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FEDERAL COMMUNICATIONS COMMISSION
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March 1, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC. 20554

Via Messenger

DOCKET FILE COPY ORIGINAL

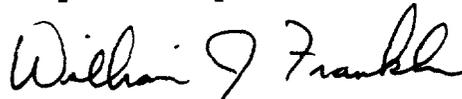
Re: **Future Development of Paging Systems**
(Interim Licensing Proposal)
WT Docket No. 96-18; PP Docket No. 93-253/
Comments of Rule Radiophone Service, Inc. and
Robert R. Rule d/b/a Rule Communications

Dear Mr. Caton:

Transmitted herewith is the original and nine copies of the Comments of Rule Radiophone Service, Inc. and Robert R. Rule d/b/a Rule Communications on the above-captioned Interim Licensing Proposal.

Kindly contact my office directly with any questions or comments regarding the attached.

Respectfully submitted,



William J. Franklin
Attorney for

Rule Radiophone Service, Inc.
and Robert R. Rule d/b/a
Rule Communications

cc: Rule Radiophone Service, Inc.
Robert R. Rule d/b/a Rule Communications

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Revision of Part 22 and Part 90 of the)
Commission's Rules to Facilitate Future)
Development of Paging Systems)
)
Implementation of Section 309(j) of the)
Communications Act -- Competitive Bidding)

WT Docket No. 96-18

DOCKET FILE COPY ORIGINAL
PP Docket No. 93-253

To: The Commission

COMMENTS OF
RULE RADIOPHONE SERVICE, INC. AND
ROBERT R. RULE d/b/a RULE COMMUNICATIONS
ON INTERIM LICENSING PROPOSAL

Rule Radiophone Service, Inc. ("RRSI") and its sole owner Robert R. Rule d/b/a Rule Communications (collectively "Rule"), by their attorney and pursuant to Section 1.415 of the Commission's Rules, hereby respectfully comment on the Commission's proposal to adopt interim licensing rules for commercial paging services.^{1/}

BACKGROUND

RRSI has been a PRS licensee in the state of Wyoming since 1976, and provides both one-way and two-way service to its subscribers using a variety of VHF channels licensed under Part 22 of the Commission's Rules. Mr. Rule similarly is authorized to provide such service southward along the front range of the Rocky Mountains from Wyoming towards Denver, and has pending applications to expand that service there. Based on that experience,

^{1/} Future Development of Paging Systems, 11 FCC Rcd ____ (FCC 96-52, released February 9, 1996) (WT Docket No. 96-18, PP Docket No. 93-253) (Notice of Proposed Rulemaking) ("NPRM").

Rule has a special expertise to comment on the interim licensing rules from the perspective of an experienced, family-owned carrier serving rural America.

I. THE COMMISSION SHOULD NOT ADOPT ANY LICENSING FREEZE WHICH WOULD LIMIT THE ABILITY OF EXISTING CARRIERS TO PROVIDE EXPANDED TWO-WAY SERVICE TO THEIR SUBSCRIBERS.

Licensing of additional base stations is a dynamic, on-going function for smaller paging companies, but proceeds by inches and not by miles. Although at times big companies will be observed filing a huge number of FCC applications all on the same frequency, this isn't the case for smaller paging companies such as RRSI. Smaller companies like RRSI will generally file applications for additional locations, one or two applications at a time, one or two locations at a time, as negotiations are completed for additional sites. In fact, here is how it typically works:

- Customers approach a smaller paging company like RRSI, and start saying something like: "Gosh... Wouldn't it be nice if you could make my pager work in City X. I go there often, and it would be very beneficial to me if it would continue to work as I travel to City X."
- The small company starts to inquire of other customers, to see if there is a realistic demand for expanding the existing service into City X. Perhaps a survey is mailed to customers.
- If demand warrants it, the next step is for the owner (in this instance, Mr. Rule) to drive to City X and obtain an antenna site. Sometimes this requires obtaining land and building a tower, other times it requires signing a lease for office space (along with authority to place an antenna on the roof of the office building being leased.) Often, the only way to firm up the site is to obtain the land or sign the lease, and then let it sit empty until the Commission acts on the system expansion application.
- Once the site is obtained, the Form 600 modification application is prepared and filed.
- After the FCC acts on the application several months later and grants the application, the company purchases the equipment, constructs the station, and begins providing expanded service to its subscribers.

RRSI has followed these procedures over roughly the last twenty years in expanding its service over significant portions of Wyoming and portions of north central Colorado.

However, the recent freeze threw an unexpected monkey wrench into Rule's system-expansion process. In announcing the freeze, the Commission made it clear that it did not intend to disrupt applications "in the pipeline".^{2/} But, what has been overlooked is that everything just described is part of the "pipeline". Just because an incumbent licensee has not yet filed an application prior to the freeze does not mean that considerable energy, effort, and expense had already been expended in order to establish facilities at a new location.

In Rule's experience, the delays and difficulties in firming up antenna site arrangements is a common cause of dead spots or holes in a service area.^{3/} An unscrupulous applicant may think nothing of filing an application for a site for which it lacks a reasonable assurance of access, with the intentions of finding a "real" site before beginning construction. But, scrupulous, family-owned companies like RRSI tend to hold honesty at a very high level, and if they can't firm up arrangements for a site in a given area, they simply don't file the application. The Commission's processing rules should neither penalize those who have complied strictly with the rules, nor reward those whose compliance was less rigorous.

^{2/} NPRM at 64 (¶140). It appears to be all too common in FCC licensing that an applicant will pull a site out of thin air, file an application at that site, and only actually obtain the site after the application has been granted. This constitutes perjury, and these people should be sanctioned. But, in the real world, these are the people who likely will end up getting construction permits under the current freeze, while those who waited until they have completed negotiations for their sites, and then missed the freeze filing deadlines, will get kicked in the teeth.

^{3/} In Wyoming, these holes can easily be twenty miles wide, and thus, will require an individually licensed transmitter to fill, which cannot be served by a fill-in transmitter. Again, certainly no licensee intends to have a service area with a twenty-mile wide hole, but this often happens. Getting these holes plugged is a time-critical top priority for Rule, and this task is completely shut down by the proposed freeze.

The interim processing rules adopted in this proceeding must satisfy the Commission's expressed goal to permit existing carriers to continue to provide service to their subscribers. Whatever rules are adopted should be measured against that standard.

II. THE COMMISSION SHOULD NOT FREEZE THE ACCEPTANCE AND GRANTING OF APPLICATIONS FOR VHF AND UHF TWO-WAY CHANNELS LISTED IN SECTION 22.561 OF THE RULES.

Contrary to what the Commission may have imagined, substantial demand for two-way service on the Part 22 150 MHz and 450 MHz channels continues, not only in rural America, but also in urban areas in the Western United States. In Denver, Colorado, for example, conventional two-way mobile telephone service is still available, and customers in the Denver area are still being served by this valuable service. And, once you get away from the Denver area, demand for conventional two-way service increases considerably.

In Rule's experience, a significant portion of mobile customers in the rural West simply do not want to subscribe to cellular service. And to the extent that broadband PCS service is implemented and managed like cellular, Rule expects that PCS service will be equally unattractive. Indeed, in the sparsely settled portions of Wyoming, only conventional mobile service is available. Cellular service in Wyoming only covers the cities and major highways, and not the isolated ranches, farms, and small towns.^{4/}

^{4/} Comparing the populations, areas, and distances between cities in Wyoming with those of, for example, Maryland illustrates the differences between the various regions of the country. According to the 1990 census, Wyoming only has seven (7) cities over 10,000 people; the three largest are Cheyenne (50,008), Casper (46,742), and Laramie (26,687). The population density of Wyoming is only 4.7 people -- or roughly one family -- per square mile. In contrast, Maryland has fifty-seven (57) cities over 10,000 people, and a population density of almost 500 people per square mile. Montgomery County, Maryland has almost twice the population (757,027) as the state of Wyoming (455,975). If it were in Wyoming, the unremarkable bedroom community of Wheaton, Maryland (58,300) would be the state's

(continued...)

In rural America, people like to know who they are doing business with, and they like to be able to meet face-to-face with the provider of their service. The fact that this is not possible with cellular service has caused many a cellular customer to give up his or her cellular service, and use manually interconnected mobile phone service.^{5/} This is a market-place decision which the FCC should not distort.

Manually interconnected mobile phone services (such as RRSI) provide something that the big cellular companies do not provide: the personalized service of knowing their subscribers' businesses and taking extra steps to provide assistance.^{6/}

Clearly, the Commission did not intend to prevent Rule and similar carriers from providing two-way service; this proceeding is concerned only with one-way paging. But, those who actively provide two-way interconnected non-cellular mobile telephone service are being severely hurt by the freeze and proposed rulemaking. In the same way that the 55 mph speed limit was appropriate for the Northeastern corridor and other densely populated areas of the country, by not for the rural Western states, any substantial preclusion of the

^{4/}(...continued)

largest city. Quite obviously, those dramatic demographic differences result in substantially different requirements for wireless service. "One size fits all" communications regulation simply is not appropriate for the entire country.

^{5/} In many cases, mobile customers unfortunately have been misled by the big cellular services in order to recruit them as customers, and once they became customers, they were treated like cattle by a customer service department located a thousand miles away in a distant city, with the only local connection to the customer being a toll-free "800" number.

^{6/} In Rule's experience, its manual-system operators commonly learn the habits of the customers, and are able to tell callers something like, "Mobile Unit 6789 normally goes to his Lodge meeting on Tuesday evenings, but he almost always checks in for missed calls around 9 PM. Could I give him a message, or if this is an emergency, could I call him at his Lodge for you?"

ability to offer conventional two-way service in those states would not serve the public interest.

The basic concept of licensing a two-way frequency to a single licensee over a large service area might make some sense in paging, but it makes no sense at all and is counterproductive to high quality two-way service. By the very nature of operations on these two-way channels, carriers providing two-way service do not license a common frequency over a wide area. In fact, just the opposite is true. For example, 152.03 MHz and 152.06 MHz might be licensed in "City A", while 152.09 MHz and 152.12 MHz might be licensed in "City B". Then, in nearby "City C", 152.15 MHz and 152.18 MHz might be licensed. Conventional mobile telephones (unlike pagers) typically operate on numerous radio channels within a frequency band. To provide the highest quality of service to the subscribers, adjacent cities need to be on separate radio frequencies.

Indeed, the NPRM found (in paragraph 13) that current licensing activity in the VHF and UHF bands "is confined largely to the addition of fill-in sites and minor expansion by existing licensees [with] relatively little desirable spectrum that remains available...." Thus, there are at best minor benefits but substantial practical and legal problems in auctioning the two-way channels. As a result, the freeze should exempt immediately the VHF and UHF two-way channels listed in Section 22.561 of the Rules. These channels should be given special consideration so that their co-primary usage of two-way is not injured in this proceeding. A significant portion of that usage is two-way communications uniquely provided by Rural Radio and BETRS licensees.²¹ Congress has established a strong public policy

²¹ As discussed above, the Commission's speculation (NPRM, ¶30) that PCS can satisfy this demand is contrary to Rule's experience with cellular service in rural Wyoming.

(continued...)

favoring the continuation of such two-way service. The Commission cannot simply disregard that policy in order to have more paging channels to auction.

III. AT THE MINIMUM, THE COMMISSION SHOULD PROCESS ALL PENDING, NON-MUTUALLY EXCLUSIVE APPLICATIONS FILED BEFORE FEBRUARY 9, 1996, EVEN IF SUCH APPLICATIONS ARE ACCEPTED FOR FILING OR APPEAR ON PUBLIC NOTICE AFTER THAT DATE.

Stated generally, the NPRM seeks to promote continued growth in the paging industry while converting its licensing scheme to a geographic-based auction. NPRM at 2 (¶1). At the same time, the NPRM seeks to allow incumbent licensees to continue to operate their businesses during the rulemaking in any manner which would not impair the Commission's desired objectives. Id. at 64 (¶¶139-40). While these goals are laudable, the Commission unquestionably hasn't gone far enough in giving the industry the flexibility to continue serving its subscribers.

First, the freeze should permit the Wireless Bureau to process all non-shared applications on file as of the date of the NPRM, providing that such applications are not (and do not become) mutually exclusive. Such mutual exclusivity could occur as a result of applications filed in response to the Public Notice of acceptance for filing of the pre-NPRM applications, even if the Public Notice appears and the competing applications are filed after the NPRM date. This freeze would still keep applicants from filing in response to the NPRM, because a post-NPRM, mutually exclusive application would not be processed until the rulemaking were complete.

^{2/}(...continued)

Industry observers feel that PCS service will spread outward from major markets to rural areas, and it will be well into the 21st Century, if at all, before rural Wyoming has PCS service in the remote areas which now require (and have) conventional two-way service.

This proposal eliminates the current confusion regarding the cut-off date for processing applications. On the one hand, the NPRM (in paragraph 146) establishes the cut-off date where "the window for filing competing applications must have closed as of [February 9, 1996]". Section 22.131 contemplates a 30-day filing window for initial authorizations and a 1-day filing window for modifications. Because of the 2 kilometer-relocation limit (Section 22.131(d)(2)(iii)), nearly all applications are deemed as "new". Under that scenario, the mutually exclusive cutoff period must have begun more than 30 days prior to February 8.

Because of the snow emergencies and the Congressional budget problems, applications which would be processed must have appeared on Public Notice by December 15, 1995 (the last Commission business day prior to January 8, 1996). Given the current delays in issuing Public Notices, this means that the acceptable applications must have been filed sometime in November 1995. The Commission will find it difficult, if not impossible, to justify such an arbitrary adoption of a retroactive cut-off date.

On the other hand, footnote 277 to the NPRM asserts that "applications filed prior to January 8, 1996, will be processed provided that they are not subject to mutually exclusive applications." This assertion contradicts the provisions of Section 22.131 discussed above. Rule suggests that the better, and less confusing, policy is for the Commission to process all applications filed prior to February 9, provided that they are not mutually exclusive.

Second, Rule supports the suggestion in paragraph 143 of the NPRM that incumbents be permitted to continue to file new applications during the pendency of the proceeding.^{8/} As discussed above, Rule needs this ability to continue to expand its service.

^{8/} The Commission should also continue to accept control applications during this period, even when filed on the mobile channel of a two-way frequency pair.

Obviously, Rule would be expanding its coverage to provide added service to the public. This added coverage should become protected if the auction winner is unwilling or unable to do so. While the Commission might want to designate this added coverage as secondary, procedures should exist to convert the coverage to primary status if either (a) the auction winner for the market either does not cover the incumbent's added coverage area during the auction winner's initial license term or (b) the auction winner loses its license for failure to construct or otherwise.

IV. THE COMMISSION MUST PROCESS PENDING, NON-MUTUALLY EXCLUSIVE APPLICATIONS DURING ITS FREEZE, EVEN WHERE SUCH APPLICATIONS ARE SUBJECT TO PETITIONS FOR RECONSIDERATION.

Finally, the Commission must define "pending applications" for the purpose of the freeze to include all applications which have been accepted for filing and whose disposition (by either grant or dismissal) has not become final and unappealable. See Section 1.65(a).

For example, Mr. Rule has pending applications (File Nos. 25594-CD-P/L-95 and 26509-CD-P/L-95) which seek authorization for new facilities to operate on two VHF channels. He filed these applications on January 26, 1995, and February 22, 1995, respectively. The Bureau accepted them for filing on February 15, 1995, and March 15, 1995, respectively. No competing applications were filed. Neither of Mr. Rule's applications is mutually exclusive with any other application.

However, the Bureau erroneously dismissed Mr. Rule's applications for failing to provide interference studies with respect to facilities whose licenses had been cancelled by Public Notice several weeks before Mr. Rule filed his two applications. For this reason, Mr. Rule timely filed a Petition for Reconsideration of the Bureau's actions, requesting that his applications be reinstated and granted. No Oppositions were filed against this Petition. But

for the Bureau's inadvertent processing errors, these applications likely would have been granted (and their facilities constructed) by now. The adoption of the freeze should not prevent timely reinstatement and granting of Mr. Rule's applications.

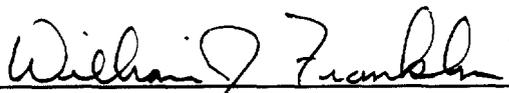
In general, the freeze should not prevent the Commission from processing non-mutually exclusive applications which have not been granted due to either a Petition to Deny or a Petition for Reconsideration. It would be arbitrary, capricious, and an abuse of discretion if the Bureau were to defer the processing of contested, non-mutually exclusive applications until the completion of the rulemaking, and then to dismiss them as not granted prior to that date, while continuing to process non-contested applications. The mere exercising of an applicant's or other petitioner's rights under the Communications Act is not a valid basis for the denial of applications.

CONCLUSION

As set forth herein, Rule respectfully requests that the Commission adopt its interim paging rules with the modifications set forth herein.

Respectfully Submitted,

**RULE RADIOPHONE SERVICE, INC. and
ROBERT R. RULE d/b/a
RULE COMMUNICATIONS**

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