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OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chief, Dockets Division

FROM: Associate General Counsel, Litigation Division

SUBJECT: Filing of two new Petitions for Review: Radiofone, Inc. v. FCC & USA, No. 95-1018, filed the U.S. Court of Appeals for the D.C. and Cincinnati Bell Telephone Company v. FCC & USA, No. 95-3023, filed the United States Court of Appeals for the Sixth Circuit

DATE: January 9, 1995

Docket No(s). GEN 90-314

File No(s). RM-7140, RM-7175 and RM-7618

This is to advise you that on January 6, 1995, Radiofone, Inc., (in the D.C. Circuit) and Cincinnati Bell Telephone Company (Sixth Circuit) filed Section 402(a) Petitions for Review of the FCC decision: In the Matter Amendment of the Commission's Rules to Establish New Personal Communications Services, FCC 94-265, released November 4, 1994, published 59 Fed. Reg. 55372 (1994)

In this proceeding, the Commission adopted and amended certain rules governing the regulation of broadband personal communications services and the method and manner of allocation of radio frequency licenses.

Due to a change in the Communications Act, it will not be necessary to notify the parties of this filing.

The Court has docketed these cases as Nos. 95-1018 and 95-3023 and the attorney assigned to handle the litigation is James M. Carr.

Daniel M. Armstrong

cc: General Counsel
Office of Public Affairs
Shepard's Citations

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

RADIOFONE, INC.,)
Petitioner)
v.)
FEDERAL COMMUNICATIONS COMMISSION)
and UNITED STATES OF AMERICA,)
Respondents.)

Case No. 95 - 1018

Filed: 1/16/95

PETITION FOR REVIEW

Radiofone, Inc., pursuant to 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342 and 2344, and Rule 15(a) of the Federal Rules of Appellate Procedure, hereby petitions the Court for review of the Third Memorandum Opinion and Order (Amendment of the Commission's Rules to Establish New Personal Communications Services), GEN Docket No. 90-314, RM-7140, RM-7175, RM-7618, released Oct. 19, 1994, erratum, No. 50507, released Nov. 4, 1994 [hereinafter Third MO&O] (copy enclosed). A summary of the Order was published in the Federal Register on November 7, 1994. 59 Fed. Reg. 55,372 (1994).

Venue is proper in this Court pursuant to 28 U.S.C. § 2343.

In the Third MO&O, the Commission upheld and amended certain rules governing the regulation of broadband personal communications services (PCS) and the method and manner of allocation of radio frequency licenses. In particular, the Commission retained, but amended, its limitations on the eligibility of entities that hold interests in cellular radiotelephone operations to participate in ownership of PCS

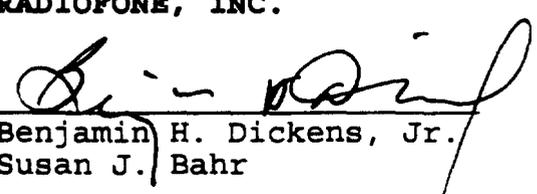
licenses, as contained in Part 24 of Title 47 of the Code of Federal Regulations. Radiofone, Inc. holds interests in cellular operations and is ineligible to obtain certain PCS licenses under these regulations. The Commission's eligibility rules for PCS licenses are unreasonable, arbitrary and capricious.

Radiofone, Inc. therefore requests that the Court review the Third MO&O and PCS eligibility rules, and set them aside on the grounds that the Third MO&O and PCS eligibility rules are arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence and reasoned analysis and are otherwise contrary to law.

Respectfully submitted,

RADIOFONE, INC.

By


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Its Attorneys

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January 6, 1995

RECEIVED

JAN 06 1995 IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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LEONARD GREEN, Clerk

OFFICE OF
GENERAL COUNSEL

CINCINNATI BELL TELEPHONE
COMPANY,

Petitioner,

vs.

Case No. 95- 3023

FEDERAL COMMUNICATIONS
COMMISSION and THE UNITED
STATES OF AMERICA,

Jan. 6, 1995

Respondents.

**PETITION FOR REVIEW OF AN ORDER
OF THE FEDERAL COMMUNICATIONS COMMISSION**

Cincinnati Bell Telephone Company, pursuant to 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342 and 2344, and Rule 15(a) of the Federal Rules of Appellate Procedure, hereby petitions the Court for review of the Third Memorandum Opinion and Order of the Federal Communications Commission, FCC 94-265, adopted October 19, 1994, released October 19, 1994, and published in the Federal Register on November 7, 1994, in the proceeding entitled In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services (the "PCS Order"). A copy of the PCS Order is attached.

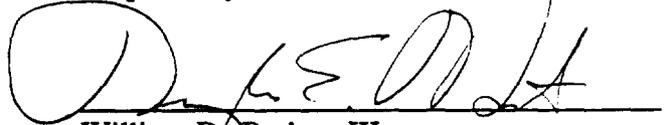
Venue is proper in this Court pursuant to 28 U.S.C. § 2343 because Cincinnati Bell Telephone Company has its principal office at Cincinnati, Ohio in this Circuit.

In the PCS Order, the Commission adopted and amended certain rules governing the regulation of broadband personal communications services and the method and manner of allocation of radio frequency licenses. In particular, the Commission established certain rules amending Part 24 of Title 47 of the Code of Federal Regulations, arbitrarily limiting

the eligibility of entities that hold a non-controlling investment interest in a cellular operator to participate in PCS licenses. Cincinnati Bell presently holds a non-controlling investment interest in a cellular operator that would render it ineligible for certain PCS licenses under the new regulations issued by the Commission. The Commission's eligibility rules for PCS licenses are unreasonable, arbitrary and capricious and in violation of the Federal Communications Act. Further, the application of the Commission's eligibility rules to Cincinnati Bell is, unreasonable, arbitrary and capricious, and unjustified.

Cincinnati Bell requests that the Court review the PCS Order and eligibility rules and set them aside on the grounds that the PCS Order and the rules are unlawful under the Communications Act, 47 U.S.C. § 151, et seq., are arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence and reasoned analysis and are otherwise contrary to law.

Respectfully submitted,



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Dated: January 6, 1995