

for RSAs proposing service within the Quiet Zone except by licensees whose original market boundaries overlap or are contained within the Quiet Zone. Petitioners argue in support of this proposal that the usual rationale for permitting new applications after licensees have had a five year "build out" period, namely that licensees should have a reasonable but not unlimited time to cover their markets and then others should be given a chance to do so, is inapplicable in Quiet Zone context. Here, Quiet Zone licensees are prevented from providing full market coverage by a unique government restriction, namely signal strength limitations within the Quiet Zone.

Petitioners further demonstrate that permitting unserved area applications to be filed for locations in and near the Quiet Zone would create major administrative difficulties, for the National Radio Astronomy Observatory ("NRAO"), which enforces Quiet Zone restrictions and for the FCC itself. Petitioners show that permitting new unserved area applicants to propose service to the Quiet Zone without requiring prior NRAO approval for their proposal would result in lengthy and inconclusive FCC proceedings, which would be contrary to the public interest.

Nor, Petitioners show, would it be any more feasible or reasonable to require the NRAO to review potentially hundreds of conflicting unserved area proposals by new applicants.

Petitioners recognize, however, that until the FCC has had an opportunity to weigh the arguments in this proceeding, it would be unfair to allow incumbent Quiet Zone licensees to file unserved

area applications while not allowing other applicants an opportunity to do so. Accordingly, Petitioners propose a stay on the acceptance of all Phase I or Phase II unserved area applications proposing any coverage into the Quiet Zone pending action on this proposal.

**I. Petitioners Have Met The Standards For The Issuance of A Stay**

Petitioners would submit that they meet the traditional tests applied by the FCC for determining whether to grant a stay. The standard factors which the FCC considers in determining whether to grant a stay were set forth in Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921 (D.C.Cir. 1958); See also Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841 (D.C.Cir. 1977). Those factors are:

"Has the petitioner made a strong showing that it is likely to prevail on the merits of its appeal?... (2) Has the petitioner shown that without such relief, it will be irreparably injured?... (3) Would the issuance of a stay substantially harm other parties interest in the proceedings?... (4) Where lies the public interest?"

Virginia Petroleum Jobbers Association, supra, 259 F.2d, at 925; Holiday Tours, Inc., supra, 559 F.2d, at 843. See also Arnold Chase, 4 FCC Rcd 5085 (1989).

**A. Petitioners Are Likely To Prevail on The Merits**

As is shown above, and in the attached Petition, it would be contrary to the public interest to allow "unserved area" applications proposing service in the Quiet Zone to be filed under the presently applicable rules. On the contrary, as is demonstrated in the Petition, it would be equitable and just to

allow licensees whose service areas now overlap the Quiet Zone to expand their service areas within the Quiet Zone after the expiration of their five year build out period if such service could be expanded as a consequence of a change in NRAO policy or as a result of changes in cellular technology permitting greater Quiet Zone coverage without interfering with NRAO operations.

The Petition makes the case that the Quiet Zone should not be subject to "unserved area" filings and should be served by its existing licensees. Petitioners submit that that showing satisfies the first of the four stay criteria.

**B. Petitioners Will Suffer Irreparable Injury In the Absence of A Stay**

As noted above, Petitioners have shown that it would be inequitable to Quiet Zone licensees to permit new applicants to file "unserved area" applications proposing to serve the Quiet Zone. Petitioners believe that the FCC will also reach that conclusion after consideration of the comments in this proceeding.

However, it will be virtually impossible for the FCC to adopt the rules Petitioners propose if RSA unserved area applications are filed prior to the conclusion of this proceeding, thus giving the applicants the procedural and substantive rights of potential licensees. Thus, not granting the requested stay would have the effect of precluding favorable FCC action on the Petition, which, in the context of this proceeding, would surely constitute irreparable injury to Petitioners.

Time is short. The non-wireline Phase I applications for West Virginia RSA #4, for example, are due to be filed May 25, 1995 and

the application due dates for the other affected RSA markets will follow as the five year build out periods expire in 1995 and 1996. Petitioners ask that the status quo be preserved and that irreparable injury be prevented by the immediate grant of a stay.

**C. Other Parties Would Not Be Substantially Harmed By the Issuance of a Stay**

At the present time, there are no unserved area applicants for the Quiet Zone, so such applicants have no interests to be "substantially harmed." If there are potential applicants who wish to file unserved area applications covering the Quiet Zone, they may make their case in this proceeding. And the stay which Petitioners propose would protect the interests of potential applicants as well, since it will also not permit Quiet Zone licensees to file unserved area applications during the pendency of the rule making proceeding.

The only possible detriment which potential applicants would suffer from the stay would be a slight delay. And, for all the reasons given above, the public interest reasons justifying that delay should outweigh any inconvenience to potential applicants.

**D. The Public Interest Lies With Granting A Stay**

This "public interest" consideration should reflect the FCC's conclusions concerning the three prior considerations. Petitioners have shown that they are likely to prevail on the merits, that they will be irreparably harmed by a failure to grant a stay, and that the harm to other parties from the issuance of a stay would be

minimal to non-existent. Petitioners have have thus shown that the public interest would be served by granting a stay.

Accordingly, Petitioners once again ask that the FCC stay the acceptance of unserved area applications proposing service within the National Radio Quiet Zone pending the outcome of this rulemaking proceeding.

Respectfully submitted,

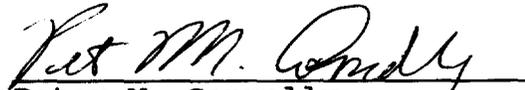
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