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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

April 8, 1994

Via Hand Delivery

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

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

Dear Mr. Caton:

Transmitted herewith, on behalf of RAM Technologies, Inc., please find the original and six (6) copies of its Proposed Findings of Fact and Conclusions of Law in the above-referenced proceeding.

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

Sincerely,

Frederick M. Joyce

FMJ/id
enc.

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APR 8 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of	)	
	)	
Application of	)	PR Docket No. 93-231
	)	
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; et al.	)	
	)	

To: Hon. Joseph Chachkin, Administrative Law Judge

RAM TECHNOLOGIES INC.'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Frederick M. Joyce
Christine McLaughlin
Its Counsel

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Date: April 8, 1994

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SUMMARY

The vast weight of the record evidence shows that Capitol Radiotelephone Company applied for a PCP license, and then operated its PCP station in repeated violation of the FCC's Rules, to the obvious detriment of a shared channel competitor, RAM Technologies. There was scant evidence that Capitol ever made any serious effort to use its PCP station for its intended purpose: to provide interference-free paging services on a commercial basis. Rather, the vast weight of the evidence proves that it is more likely than not that Capitol's primary purpose was to cause interference to RAM's shared channel operations.

In so doing, Capitol caused economic hardship to RAM, and impeded service to RAM's customers. That conduct was unbefitting of an FCC licensee, and constitutes sufficient grounds to warrant severe sanctions against Capitol, including forfeitures and license revocations.

TABLE OF CONTENTS

Page

Summary. i

Preliminary Statement. 2

Issues Designated for Hearing 2

Summary of the Issues. 6

PCP Regulatory History 7

FCC Restrictions on PCP Operations 10

FINDINGS OF FACT

Capitol's PCP Application. 13

Capitol's Advertising Campaign 16

RAM's Concerns about Capitol's PCP Application 17

Interference Problems on the 152.480 MHz Frequency 18

Stereo Interference. 19

Call Sign and Testing Interference 20

Duplicate Paging Interference. 25

CONCLUSIONS OF LAW

Abuse of Commission Application Processes. 28

Willful, Malicious Interference to RAM's Operations. . . .31

Licensee Ineptness 34

Misrepresentations of Fact; Lack of Candor 35

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

In the Matters of	)	
	)	
Application of	)	
	)	
CAPITOL RADIOTELEPHONE, INC. d/b/a, CAPITOL PAGING	)	PR Docket No. 93-231
	)	
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.	)	

To: Hon. Joseph Chachkin, Administrative Law Judge

RAM TECHNOLOGIES INC.'S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. RAM Technologies, Inc. ("RAM"), through its attorneys and pursuant to Section 1.263 of the Commission's Rules, 47 C.F.R. § 1.263, hereby submits the following proposed Findings of Fact and

Conclusions of Law:

Preliminary Statement

Issues Designated for Hearing

2. By Hearing Designation Order, 8 FCC Rcd. 6300 (August 31, 1993) (HDO), the Commission ordered that a Petition for Reconsideration filed by RAM be granted, and that the license of Capitol Radiotelephone Inc., d.b.a. Capitol Paging ("Capitol") for Private Carrier Paging ("PCP") station WNSX-646 on the frequency 152.480 MHz in the Huntington/Charleston, West Virginia area be rescinded, and that the underlying application for that station (File No. 0190207) be returned to pending status.

3. It was further ordered, pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(e), that the application of Capitol for a PCP facility on the frequency 152.480 MHz in Huntington/Charleston, West Virginia (File No. 0190207) be designated for hearing to be held before an Administrative Law Judge upon the issues set forth in paragraph 28 of the HDO.

4. It was further ordered that, regardless of whether the hearing record warranted an Order denying Capitol's application, it should be determined, pursuant to Sections 503(b)(2)(C) and 503(b)(3)(A) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 503(b)(2)(C) and 503(b)(3)(A), and Section 1.80(g) of the Commission's Rules, 47 C.F.R. § 1.80(g), whether an Order of Forfeiture should be issued against Capitol in an amount not to exceed $20,000 for the apparent violations referred to in the July

30, 1992 Notice of Apparent Liability for Monetary Forfeiture and/or in an amount not to exceed $75,000 for each of the continuing rule violations set forth in subparagraph (g) of paragraph 28 of the HDO.

5. It was also ordered that, based upon the information set forth in the HDO, this case would be decided upon the following issues:

a. Whether, during the month of October 1990, from November 15, 1990 through November 18, 1990, on March 4, 1991, on March 19, 1991, and/or from July 17, 1991 through July 19, 1991, in light of the evidence adduced, Capitol Radiotelephone Inc., Capitol Radio Telephone Inc. d.b.a. Capitol Paging, Capitol Radiotelephone Company Inc., and Capitol Radiotelephone Co. Inc. willfully, maliciously and/or repeatedly caused private land mobile radio station WNSX-646 to transmit in a manner that caused harmful interference, in violation of Section 90.403(e) of the Commission's Rules, 47 C.F.R. § 90.403(e), and/or in violation of Section 333 of the Communications Act of 1934, as amended, 47 U.S.C. § 333.

b. Whether on August 12, 13, 14, and 15, 1991, in light of the evidence adduced, Capitol Radiotelephone Inc., Capitol Radio Telephone Inc. d.b.a. Capitol Paging, Capitol Radiotelephone Company Inc., and Capitol Radiotelephone Co., Inc. willfully, maliciously and/or repeatedly caused private land mobile radio station WNSX-646 to transmit in a manner that caused harmful interference, in violation of Section 90.403(e) of the Commission's Rules, 47 C.F.R. § 90.403(e), and/or in violation of Section 333 of the Communications Act of 1934, as amended, 47 U.S.C. § 333.

c. Whether, from November 15, 1990 through November 18, 1990, on March 4, 1991, and/or from July 17, 1991 through July 19, 1991, in light of the evidence adduced, Capitol Radiotelephone Inc., Capitol Radio Telephone Inc. d.b.a. Capitol Paging, Capitol Radiotelephone Company Inc., and Capitol Radiotelephone Co., Inc. willfully and/or repeatedly caused private land mobile radio station WNSX-646 to transmit communications for testing purposes in a manner such that the tests were not kept to a minimum and every measure was not taken to avoid harmful

interference, in violation of Section 90.405(a)(3) of the Commission's Rules, 47 C.F.R. § 90.405(a)(3).

d. Whether, on August 12, 13, 14, and/or 15, 1991, in light of the evidence adduced, Capitol Radiotelephone Inc., Capitol Radio Telephone Inc. d.b.a. Capitol Paging, Capitol Radiotelephone Co., Inc. willfully and/or repeatedly caused private land mobile radio station WNSX-646 to transmit communications for testing purposes in a manner such that the tests were not kept to a minimum and every measure was not taken to avoid harmful interference, in violation of Section 90.405(a)(3) of the Commission's rules, 47 C.F.R. § 90.405(a)(3).

e. Whether on August 12, 13, 14, and/or 15, 1991, in light of the evidence adduced, Capitol Radiotelephone Inc., Capitol Radio Telephone Inc. d.b.a. Capitol Paging, capitol Radiotelephone Company Inc. and Capitol Radiotelephone Co., Inc. willfully and/or repeatedly caused private land mobile radio station WNSX-646 to identify its transmissions by Morse code at a rate less that 20-25 words per minute in violation of Section 90.425(b)(2) of the Commission's Rules, 47 C.F.R. § 90.425(b)(2).

f. Whether from November 15, 1990 through November 18, 1990 Capitol Radiotelephone Inc., Capitol Radio Telephone Inc. d.b.a. Capitol Paging, Capitol Radiotelephone Company Inc., and Capitol Radiotelephone Co., Inc. caused private land mobile radio station WNSX-646 to willfully and/or repeatedly transmit on the frequency 152.480 MHz for purposes other than completing private carrier pages, in violation of Sections 90.173(b) and 90.403(c) of the Commission's Rules, 47 C.F.R. §§ 90.173(b) and 90.403(c). Further, whether the content of these transmissions included common carrier paging traffic in violation of Section 90.415(b) of the Commission's Rules, 47 C.F.R. § 90.415(b)

g. Whether beginning on or about August 27, 1992 and continuing to the present, Capitol Radiotelephone Inc., Capitol Radio Telephone Inc. d.b.a Capitol Paging, capitol Radiotelephone Company Inc., and Capitol Radiotelephone Co., Inc. caused private land mobile radio station WNSX-646 to willfully and/or repeatedly transmit on the frequency 152.480 MHz for purposes other than completing private carrier pages, in violation of Sections 90.173(b) and 90.403(c) of the Commission's Rules, 47 C.F.R. §§ 90.173(b) and 90.403(c). Further, whether the content of these transmissions included common carrier paging traffic in violation of Section

90.415(b) of the Commission's Rules, 47 C.F.R. § 90.415(b).

h. Whether in written and/or oral statements to the Commission or its staff with respect to the above matters, Capitol Radiotelephone Inc., Capitol Radio Telephone Inc., Capitol Radiotelephone Company (Co.) Inc., and/or any of these entities doing business as Capitol Paging misrepresented facts to the Commission and/or was lacking in candor.

i. Whether, in light of the findings under paragraph (h), any of the above captioned applicants\licensees willfully or repeatedly violated Section 1.17 of the Commission's Rules, 47 C.F.R. § 1.17.

j. In light of the findings under paragraphs (a) through (i), whether Capitol Radiotelephone Inc., Capitol Radio Telephone Inc., Capitol Radiotelephone Company (Co.), Inc., and/or any of these entities doing business as Capitol Paging have the requisite basic character qualifications to continue to remain Commission licensees.

k. In light of the findings under paragraphs (a) through (j), whether Capitol Radiotelephone Inc., Capitol Radio Telephone Inc., Capitol Radiotelephone Company (CO), Inc., and/or any of these entities doing business as Capitol Paging are qualified to retain each of their respective licenses set forth in the caption of this proceeding.

l. In light of the findings under paragraphs (a) through (k), whether any or all of the captioned radio station licenses should be revoked.

m. In light of the findings under paragraphs (a) through (l), whether Capitol Radiotelephone Inc. d.b.a. Capitol Paging filed an application for a private carrier paging facility on the frequency 152.480 MHz in Huntington/Charleston, West Virginia (File No. 0190207) primarily for the purpose of obtaining a license in order to cause harmful interference to station WNJN-621 licensed to RAM Technologies Inc.

n. In light of the findings under paragraphs (a) through (m), whether the application of Capitol Radiotelephone Inc. d.b.a. Capitol Paging for a private carrier paging facility on the frequency 152.480 MHz in Huntington/Charleston, West Virginia (File No. 0190207) should be granted.

6. It was further ordered that the Private Radio Bureau ("Bureau") and RAM be made parties to this proceeding.

7. It was further ordered that Capitol would have the burden of proof and the burden of proceeding with respect to the matter of its application for a private carrier paging facility on the frequency 152.480 MHz in Huntington/Charleston, West Virginia (File No. 0190207), and that with respect to all other matters in the proceeding the Bureau would have the burden of proof and the burden of proceeding.

8. By Motion dated December 3, 1993, Capitol moved the Presiding Officer to dismiss the subject PCP application, and delete the issues designated in regard to that application; the Motion was unopposed. By Memorandum, Opinion and Order released December 22, 1993, the Presiding Officer granted Capitol's Motion. Accordingly, the Bureau had the burden of proof and the burden of proceeding with regard to all of the remaining issues in the proceeding.

9. Hearings were held on February 1, 2, 3, 4, 7, 8 and 9, 1994. The record was closed by Order of the Presiding Officer.

Summary of the Issues

10. The issues designated in the HDO pertain to the respective rights and obligations of private carrier paging ("PCP") licensees under the Communications Act and the FCC's Rules. Since a PCP operator may share a particular frequency with its competitor in the same marketplace, as in this case, compliance with the PCP

Rules is of fundamental importance. A PCP licensee who willfully or negligently violates the FCC's PCP Rules can cause considerable financial and electrical harm to another entity's paging business, while interrupting or delaying critical communications services to the doctors, hospitals, law enforcement officials, tradesmen and others who subscribe to that service.

11. The Commission has previously, albeit infrequently, dealt with PCP compliance issues. See Arch Capitol District, Inc., 3 FCC Rcd. 6191 (P.R.Bur. 1988). The HDO presents the first instance where such issues have been designated for a hearing. To a great extent then, this is a case of first impression. Consequently, before determining whether Capitol has violated any of the Commission's rules or requirements, we must first examine the metes and bounds of those rules.

PCP Regulatory History

12. Capitol and RAM are licensed by the FCC to operate PCP services in the Business Radio Service; a Private Land Mobile Radio Service governed by Part 90 of the FCC's Rules. PCP service is different from radio common carrier ("RCC") paging service in certain respects.

13. PCP service is a relatively new form of paging service, created by the Commission in 1982. The Commission created PCP service for the express purpose of providing users the "benefit [of] having several paging service options available to satisfy their individualized service needs ...." Paging Operations, 91 FCC

2d 1214, 1222 (1982). The Commission has stated that "[w]ithout the PCP option, users would be denied the ability to secure individually-tailored service arrangements, a basic feature of the PCP option." Id.

14. PCP service is not subject to any local rate or entry regulations (state certification and tariff requirements) as a matter of law.[1] Section 332(c)(3) of the Communications Act, 47 U.S.C. § 332(c)(3), states that "no State or local government shall have any authority to impose any rate or entry regulation upon any private land mobile service ...." 47 U.S.C. § 332(c)(3). Thus, PCP operators provide paging services to their customers pursuant to private service contracts, rather than state-mandated tariffs.

15. The Commission has different rules for PCP versus RCC paging service. For instance, because PCP service is considered a "business radio service", until recently PCP operators could not provide service to the "personal consumers" that RCC paging companies could serve.[2] At the time of the events cited in the HDO, PCP customers were required to have some "business" use for the service, whereas RCC paging service could be used for purely personal purposes, in addition to commercial use. See 47 C.F.R.

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[1] Recent amendments to the Communications Act will substantially change the manner in which both RCCs and PCPs are regulated by the states and FCC in the future; such issues are presently under consideration by the Commission. See 47 U.S.C. 3(n); 332; and Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252. Those considerations are irrelevant to this analysis; however, since the events in this case transpired prior to the recent amendments to the Act.

[2] The FCC removed this eligibility restriction only after the events that transpired in this case.

§90.75(a).

16. PCP service also differs from RCC service in that a PCP licensee may be required to "share" a particular radio frequency with other business radio licensees. See 47 C.F.R. §90.173(a). RCC paging frequencies, on the other hand, are licensed by the FCC to one entity on an exclusive basis.

17. The applicable PCP Rules require licensees to "cooperate in the selection and use of frequencies in order to reduce interference and make the most effective use of the authorized facilities." 47 C.F.R. §90.173(b). Consequently, it is not unusual for several PCP operators to share the same frequency without causing harmful interference to each other's operations. (Tr. 89, 278-79).

18. Despite the aforementioned regulatory distinctions between PCP and RCC paging service, the services are similar to each other in many respects. The equipment used to provide both PCP and RCC paging services are virtually the same. (Tr. 477).

19. The Communications Amendments Act of 1982, P.L. 97-259, expressly stated that private carriers may hold out their services to "eligible" members of the general public on a for-profit basis. See 47 U.S.C. §332. Thus, a PCP service may be a for-profit "carrier" service, rather than a shared cost, or non-profit private radio service.

20. Moreover, the FCC has expressly ruled that a PCP system may be interconnected with the public switched telephone network. See Interconnection of Paging Systems with the Public Switched

Telephone Network, 62 Rad.Reg. 2d 1153 (1987). Thus, in that technical respect, PCP service is comparable to interconnected RCC paging service.

21. On certain frequencies, particularly the subject 152.480 MHz frequency, PCP licensees have been authorized by the FCC to operate at higher output powers and antenna heights than many RCC paging companies. Consequently, the 152.480 MHz became a "popular" PCP frequency.

22. In July of 1990, the FCC amended its rules to increase permitted output power on the 157.740 MHz PCP frequency to 350 watts. Amendment of Part 90, FCC Mimeo 90-253 (July 9, 1990). Thus, prior to a grant of Capitol's PCP application, another high power VHF frequency was available for use in the subject service areas. That fact is relevant to the issues here, since there are questions as to why Capitol would have chosen to operate on the 152.480 MHz frequency which was admittedly highly congested at the time that Capitol applied for a PCP license.

23. Certain regulatory advantages of PCPs over RCCs have already been mentioned. Since private land mobile radio services are preempted from state and local rate and entry regulations, PCPs are not subject to RCC tariff and certification requirements. In addition, the process for obtaining PCP licenses may be quicker than the process for obtaining RCC paging licenses.

FCC Restrictions on PCP Operations

24. Because PCP frequencies are assigned on a shared, rather than exclusive, basis the FCC has adopted several rules and

constraints to help ensure interference-free operations on these frequencies. The following regulatory constraints are particularly germane to the issues in this case.

25. PCP applicants and licensees are required to "cooperate in the selection and use of frequencies in order to reduce interference and make the most effective use of the authorized facilities." 47 C.F.R. §90.173(b). PCP applicants must first obtain a statement from the applicable frequency coordinator recommending the most appropriate frequency; that recommendation is submitted to the FCC with the application. See 47 C.F.R. §90.175. The designated frequency coordinator for PCP applications is the National Association of Business and Educational Radio ("NABER").

26. Following the grant of a PCP license, licensees must continue to cooperate with shared channel licensees. Under the Rules, licensees of stations "suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements." 47 C.F.R. §90.173(b).[3] If licensees cannot mutually resolve interference problems, the FCC may impose restrictions upon a PCP station's operations. Id.

27. PCP licensees are required to "restrict all transmissions to the minimum practicable transmission time", and they must "employ an efficient operating procedure designed to maximize the

---

[3] "Interference" is defined under the Rules as follows: "The effect of unwanted energy due to one or a combination of emissions, radiation, or inductions upon reception in a radiocommunication system, manifested by any performance degradation, misinterpretation, or loss of information which could be extracted in the absence of such unwanted energy." 47 C.F.R. 2.1.

utilization of the spectrum." 47 C.F.R. §90.403(c). Communications involving the "imminent safety of life or property are to be afforded priority by all licensees." 47 C.F.R. §90.403(d).

28. PCP licensees must take "reasonable precautions to avoid causing harmful interference. This includes monitoring the transmitting frequency for communications in progress and such other measures as may be necessary to minimize the potential for causing interference." 47 C.F.R. §90.403(e).

29. A PCP station cannot transmit broadcasting program material of any kind. 47 C.F.R. §90.415(a). (Capitol's purported PCP "expert" testified at the hearings that there were no such restrictions on what a PCP licensee could transmit; thus casting serious doubts upon the competence of his testimony). A PCP station cannot render common carrier service. 47 C.F.R. §90.415(b). (The same "expert" apparently also knew nothing about this restriction on PCP communications).

30. A PCP licensee may transmit only communications "directly related and necessary to those activities which make the licensee eligible for the station license ...." 47 C.F.R. §90.405(a)(2). A PCP licensee may transmit communications for testing purposes that are "required for proper station and system maintenance." 47 C.F.R. §90.405(a)(3). Such testing, however, must be kept "to a minimum and shall employ every measure to avoid harmful interference." Id.

31. There are restrictions on who may receive PCP service.

Throughout most of the operative time period in this case, PCPs were not allowed to provide service to "individuals" or to anyone for "personal" use; PCP customers had to have some "business" use to be an eligible customer. See 47 C.F.R. §90.75(c) (1992). That restriction was lifted by the FCC in PR Docket No. 93-38, which was adopted in June of 1993. Report and Order, 8 FCC Rcd. 4822 (July 16, 1993); and, 47 C.F.R. §90.75(c)(10) (1993).

32. Today, there remain certain ownership and customer eligibility restrictions on PCP licenses. No PCP license may be granted to or held by a foreign government or its representatives. 47 C.F.R. §90.115. Since those entities are ineligible to be PCP licensees, they are also ineligible to be PCP customers. See, e.g., 47 C.F.R. §90.75(c)(10).

33. Though there are myriad other rules that govern PCP operations, the foregoing ones are particularly relevant to the issues designated in the HDO.

FINDINGS OF FACT

34. This matter involves the facts and circumstances surrounding the application for and operation of PCP station WNSX-646 by Capitol.

Capitol's PCP Application

35. Capitol and RAM were (and are) competitors in the Huntington and Charleston, WV markets in the provision of paging services. (Tr. 833). Capitol had been providing radio common carrier paging service for nearly 30 years on the 152.510 and other

exclusive RCC paging frequencies. (Tr. 823). Its RCC paging service covered a wider territory than Huntington and Charleston. Capitol had only approximately 2800 to 3000 paging units in service in late 1989 to early 1990. (Tr. 831-32). Capitol did not claim that it needed a PCP license due to channel congestion on its existing RCC paging channel. (Tr. 865-66).

36. In 1989, Robert A. Moyer, Jr., who had previously competed against Capitol as an RCC paging operator, returned to the paging business as a PCP operator. (Tr. 87). Mr. Moyer's company, RAM, obtained a PCP license on the 152.480 MHz frequency. After just one year of operations, RAM had already placed more paging units in service than Capitol had done in its 30 years in business. (Tr. 869-70).

37. Perhaps coincidentally, in early 1990, Capitol applied for a PCP license on the 152.480 MHz frequency that was already being used by RAM. (Tr. 70). Capitol filed an application for this PCP station, located at sites in Huntington and Charleston, West Virginia in late March 1990. Capitol sought to operate this station on the frequency 152.480 MHz, a shared private land mobile paging channel already authorized at these geographic locations to RAM as licensee of station WNJN-621.

38. J. Michael Raymond, the Vice President of Capitol, testified that he had no prior experience with PCP operations, but that it was his idea for Capitol to get a PCP license. (Tr. 866-68). Mr. Raymond was and is responsible for the day-to-day operation of Capitol's paging business.

39. Mr. Raymond, and RAM employees, testified that Capitol was aware that the shared 152.480 MHz frequency was already heavily used by RAM at the time that Capitol applied to share that frequency. (Tr. 848-50; 871-73). Nevertheless, Capitol apparently convinced NABER, the frequency coordinator, that there was sufficient airtime available to justify coordination of Capitol's application.

40. Mr. Raymond proffered several reasons for applying for this particular 152.480 PCP frequency; those explanations, however, served only to cast doubts on Capitol's motives in applying for that license.

41. For instance, Mr. Raymond testified that Capitol applied for the 152.480 frequency because it was the only high power VHF frequency available. (Tr. 866-67). However, Capitol never installed high power transmitters, and, nearly six months after constructing its PCP station, was operating its station at an output power described by the FCC's Field Engineer as "quite low." (Tr. 119, 126 testimony of Field Engineer Walker, 1216-17).

42. In addition, prior to the September 1990 grant of Capitol's PCP license, another high powered VHF PCP frequency became available for Capitol's use, 157.740. Still, Capitol chose to proceed with its plans to operate on 152.480.

43. Mr. Raymond also claimed that Capitol wanted 152.480 because it could be "networked" with the nationwide 152.480 MHz system operated by a company called Network USA; but, Capitol could have "networked" any available paging frequency. (Tr. 921).

Moreover, RAM held a ten-year exclusive local franchise to operate on the 152.480 MHz Network USA system. (Tr. 1221). Apparently, Capitol never bothered to contact Network USA throughout the three years that Capitol held its PCP licenses to determine if Capitol could become a member of that 152.480 network. (Tr. 923-25).

44. Mr. Raymond also testified that Capitol wanted a PCP license because it would not be subject to West Virginia rate regulations, so it could price its service competitively; but, the fact is that Capitol had apparently lowered its RCC paging rates without any protests. (Tr. 890). In any event, the "no state regulation" preference could apply to any PCP frequency; it does not explain Capitol's peculiar interest in sharing the already busy 152.480 PCP frequency.

Capitol's Advertising Campaign

45. Throughout 1989 and early 1990, Capitol engaged in activities that cast doubts upon its bona fide intentions to operate a PCP station in compliance with the FCC's Rules. For example, Capitol paid for "Yellow Pages" and newspaper advertisements wherein it referred to PCP service as "party line" service. (Tr. 854-60). In these and other advertisements, Capitol referred to RCC paging service as being "guarded" communications, while PCP communications were not. (Id.). Mr. Raymond testified that the purpose of the advertisements was to say that "a RCC frequency is superior to a private carrier frequency." (Tr. 859).

46. There were other examples of Capitol conduct that were inconsistent with a bona fide intent to apply for and use a 152.480

PCP license in compliance with the FCC's Rules. For instance, in early 1990, certain Capitol officers and employees, including Raymond, contacted RAM customers in an effort to solicit their business. Raymond testified that he had "explained" to those RAM customers the "differences" between an RCC license and a PCP license. (Tr. 840-41).

47. As part of that "explanation," Capitol sent to prospective customers copies of RAM's 152.480 paging "traffic" studies. Capitol's apparent purpose in so doing was to show those prospective customers that if they used PCP service, they would be sharing a busy frequency. (Tr. 850).

48. In sum, just shortly before applying for a 152.480 PCP application, Capitol had launched an aggressive advertising campaign in an appeared effort to disparage PCP service; it had attempted to solicit RAM customers with an "explanation" about the high level of traffic on the 152.480 PCP frequency; it had knowledge that the 152.480 frequency was busy with RAM traffic, it had exclusive use of several RCC channels that did not have any capacity problems; and it had not bothered to determine whether it could become an affiliate on the existing nationwide 152.480 network. Despite these facts, Capitol applied for a PCP license on the same frequency that RAM was using.

RAM's Concerns about Capitol's PCP Application.

49. In March of 1990, RAM filed a Petition to Deny and Motion for Stay objecting to grant of Capitol's application. RAM contended that Capitol sought a PCP license for the sole purpose of

causing harmful interference to RAM's PCP operations. RAM's Petition to Deny and Motion for Stay was denied on the basis that RAM had at that time failed to prove that Capitol planned to intentionally interfere with RAM's station. HDO ¶ 3.

50. On August 31, 1990, RAM filed a Petition for Reconsideration of the action denying its Petition to Deny and Motion for Stay. Capitol was granted a license for station WNSX-646 on September 12, 1990 subject to the outcome of RAM's pending Petition for Reconsideration. Id.

Interference Problems on the 152.480 MHz Frequency.

51. RAM employees testified at the hearings that they occasionally had interference problems on the 152.480 frequency with PCP licensees other than Capitol; but, in every case but Capitol's, the licensees addressed the problem, and arrived at an amicable solution. (Tr. 491-92). With the use of automatic "monitoring" equipment, the possibility of shared channel interference can apparently be greatly reduced, and more than one licensee can share a given PCP frequency. (Tr. 278, 509-10).

52. The interference problems addressed in the HDO were apparently of a degree and duration quite unlike any interference problem RAM had experienced with other shared-channel licensees.

Interference Problems Following Capitol's License Grant

53. Shortly after Capitol obtained a license to operate PCP station WNSX-646, RAM repeatedly complained to the Bureau of the very interference that it had previously anticipated. The interference occurred, off and on, for more than two years, ending

sometime in the Fall of 1993, when Capitol ceased transmitting on its PCP station. (Tr. 279, 369-70).

"Stereo" Interference.

54. In or around November of 1990, RAM began experiencing what it described as "stereo" interference. Robert Moyer, President of RAM, Raymon Bobbitt, RAM's Vice President for Technical Services, and Dale Capehart, Vice President of RAM, testified that after experiencing a sudden increase in paging traffic on the 152.480 PCP channel, they set up two receivers to monitor 152.480 transmissions, and 152.510 transmissions. (Tr. 74-76; 466-68). In so doing, they heard "identical" digital transmissions being sent simultaneously over Capitol's 152.510 RCC paging channel and the shared 152.480 PCP channel. (Tr. 288, 466-68).

55. They recognized the call sign associated with those transmissions as Capitol's RCC call sign. They tuned two "scanners" side by side, one to Capitol's 152.510 RCC channel, the other to the 152.480 PCP frequency, and the transmissions on the two channels were "identical." Id.

56. Although Capitol claimed that it did not "construct" its PCP station until March of 1991, that does not eliminate Capitol as the possible cause of this "stereo" interference problem in late 1990. There was testimony that it would not have been difficult for Capitol to cause the stereo interference, with or without a PCP license.

57. It was explaind by RAM's Vice President for Technical Services, Raymon Bobbitt, that Capitol could have caused the "stereo" interference simply by taking a receiver that received Capitol's 152.510 audio output, and retransmitting that audio onto the 152.480 channel, so that all the paging traffic being transmitted over Capitol's 152.510 frequency would be rebroadcast over the 152.480 PCP frequency. (Tr. 467-68, 472-73).

58. In sum, RAM's testimony about receiving "stereo" interference from Capitol in November of 1990, was not inconsistent with Capitol's assertions that it did not "construct" its own PCP stations in Huntington and Charleston until March of 1991.

59. This "stereo" interference problem was also consistent with RAM's prior allegations to the Bureau that Capitol intended to "busy" the shared PCP frequency "with garbage." See RAM Petition to Deny or Request to Amend Application at pp 3-5 (March 29, 1990) (Capitol Exhibit No. 2).

Call Sign and "Testing" Interference.

60. Sometime in March of 1991, RAM's Vice President, Dale Capehart, contacted Capitol to complain that Capitol was transmitting its call sign identification in such a manner as to interfere with RAM's paging transmissions. (Tr. 280-81). Capitol stated that it would fix the problem. (Tr. 281). Mr. Capehart testified that this particular form of interference continued "off and on" for approximately two months, and that when Capitol would station "ID" on top of RAM transmission, several pages would be lost. (Tr. 312-13).

61. On April 2, 1991, a meeting was convened by the Chief, Land Mobile and Microwave Division, Private Radio Bureau, in an effort to resolve these interference complaints. The meeting concluded with an apparent settlement. RAM and Capitol agreed to cooperate to resolve harmful interference. RAM agreed to withdraw its Petition for Reconsideration. HDO par. 4.

62. Subsequently, however, RAM continued to complain of harmful interference from Capitol. Mr. Capehart and Mr. Bobbitt testified that a paging signal that consisted of two-tones, in sequences of 10 to 20 seconds, was transmitted over the air repeatedly, sometimes 24 hours a day, throughout the ensuing months. (Tr. 136, 290-91). This "test" tone stopped only after the FCC's Field Engineers inspected both RAM's and Capitol's stations in August of 1991. (Tr. 291).

63. There was no evidence throughout the hearings that any of these tone sequence transmissions that were repeated in the months of July and August 1991, pertained to actual Capitol paging customers. Capitol's witnesses testified that this repeated tone sequence was used for various "test" purposes (Tr. 980); that is also what Capitol's officers told the FCC's Field Engineers. (Tr. 139, 141).

64. The FCC's Field Engineers; however, could not discern any legitimate "testing" taking place while Capitol's repeated tone transmissions took up airtime on the shared PCP channel; indeed, they testified that they had never heard such "testing" before. (Tr.137-38).