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

In re	)	
	)	
Request of Cellular Communications of Puerto Rico, Inc. to Hold an Auction to License Cellular RSA No. 727A, Ceiba, Puerto Rico	)	RM-8897

To: The Commission

REPLY TO OPPOSITION TO MOTION TO STRIKE REPLY COMMENTS AND OPPOSITION TO REQUEST FOR SANCTIONS AGAINST RSA OPERATORS GROUP

The RSA Operators Group ("RSAOG"), by their counsel, respectfully submits its response to the Opposition to Motion to Strike Reply Comments and Request for Sanctions Against RSAOG ("Opposition") filed by Cellular Communications of Puerto Rico, Inc. ("CCPR") on January 2, 1997.

RSAOG's Motion to Strike ("Motion") explained that a communication would be considered a prohibited *ex parte* communication when it (a) presented sufficient facts to identify a specific proceeding and (b) related to the merits of that proceeding. Russell H. Carpenter, Jr., 3 FCC Rcd 6141 (OMD 1988). CCPR denies that its Reply Comments and its initial petition that instigated this proceeding ("Petition") were prohibited *ex parte* communications. CCPR claims that unlike the presentations in Carpenter:

> ***CCPR's presentations in this proceeding had nothing to do with the Commission's ultimate choice of a licensee for the Ceiba RSA market*** or any of the other five RSA markets referenced in the lottery notice. Rather, CCPR's presentations involved only the procedure by which the Commission should award these licenses.

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CCPR Opposition at p.2 (emphasis added). Clearly, CCPR's requested changes go well beyond simply changing "only the procedure by which the Commission should award [RSA] licenses." Id. CCPR's proposed changes are intended precisely to change "the Commission's ultimate choice of a licensee for the Ceiba market..." to use CCPR's own above-quoted standard.

CCPR's presentations sought changes in FCC rules that would

> (a) open a new filing window to allow competing applications to be filed against the pending, cut-off applications that are protected from the filing of new mutually-exclusive applications; and
>
> (b) allow entities now ineligible to hold permanent RSA licenses in certain markets (such as interim operating authorization holders in such markets) to be eligible to participate in the permanent licensing process.

CCPR's presentations in this proceeding have been directed specifically at the Ceiba PR RSA market, as evidenced by the manner the caption is styled in its Opposition. CCPR's initial petition referenced only the Ceiba PR RSA. The reason for CCPR's focus is evident. CCPR is the current IOA holder in the Ceiba PR RSA. Absent a change in FCC rules and policies, CCPR is precluded from becoming the initial permanent licensee in Ceiba, a market with which CCPR is intimately familiar and has proprietary information concerning the true value of the market. Such information would afford a significant advantage to CCPR if it were allowed to participate in an auction licensing process for the Ceiba PR RSA.

CCPR's claims notwithstanding, the matters raised by CCPR in its presentations in this proceeding go directly to the issues to be decided in the restricted Ceiba PR RSA proceeding and therefore

each Ceiba PR RSA pending applicant was required to be served with copies of all of CCPR's filings in the above-referenced proceeding. The Commission itself so held respecting CCPR's pre-September 18, 1996 presentations, deeming them "impermissible." *See*, Public Notice, DA 96-1685, released October 24, 1996 at p.2. ("Request for Comments Notice"). Although the Request for Comments Notice purported to open the door prospectively for *ex parte* presentations addressed to the merits, RSAOG has consistently contended that it was arbitrary and capricious for the Commission to waive its *ex parte* and service rules respecting any pleadings which seek either dismissal of the pending applications or elimination of their status as protected and cut-off. *See, e.g.*, RSAOG Comments filed November 25, 1996 at n.1; RSAOG Reply Comments filed December 10, 1996 at n.1; RSAOG Motion to Strike and Request for Sanctions against CCPR filed December 10, 1996 *seriatim*. RSAOG's position is supported by recent precedent. *See, e.g.*, letter decision dated December 11, 1996 from Andrew S. Fishel to Robert L. Petit, Esq., concerning *ex parte* presentations of PCS 2000, L.P., p.2. (Copy attached hereto for convenience.)

CCPR's Opposition also asks that sanctions be levied against the RSAOG for alleging in RSAOG's pleadings that CCPR's presentations violated the Commission's *ex parte* rules. RSAOG's position, *i.e.*, that it is arbitrary and a violation of the due process clause of the U.S. Constitution for the Commission to accept and/or consider *ex parte* filings which seek dismissal of specific applications or removal of their status as cut-off, is not

only reasonable but correct, and RSAOG has asserted its position consistently in good faith. CCPR's suggestion that sanctions be imposed against RSAOG seems to be an attempt to divert the Commission from initiating an investigation of CCPR's complete disregard for the Commission's *ex parte* rules which this Commission already held were violated by CCPR.[1]

CCPR's disregard for the *ex parte* rules should not be countenanced. Its back-door and cavalier attitude towards the rights of qualified cut-off applicants in the Ceiba PR RSA proceeding require the Commission to strike CCPR's initial petition and its Reply Comments.

Respectfully submitted,

RSA OPERATORS GROUP

By: _____

Richard L. Brown
David J. Kaufman
Scott C. Cinnamon
Its Attorneys

Brown Nietert & Kaufman, Chtd.
1920 N Street, N.W.
Suite 660
Washington, D.C. 20036

January 13, 1997

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[1] As discussed in RSAOG's December 10, 1996 Motion to Strike and Request for Sanctions against CCPR, further sanctions against CCPR are appropriate because its participation in the Ceiba PR RSA permanent licensing proceeding violates the terms of its IOA for the Ceiba PR RSA. Every day that the choice of an initial permanent licensee is delayed is another day that CCPR, as the interim operator, collects more revenues from its interim operations. It is for this reason, among others, that IOA holders are prohibited from participating in initial permanent licensing proceedings -- their vested interest is to engender delay as CCPR is doing here. At the very least, CCPR should be required to disgorge the revenues it earns between September 18, 1996 and the actual lottery date.

CERTIFICATE OF SERVICE

I, Melissa L. Clement, a secretary at the law firm of Brown Nietert & Kaufman, Chartered, do hereby certify that I caused a copy of the foregoing "**Reply to Opposition to Motion to Strike Reply Comments and Opposition to Request for Sanctions Against RSA Operators Group**" to be sent via first class U.S. mail, postage prepaid or hand delivered, this 13th day of January, 1997 to each of the following:

Eric J. Bash, Esq.*
Commercial Wireless Division
Legal Branch
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 7130
Washington, DC 20554

Charles D. Ferris, Esq.
Sara F. Seidman, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, DC 20004

ITS
2100 M Street, N.W.
Room 140
Washington, DC 20554

John T. Scott, III
Crowell & Moring, L.L.P.
1001 Pennsylvania Ave., N.W.
Washington, DC 20004

Christopher R. Johnson
Manager, Regulatory Affairs
2201 NW Sammamish Road
Suite 100
Issaquah, WA 98027

Melissa L Clement

Melissa L. Clement

* Via Hand Delivery

SCC\LOTTERY.CERT\mlc