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FCC MAIL SECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20541

FCC 98M-53

80816

In Matter of)	CIB DOCKET NO. 98-44
)	
JOSEPH FRANK PTAK)	
San Marcos, Texas)	
)	
Order to Show Cause Why a Cease and)	
Desist Order Should Not Be Issued)	

ORDER

Issued: April 29, 1998

Released: May 1, 1998

On April 28, 1998, two pleadings (no copies) were received in the office of the undersigned Presiding Judge. Both were postmarked - Austin, Texas. The pleadings are requests by individuals for intervention as parties to this case.

As with the previous misfiling with the Presiding Judge, the pleadings were re-delivered to the Office of the Secretary for filing. See Order FCC 98M- 52, released April 29, 1998. The pleadings are only in original form without the required number of copies. Therefore, it is discretionary with the Secretary as to whether the pleadings will be filed and made a part of this case record. It is again emphasized that the parties (and those asking for party status)¹ are expected to be fully familiar with the Commission's Rules of Practice. See Order FCC 98M-46, released April 16, 1998.

It is also noted that the misdirected pleadings have no certificate of service or other indication that copies were attempted to be served on counsel for the Bureau. There is a prohibition under the Commission's Rules against ex parte contacts with Presiding Judges in restricted adjudicatory proceedings. See 47 C.F.R. §1.1208. These Rules prohibit communications relative to the merits or outcome of an adjudicatory proceeding, such as this one, that are made either to or from Commission decision-making personnel, unless, if written, they are served on the parties or, if oral, the parties have an opportunity to be present. TELESTAR, INC., FCC 89-132, 4 F.C.C. Rcd. 4065 (1989). While the two pleadings are procedural and not directed to the merits of the case, the failure to serve copies of the pleadings on the Bureau is still a serious omission under the Rules of Practice. 47 C.F.R. §1.47 (service of documents and proof of service).

¹ There are conditions required to be met before party status may be achieved. See 47 C.F.R. §1.223 (petitions to intervene). Non-parties may testify if they have evidence to offer that is relevant to the issues. See 47 C.F.R. §1.225 (participation by non-parties).

Accordingly, IT IS ORDERED that there be no further filings of pleadings and related papers with the Presiding Judge until after they are filed with the Office of the Secretary and served on Bureau counsel.²

IT IS FURTHER ORDERED that there shall be no prohibited oral or written ex parte communication made or attempted to be made to the Presiding Judge in this adjudicatory matter.³

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge

² As indicated in the previous Order FCC 98M-52, a courtesy copy of any filed pleading or paper related to this adjudication matter should be delivered or directed the same day to the Presiding Judge's office.

³ A third document which is an ex parte communication from Mr. John Backus is being directed to the General Counsel. It appears that other ex parte statements are being solicited from "all listeners" in possible violation of the prohibition against ex parte communications.