OFFICE OF GENERAL COUNSEL

M E M O R A N D U M

TO: Chief, Dockets Division

FROM: Associate General Counsel, Litigation Division

SUBJECT: Cablevision Systems Corporation v. FCC & USA, No. 94-1631. Filing of a new Petition for Review filed in the United States Court of Appeals for the D.C. Circuit.

DATE: September 21, 1994

Docket No(s). ET 93-266 and GEN 90-314

File No(s). PP-6, PP-52 and PP-58

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This is to advise you that on September 16, 1994, Cablevision Systems Corporation, filed a Section 402(a) Petition for Review in the U.S. Court of Appeals for the D.C. Circuit. The FCC underlying decisions are: In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, 9 FCC Rcd 1337 (1994)(FCC 93-550) and In the Matter of Review of the Pioneer's Preference Rules & In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, FCC 94-209, released August 9, 1994.

Challenge to FCC amended pioneer's preference rule, as applied to broadband personal communication services so as to require preference winners to pay for their licenses an amount keyed to the auction prices paid for similar licenses. Petitioner challenges both the decision to charge for the pioneers' licenses and the earlier decisions to grant pioneer's preference to three applicants.

Due to a change in the Communications Act, it will not be nessary to notify the parties of this filing.

The Court has docketed this case as No. 94-1631 and the attorneys assigned to handle the litigation of this case are John E. Ingle and James Carr.

Daniel M. Armstrong

cc: General Counsel
Office of Public Affairs
Shepard's Citations

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CABLEVISION SYSTEMS CORPORATION, Petitioners, v. FEDERAL COMMUNICATIONS COMMISSION and UNITED STATES OF AMERICA, Respondents.	)	Case No. 94-1631 Filed: 9/16/94

Petition for Review

Cablevision Systems Corporation ("Cablevision"), by its attorneys, pursuant to 28 U.S.C. §§ 2342 and 2344, 47 U.S.C. § 402(a), and Rule 15 of the Federal Rules of Appellate Procedure, petitions this Court for review of the Federal Communications Commission's ("Commission") Memorandum Opinion and Order on Remand in its docketed proceeding In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, PP-6, PP-52, and PP-58 (released August 9, 1994) ("Remand Order").[1/] A summary of the Commission's Remand Order appeared in the Federal Register on August 18, 1994. A copy of the order is attached in Appendix A.

[1/] Given that an award of a pioneer's preference does not constitute grant of a Commission license, Cablevision seeks review pursuant to 47 U.S.C. § 402(a) in lieu of an appeal pursuant to 47 U.S.C. § 402(b). Should the Court find otherwise, Cablevision requests that its petition for review be considered as a timely notice of appeal.

Cablevision and other petitioners originally sought review of In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Third Report and Order,[2] which were consolidated by the Court. The Commission issued its Remand Order after this Court remanded the consolidated cases. On remand, the Commission amended its pioneer's preference rules to require the recipients to pay for licenses.[3] In an apparent affirmation of its underlying decision granting the largest and most important licenses as preference awards, the Commission required Cox Enterprises, Inc., Omnipoint Communications, Inc. and American Personal Communications to pay 90 percent of the winning auction bid for the other 30 MHz license in their Metropolitan Trading Area (MTA), or 90 percent of an adjusted value based on the average per population price of the top 10 MTA licenses.

The Commission did not, however, address the remaining issues Cablevision and others raised on appeal. Specifically, the Commission failed to adequately explain its decision to grant three requests for pioneer's preferences and deny the requests of 47 other applicants, including Cablevision. Cablevision maintains that, among other things, the Commission failed to adequately distinguish between those parties that received awards

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[2] 9 FCC Rcd. 1337 (1994).

[3] The Commission's pioneer's preference rules are codified at 47 C.F.R. §§ 1.402, 1.403, 5.207 (1992).

and those that did not. Further, the licenses awarded as preferences were excessive in size and scope.

Relief is sought on the grounds that the Commission's order is arbitrary, capricious and otherwise contrary to law. Venue is proper pursuant to 28 U.S.C. § 2343.

Cablevision requests that this Court enjoin, set aside or hold unlawful the Commission's Order and grant such other relief as it deems appropriate.

Respectfully submitted,

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September 16, 1994

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