

**RICHARD S. BECKER & ASSOCIATES**

INCORPORATED  
1100 K STREET NW  
EIGHTH FLOOR  
WASHINGTON, D.C. 20006  
TELEPHONE 833-4422  
FACSIMILE 296-1458  
TELECOPIER 296-1458

RICHARD S. BECKER  
JEFFREY E. RUMMEL  
OF COUNSEL  
JAMES S. FINERFROCK

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October 6, 1997

William F. Caton, Acting Secretary  
Federal Communications Commission  
Washington, DC 20554

Re: WT Docket No. 96-18  
PP Docket No. 93-253

Dear Mr. Caton:

Transmitted herewith on behalf of Range Corporation are one (1) original paper, four (4) paper copies, one (1) silver master microfiche and two (2) diazo duplicate microfiche copies of an "Opposition To Emergency Petition For Relief" filed in opposition to an "Emergency Petition For Relief" filed by SuperCom Limited Partnership of Northern Michigan in the above-referenced proceeding on September 23, 1997.

Should any questions arise with respect to this matter, please communicate directly with this office.

Respectfully submitted,

*Richard S. Becker*

Richard S. Becker  
Attorney for Range Corporation

Enclosures

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

In the Matter )  
 )  
Freeze On CMRS Paging ) WT Docket No. 96-18  
Applications For ) PP Docket No. 93-253  
Exclusive Frequencies )

To: The Commission

**OPPOSITION TO  
EMERGENCY PETITION FOR RELIEF**

Range Corporation, by its attorneys and pursuant to 47 C.F.R. §1.45(a), hereby opposes the "Emergency Petition For Relief" ("Emergency Petition") filed by SuperCom Limited Partnership of Northern Michigan ("Supercom") on September 23, 1997. In opposition, the following is respectfully shown.

1. In its Emergency Petition, Supercom, "request[ed] the Commission to direct the staff that it is permissible to accept applications from carriers seeking to provide interim service to areas adjacent to a licensee's currently authorized service area."<sup>1</sup> Supercom and its affiliated entities are currently licensed for 152.84 MHz Commercial Mobile Radio Service ("CMRS") one-way paging transmitters at seven (7) locations in the Upper Peninsula of Michigan.<sup>2</sup> In its February 24, 1997, Second Report And Order And

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<sup>1</sup>Emergency Petition, p.2.

<sup>2</sup>These sites are Iron Mountain, Hancock and Escanaba [Supercom Station KNKD 286 (File No. 26628-CD-R-88)], Marquette [Supercom Station KNKD 293 (File No. 26626-CD-R-88)], Sault Ste. Marie [Supercom Station KNKJ 322 (File No. 26624-CD-R-88)]; Rockland [Ontonogan Communications, Inc. ("OCI") Station KNKB 694 (File No. 27323-CD-R-88)] and Munising, Michigan [Hiawatha Telephone Company ("HTC") Station KNKC 315 (File No. 24827-CD-R-88)]. Supercom's Station KNKD 293 was originally licensed for three (3) additional 152.84 MHz transmitter sites at Ishpeming, Manistique and Newberry,

Further Notice Of Proposed Rulemaking in the geographic paging rulemaking proceeding,<sup>3</sup> the Commission held that in order to implement the transition to geographic area licensing for CMRS one-way paging frequencies, the Commission will: (1) dismiss all pending mutually-exclusive ("MX") paging applications; (2) process all pending non-MX paging applications filed on or before July 31, 1996; (3) dismiss all pending non-MX paging applications filed after July 31, 1996; and (4) no longer accept site-by-site paging applications.<sup>4</sup> In its Emergency Petition, Supercom alleged that

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Michigan (File No. 21827-CD-P/L-4-85). By letter dated April 17, 1987, however, the Commission denied Supercom's request for extension of the construction period for these three (3) sites and the Commission explicitly terminated Supercom's authorization therefor. See Commission letter 63500-JSG. Accordingly, Supercom is not currently authorized for these locations despite the fact that they are incorrectly included in Supercom's current license for Station KNKD 293. A complete explanation of these facts, including copies of relevant documents, is included in a "Petition For Revocation Of Licenses" ("Revocation Petition") filed by Range against Supercom on March 6, 1997, which demonstrated that Supercom: (1) illegally constructed and operated four (4) additional 152.84 MHz transmitter sites at Newberry, Manistique, Baraga and Iron River in the Upper Peninsula of Michigan above Line A; (2) carried out an unauthorized transfer of control and assignment of Supercom's above-specified licenses; and (3) improperly relocated and consolidated Supercom's system control point.

<sup>3</sup>Second Report And Order And Further Notice Of Proposed Rulemaking, WT Docket No. 96-18, PP Docket No. 93-253, FCC 97-59 (released February 24, 1997) (hereinafter "Second R&O").

<sup>4</sup>Second R&O at ¶¶6, 227. In its February 9, 1996, Notice Of Proposed Rulemaking in this docket, 11 FCC Rcd 3108 (1996), the Commission imposed a blanket Freeze on applications for all CMRS paging frequencies. In an April 23, 1996, First Report And Order in this docket, 11 FCC Rcd 16570 (1996), the Commission modified the Freeze (the "Modified Freeze") to allow a CMRS paging licensee to apply for additional transmitter locations on its authorized frequency if the proposed site is located within 40 miles of an authorized transmission site that was licensed on or before February 8, 1996, and was operational as of the date of filing of

in order to respond to alleged "requests for paging services for areas it is not currently authorized to serve,"<sup>5</sup> the Commission should circumvent the processing standards adopted in the Second R&O and allow Supercom to apply for interim authorization to expand Supercom's 152.84 MHz system beyond the seven (7) transmitter sites currently authorized to Supercom, OCI and HTC.

2. Range opposes Supercom's Emergency Petition. Supercom conveniently omitted from its Emergency Petition any reference to the extensive litigated proceeding regarding Supercom's 152.84 MHz system that was commenced by filing of Range's Revocation Petition and that is currently awaiting Commission action.<sup>6</sup> Range's pleadings in that case<sup>7</sup> demonstrated that Supercom's illegal

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the expansion application. By Public Notice dated June 10, 1996, 11 FCC Rcd 7032 (1996), the Commission made clear that only expansion applications filed on or before July 31, 1996, would be assured of processing under the Modified Freeze standards. In the Second R&O, the Commission adopted geographic licensing for CMRS paging frequencies like Supercom's 152.84 MHz, terminated the Modified Freeze filing procedures and, consistent with its June 10, 1996, Public Notice, decided to dismiss all pending MX applications and all pending non-MX applications filed after July 31, 1996. Second R&O at ¶¶6, 227.

<sup>5</sup>Emergency Petition at n.2; see also id. at 4 (interim authority necessary "to serve heavy, pent up demand for paging services").

<sup>6</sup>In point of fact, Supercom failed to serve Range with Supercom's Emergency Petition, even though Supercom's pleading seeks Commission authorization to file applications for interim authority to expand Supercom's 152.84 MHz system that is the very subject of the ongoing litigation. Range only became aware of Supercom's Emergency Petition when it was announced by Public Notice dated September 26, 1997.

<sup>7</sup>Range's primary pleadings in its litigation against Supercom are Range's: (1) March 6, 1997, Revocation Petition; (2) April 10, 1997, "Consolidated Reply To Oppositions To Petition For Revocation Of Licenses;" (3) April 23, 1997, "Request For Dismissal"

operation of four (4) additional 152.84 MHz transmitter sites and unauthorized transfer of control and assignment of license and, more importantly, Supercom's attempt to cover-up those violations with misrepresentations and lack of candor, demand that the Commission commence proceedings to revoke all Commission licenses held by Supercom and its affiliated entities and that the Commission dismiss the applications and Special Temporary Authority ("STA") requests filed by Supercom belatedly seeking Commission authorization for the four (4) illegal 152.84 MHz transmitter sites.<sup>8</sup> Range respectfully submits that the same facts and arguments that warrant revocation of all of Supercom's licenses demand that the Commission also deny Supercom's Emergency Petition.

3. Range must also emphasize that Supercom's Emergency Petition seeks special treatment by the Commission for Supercom, a licensee that has consistently failed to comply with clear Commission requirements for expansion of CMRS paging systems that all other CMRS paging licensees, including Range, have been forced

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("Dismissal Request") seeking Commission dismissal of licensing requests filed by Supercom as specified at note 8 hereof; and (4) April 28, 1997, "Opposition To Motion For Leave To File And Supplemental Statement." Responsive pleadings and additional filings have been made by both Range and Supercom in the outstanding proceeding.

<sup>8</sup>After Range brought Supercom's illegal 152.84 MHz transmitter sites to the Commission's attention, Supercom terminated operation at these sites and on April 14, 1997, Supercom filed STA requests, FCC Form 489 applications and FCC Form 600 applications for 152.84 MHz at the four (4) illegal sites at the Newberry, Manistique, Baraga and Iron River, Michigan. These applications remain pending before the Commission, with the exception of the Manistique FCC Form 489 application that was dismissed by Commission letter 2000C3-CML dated June 2, 1997.

to abide by. In effect, Supercom's Emergency Petition seeks to tilt the regulatory playing field in Supercom's favor. A brief review of the history of Supercom's actions with respect to its 152.84 MHz system demonstrates conclusively that Supercom failed to legally expand its 152.84 MHz like other licensees during the Modified Freeze, and instead chose to illegally construct and operate additional transmitter sites and advertise to the public Supercom's impermissible expanded coverage area. Specifically:

- Supercom was fully aware of imposition of the Freeze in February, 1996, and Supercom opposed the Freeze in March 18, 1996, "Comments Opposing The Commission's Planned Radical Restructuring Of The Paging Industry And Related Changes To The Paging Licensing Process."
- The Commission responded to the positions taken by Supercom and other CMRS paging licensees by adopting the Modified Freeze and allowing incumbent licensees to expand their systems.<sup>9</sup> Significantly, however, at no time during the Modified Freeze, either prior to the July 31, 1996, cut-off date or thereafter, did Supercom file any applications to expand its 152.84 MHz system. The Commission gave Supercom and all other CMRS paging licensees a chance to expand their systems, but Supercom chose not to take advantage of that opportunity.
- Instead, Supercom unilaterally decided that it could expand its 152.84 MHz paging system and reorganize itself to bring in new 50% voting and 50% equity owners without obtaining requisite prior Commission consent. Supercom constructed the additional 152.84 MHz transmitters at Newberry, Manistique, Baraga and Iron River using omni-directional antennas and Supercom operated those transmitters at full power. Supercom marketed its expanded service using an inaccurate and misleading coverage map that Range has already provided to the Commission<sup>10</sup> and Supercom exploited its unauthorized operations in an attempt to gain an illegal and unfair competitive advantage.

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<sup>9</sup>First R&O, 11 FCC Rcd 16570.

<sup>10</sup>See Range's Revocation Petition at Exhibit 20. A copy of that map is attached hereto as Exhibit 1 for the convenience of the Commission.

- When Range's Revocation Petition caught Supercom red-handed in its violations, Supercom opposed the Revocation Petition by lying to protect itself and its related entities by claiming that the 152.84 MHz operations were authorized pursuant to a Commission authorization that was terminated ten (10) years ago or that operations were "total fill-in" transmitters, even though such transmitters are impermissible above Line A and despite subsequent admissions by Supercom that the transmitters extended the composite interference contour of Supercom's properly-licensed 152.84 MHz transmitters.

Now that Range has uncovered Supercom's illegal operations and Supercom has had to deactivate the illegal transmitters, Supercom's Emergency Petition is attempting to regain the illegal service coverage through proposed applications for interim authority. Supercom's failure to abide by the same Commission application requirements applicable to other CMRS paging licensees, including the now-terminated possibility for system expansion pursuant to the Modified Freeze, cannot be rewarded by grant of the special treatment requested in Supercom's Emergency Petition.

4. Finally, Range must note that at no point in its Emergency Petition did Supercom quantify or provide evidence of the "heavy, pent up demand for paging services" that Supercom is purportedly experiencing on 152.84 MHz.<sup>11</sup> In point of fact, in opposing Supercom's April 14, 1997, STA requests for 152.84 MHz at Supercom's four (4) illegal transmitter sites, Range demonstrated that Supercom not only failed to demonstrate the "extraordinary circumstances" necessary to warrant Commission grant of STA, but also that Supercom itself admitted that, "as of February 1997 [Supercom] provided paging service to 17 new paging units in the

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<sup>11</sup>See Emergency Petition at n.2, 5.

four pertinent communities.... This number can hardly be viewed as substantial."<sup>12</sup> In other words, Supercom admitted that the four (4) 152.84 MHz transmitters illegally constructed by Supercom in December, 1996, were serving only a total of 17 paging units as of February, 1997. It is hard to imagine how such a paltry beginning could now result in the "heavy, pent up" demand that Supercom complained of in its Emergency Petition. In short, even without considering Supercom's illegal operations, unauthorized transfer/assignment of license, misrepresentations and continuing lack of candor, Range respectfully submits that the Commission must deny Supercom's Emergency Petition because Supercom failed to demonstrate that deviation from the processing standards adopted in the Second R&O will serve the public interest.

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<sup>12</sup>Dismissal Request, p.6-8.

**WHEREFORE**, for all of the foregoing reasons, Range hereby opposes Supercom's Emergency Petition.

Respectfully submitted,

**RANGE CORPORATION**

By: 

Richard S. Becker  
James S. Finerfrock  
Jeffrey E. Rummel

Its Attorneys

Richard S. Becker & Associates, Chartered  
1915 Eye Street, Northwest  
Eighth Floor  
Washington, DC 20006  
(202) 833-4422

Date: October 6, 1997

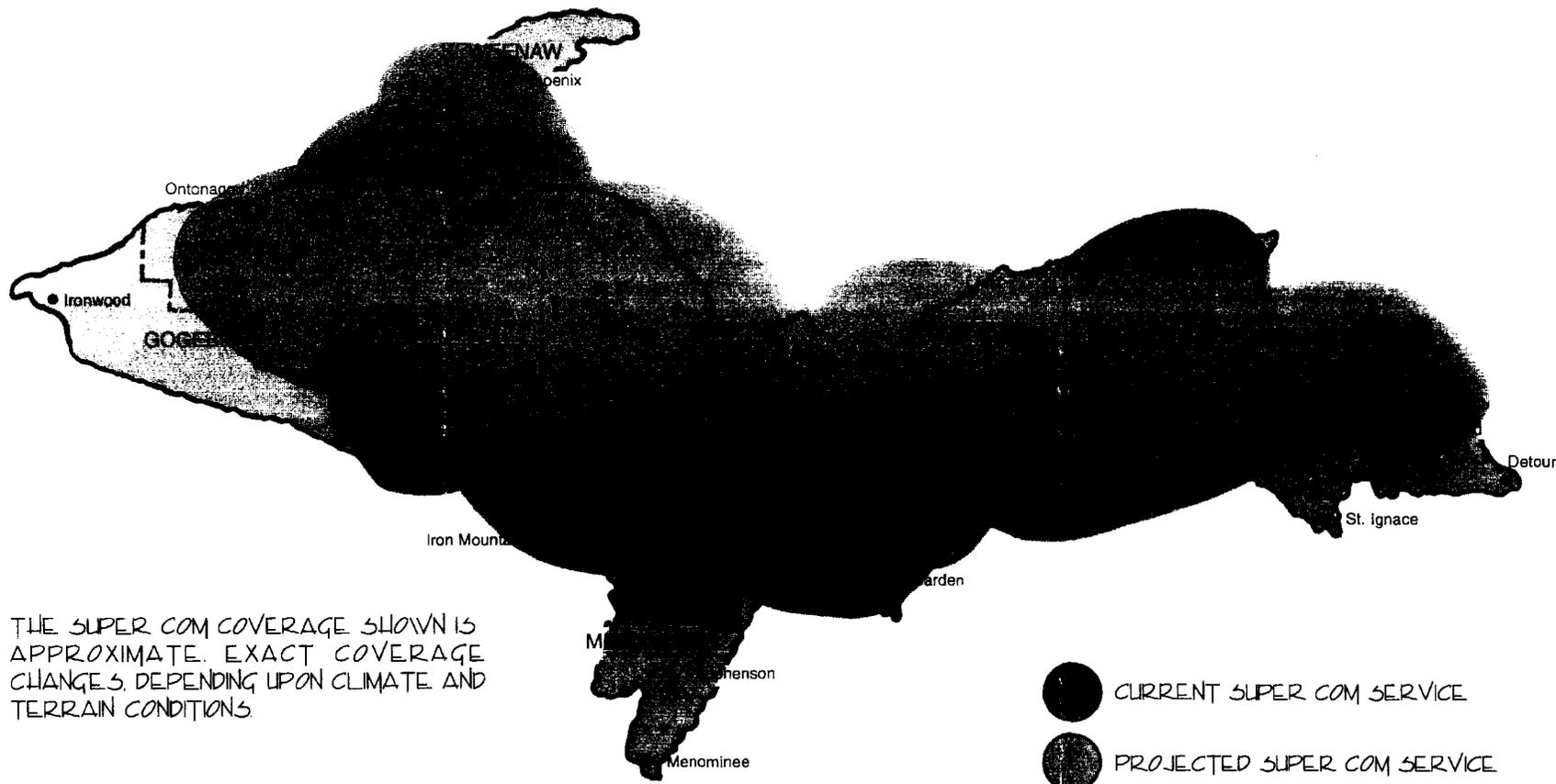
Exhibit 1

SUPERCOM 152.84 MHZ COVERAGE MAP

# SuperCom



2600 U.S. 41 WEST • MARQUETTE, MICHIGAN 49855  
(906) 226-3352 OR 1-800-433-6748  
FAX (906) 226-3359



SUPER COM COVERAGE AREA MICHIGAN'S UPPER PENINSULA

**CERTIFICATE OF SERVICE**

I, Emily Luther, a secretary in the law firm of Richard S. Becker & Associates, Chartered, hereby certify that I have on this 6th day of October, 1997, sent by First Class United States mail, postage prepaid, copies of the foregoing "OPPOSITION TO EMERGENCY PETITION FOR RELIEF" to the following:

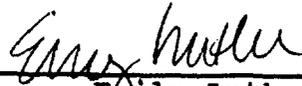
Daniel Phythyon, Chief\*  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, N.W.; Room 5002  
Washington, DC 20554

Ramona Melson, Chief\*  
Policy And Rules Branch  
Commercial Wireless Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2100 M Street, N.W.; 7th Floor, Room 102  
Washington, DC 20554

James H. Bennett, Deputy Chief\*  
Licensing And Technical Analysis Branch  
Commercial Wireless Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2100 M Street; Room 8629  
Washington, DC 20554

Timothy E. Welch, Esquire  
Hill & Welch  
1330 New Hampshire Ave., N.W.; Suite 113  
Washington, DC 20006  
Attorney for Supercom

David L. Nace, Esquire  
B. Lynn F. Ratnavale, Esquire  
Lukas, McGowan, Nace & Gutierrez, Chtd  
1111 19th St., N.W.; Suite 1200  
Washington, DC 20036  
Attorney for Mid-South  
Telecommunications, Inc.,  
et al.

  
\_\_\_\_\_  
Emily Luther

\* Hand delivered

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