

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DOCKET FILE COPY DUPLICATE
~~EXHIBIT~~

MAY 10 1994

DOCKETING STATEMENT

Administrative Agency Review Proceedings
(To be completed by appellant/petitioner)

94-1292 ✓

1. CASE NO. _____ 2. DATE DOCKETED 04/01/94

3. CASE NAME
(lead parties only) Pacific Bell, et al. v. Federal Communications Commission, et al.

4. TYPE OF CASE: Review Appeal Enforcement Complaint

5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? YES ___ NO XX
IF YES, cite statute: _____

6. CASE INFORMATION:

a. Identify agency whose order is to be reviewed: Federal Communications Commission

b. Give agency docket or order number(s): Gen. Docket No. 90-314, FCC No. 93-550

c. Give date(s) of order(s): released February 3, 1994

d. Is a request for rehearing or reconsideration pending at the agency? YES XX NO ___

e. Are any other cases involving the same underlying agency order pending in this Court or in any other court? YES XX NO ___ If YES, identify name(s), docket number(s), and court(s):

See attached

f. Are any other cases, to counsel's knowledge, pending before the agency, this Court or the Supreme Court which involve *substantially the same issues* as the instant case presents? YES XX NO ___
If YES, give name(s) and number(s) of these cases and identify court/agency: _____

See attached

Signature Albert Kramer Date 05/04/94

Name of Counsel or Pro Se Litigant (Print) Albert H. Kramer, Esq.

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Address 1201 New York Avenue, NW - Penthouse
Washington, D.C. 20005-3919

Counsel for Appellant/Petitioner (Name of Party) Petitioner Broadband Communications Corporation

ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 10 days by letter, with copies to all other parties, specifically referring to the challenged statement. An original and three copies of such letter should be submitted.

DOCKETING STATEMENT
of Broadband Communications (94-1292)
(continued)

FILED
MAY 10 1994

FCC

1. CASE NO. 94-1292

2. DATE DOCKETED: 04/01/94

6. CASE INFORMATION:

e. Other cases pending before U.S. Court of Appeals for the D.C. Circuit

- Pacific Bell v. FCC, et al.*, Case No. 94-1148, D.C. Cir.
- Pacific Bell v. FCC, et al.*, Case No. 94-1149, D.C. Cir.
- Viacom International Inc. v. FCC*, Case No. 94-1152, D.C. Cir.
- Viacom International Inc. v. FCC, et al.* Case No. 94-1153, D.C. Cir.
- Freeman Engineering Associates, Inc. v. FCC*, Case No. 94-1155, D.C. Cir.
- Bell Atlantic Personal Communications, Inc. v. FCC, et al.*, Case No. 94-1157, D.C. Cir.
- Panhandle Telephone Cooperative, Inc. v. FCC, et al.*, Case No. 94-1158, D.C. Cir.
- Cablevision Systems Corporation v. FCC, et al.*, Case No. 94-1280, D.C. Cir.
- PCN America, Inc. v. FCC, et al.*, Case No. 94-1294, D.C. Cir.
- Pagemart, Inc. v. FCC, et al.*, Case No. 94-1281, D.C. Cir.
- **Paging Network, Inc. v. FCC, et al.*, Case No. 94-1327
- ***Time Warner Telecommunications, Inc. v. FCC, et al.*, Case No. 94-1299, D.C. Cir.

The above-referenced cases were consolidated by orders dated April 6, 1994 and April 7, 1994.

f. Other proceedings pending before the Federal Communications Commission

Petition for Reconsideration of Qualcomm Incorporated, Gen. Docket No. 90-314.

Petition for Partial Reconsideration of Corporate Technology Partners, Gen. Docket No. 90-314.

* *Paging Network, Inc. v. FCC, et al.* is not consolidated with 94-1148, et al.

** A motion to consolidate case No. 94-1299 with consolidated cases 94-1148, et al. is currently pending before this Court.

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

FILED
MAY 10 1994
FCC

PACIFIC BELL, et al.)
)
Petitioners,)
)
v.) Case No. 94-1148 and
) Consolidated Cases 94-1149,
) 94-1152, 94-1153, 94-1155,
FEDERAL COMMUNICATIONS COMMISSION) 94-1157, 94-1158, 94-1280,
and THE UNITED STATES OF AMERICA,) 94-1281, 94-1292 and 94-1294
)
Respondents.)

PETITIONER'S RESPONSE TO COURT'S
ORDER OF APRIL 7, 1994

In response to the Court's procedural order dated April 7, 1994, petitioner, Broadband Communications Corporation ("Broadband"), submits the following:

A. Underlying Decision.

Two copies of the underlying decision -- the Federal Communications Commission's ("FCC") Third Report and Order in the matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Docket No. 90-314, FCC No. 93-550, RM-7140, RM-7175, RM-7618, pp-6 through pp-10, pp-12, pp-13, pp-15 through pp-20, pp-26, pp-27, pp-41 through pp-52, pp-54 through pp-68, pp-70, pp-72 through 78 (released February 3, 1994) (the "Third Report and Order") -- are attached hereto.

B. Non-Binding Statement of Issues to be Raised.

Whether the FCC's decision to award pioneer's preferences for licenses of personal communications services to three applicants for such preferences and to deny the requests of 47

other applicants, including Broadband, violated the FCC's own rules and was otherwise arbitrary, capricious and an abuse of discretion.

C. Statement Regarding Deferred Appendix.

A deferred appendix under F.R.A.P 30(c) will be utilized in this appeal.

Respectfully submitted,



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Attorneys for Broadband Communications
Corporation

Dated: May 6, 1994

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

FILED
MAY 10 1994

PACIFIC BELL, et al.)
)
Petitioners,)
)
v.) Case No. 94-1148 and
) Consolidated Cases 94-1149,
) 94-1152, 94-1153, 94-1155,
FEDERAL COMMUNICATIONS COMMISSION) 94-1157, 94-1158, 94-1280,
and THE UNITED STATES OF AMERICA,) 94-1281, 94-1292 and 94-1294
)
Respondents.)

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Rules 9(c) and 11(a) of the General Rules of this Court, Broadband Communications Corporation ("Broadband"), Petitioner in Case No. 94-1294, certifies the following:

A. Rulings Under Review.

Broadband's petition seeks direct review of the Federal Communications Commission's ("FCC") Third Report and Order in the matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Docket No. 90-314, FCC No. 93-550, RM-7140, RM-7175, RM-7618, pp-6 through pp-10, pp-12, pp-13, pp-15 through pp-20, pp-26, pp-27, pp-41 through pp-52, pp-54 through pp-68, pp-70, pp-72 through 78 (released February 3, 1994) (the "Third Report and Order").

B. Related Cases.

In addition to Broadband's Petition, Petitions for Review of the Third Report and Order have also been filed by Pacific Bell Corporation (No. 94-1148), Pacific Bell (No. 94-1149), Viacom International Inc. (No. 94-1152), Viacom International Inc. (No.

94-1153), Freeman Engineering Associates, Inc. (No. 94-1155), Bell Atlantic Personal Communications, Inc. (No. 94-1157), Panhandle Telephone Cooperative, Inc. (No. 94-1158), Cablevision Systems Corporation (No. 94-1280), PCN America, Inc. (No. 94-1294), Time Warner Telecommunications, Inc. (No. 94-1299) and Pagemart, Inc. (No. 94-1281).

This Court consolidated case nos. 94-1148, 94-1149, 94-1152, 94-1153, 94-1155, 94-1157, 94-1158, 94-1280, 94-1292 and 94-1294, by Order dated April 6, 1994. By Order dated April 7, 1994, this Court also consolidated case nos. 94-1148, et al. with case no. 94-1281.

C. Parties, Intervenors and Amici.

To the best of counsel's knowledge, the parties who participated before the FCC in proceedings concerning the Third Report and Order are as follows:

Adelphia Communications Corp.
Advanced Cordless Technologies
Advanced Mobilecomm Technologies Inc.
Advanced Wireless Communications, Inc.
Alcatel Network Systems
Alliance of Rural Area Telephone and
Cellular Service Providers
Alltel Service Corporation
AMBC Subsidiary Corporation
American Gas Association
American Mobile Satellite Corporation
American Mobile Tele. Assoc.
American Person Communications
American Petroleum Institute
American Portable Telecommunications Inc.
American SMR Network Association
American Telezone Intercell International Inc.
Ameritech
Anchorage Telephone Utility
Andrew Corporation
Appellant Parties (The)
Apple Computer, Inc.

Applied Telecommunications Technologies, Inc.
APSCO
Apsco-Arizona
Arch Communications Group, Inc.
Arraycomm, Inc.
Assoc. for Private Carrier Paging
Associated PCN Co.
Associated Public-Safety Communications Officers
Association of American Railroads
AT&T
Atlantic Cellular Company
Bell Corporation Research, Inc.
BellSouth Corporation
Cable USA, Inc.
Cablevision Systems Corp.
Calcell Wireless, Inc.
California Microwave
California Public Safety Radio Association
California Public Utilities Commission
Capital Cities/ABC, Inc.
CCI
Cellnet
Cellular Service, Inc.
Celsat, Inc.
Centel Corporation
Century Cellunet, Inc.
CFW Telephone Company
Chesnee Telephone Company
Cincinnati Bell Telephone Co.
Citizens Utilities Co.
City Utilities of Springfield
Clear Creek, et al.
CNET
Cobra Electronics Group of Dynascan Corporation
Columbia Cellular Corporation
Comcast
Committee on Radio Frequencies National Research Council
Communications Satellite Corporation
Comsat Mobile Communications
Comsearch
Concord Telephone Company (The)
Contel Cellular, Inc.
Cooperative Power
Corporate Technology Partners
Cox Enterprises
CTIA
Cylink Corporation
DBX Corporation
Defense Info. System Agency
Department of the Interior
Department of Trade & Industry
Dial Page

Digital Microwave Corporation
Digital Satellite Broadcasting Corp.
Domestic Automation
Dr. Michael Trahos
Echo Group, L.P.
Edison Electric Institute
EEPA
Ericsson
Express Communications
Ferranti Creditphone Ltd.
Fidelity Investments
Florida Cellular RSA Ltd. Partnership
Florida RSA Partners
FMR Corporation
Freeman Engineering
General Communication, Inc.
General Instrument Corporation
Geostar Messaging Corporation
Global Enhanced Messaging
Global Wolfsberg Systems, Inc.
Grand Broadcasting Corporation
Graphic Scanning Corporation
GTE Service Corporation
Harris Corporation
Harrisonville
Henry Geller
Hewlett-Packard Company
Hitachi Telecom (USA)
Home Tel
Hughes Network Systems, Inc.
IEEE
Illinois Commerce Commission
In-Flight
Interdigital Communications Corp.
Iowa Network Services, Inc.
Kerrville Telephone
Killen & Associates, Inc.
Knowledge Implementations
Lace Inc.
LCC Incorporated
Leslie Taylor Associates
Lincoln Telephone
Linkatel Communications, Inc.
Litel Telecommunications Corp.
Local Area Telecommunications, Inc.
Massachusetts Institute of Technology
Matriz Personal Communications
Matsushita Communication
McCaw Cellular Communications
MCI Telecommunications
Mercury Personal Communications Network, Ltd.
Metricom, Inc.

Metriplex
Michigan Public Service Commission
Millicom, Incorporated
Missouri Pacific Railroad Co.
Mitsubishi Electric Corporation
Montgomery Securities
Motorola, Inc.
Motorola Satellite Communications, Inc.
MTEL
NABER
NAC, Inc.
NARUC
NATA
National Association of Broadcasters
National Communications System
NCR Corporation
New York State Dept. of Public Service
Nextel Communications, Inc.
Northern Telecom
Northwest Iowa Power Cooperative
Novatel Communications, Ltd.
NTCA
NYNEX Corporation
Ohio Linx
Omnipoint Corporation
Omnipoint Mobile Data Company
OPASTCO
Oracle Data Publishing, Inc.
Orbital Communications Corp.
Pacific Communications Sciences
Pacific Telecom Cellular, Inc.
Pactel Corporation
Pactel Paging
Pagemart
Paging Network
Pametto Rural Telephone Corporation
Panhandle Telephone Cooperative Inc.
Pass Word, Inc.
PCN America, Inc.
PCN Communications, Inc.
PCNSNY
PCS Action, Inc.
PDN/PCS
Pegasus Communications, L.P.
Pennsylvania Public Service Commission
Personal Network Services Corp.
Pertel
Phoenix Fire Department
Piedmont, et al.
Pinon Communications, Inc.
PMN, Inc.
Point Communications Company

Powerspectrum
Public Service Commission of D.C.
Public Service Commission of Wisconsin
Puerto Rico Telephone Company
Pulson Communications Corporation
Qualcomm Incorporated
Radio Telecom and Technology, Inc.
Radiofone, Inc.
Rochester Telephone Corporation
Rock Hill, et al.
Rockwell International Corporation
Rolm
Rose Communications
Roseville Telephone
Rural Cellular Corporation
Rural Independent Coalition
Satcom, Inc.
Satellite CD Radio Inc.
SM Tex, Inc.
Small Business PCS Association
Southern New England Telephone
Southern New England Telecommunications Corp.
Southwestern Bell Corporation
Spatial Communications, Inc.
Special Industrial Radio Service Association, Inc.
Spectralink Corporation
Sprint
State of California - Telecommunications Division
Strother Communications Inc.
Suite 12 Group
Swayzee Telephone Company
Taconic Telephone Corporation
Taft Broadcasting Company
Tandy Corporation
Teco Energy, Inc.
Teknekron Communications Systems
TEL/LOGIC INC.
Tele-Communications, Inc.
Telecommunications Industry Association
Telephone and Data Systems
Teleport Denver
Telescience
Telmarc Telecommunications
Telocator
TERZ Transportation Telephone Company
Texas Advisory Commission on State Emergency Communications
Texas Wire Music, Inc.
Time Warner
TRW Inc.
U.S. Department of Justice
U.S. Department of Commerce
U.S. Small Business Administration

U.S.T.A.
UK Association of the EEA
Uniden America Corporation
Union Pacific Railroad Co.
United Native American Telecommunications, inc.
United Parcel Service, Inc.
United Power
Unterberg Harris
US Intelco Networks, Inc.
US West
US West Newvestor Group Inc.
USA Mobile Communications Inc.
UTAM, Inc.
Utilities Telecommunication Council
Vanguard Cellular Systems, Inc.
Viacom International, Inc.
Waterway Communications Systems Inc.
Winforum
Wireless Cable Association Inter'l, Inc.

To the best of counsel's knowledge, the parties that have sought review of the Third Report and Order in this Court are as follows:

Pacific Bell
American Personal Communications
Cox Enterprises, Inc.
Broadband Communications Corporation
PCN America, Inc.
Omnipoint Communications, Inc.
Mobile Telecommunications Technologies Corporation
US West, Inc.
Cablevision Systems Corporation
Time Warner Telecommunications, Inc.
Federal Communications Commission
Pagemart, Inc.
Paging Network, Inc.

To the best of counsel's knowledge, the parties that have moved to intervene in this case are as follows:

American Personal Communications
Omnipoint Communications, Inc.
Mobile Telecommunications Technologies Corporation
U S West, Inc.

Broadband's disclosure of interests pursuant to Rule 6A of the Court's General Rules was filed with Broadband's Petition for Review.

Respectfully submitted,



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Dated: May 6, 1994

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of May, 1994, I caused a true copy of Broadband Communications Corporation's Response to Court's Order of April 7, 1994 and Broadband Communications Corporation's Certificate as to Parties, Rulings and Related Cases to be served by first class mail, postage prepaid, to the following:



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