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OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chief, Dockets

FROM: Associate General Counsel, Litigation Division

SUBJECT: Association of Independent Designated Entities and David Meredith v. FCC & USA, No. 94-1712. Filing of a new Petition for Review in the United States Court of Appeals for the District of Columbia Circuit

DATE: November 29, 1994

Docket No(s). PP 93-253

File No(s).

This is to advise you that on November 23, 1994, Association of Independent Designated Entities and David Meredith, filed a Section 402(a) Petition for Review in the District of Columbia Circuit of the FCC decision: In the Matter of Implementation of Section 309(j) of the Communications Act - Competitive Bidding, FCC 94-264, released October 19, 1994.

In this proceeding, the Petitioners seek review of the FCC's decision to adopt and amend rules governing use of competitive bidding to select between mutually exclusive applications for the broadband PCS radio service.

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

The Court has docketed this case as No. 94-1712 and the attorney assigned to handle the litigation is 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

Nov 25 4 15 PM '94

Association of Independent Designated Entities)
and)
David Meredith)
Petitioners,)
v.)
Federal Communications Commission)
and United States of America,)
Respondents.)

Case No. 94-1772
Filed: 11/23/94

PETITION FOR REVIEW

The Association of Independent Designated Entities ("AIDE") and Mr. David Meredith, individually and as a member of AIDE, by their attorney hereby jointly petition this Court for review of the Fourth Memorandum Opinion and Order of the Federal Communications Commission ("FCC") in the proceeding Implementation of Section 309(j) of the Communications Act - Competitive Bidding, 9 FCC Rcd ____ (FCC 94-264, released October 19, 1994) (PP Docket 93-253) ("Fourth Memorandum Opinion and Order"). A copy of the Fourth Memorandum Opinion and Order is attached. A summary of the Fourth Memorandum Opinion and Order was published in the Federal Register, 59 FR 53364 (October 24, 1994).

This Petition is filed pursuant to 28 U.S.C. §§ 2342, 2344; Section 402(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 402(a); and Rule 15 of the Federal Rules of

Appellate Procedure. Venue lies in this Court pursuant to 28 U.S.C. § 2343.

In the Fourth Memorandum Opinion and Order, the FCC adopted and amended certain rules governing its use of competitive bidding (auctions) to select between mutually exclusive applications for the broadband PCS radio service. One significant effect of those rules is to prohibit pre-auction settlements between mutually exclusive applicants for broadband PCS licenses, a result inconsistent with the competitive bidding provision of the Communications Act, 47 U.S.C. §309(j). The Commission's auction rules are unreasonable, arbitrary and capricious, and in violation of the Communications Act.

Also in the Fourth Memorandum Opinion and Order, the FCC adopted certain rules governing its processing of broadband PCS applications without providing an adequate opportunity for notice and comment on such proposed rules. The Commission thus violated the Administrative Procedure Act, 5 U.S.C. §553, and its own rules, 47 C.F.R. §1.413. The Commission's auction rules are unreasonable, arbitrary and capricious, and in violation of the Communications Act and the Administrative Procedure Act.

AIDE is an unincorporated association, with membership limited to persons and entities likely to be classified as "Designated Entities" under the Communications Act, 47 U.S.C. § 309(j). AIDE was formed for the purpose of representing the interests of designated entities before the FCC. AIDE actively participated in the proceeding below, and the interests of AIDE

and its members is directly affected by the rules adopted in the Fourth Memorandum Opinion and Order.

Mr. Meredith is a member of AIDE. He directly and indirectly holds numerous interests in FCC-licensed radio systems. He presently intends to participate in the Commission's auction process for broadband PCS, and possibly other services as well.

AIDE and Mr. Meredith request that the Court review the Fourth Memorandum Opinion and Order and the FCC's broadband PCS auction and application-processing rules and set them aside on the grounds that they are unlawful under the Communications Act and the Administrative Procedure Act, are arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence and reasoned analysis, and are otherwise contrary to law.

Respectfully submitted,

Association of Independent
Designated Entities
David Meredith

By


William J. Franklin
DC Bar No. 939785
Their Attorney

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November 23, 1994

CERTIFICATE OF SERVICE

I hereby certify that on this 23th day of November 1994, I delivered (via U.S. first-class mail) copies of the foregoing Petition for Review to the Federal Communications Commission, the U.S. Department of Justice, and all parties to the proceeding.

By: William J. Franklin
William J. Franklin