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JUL 23 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Revision of Part 22 and Part 90 )  
of the Commission's Rules to Facilitate )  
Future Development of Paging Systems )  
)  
)  
Implementation of Section 309(j) )  
of the Communications Act -- )  
Competitive Bidding )

WT Docket No. 96-18

PR Docket No. 93-253

### PETITION FOR RECONSIDERATION

Rand McNally & Company ("RMC") hereby petitions the Commission to reconsider its decision in the above-referenced proceeding<sup>1</sup> with respect to the rules announced therein regarding partitioning.

RMC requests, more specifically, that the Commission amend Section 22.513(b) either to eliminate the ability of paging licensees to partition along the "boundaries of an FCC-recognized service area" or to specify that, notwithstanding this provision, the use of RMC's Major Trading Area (MTA) or Basic Trading Area (BTA) Listings is not permitted for partitioning in the absence of an express license agreement with RMC permitting such use.

RMC has objected, in numerous proceedings, to the Commission's proposed and, in some cases, adopted rules that permit Commission licensees to use RMC's proprietary MTA and BTA Listings for the partitioning of licenses in services for which RMC has not licensed their use. RMC's copyright interest in these Listings is a matter of Commission record, as is its position with respect to the use of its Listings for partitioning and need not be restated here. RMC's most recent pleading on the subject, Comments filed a week ago with respect to the partitioning of Wireless

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<sup>1</sup> 64 Fed. Reg. 33762 (June 24, 1999).

Communications Services (WCS) licenses is attached for reference<sup>2</sup> and other RMC pleadings on the subject are incorporated herein by reference.<sup>3</sup>

There is one significant difference between the partitioning rules announced for paging and those heretofore protested by RMC that should be addressed. The express reference to RMC's Listings: "FCC-recognized service area . . . (i.e., Major Trading Area, Basic Trading Area)" that has previously appeared in the Commission's rules<sup>4</sup> has been replaced with "FCC-recognized service area . . . (e.g., MEA or EA)."

RMC believes that this change has been made in response to concerns raised by RMC in earlier proceedings and appreciates the fact that an effort has been made to address MRC's concerns in this docket. Unfortunately, while going in the right direction, the new version of the partitioning rules continues to have the effect of encouraging Commission licensees to employ MTA or BTA Listings, and thereby infringe on RMC's copyright interests.

The underlying problem is that, in addition to Economic Areas (EAs) or Commission-created aggregates thereof, the primary geographic area designations used by the Commission to license CMRS services have been MTAs or BTAs. Accordingly, for a licensing scheme, such as here for paging, that will (initially) be based upon EAs or MEAs, to then allow licensees to partition based upon other "FCC recognized service areas," even without expressly mentioning MTAs or BTAs by name, surely has the effect of encouraging their illegitimate use. By express reference or not, for CMRS, the reference to other "FCC recognized service area(s)" would lead EA or MEA licensees to BTAs or MTAs. Indeed, under the rules as announced, it would appear that if an MEA licensee were to seek to partition its license along MTA boundaries, the Commission could find itself forced, by its own rules, to grant an MTA-defined license, even if that very grant would further infringe on RMC's copyright interests.

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<sup>2</sup> Comments, WT Docket No 99-168 (WCS), July 19, 1999.

<sup>3</sup> See, e.g., RMC's Request for Clarification, ET Docket 94-32 (Below 5 GHz), Jan. 22, 1999; Comments, WT Docket No. 98-169 (218-219 MHz), Oct. 28, 1998; Petition for Reconsideration and Request for Expedited Action, PR Docket No. 89-552 (220-222 MHz), Oct. 13, 1998; Comments, ET Docket No. 94-124 (Wireless Communications Service), Sept. 19, 1998.

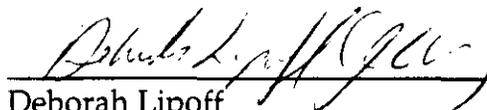
<sup>4</sup> See 47 C.F.R. § 27.15(b).

CONCLUSION

RMC appreciates that an effort has been made in this proceeding to avoid the infringement of its copyright interests that has occurred in other partitioning rules, as to which RMC's various comments and petitions are still pending. Nevertheless, the modification to the rules that has been made does not accomplish this purpose. Accordingly, RMC urges the Commission to further reform its paging rules so as to avoid infringing, and effectively inviting its licensees to infringe, upon RMC's proprietary copyright interests.

Respectfully submitted,

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July 23, 1999

In the Matter of )  
)  
Service Rules for the 746-764 and )  
776-794 MHz Bands, and )  
Revisions to Part 27 of the )  
Commission's Rules )

WT Docket No. 99-168

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COMMENTS OF RAND McNALLY & COMPANY

Rand McNally & Company ("RMC") hereby submits the following comments in response to the Notice of Proposed Rulemaking released on June 3, 1998, in the above captioned proceeding ("Notice").

RMC's comments address the Commission's proposal to allow licensees of the frequencies that are subject to the Notice to partition their licenses in accordance with Section 27.15 of the Commission's Rules. These rules, inter alia, purport to authorize Part 27 licensees to employ another "FCC recognized service area . . . (i.e., Major Trading Area, Basic Trading Area . . .)" to partition their licenses.<sup>1</sup>

RMC has made clear to the Commission in numerous pleadings of record<sup>2</sup> that the Commission has no authority to use or allow its licensees to use RMC's MTA or BTA listings for any purpose other than in connection with the licensing of certain specific services in certain specific frequency bands as authorized under certain specific agreements with RMC. RMC has granted no such license, and the Commission has no right to employ, or encourage others to employ, RMC's MTA or BTA Listings for other services, including any service licensed under Part 27 or the particular services that are subject to the instant Notice.

Section 27.15(b) of the Commission's rules infringes on RMC's copyright, both expressly with its use (and encouragement of others to use) the MTA and BTA

<sup>1</sup> 47 C.F.R. §27.15(b).

<sup>2</sup> See, e.g., RMC's Request for Clarification, ET Docket 94-32 (Below 5 GHz), Jan. 22, 1999; Comments, WT Docket No. 98-169 (218-219 MHz), Oct. 28, 1998; Petition for Reconsideration and Request for Expedited Action, PR Docket No. 89-552 (220-222 MHz), Oct. 13, 1998; Comments, ET Docket No. 94-124 (Wireless Communications Service), Sept. 19, 1998.

listings, and implicitly so in its reference to other "FCC recognized service areas," which, with or without the express reference to MTAs and BTAs, wrongly suggests to Part 27 licensees that the use of MTAs or BTAs, which have been authorized for certain other CMRS services, is permissible for partitioning Part 27 licenses. Each time the Commission expands the scope of Section 27.15(b) to additional services, it compounds the injury to RMC.

The Commission has at its disposal an alternative workable formulation of partitioning rules, governing of AVM licenses, 47 C.F.R. 90.365(b), which (following the issuance of an Erratum)<sup>3</sup> makes no reference to the use of the MTA or BTA Listings or other "FCC recognized service areas."<sup>4</sup> Absent a license agreement with RMC that would permit partitioning of Part 27 or other not currently covered FCC-services along MTA or BTA lines -- an alternative which RMC has expressed a willingness to entertain, but as to which up to now the Commission has expressed no interest -- such a partitioning formulation should be employed here as well, and Part 27 should finally be amended to avoid further infringement, injury, and damages.

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<sup>3</sup> Erratum to Second Report and Order, Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, PR Docket No. 93-61 (July 20, 1998).

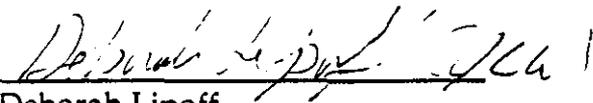
<sup>4</sup> The AVM partitioning rule still allows partitioning along county boundaries. For the avoidance of doubt, while RMC obviously has no objection to partitioning along county lines, RMC would regard any licensee's effort to partition based upon the compilation of counties that are reflected in the MTA/BTA Listings as an infringement.

**CONCLUSION.**

The Commission has no right nor authorization to use, or encourage others to use, expressly or by implication, the MTA/BTA Listings for licensing, initial or subsequent partitioning, of the instant or any other Part 27 Wireless Communications Services licenses. Absent a license agreement permitting such use, the Commission should refrain and cease and desist from infringing upon these rights.

Respectfully submitted,

RAND McNALLY & COMPANY

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