DOCKET FILE COPY ORIGINAL

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

RECEIVED
DEC 18 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

To: The Commission

WIRELESS TELECOMMUNICATIONS BUREAU'S REPLY TO CAPITOL RADIOTELEPHONE, INC.'S EXCEPTIONS TO THE INITIAL DECISION DENYING REQUEST FOR REIMBURSEMENT UNDER EAJA

Daniel B. Phythyon
Chief, Wireless Telecommunications Bureau

Gary P. Schonman
Chief, Compliance and Litigation Branch
Wireless Telecommunications Bureau

Susan A. Aaron
Attorney
Wireless Telecommunications Bureau

Federal Communications Commission
2025 M Street, N.W., Suite 8308
Washington, D.C. 20554
(202) 418-0569

December 18, 1997

No. of Copies rec'd 0+14
List ABCDE

SUMMARY

On November 5, 1997, Administrative Law Judge ("ALJ") Chachkin issued an Initial Decision, FCC 97-D-10 (released November 5, 1997) ("EAJA Initial Decision"), denying the application of Capitol Radiotelephone, Inc.'s, d/b/a Capitol Paging, ("Capitol"), for reimbursement of attorney's fees and other expenses under the Equal Access to Justice Act, 5 U.S.C. § 504, and Sections 1.1501, *et seq.*, of the Commission's Rules, 47 C.F.R. §§ 1.1501, *et. seq.* (1995) ("EAJA"). In the EAJA Initial Decision, the Presiding Judge found that the Commission's designation of this matter for hearing and the Bureau's prosecution of the case against Capitol were "substantially justified". Id. at ¶ 13. Accordingly, since the Commission's action was found to be "substantially justified", Capitol's application for an award of fees pursuant to EAJA was properly denied. See EAJA, 5 U.S.C. § 504; Section 1.1504 of the Commission's Rules, 47 U.S.C. § 1.1501.

On December 5, 1997, Capitol filed exceptions, arguing that reversal of the EAJA Initial Decision was warranted for three reasons. As demonstrated below, Capitol's arguments are factually flawed, legally deficient and fail to support a reversal of the EAJA Initial Decision. Specifically, contrary to Capitol's assertions, the Presiding Judge, in issuing the EAJA Initial Decision, properly applied the statutory standard and considered the administrative record, as a whole, in making the "substantially justified" determination. Furthermore, the Presiding Judge correctly disregarded findings and conclusions which, subsequently on appeal, had been stricken from the administrative record. Accordingly, Capitol's request for EAJA reimbursement was properly denied and the EAJA Initial Decision should be affirmed.

TABLE OF CONTENTS

Page

SUMMARY i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

A. In Considering Capitol's EAJA Request, The Presiding Judge Correctly Disregarded Findings Stricken From The Administrative Record 2

B. The Presiding Judge Properly Applied The Statutory Standard For Determining "Substantial Justification". 5

C. The Presiding Judge Properly Considered The Administrative Record, As A Whole, In Making The "Substantially Justified" Determination 7

Reliance on Credibility Determinations 7

The Bureau's Treatment of RAM 9

Investigatory Errors 10

TABLE OF AUTHORITIES

Page

Cases

Capitol Radiotelephone Inc., 8 FCC Rcd 6300 (HDO 1993) 3, 6, 11

Capitol Radiotelephone, Inc., 9 FCC Rcd 6370 (ALJ 1994) 3, 9, 10

Capitol RadioTelephone, Inc., 11 FCC Rcd 2335 (Review Board 1996) 3, 7, 9

Capitol RadioTelephone Inc., 11 FCC Rcd 8232 (Commission 1996) 4, 6, 10, 11

Capitol RadioTelephone Inc. v. Federal Communications Commission, 111 F. 3d 962 (D.C.Cir. 1997) 4

Capitol Radiotelephone, Inc., FCC 97D-10 (ALJ rel. November 5, 1997) . . . . . 1, passim

Charter Management, Inc. v. NLRB, 768 F. 2d 1299 (11th Cir. 1985) 8

Europlast, Ltd. v. NLRB, 33 F. 3d 16 (7th Cir. 1994) 8

In the matter of Equal Access to Justice Act Rules, 2 FCC Rcd 1394 (1987) 10

Kemp v. Balboa, 23 F. 3d 211 (8th Cir. 1984) 4

Leeward Auto Wreckers, Inc. v. NLRB, 841 F. 2d 1143 (D.C. Cir. 1988) 8-9

Pierce v. Underwood, 487 U.S. 552 (1988) 5

Trahan v. Brandy, 907 F.2d 1215 (D.C. Cir. 1990) 2

Statutes and Rules

Commission's Rules,
47 C.F.R. §§ 1.1501, *et. seq.* 1
47 C.F.R. §§ 1.1501 2
47 C.F.R. § 90.405(a)(3) 11
47 C.F.R. § 90.425(b)(2) 11

Equal Access to Justice Act,
5 U.S.C. § 504 . . . . . 2, passim

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

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

To: The Commission

WIRELESS TELECOMMUNICATIONS BUREAU'S REPLY TO CAPITOL RADIOTELEPHONE, INC.'S EXCEPTIONS TO THE INITIAL DECISION DENYING REQUEST FOR REIMBURSEMENT UNDER EAJA

1. On December 5, 1997, Capitol Radiotelephone, Inc., d/b/a Capitol Paging, ("Capitol"), filed exceptions to Administrative Law Judge ("ALJ") Chachkin's Initial Decision denying Capitol's application for reimbursement under the Equal Access to Justice Act, 5 U.S.C. § 504, and Sections 1.1501, *et seq.*, of the Commission's Rules, 47 C.F.R. §§ 1.1501, *et. seq.* (1995) ("EAJA"). The Chief, Wireless Telecommunications Bureau[1] ("Bureau"), by his attorneys, hereby opposes Capitol's request for relief. The Bureau's failure to address a specific argument advanced by Capitol should not be construed as a concession of that argument.

2. Capitol seeks reversal of the Presiding Judge's Initial Decision, FCC 97D-10 (released November 5, 1997) ("EAJA Initial Decision"), denying Capitol's request for reimbursement of attorney's fees and other expenses under the EAJA. In the EAJA Initial Decision, the Presiding Judge found that the Commission's designation of this matter for hearing and the Bureau's prosecution of the case against Capitol were "substantially justified".

---

[1] This matter was originally brought by the Private Radio Bureau, the predecessor to the Wireless Telecommunications Bureau.

Id. at ¶ 13. When an agency's action is found to be "substantially justified", an application for an award of fees pursuant to the EAJA must be denied. EAJA Initial Decision, at 4 (citing Trahan v. Brandy, 907 F.2d 1215 (D.C. Cir. 1990)); see also, EAJA, 5 U.S.C. § 504; Section 1.1501 of the Commission's Rules, 47 U.S.C. § 1.1501.

3. Capitol raises three exceptions to the EAJA Initial Decision. First, Capitol argues that in denying the EAJA application, the Presiding Judge erred by failing to consider the initial adverse findings and conclusions made against a non-party which, subsequently on appeal, had been stricken from the administrative record. Second, Capitol claims that the Presiding Judge misapplied the statutory standard of "substantially justified" by failing to fully analyze the basis on which the Bureau brought the revocation proceeding against Capitol. Third, Capitol claims that the Presiding Judge failed to consider the administrative record, as a whole, in making the "substantially justified" determination. See Capitol Radiotelephone Company, Inc. Exceptions to the Initial Decision of Administrative Law Judge Joseph Chachkin ("Capitol's Exceptions"), filed December 5, 1997, at 4. As set forth below, these arguments are factually flawed, legally deficient and fail to support a reversal of the Presiding Judge's EAJA Initial Decision. Accordingly, the Commission should affirm the EAJA Initial Decision denying Capitol's request for an EAJA award.

A. In Considering Capitol's EAJA Request, The Presiding Judge Correctly Disregarded Findings Stricken From The Administrative Record.

4. Capitol argues that when ruling on the EAJA request, the Presiding Judge erroneously disregarded findings and conclusions which, subsequently on appeal, had been stricken from the administrative record. These findings and conclusions center on one of Capitol's competitors, RAM Technologies, Inc. ("RAM"), which shared a channel on

frequency 152.48 MHz with Capitol. The underlying proceeding in this matter arose in part out of RAM's repeated complaints of harmful interference by Capitol and numerous letters the Commission received on behalf of RAM complaining of Capitol's interference.[2] In the underlying proceeding in this case, the Presiding Judge rendered findings that RAM's complaints concerning Capitol were a result of an anticompetitive campaign by RAM to drive Capitol from the shared channel. See e.g., Capitol Radiotelephone, Inc. ("1994 Initial Decision"), 9 FCC Rcd 6370, 6373 n.7 and 6378-79 (¶¶ 13 n.7, 61, 65) (1994).

5. On review, however, the Review Board, on its own motion, struck from the ALJ's decision the adverse findings and conclusions against RAM. Capitol RadioTelephone, Inc. ("Review Board Decision"), 11 FCC Rcd 2335, 2342 (¶ 32) (1996) (citing 1994 Initial Decision, at ¶¶ 13 n. 7, 61 and 65). The Review Board reasoned that the findings went far beyond the designated issues in the proceeding as "RAM's licenses were not designated for hearing nor were any issues specified against RAM." Review Board Decision, 11 FCC Rcd at 2342 (¶ 32). The Review Board further found the evidence on which the findings in the 1994 Initial Decision were based was one-sided and unreliable. Id. (except for a disputed declaration from an interested third-party and conjecture by Capitol's witnesses, "the record is

---

[2] See e.g., Capitol Radiotelephone Inc. ("HDO"), 8 FCC Rcd 6300, 6301 (¶ 4), n. 6 (1993) (citing letter of November 27, 1990, from Frederick M. Joyce to Jerold Feldman (referencing , on behalf of RAM, oral complaint made to the FCC of harmful interference by Capitol); letter of November 28, 1990 from Frederick M. Joyce to Carol Fox Foelak (complaining, on behalf of RAM, of harmful interference caused by Capitol's retransmission of common carrier pages on 152.490 MHz from November 15, 1990 through November 18, 1990); letter of February 19, 1991 from Hon. Carl C. Perkins, U.S. House of Representatives to Ralph A. Haller, Chief, Private Radio bureau (complaining, on behalf of RAM, of Capitol interference to RAM that occurred in October 1990, and further complaining that "Capitol has apparently refused to contact RAM to cooperate in engineering its system to avoid harmful co-channel interference"); letter of March 5, 1991 from Frederick M. Joyce to Carol Fox Foelak (complaining, on behalf of RAM, of harmful interference caused by Capitol on March 4, 1991); letter of March 19, 1991 from A. Dale Capehart to Mike Raymond (RAM complaint of interference on that date sent directly to Capitol)).

devoid of any indicia to support the ALJ's findings and conclusions" against RAM.) The Commission affirmed deletion of the findings stating, "No issues were designated against RAM in this proceeding. Because RAM therefore lacked appropriate notice and adequate opportunity to rebut the charges made against it, the findings are invalid as to their prejudicial effect on RAM." Capitol RadioTelephone Inc. ("Commission Decision"), 11 FCC Rcd 8232, 8240 (¶ 20) (1996). The District of Columbia Circuit affirmed the Commission's decision to strike the findings. Capitol RadioTelephone Inc. v. Federal Communications Commission ("D.C. Circuit Decision"), 111 F.3d 962 (D.C.Cir. 1997).

6. Capitol attempts to resurrect the deleted RAM findings by arguing that the Commission's ruling invalidates the findings only as to the prejudicial effect on RAM but not in the context of Capitol's EAJA request. See Capitol's Exceptions, at 5. Capitol has failed to cite any legal support for its contorted and overly-narrow reading of the Commission's ruling. Indeed, once a matter is stricken from the record, it may not be considered as a basis for any ruling, including an award of damages. See e.g., Kemp v. Balboa, 23 F. 3d 211 (8th Cir. 1994) (reversing award of only nominal damages based upon inadmissible evidence which should have been stricken from the record). Capitol's argument additionally misconstrues the basis for striking the evidence. The findings and conclusions against RAM were stricken because they were based on an incomplete record in that RAM was not a party to the proceeding and thus lacked adequate notice to fully defend the charges at the hearing. Commission Decision, 11 FCC Rcd at 8240 (¶ 20). Based on this holding, reliance on the deleted findings and conclusions for any ruling would be improper. Thus, the Presiding Judge correctly held that the stricken findings do not provide a basis for ruling on Capitol's

EAJA request. EAJA Initial Decision, at ¶ 14 n.8.

B. The Presiding Judge Properly Applied The Statutory Standard For Determining "Substantial Justification".

7. Contrary to Capitol's contention, the Presiding Judge properly applied the statutory standard in determining whether an agency's action is "substantially justified". As Capitol conceded, "The Decision below correctly cites the governing interpretation of the 'substantial justification' standard of the EAJA" as set forth in Pierce v. Underwood, 487 U.S. 552 (1988). See Capitol's Exceptions, at 6 (citing EAJA Initial Decision at ¶ 13). In Pierce, the Supreme Court defined the phrase "substantially justified" in the context of the EAJA to mean "justified in substance or in the main -- that is, justified to a degree that could satisfy a reasonable person." Pierce, 487 U.S. at 565. The Supreme Court further recognized that both a prevailing party as well as a losing party may be found to have taken a "substantially justified" position. Id. at 566 n.2 and 569 ("a position can be justified even though it is not correct, and we believe it can be substantially (i.e., for the most part) justified if a reasonable person could think it correct, that is, if it has a reasonable basis in law and fact.").

8. In applying the Pierce standard, the Presiding Judge held "that there was a reasonable basis in law and fact for designating this matter for hearing and prosecuting the case to its conclusion." EAJA Initial Decision, at ¶14. The Presiding Judge found that the "proceeding arose out of RAM's repeated complaints of harmful interference by Capitol, accompanied by supporting affidavits, and information developed by Commission personnel during field inspections." Id. The administrative record in this matter fully supports the Presiding Judge's finding. The record reveals that prior to issuing the Hearing Designation Order, the Commission had received numerous letters on behalf of RAM complaining of

Capitol's interference. See, Discussion, supra, at ¶ 4, n. 2, The Field Operations Bureau and the Private Radio Bureau made repeated attempts to resolve the matter between RAM and Capitol, but the interference and the complaints nevertheless continued. See Videotape of FCC Open Meeting, August 3, 1993 (adopting the Hearing Designation Order against Capitol). Thereafter, Commission personnel conducted an on-site investigation to verify RAM's complaints, which involved extensive monitoring over a period of days, followed by a station inspection. See Capitol RadioTelephone Inc. ("HDO"), 8 FCC Rcd 6300, 6302-03 (¶¶ 9-13) (1993). The investigation indicated that Capitol was engaged in excessive and prolonged testing of its system, causing interference with RAM's operation. Id.

9. The pre-hearing record also raised substantial and material questions of fact regarding Capitol's lack of candor in dealing with the Commission. The pre-hearing record appeared to raise questions as to whether Capitol had been less than forthcoming regarding its testing of its station. See, HDO, 8 FCC Rcd at 6304 (¶ 20). Indeed, in upholding the Review Board's finding of a violation of Section 90.405(a)(3), pertaining to testing for station and system maintenance, the Commission reasoned that "the lack of a credible justification for the prolonged testing [by Capitol] and the suspicious circumstances disclosed during the inspection [by Commission field personnel] amply support[ed]" the Review Board's holding that the rule was violated. Commission Decision, 11 FCC Rcd at 8237-38 (¶¶ 12, 13).

10. Moreover, the Review Board's resolution of the malicious interference issue, which was not disturbed by the Commission on appeal, is further evidence that there was "substantial justification" for designating Capitol's licenses for hearing and adjudicating the issue. In addressing this issue, the Review Board stated, "Whether or not the tone

transmissions provide clear evidence of malicious interference for purposes of Section 333 of the Communications Act is a close question . . . ." Review Board Decision, 11 FCC Rcd at 2341 (¶ 25). The Review Board's finding that the matter of malicious interference by Capitol was a "close question" constitutes an affirmative acknowledgement that the commencement of the proceeding against Capitol was indeed substantially justified. A finding of malicious interference by Capitol could have justified revocation of its licenses. The fact that the ultimate sanction imposed was a $2,000 forfeiture does not undermine or diminish the substantial justification that existed in 1993 upon which the Commission relied in designating this case for hearing and asserting its position during the proceeding. A prima facie case of significant violations substantially justified commencing the action against Capitol and the Review Board's finding of a "close question" on the serious matter of malicious interference confirms that fact. As the Presiding Judge appropriately concluded, "Under the circumstances, there was **ample reason** for designating this matter for hearing." EAJA Initial Decision, at ¶ 14 (emphasis added).

C. The Presiding Judge Properly Considered The Administrative Record, As A Whole, In Making The "Substantially Justified" Determination.

11. Capitol claims that the Presiding Judge failed to consider the administrative record, as a whole, in finding that the Commission was "substantially justified" in bringing the proceeding against Capitol. EAJA Initial Decision, at ¶ 14. Capitol advances three bases as support for this argument, none of which, as set forth below, justifies reversing the Presiding Judge's EAJA ruling.

Reliance on Credibility Determinations

12. First, Capitol objects to the ruling that "the Presiding Judge's significant

reliance on credibility findings in resolving the factual questions supports the view that there was 'substantial justification' for the Commission's decision to designate the matter for hearing." EAJA Initial Decision, at ¶ 14. According to Capitol, the existence of credibility questions in this case is insufficient to support a finding of substantial justification. Capitol maintains that the Presiding Judge's determination in the underlying decision, that the testimony of RAM's witnesses lacked credibility and crediting the testimony of Capitol's witnesses, proves that the Commission was unjustified in litigating this matter. In prior court decisions, however, a nearly identical argument was considered and rejected within the context of the EAJA. Europlast, Ltd. v. NLRB, 33 F. 3d 16, 17-18 (7th Cir. 1994). For example, in Europlast, the Seventh Circuit found that substantial justification in issuing a complaint existed even though the issuance of the complaint was based chiefly upon the testimony of witnesses which the ALJ later found lacked credibility. The Court reasoned that the agency had no way of foreseeing the ALJ's credibility determinations, which were made most frequently in favor of the company's witnesses and against those of the agency. Id.; see also, Charter Management, Inc. v. NLRB, 768 F. 2d 1299, 1302 (11th Cir. 1985) (the fact that the ALJ decided the employer's witness was more credible than the agency's witnesses, does not render the agency wrong in issuing a complaint based on the statements of the agency's witnesses). Thus, where as here, conflicting statements exist and the circumstances could support the finding of a violation, the agency is justified in pursuing litigation "to see and hear live witnesses subjected to direct and cross-examination to make necessary credibility determinations." Charter Management, supra, 768 F.2d at 1303.

13. Moreover, Capitol's reliance on Leeward Auto Wreckers, Inc. v. NLRB, 841

F.2d 1143 (D.C. Cir. 1988), is misplaced. In that case, the Court found that pivotal issues of fact directly contradicting the agency's case-in-chief remained undisputed in the record throughout the proceeding. Id. at 1148-1149. Here, that is clearly not the case, as the administrative record contains evidence that Capitol violated the Commission's Rules. After having a full and complete opportunity to observe and evaluate the witnesses, the Presiding Judge chose not to credit that evidence. Irrespective of that fact, it is clear that in rendering the underlying decision, the Presiding Judge relied significantly on his personal assessment and determination of the credibility of the various witnesses. See e.g., 1994 Initial Decision, 9 FCC Rcd at 6379 (¶¶ 66, 76). Moreover, the Review Board placed considerable weight on the ALJ's credibility findings. See, Review Board Decision, 11 FCC Rcd at 2340 (¶ 21). Since credibility findings were necessary to resolve the factual questions at issue, a hearing was necessary in order for those determinations to be made. Accordingly, the Presiding Judge's reliance on credibility findings establishes "substantial justification" for the Commission's decision to designate this matter for hearing.

The Bureau's Treatment of RAM

14. Second, Capitol argues that "substantial justification" is lacking because the Private Radio Bureau failed to designate any issues against RAM, thereby treating RAM more leniently than it did Capitol. See Capitol's Exceptions, at 8. The Bureau's treatment of RAM, however, has no bearing on the question of "substantial justification" as to Capitol. The fact that the Bureau could have designated RAM for hearing but did not do so, does not exonerate Capitol for violations it committed or diminish the substantial justification that existed for proceeding against Capitol. As the Commission emphasized, "While it is unfortunate that

[due to the expiration of the statute of limitations], RAM will not be held accountable for any violations that it committed to the same extent as Capitol, the fact that a forfeiture cannot now be imposed against RAM does not excuse Capitol's violations." Commission Decision, 11 FCC Rcd at 8240 (¶ 19).

Investigatory Errors

15. Third, Capitol maintains that the existence of "investigatory errors" by Commission inspectors precludes a determination that the Commission was "substantially justified" in designating this matter for hearing. Capitol cites the Presiding Judge's underlying decision which found the allegations in the HDO relating to Capitol's "inhibitor" was a result of an investigatory error by the Commission's inspectors. Capitol also relies on the Presiding Judge's finding that the allegations in the HDO concerning Capitol's computerized record was mistaken. See 1994 Initial Decision, 9 FCC Rcd at 6383 (¶ 114).

16. As the Presiding Judge correctly found in the EAJA Initial Decision, however, "the existence of these errors does not preclude a determination that the Commission was 'substantially justified' in designating this matter for hearing." EAJA Initial Decision, at n.7. The "investigatory errors" in question constitute only a **portion** of the evidence on which the proceeding was based. The Commission's Rules, however, require the administrative record **as a whole** to be considered in making such a finding. In the matter of Equal Access to Justice Act Rules, 2 FCC Rcd 1394 (1987)("[W]hether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, adduced during the course of the adjudication.") Here, the record demonstrates that the designation of Capitol was based on several additional grounds as well, including

evidence of willful and repeated harmful interference, malicious interference, test transmission violations, improper morse code transmissions, improper retransmissions, and lack of candor issues. See HDO, 8 FCC Rcd at 6302-04 (¶¶ 8 - 20). None of these involved "investigatory errors". Indeed, as noted above, although the Review Board ultimately ruled in Capitol's favor on this issue, the Review Board found the question of the very serious charge of malicious interference to be a "close question". See Discussion, supra, at ¶ 10. Additionally, the Commission found support in the record for a violation of Section 90.405(a)(3) of the Commission's Rules, pertaining to testing for station and system maintenance, which requires licensees to keep testing "to a minimum" and "to employ every measure to avoid harmful interference." 47 C.F.R. § 90.405(a)(3); see also Commission Decision, 11 FCC Rcd at 8237-38 (¶ 12,13). The Commission further upheld the Review Board's finding of a violation of Section 90.425(b)(2) of the Commission's Rules, which pertains to the required Morse code transmission rate. Commission Decision, 11 FCC Rcd at 8238 (¶ 13). Thus, as a whole, the record amply supports the Commission's designation of this matter for hearing and the Bureau's prosecution of the case against Capitol. Moreover, the evidence adduced at the hearing establishes that the "investigatory errors" were made inadvertently. There is no evidence that the Private Radio Bureau acted deliberately or in bad faith in committing the errors. For these reasons, the existence of "investigatory errors" does not defeat a finding of "substantial justification".

17. Accordingly, Capitol's request for reversal of the Presiding Judge's ruling rejecting Capitol's application for reimbursement under the Equal Access to Justice Act should be denied in all respects.

Respectfully submitted,
Daniel B. Phythyon
Chief, Wireless Telecommunications Bureau

Gary P. Schonman
Chief, Compliance and Litigation Branch

Susan A. Aaron
Attorney
Wireless Telecommunications Bureau

Federal Communications Commission
2025 M Street, N.W., Suite 8308
Washington, D.C. 20554
(202) 418-0569

December 18, 1997

CERTIFICATE OF SERVICE

I, Susan Aaron, an attorney in the Enforcement and Consumer Information Division, Wireless Telecommunications Bureau, certify that I have, by first class U.S. mail, this 18th day of December 1997, sent copies of the foregoing "Wireless Telecommunications Bureau's Reply to Capitol Radiotelephone, Inc.'s Exceptions To The Initial Decision Denying Request For Reimbursement Under EAJA", to:

Kenneth E. Hardman, Esquire
Moir & Hardman
2000 L Street, N.W.
Suite 512
Washington, D.C. 20036
Counsel for Capitol Radiotelephone, Inc.

Frederick M. Joyce, Esquire
Joyce & Jacobs
1019 19th Street, N.W.
14th Floor
Washington, D.C. 20036
Counsel for RAM Technologies, Inc.

Administrative Law Judge Joseph Chachkin
Federal Communications Commission
2000 L Street, N.W.
Second Floor
Washington, D.C. 20554

Susan A. Aaron

Susan Aaron