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

MAY 2 1997

Federal Communications Commission
Office of Secretary

In re the matters of)
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CAPITOL RADIOTELEPHONE INC.) PR Docket No. 93-231
d/b/a Capitol Paging)

To: Administrative Law Judge Joseph Chachkin

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WIRELESS TELECOMMUNICATIONS BUREAU'S SUPPLEMENT
TO COMMENTS ON REQUEST FOR REIMBURSEMENT UNDER
THE EQUAL ACCESS TO JUSTICE ACT

1. On March 26, 1997, the Wireless Telecommunications Bureau filed comments on a First Application for Reimbursement Under the Equal Access to Justice Act submitted by Capitol RadioTelephone Company, d/b/a Capitol Paging ("Capitol"), on February 28, 1997. The Bureau hereby supplements its comments with the attached Judgment of the United States Court of Appeals for the D.C. Circuit.

2. Pursuant to the attached Judgment, issued on April 14, 1997, the United States Court of Appeals for the D.C. Circuit has affirmed the Commission's Memorandum, Opinion and Order, 11 FCC Rcd 8232 (1996), in this proceeding. Because the Judgment has not ripened into a final disposition of this case, the Bureau continues to reserve its right to

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answer Capitol's request for reimbursement of fees.

Respectfully submitted
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May 2, 1997

ATTACHMENT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 96-1272

September Term, 1996

Capitol Radiotelephone Company, Inc.,
Appellant

v.

Federal Communications Commission,
Appellee

RAM Technologies, Inc.,
Intervenor

United States Court of Appeals
For the District of Columbia Circuit

FILED APR 14 1997

Consolidated with 96-1273

Appeals of an Order of the
Federal Communications Commission

Before: WALD, ROGERS and TATEL, *Circuit Judges*.

J U D G M E N T

This appeal from an order of the Federal Communications Commission was considered on the record below and on the briefs of counsel. The issues have been accorded full consideration by the Court and occasion no need for a published opinion. *See* D.C. Cir. Rule 36(b). It is

ORDERED and **ADJUDGED** that the order of the Federal Communications Commission is hereby affirmed for substantially the reasons set forth in the Commission's *Memorandum Opinion and Order*, 11 F.C.C. Rcd 8232 (1996). The Commission's decision to reach the merits of petitioner's application for review without ordering full briefing was within its discretion. *See* 47 C.F.R. § 1.115(f)(2). The Commission's decision to strike earlier findings that were unrelated to the claims resolved against petitioner and that extended beyond the issues originally set for hearing was also proper. *See West Coast Media, Inc. v. FCC* 695 F.2d 617, 620 (D.C. Cir. 1982) (FCC should not examine issues that were not designated for hearing).

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 41.

FOR THE COURT:

Mark J. Langer, Clerk

BY: 

Deputy Clerk

CERTIFICATE OF SERVICE

I, Rosalind Bailey, a secretary in the Enforcement Division of the Wireless Telecommunications Bureau, hereby certify that on this 2nd day of May 1997, copies of the foregoing Wireless Telecommunications Bureau's Supplement to Comments on Request for Reimbursement Under the Equal Access to Justice Act" to:

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