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April 2, 1996

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

Via Messenger

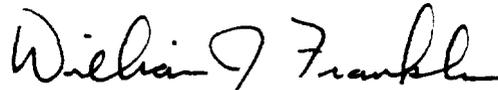
Re: **Future Development of Paging Systems  
(Auction Licensing Proposal)**  
WT Docket No. 96-18; PP Docket No. 93-253  
Comments of Rule Radiophone Service, Inc. and  
Robert R. Rule d/b/a Rule Communications

Dear Mr. Caton:

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

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

APR - 2 1996

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

PP Docket No. 93-253

To: The Commission

**REPLY COMMENTS OF  
RULE RADIOPHONE SERVICE, INC. AND  
ROBERT R. RULE d/b/a RULE COMMUNICATIONS  
ON AUCTION 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 reply to comments filed on the Commission's proposal to adopt auction licensing rules for commercial paging services.<sup>1/</sup>

Rule separately addresses Comments filed both with respect to the Initial Regulatory Flexibility Analysis ("IFRA") and with respect to the Commission's auction proposal. In summary, Rule concludes that the auction proposal is contrary to the interests of itself and similarly situated small businesses. In particular, the Commission should not auction the "lower band" 150 MHz and 450 MHz Part 22 channels. Further, the Commission must adopt rules which provide limited post-auction expansion rights for incumbents.

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<sup>1/</sup> 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 filed Comments in this proceeding with respect to the proposed interim licensing rules (the "Rule Interim Comments") and with respect to the proposed auction rules (the "Rule Auction Comments").

**REPLY COMMENTS WITH RESPECT TO  
INITIAL REGULATORY FLEXIBILITY ANALYSIS:**

**I. PASS WORD, INC. CORRECTLY NOTED THAT THE COMMISSION'S AUCTION PROPOSAL WILL DISADVANTAGE THE INTERESTS OF SMALL BUSINESSES IN DEVELOPING AND EXPANDING THEIR PAGING SYSTEMS.**

Rule supports the Comments of Pass Word, Inc. (at 2-7) with respect to the Commission's IFRA (Appendix A to the NPRM). The IRFA concluded that the paging auction proposal would "benefit" small entities by facilitating their market entry and access to capital, increasing their flexibility, and lessening their administrative burdens.

Pass Word concluded that the IFRA was incorrect, and that auctioning paging licenses would not serve the public interest or benefit small entities. Consolidated Communications Mobile Services, Inc. ("CCMS") shared this concern (at 5-7), noting that the Commission's auction proposal "will threaten the viability of small and mid-sized paging operators."

These conclusions are supported by Rule's Auction Comments, which demonstrate that small businesses generally cannot provide wide-area MTA paging, that wide-area paging systems are unlikely to provide timely service to rural America, that existing small paging operators likely be unable to acquire licenses in an auction even for their existing channels, and that a likely result of auctioning paging licenses is the slow strangulation of existing, smaller paging companies.

Accordingly, in assessing the comments in this proceeding, the Commission must be careful to craft paging rules which will truly benefit small businesses, their subscribers, and the public interest.

**REPLY COMMENTS WITH RESPECT TO  
PROPOSED AUCTION RULES:**

**II. NUMEROUS PARTIES AGREE WITH RULE THAT THE COMMISSION SHOULD NOT AUCTION TWO-WAY MOBILE-TELEPHONE AND BASIC EXCHANGE TELECOMMUNICATIONS RADIO SERVICE (BETRS) CHANNELS, IF NOT ALL 150 MHz AND 450 MHz PART 22 CHANNELS.**

In its Interim Comments, Rule described (at 4-7) how two-way mobile-telephone service remains in demand in much of America, and how two-way service requires a licensing plan inconsistent with wide-area paging. Similarly, in its Auction Comments, Rule described (at 23-24) the importance of two-way mobile telephone and BETRS service to its users.

Numerous other parties to this proceeding have made similar observations, and they have concluded that the Commission should not auction channels used for two-way mobile telephone and BETRS service. For example, the Nucla-Naturita Telephone Company ("NNTC") documented (at 3-5 and 9-10) how the Commission's adoption of auctions for frequencies also allocated for BETRS would contravene Sections 1 and 309(j)(7)(A) of the Communications Act. Small Business in Telecommunications ("SBT") makes the same observations (at 7-8), but also observes (at 5-6) that the Commission's proposal is further inconsistent with existing two-way (Improved Mobile Telephone Service, or "IMTS") use of the channels.

Indeed, drawing upon similar experiences to Rule's, the Paging Coalition (at 2-5) urges the Commission not to auction any of the 150 Mhz (VHF) and 450 MHz (UHF) Part 22 channels.<sup>2/</sup> Both the Coalition and Rule based their comments in part of the

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<sup>2/</sup> Notably, the Paging Coalition (at 4) echoed Rule's concern (Auction Comments at 16-17) that an auction winner could use its license to act as a "slum lord" and hold incumbent  
(continued...)

Commission's own finding (NPRM, ¶13) that "there is relatively little desirable spectrum that remains available for licensing" in these bands. The Paging Coalition (at 15) specifically requested that IMTS channels not be subject to auction. CCMS (at 7), went even further, suggesting that the "lower band" 150 Mhz (VHF) and 450 MHz (UHF) Part 22 channels not be subject to auction.

### **III. NUMEROUS PARTIES AGREE WITH RULE THAT THE COMMISSION SHOULD RETAIN EXPANSION RIGHTS FOR INCUMBENTS EVEN AFTER PAGING LICENSES ARE AUCTIONED.**

In its Auction Comments, Rule proposed (at 16-17) a mechanism by which incumbent paging licensees would retain limited expansion rights for their systems even after paging licensees are auctioned.<sup>2/</sup> In Rule's view, incumbents should be able to expand their interference contours in urban areas up to 25 miles in urban areas and up to 100 miles in rural areas. Further, expansions beyond those limits should be permitted where the geographic licensee does not oppose the expansion within 30 days after Public Notice.

Other parties agreed with Rule's general proposal, although they differed as to the specifics. For example, Ameritech proposed (at 11-13) that incumbents be permitted to define their protected area, consisting of their composite interference contour and all gaps therein up to 150 miles across. The Paging Coalition suggested (at 20-21) that incumbents be permitted to file for transmitters within 40 miles of their existing transmitters, or in

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<sup>2/</sup>(...continued)  
licensees "hostage" to unreasonable demands. Ameritech (at 9) warned about a "sort of sabotage" of incumbents by auction winners.

<sup>3/</sup> As set forth above, Rule does not oppose auctioning of paging licensees only for the 929 MHz and 931 Mhz channels. However, to the extent that the Commission auctions lower-band paging channels, the remainder of these Reply Comments should also apply to those auctions as well.

"pockets" substantially surrounded by an existing system. CCMS suggests (at 9-10) that incumbents be afforded an opportunity after the auction to expand their system into contiguous unserved areas.

Finally, Rule (Interim Comments at 8-9) 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.<sup>4/</sup> As discussed above, Rule needs this ability to continue to expand its service.

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.

Certainly the Commission does not want to create a regulatory "Catch 22" where neither the auction winner nor any incumbent or other licensee provides communications service to an unserved area. This could happen under the proposed rules when an auction winner is unwilling or unable to provide service to an unserved portion of its market (not otherwise needed to satisfy any minimum coverage requirements). As proposed, the auction rules would preclude incumbents or other licensees from providing this service by coverage

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<sup>4/</sup> 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.

expansion into an unserved area even if they wanted to do so. At most, the Commission should auction paging licenses, not fiefdoms.<sup>5/</sup>

**IV. TO THE EXTENT THAT PAGING CHANNELS ARE AUCTIONED, THE LICENSING AREA GENERALLY SHOULD BE NO BIGGER THAN A BASIC TRADING AREA; CHANNELS SHOULD BE EXEMPTED FROM THE AUCTION WHERE SUBSTANTIALLY LICENSED WITHIN THE MARKET.**

In its Auction Comments, Rule suggested (at 13-14) that the Commission should auction 150 MHz and 450 Mhz channels (if at all) on a county-by-county basis and 929/931 MHz channels on a multiple-county basis. Other parties split on this issue; most favoring Basic Trading Areas or Economic Areas, and a few favoring Major Trading Areas. Some favored a mix of sizes at 929/931 MHz, with a few PCS-like regional licenses, some MTAs, and primarily BTAs or EAs.

Upon review of these Comments, Rule continues to support the smallest feasible region for each frequency band. At 929/931 MHz, use of the BTA or EA generally would be acceptable.

However, Rule generally supports the "opt-out" proposals made by several parties. Under these proposals, channels would be exempted from the auction where substantially licensed within the market. For example, Ameritech (at 13) favors a minimum of 70% population coverage. The Paging Coalition (at 8) places the limit at two-thirds (66%) of population coverage within the composite interference contour. SBT (at 16) proposes that designated entities receive a dispositive preference for any market in which their licensed

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<sup>5/</sup> The Commission's recent experience with cellular unserved-area licensing illustrates that the threat of eventual third-party licensing to unserved areas is perhaps the strongest incentive for existing carriers to expand their service areas. Without this threat, an auction winner has no regulatory incentive ever to provide needed communications service beyond the minimum required coverage.

channel provides service to one-third or more of the population or one-half or more of the area.

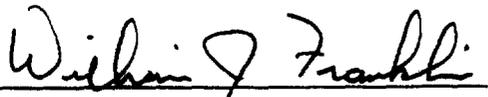
Of these proposals, that of the Paging Coalition (two-thirds of population within composite interference contours) best seems to balance the Commission's preference for auctions against the realities that auctioning licenses which cannot provide substantial service is not in the public interest.

### CONCLUSION

As set forth herein and in its Comments, Rule respectfully requests that the Commission adopt its auction paging rules with specific measures to protect the interests of small businesses, other paging licensees and their subscribers, and two-way mobile telephone and BETRS licensees and their subscribers, as well as the public interest as a whole.

Respectfully Submitted,

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

By: 

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was sent by U.S. mail, first-class postage prepaid, on this 2d day of April, 1996, to:

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