

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of Section 309(j))
of the Communications Act)
Competitive Bidding) PP Docket No. 93-253
)

PETITION FOR RECONSIDERATION AND
REQUEST FOR IMMEDIATE PROCESSING OF
CELLULAR UNSERVED AREA SETTLEMENT AGREEMENT

To: The Commission

Thumb Cellular Limited Partnership (Thumb Cellular), by its attorneys, hereby seeks review of a portion of the Commission's April 20, 1994 Second Report and Order, FCC 94-61. In support whereof, the following is respectfully submitted:

1) As indicated in Thumb Cellular's November 10, 1993 Comments submitted in this proceeding, Thumb Cellular is the licensee of Cellular Station KNKQ268, MI RSA #10-B. On March 10, 1993 Thumb Cellular filed an unserved area application proposing to serve an adjacent unserved area in the Detroit MSA #5-B market. On or about March 10, 1993 the licensee of the Detroit MSA #5-B (Station KNKA231), Detroit SMSA Limited Partnership (DSLPL), also filed an application to serve that unserved area. The applications were scheduled for lottery in the Commission's July 9, 1993 Lottery Notice. The affected unserved area constitutes a small "no man's land" between the two cellular systems.

2) On September 20, 1993 Thumb Cellular and DSLPL filed a Joint Request to Cancel Lottery (Joint Request) with the Commission. The Joint Request was based upon a settlement agreement

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dated as of September 16, 1993.¹ The proposed settlement envisioned a full market settlement in which the lottery would be cancelled, DSLP's application would be granted, and Thumb Cellular's application would be dismissed.²

3) Subsequent to the September 20, 1993 settlement filing with the Commission, undersigned counsel spoke with a representative of the Mobile Services Division (MSD) to ascertain the status of settlement processing. The staff member indicated that processing settlements for cellular unserved market areas was being put on hold. Subsequently, the Commission issued the subject NPRM which confirmed that information.

4) Paragraph 160 of the NPRM requests comments relating to whether full market settlements should be allowed "pending the decision of lottery or auction." Thumb Cellular indicated that granting the full market settlement agreement for the Detroit MSA #5-B cellular unserved area would serve the public interest. Thumb Cellular listed five public interest considerations which counseled for approval of the settlement.

5) Rather than deal with the issue raised in the NPRM, and commented upon by Thumb Cellular, the Second Report and Order, in a footnote, states that

As noted, we will address the applicability of competitive bidding to certain cellular radio applications filed

¹ Undersigned counsel's files indicates that settlement discussions commenced with an August 3, 1993 letter from Thumb Cellular to DSLP.

² The settlement agreement provides that DSLP consents to contour extensions by Thumb Cellular into Detroit MSA #5-B after DSLP's unserved area application is granted.

prior to July 26, 1993, in a separate order.³ These applications present unique issues because of the special rule that Congress adopted in Section 6002(e) of the Budget Act that is applicable only to mutually exclusive applications filed prior to that date. Second Report and Order, p. 26 n. 55.

6) There is no indication given as to when the "separate order" would be issued. Nor does the Commission explain which "unique issues" are involved which could not be resolved in the more than five months that the NPRM was under consideration. In the meantime, cellular service to subscribers in the affected area must remain inferior to that which could be provided after approval of the settlement agreement.

7) To our knowledge, no party filed an application to compete against the applications involved in the settlement and no party filed a protest against either pending application or the settlement itself. The Second Report and Order did not present one rational reason to support further delay in processing applications which have been pending for more than fourteen months. The Commission has utterly failed to meet its statutory directive to promote

the development and rapid deployment of new technologies, products, and services, including those residing in rural areas, without administrative or judicial delays . . ." Section 309(j)(3) of the Communications Act, as amended. (Emphasis added.)

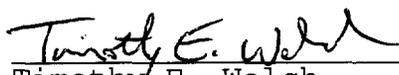
8) The Commission has unjustifiably and inexplicably imposed an unreasonable delay in the services Thumb Cellular would provide under the settlement agreement. The public interest considerations

³ The "as noted" language in Footnote 55 seems to indicate that this issue is discussed elsewhere in the Second Report and Order. However, we could not find any other reference to this issue in the Second Report and Order.

Thumb Cellular presents here and in its Comments make the Commission's failure to process the settlement agreement unconscionable.

WHEREFORE, in view of the information presented herein, it is respectfully requested that the Commission immediately process the settlement agreement filed in the Detroit MSA #5-B unserved cellular radio market.

Respectfully submitted,
THUMB CELLULAR LIMITED
PARTNERSHIP



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