

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

In the Matter of)
)
Revision of Part 22 and Part 90 of the) WT Docket No. 96-18
Commission's Rules to Facilitate Future)
Development of Paging Systems)
)
Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act --)
Competitive Bidding)

To: The Commission

DOCKET FILE COPY ORIGINAL

PETITION FOR PARTIAL RECONSIDERATION

Radiofone, Inc. (Radiofone), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby requests partial reconsideration of the interim licensing rules adopted in the Commission's First Report and Order ("the Order") in the above-captioned proceeding.¹ The Commission should be applauded for establishing interim licensing rules which permit incumbent carriers to file expansion applications. However, Radiofone is joining in the simultaneously filed Petition for Partial Reconsideration of Blooston, Mordkofsky, Jackson & Dickens, which demonstrates that the interim filing rights must be modified in order to: (1) allow expansion from recently granted sites, (2) allow 75-mile expansions in less populated areas, and (3) prevent unwarranted competing applications. This instant petition is being filed separately to bring to the Commission's attention an issue which is particular

¹ WT Docket No. 96-18 and PP Docket No. 93-253, 61 Fed. Reg. 21380 (May 10, 1996).

to Radiofone and a handful of other carriers who have followed the Commission's rules concerning extended implementation of paging systems. As discussed below, these carriers should be allowed to expand from any authorized site for which a performance bond has been posted, regardless of whether the site has been constructed.

Expansion Rights Must Be Accorded To Slow Growth Licensees.

The Commission's Order, which permits incumbent licensees to file expansion applications, is a step in the right direction. However, the Commission has limited the right of incumbent licensees to file such expansion applications to those sites within a 40-mile radius of a co-channel stations which were licensed to the applicant as of February 8, 1996, and which have been constructed. The latter requirement works an undue hardship on carriers such as Radiofone, that have planned their systems based on the Commission's extended implementation rules for regional private carrier paging systems.

As described in its March 18, 1996 comments in this proceeding, Radiofone is licensed to construct and operate two regional private carrier paging systems in the 929 MHz band, covering significant portions of the southeastern and southwestern United States. Each system encompasses more than 100 transmitter sites already, and will surpass several hundred sites when fully implemented. In accordance with the Commission's rules for 929 MHz exclusive paging systems, Radiofone planned its initial coverage to meet the requirements to qualify for regional exclusivity. Therefore, many portions

of each system are licensed for only a relative handful of transmitters at this time, and the coverage in these areas was to be filled in completely through the filing of additional site applications as the system buildout proceeds. Because of the tremendous scope of these systems, Radiofone requested authority for and was granted an extended implementation schedule, as provided for by Rule Section 90.496. To this end, Radiofone has posted a bond of \$1,680,000, and has committed itself to a rigorous buildout schedule at the risk of forfeiting the portion of the performance bond allocated to each site.

The imposition of the paging freeze has made it nearly impossible for Radiofone to fill-in the gaps between currently authorized coverage areas, and apply for extensions of coverage in each market that will eventually be necessary to provide a complete and reliable paging service. While the modifications made to the paging freeze by the Order allow expansion from constructed sites, this affords little relief to Radiofone, which cannot possibly construct all the facilities on its extended implementation schedule in time to take advantage of the ability to file expansion applications. Indeed, the Commission's staff has apparently indicated at recent industry events that the paging auctions could be held as soon as October 1996, which may effectively end expansion opportunities for incumbent licensees.

Accordingly, the Commission should clarify that regional paging carriers can apply for expansion of their coverage within 40 miles of any site which is either constructed, or covered by a performance bond pursuant to Rule Section 90.496. Because such licensees have posted a bond, the Commission can be assured that the licensee will ultimately construct the granted facilities,

and that any expansion proposals will be bona fide in nature. In the alternative, the Commission should clarify that incumbent licensees will retain the ability to file expansion applications within 40 miles of constructed sites even after any market area licensing process has been completed. Either course would afford protection to licensees such as Radiofone, that have invested millions of dollars in regional paging systems, in reliance on the Commission's existing rules. For the reasons set forth in Radiofone's March 18, 1996 comments, protection of such regional carriers is vital to the public interest and would comport with the requirements of the Administrative Procedure Act and other relevant statutes.

CONCLUSION

In light of the foregoing, it is respectfully requested that the Commission modify its interim paging licensing rules in the manner described above.

Respectfully submitted,

RADIOFONE, INC.

By: 

John A. Prendergast
Richard D. Rubino

BLOOSTON, MORDKOFKY, JACKSON
& DICKENS
2120 L Street, N.W., Suite 300
Washington, D.C. 20037
(202) 659-0830

Filed: June 6, 1996

CERTIFICATE OF SERVICE

I, Elizabeth A. Ebere, hereby certify that I am an employee of Blooston, Mordkofsky, Jackson & Dickens, and that on this 6th day of June 1996, I caused to be delivered by first-class U.S. mail, postage prepaid, a copy of the foregoing **Petition for Partial Reconsideration** to the following:

Chairman Reed Hundt *
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554

ITS *
Room 246
1919 M Street, NW
Washington, DC 20554

Commissioner James Quello *
Federal Communications Commission
1919 M Street, NW, Room 802
Washington, DC 20554

A. Thomas Carroccia, Esq.
Bell, Boyd & Lloyd
1615 L Street, N.W., Suite 1200
Washington, D.C. 20036
For: A + Communications, Inc.

Commissioner Andrew Barrett *
Federal Communications Commission
1919 M Street, NW, Room 826
Washington, DC 20554

John L. Crump
d/b/a ACE Communications
11403 Waples Mill Road
P.O. Box 3070
Oakton, VA 22124

Commissioner Rachelle Chong *
Federal Communications Commission
1919 M Street, NW, Room 844
Washington, DC 20554

George V. Wheeler, Esq.
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
For: American Paging, Inc.

Commissioner Susan Ness *
Federal Communications Commission
1919 M Street, NW, Room 832
Washington, DC 20554

Donald J. Evans, Esq.
McFadden, Evans & Sill
1627 Eye Street, N.W., Suite 810
Washington, D.C. 20006
For: B & B Communications, Inc.

Michelle Farquhar, Chief *
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, D.C. 20554

Jill Abeshouse Stern, Esq.
Robert J. Cynkar, Esq.
Janice H. Ziegler, Esq.
Edmund D. Daniels, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037
For: Coalition for a Competitive
Paging Industry

David Furth, Chief *
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 7002
Washington, D.C. 20554

Mika Savir, Esq. - Legal Branch *
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 7130
Washington, D.C. 20554

Veronica M. Ahern, Esq.
Nixon, Hargrave, Devans & Doyle
One Thomas Circle
Washington, D.C. 20005
For: Consolidated Communications
Mobile Services, Inc.

* By Hand Delivery

Michael J. Shortley, III, Esq.
 Frontier Corporation
 180 South Clinton Avenue
 Rochester, NY 14646

Joseph Konopny, Esq.
 William L. Fishman, Esq.
 Sullivan & Worcester, LLP
 1025 Connecticut Avenue, N.W.
 Suite 1000
 Washington, D.C. 20036
 For: Diamond Page Partnerships
 AmericaOne
 Northwest Pager
 Metro Paging
 West Virginia Pager
 PagerOne

Alan S. Tilles, Esq.
 Meyer, Faller, Weisman & Rosenberg
 440 Jenifer Street, N.W., Suite 380
 Washington, D.C. 20015
 For: Glenayre Technologies, Inc.

Gene P. Belardi, Vice President
 MobileMedia Communications, Inc.
 2101 Wilson Boulevard, Suite 935
 Arlington, VA 22201

Thomas Gutierrez, Esq.
 J. Justin McClure, Esq.
 Lukas, McGowan, Nace & Gutierrez
 1111 19th Street, N.W., Suite 1200
 Washington, D.C. 20036
 For: Mobile Telecommunication
 Technologies Corporation

William J. Franklin, Esq.
 William J. Franklin, Chartered
 1200 G Street, N.W., Suite 800
 Washington, D.C. 20005-3814
 For: North State Communications Inc.
 Rule Radiophone Service, Inc.
 Rule Communications

Robert R. Rule
 Rule Communications, Inc.
 2232 Dell Range Boulevard
 Cheyenne, WY 82009

Lucille M. Mates, Esq.
 Pacific Bell
 140 New Montgomery St., Rm 1526
 San Francisco, CA 94105

James L. Wurtz, Esq.
 Margaret E. Garber, Esq.
 Pacific Telesis
 1275 Pennsylvania Avenue, N.W.
 Washington, D.C. 20004
 For: Pacific Bell

Judith St. Ledger-Roty, Esq.
 Paul G. Madison, Esq.
 Reed, Smith, Shaw & McClay
 1301 K Street, N.W.
 Suite 1100 - East Tower
 Washington, D.C. 20005
 For: Paging Network, Inc.

Phillip L. Spector, Esq.
 Thomas A. Boasberg, Esq.
 Paul, Weiss, Rifkind, Wharton
 & Garrison
 1615 L Street, N.W.
 Washington, D.C. 20036
 For: Pagemart, Inc.

John D. Pellegrin, Esq.
 John D. Pellegrin, Chartered
 1140 Connecticut Avenue, N.W.
 Suite 606
 Washington, D.C. 20036

Katherine M. Holden, Esq.
 Wiley Rein & Fielding
 1776 K Street, N.W.
 Washington, D.C. 20006
 For: Personal Communications
 Industry Association

Mark J. Golden
 Vice President of Industry Affairs
 Personal Communications Industry Assn
 1019 19th Street, N.W., Suite 1100
 Washington, D.C. 20036

George L. Lyon, Jr., Esq.
 Pamela Gaary, Esq.
 Lukas, McGowan, Nace & Gutierrez
 1111 19th Street, N.W., Suite 1200
 Washington, D.C. 20036
 For: Jon D. Word
 Pioneer Telephone Cooperative

Terry J. Romine, Esq.
 Lukas, McGowan, Nace & Gutierrez
 1111 19th Street, N.W., Suite 1200
 Washington, D.C. 20036
 For: Preferred Networks, Inc.

Ellen S. Mandell, Esq.
 Pepper & Corazzini, LLP
 1776 K Street, N.W., Suite 200
 Washington, D.C. 20006
 For: Pagers Plus
 Priority Communications, Inc.

Jerome K. Blask, Esq.
 Daniel E. Smith, Esq.
 Gurman, Blask & Freedman, Chartered
 1400 Sixteenth Street, N.W.
 Suite 500
 Washington, D.C. 20036
 For: ProNet Inc.

Robert H. Schwaninger, Jr., Esq.
 Brown and Schwaninger
 1835 K Street, N.W., Suite 650
 Washington, D.C. 20006

David L. Hill, Esq.
 Audrey P. Rasmussen, Esq.
 O'Connor & Hannan
 1919 Pennsylvania Avenue, N.W.
 Suite 800
 Washington, D.C. 20006-3483
 For: Paging Partners Corporation
 Source One Wireless, Inc.

Richard S. Becker, Esq.
 James S. Finerfrock, Esq.
 Jeffrey E. Rummel, Esq.
 Richard S. Becker & Assoc., Chartered
 1915 Eye Street, N.W., 8th Floor
 Washington, D.C. 20006
 For: TSR Paging Inc.

Raymond C. Trott, P.E.
 Trott Communications Group, Inc.
 1425 Greenway Drive, Suite 350
 Irving, TX 75038

Steven S. Seltzer, President
 Personal Communications, Inc.
 RCC of Pennsylvania, Inc.
 Modern Communications Corp.
 P.O. Box One
 Altoona, PA 16603-0001

Amelia L. Brown, Esq.
 Henry A. Solomon, Esq.
 Haley, Bader & Potts
 4350 N. Fairfax Drive, Suite 900
 Arlington, VA 22203-1633
 For: Personal Communications, Inc.
 RCC of Pennsylvania, Inc.
 Modern Communications Corp.
 Western Radio Services Co., Inc.

Frederick M. Joyce, Esq.
 Christine McLaughlin, Esq.
 Joyce & Jacobs, LLP
 1019 19th Street, N.W.
 14th Floor, PH-2
 Washington, D.C. 20036
 For: A+ Network
 Brandon Communications
 Merryville Investments
 Metrocall, Inc.
 Morris Communications, Inc.
 Nationwide Paging, Inc.
 Page-USA, Inc.
 Pager One

George L. Lyon, Jr., Esq.
 David Nace, Esq.
 Lukas, McGowan, Nace & Gutierrez
 1111 19th Street, N.W., Suite 1200
 Washington, D.C. 20036
 For: Page Telecommunications, LLC
 Heartland Telecommunications

Alan R. Shark, President
 American Mobile Telecommuni-
 cations Association
 1150 18th Street, N.W., Suite 250
 Washington, D.C. 20036

Rick Hafla
Teton Communications, Inc.
545 South Utah Avenue
Idaho Falls, ID 83402

Pamela L. Gist, Esq.
Lukas, McGowan, Nace & Gutierrez
1111 19th Street, N.W., Suite 1200
Washington, D.C. 20036
Counsel for: Liberty Cellular, Inc.

Charles D. Cosson, Esq.
Mary McDermott, Esq.
Linda Kent, Esq.
U.S. Telephone Association
1401 H Street, N.W., Suite 600
Washington, D.C. 20005

William Ciuffo
Comp Comm, Inc.
One Echelon Plaza, Suite 100
227 Laurel Road
Voorhees, NJ 08043-2331

Lloyd D. Huffman
Huffman Communications
2829 West 7th Avenue
P. O. Box 1753
Corsicana, TX 75151-1753

Caressa D. Bennet, Esq.
Michael R. Bennet, Esq.
Bennet & Bennet, PLLC
1831 Ontario Place, N.W., Suite 200
Washington, D.C. 20009
For: Border to Border Communications

Larry Shaefer, President
SMR Systems, Inc.
4212 Mt. Vernon
Houston, TX 77006-5416

Dallas Vanderhoof
General Manager
TeleBEEPER of New Mexico, Inc.
P.O. Box 25161
Albuquerque, NM 87125

Laura H. Phillips, Esq.
Christina H. Burrow, Esq.
Dow, Lohnes & Albertson
1200 New Hampshire Avenue, NW
Suite 800
Washington, D.C. 20036-6802
For: Sunbelt Transmission Corp.
Snider Communications Corp.

Lawrence M. Miller, Esq.
Schwartz, Woods & Miller
1320 Connecticut Avenue, NW
Suite 300
Washington, D.C. 20036
For: Datafon II, Inc.
Zipcall Long Distance, Inc.

James F. Roberts, Esq.
Marsha Y. Reeves, Esq.
Latham & Watkins
1001 Pennsylvania Avenue, NW
Suite 300
Washington, D.C. 20004-2505
For: PageAmerica Group, Inc.

Donald A. Fishman, Esq.
Kevin C. Boyle, Esq.
Latham & Watkins
1001 Pennsylvania Avenue, NW
Suite 300
Washington, D.C. 20004-2505
For: MobileMedia Communications, Inc.

David C. Jatlow, Esq.
Young & Jatlow
2300 N Street, NW, Suite 600
Washington, D.C. 20037
For: AT&T Wireless

Dennis L. Myers, Vice President
Ameritech Cellular Services
2000 West Ameritech Center Drive
Location 3H78
Hoffman Estates, IL 60195-5000

Jay Kitchen, President
PCIA
500 Montgomery Street, Suite 700
Alexandria, VA 22314

Heather Hipsley, Esq.
 Bureau of Consumer Protection
 Federal Trade Commission
 6th and Pennsylvania Avenues, N.W.
 Room 282-B
 Washington, D.C. 20580

Jeanne M. Walsh, Esq.
 Kurtis & Associates, P.C.
 2000 M Street, NW, Suite 600
 Washington, D.C. 20036

Jack Richards, Esq.
 Keller and Heckman
 1001 G Street, NW, Suite 500 West
 Washington, D.C. 20001

Kevin O'Brien, President
 O'Brien Communications
 5054 Rapidan Place
 Annandale, VA 22003

Carl W. Northrop, Esq.
 Paul, Hastings, Janofsky & Walker
 1299 Penn. Ave, NW, 10th Floor
 Washington, D.C. 20004
 For: AACS Communications, Inc.
 AirTouch Paging
 Answer, Inc.
 Arch Communications Group Inc.
 Cal-Autofone
 Centrapage of Vermont
 Centracom, Inc.
 Communications Enterprises
 Desert Mobilfone
 Detroit Newspaper Agency
 Electronic Engineering Company
 Hello Pager Company, Inc.
 Jackson Mobilphone Company
 LaVergne's Telephone Ans. Serv.
 Midco Communications
 Donald G. Pollard d/b/a Siskiyou
 Mobilfone
 PowerPage, Inc.
 Radio Electronic Products Corp.
 RETCOM, Inc.
 Westlink Licensee Corporation

Timothy E. Welch, Esq.
 Hill & Welch
 1330 New Hampshire Avenue, N.W.
 Suite 113
 Washington, D.C. 20036
 For: Amery Telephone Company, Inc.
 ATS Mobile Telephone, Inc.
 B & B Beepers
 Baker's Elec. & Communications
 Baldwin Telecom, Inc.
 Benkelman Telephone Company
 Chequamegon Telephone Co-op
 Communications Sales & Service
 HEI Communications, Inc.
 Mashell Connect, Inc.
 Metamora Telephone Company
 Mobilfone Service, Inc.
 Paging Associates, Inc.
 Pigeon Telephone Company, Inc.
 Porter Communications, Inc.
 Karl A. Rinker d/b/a Rinkers
 Communications
 Supercom, Inc.
 Wauneta Telephone Company
 Wilkinson County Telephone
 Company, Inc.


 Elizabeth A. Ebere