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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Deferral of Licensing of MTA	)	GN Docket No. 93-253
Commercial Broadband PCS	)	ET Docket No. 92-100

DOCKET FILE COPY ORIGINAL

OPPOSITION TO APPLICATION FOR REVIEW

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Dated: August 10, 1995

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SUMMARY

The Commission should deny the Application for Review and affirm the Bureau's June 23, 1995 order in all respects, specifically holding that Petitioners are effectively seeking an untimely review of the Commission's PCS auction rules, holding that the Commission did not fail to comply with its statutory mandate in structuring the auctions, rejecting Petitioners' wholly unsupported claims of collusion, and denying the requested stay.

A grant of Petitioners' Application will not serve the public interest. The Commission has repeatedly found that a further delay of the A and B block licensing will harm the public interest as a whole by denying wireless customers the benefits arising from rapid deployment of new and innovative PCS services, including increased competition to incumbent cellular providers.

Further, a grant of Petitioners' Application will severely harm WirelessCo and PhillieCo. After an extensive Commission rulemaking process and auction for broadband PCS licenses, after filing detailed Form 600 applications and paying their winning bids in full, and after being granted their licenses, WirelessCo and PhillieCo are now faced with Petitioners' Application for Review which effectively seeks to revoke those licenses. Revocation of these licenses would severely harm WirelessCo and PhillieCo, who have already been required to pay 100% of their winning bids—an amount of over $2.1 billion in the case of WirelessCo and nearly $85 million for PhillieCo. The action requested by Petitioners *after* WirelessCo and PhillieCo have paid such large sums results in significant harm in the form of lost returns because the money has been deposited in the

U.S. Treasury rather than profitably invested elsewhere (including, potentially, in other competitive services). Further, WirelessCo and PhillieCo have already taken significant steps toward providing PCS service, including entering into negotiations with equipment manufacturers for subscriber equipment, network equipment, switching equipment and cell sites and negotiating relocation agreements with incumbent microwave licensees that occupy spectrum to be used by PCS licensees. Moreover, WirelessCo has hired employees in more than 20 cities and is negotiating facility leases in multiple locations.

In light of the damage that deferral of the already-granted licenses would cause to WirelessCo, PhillieCo and the public, the Commission should deny the Application for Review and affirm the Bureau's Order.

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OPPOSITION TO APPLICATION FOR REVIEW

Pursuant to Section 1.115(d) of the Commission's rules[1] and the Commission's August 3, 1995 Public Notice,[2] WirelessCo, L.P. ("WirelessCo") and PhillieCo, L.P. ("PhillieCo") hereby oppose the above-captioned Application for Review ("Application")[3] filed on July 21, 1995 by the National Association of Black Owned Broadcasters, Inc. ("NABOB"), Percy E. Sutton, Individually, and the National Association for the Advancement of Colored People ("NAACP") (collectively the "Petitioners"). As the discussion below demonstrates, the Wireless Telecommunications Bureau ("Wireless Bureau" or "Bureau") properly rejected the Petitioners' claims in its June 23, 1995 order in this proceeding.[4] Pursuant to the Bureau's Order, WirelessCo and PhillieCo have already been awarded their licenses and have taken significant steps

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1 47 C.F.R. §1.115(d).

2 "Filing Deadlines for Oppositions and Replies to Applications for Review," F.C.C. Public Notice, DA 95-1716 (Aug. 3, 1995).

3 The Petitioners actually filed two Applications for Review raising substantially the same issues. WirelessCo and PhillieCo are separately opposing the other Application for Review, which was filed in Applications for A and B Block Broadband PCS Licenses, File Nos. 00001-CW-L-95 through 00099-CW-L-95, Call Signs KNLF204 through KNLF302.

4 *Deferral of Licensing of MTA Commercial Broadband PCS,* PP Dkt. No. 93-253, Memorandum Opinion and Order, DA 95-1410 (June 23, 1995) ("Deferral Order").

toward providing PCS service. In their Application, Petitioners largely reiterate arguments which the Bureau considered and properly rejected, and wholly fail to provide any valid reason for the Commission to overturn the Bureau's prior ruling and grant the extraordinary relief, *i.e.*, license revocation, which Petitioners in effect seek in this proceeding. Accordingly, WirelessCo and PhillieCo urge the Commission to deny the instant Application and to affirm the Deferral Order in all respects.

PROCEDURAL BACKGROUND

Pursuant to the rules and policies adopted by the Commission, on the basis of an extensive public record, which included the participation of NABOB and other interested parties, the Commission conducted its initial broadband PCS auction beginning in December 1994 in which WirelessCo was the high bidder for 29 licenses and PhillieCo was the high bidder for one license.[5] The WirelessCo winning bids for these licenses were in excess of $2.1 billion, and PhillieCo's winning bid was nearly $85 million.[6] WirelessCo and PhillieCo subsequently made timely 20% downpayments on their winning bids, then filed timely applications for licenses in all markets in which they were the winning bidders.

Following the filing of these license applications, the Petitioners filed with the Commission on May 12, 1995 both (1) an Application for Review and Request for Stay in this proceeding, and (2) a Petition to Deny and Request for Stay in the individual

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[5] *See* "FCC Announces April 5 Deadline for Submission of FCC Form 600 Broadband PCS Applications," FCC Public Notice, DA 95-586, at Attachment A (Mar. 22, 1995).

[6] *See id.*

licensing proceedings. Both pleadings sought essentially the same relief—a deferral of the grant of licenses to the winning bidders, ostensibly because the granting of licenses to the winners of the A and B block auctions would harm the future winners of the later C block auctions (in which the so-called designated entities will be participating).

The Commission denied the Petitioners' pleadings in two separate orders released on June 23, 1995. In its order in this proceeding ("Deferral Order"), the Bureau held that the Commission rules regarding the structure and sequence of the PCS auctions were established in accordance with the Commission's statutory mandate and that the Petitioners failed to satisfy the substantive legal requirements for grant of a stay.[7] In the other June 23 order ("Licensing Order"), the Bureau granted PCS licenses to the winning bidders from the A and B block auction.[8] The Licensing Order also dismissed Petitioners' request for reconsideration of the auction procedures, based upon findings similar to those in the Deferral Order, and held that Petitioners lacked standing to challenge the license grants in a petition to deny.[9] Following these orders, WirelessCo and PhillieCo tendered in full the remaining balances on their respective bids and subsequently received their licenses.

In response to the Deferral Order and the Licensing Order, the Petitioners have now filed both (1) an Application for Review with the Commission in this proceeding,[10]

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[7] Deferral Order.

[8] *Applications for A and B Block Broadband PCS Licenses*, Order, DA 95-1411 (June 23, 1995) ("Licensing Order").

[9] *Id.*

[10] Application for Review, Deferral of Licensing of MTA Commercial Broadband PCS, GN Dkt. No. 93-253 (filed July 21, 1995) ("Application").

and (2) an Application for Review with the Commission in the separate licensing proceedings.[11] Both pleadings yet again seek to "stay" or deny the issuance of the A and B block licenses,[12] despite the fact that these licenses already have been issued. The Petitioners thus do not seek to maintain the status quo pending further Commission review, but actually seek to change radically the status quo by effectively asking the Commission to revoke licenses that already have been issued. As discussed in more detail below, WirelessCo and PhillieCo have already taken many significant steps—financial and otherwise—to begin their PCS businesses following the issuance of these licenses. Thus the Petitioners' styling of their request for "stay" is misleading and their request is inappropriate.

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[11] Application for Review, Applications for A and B Block Broadband PCS Licenses, File Nos. 00001-CW-L-95 through 000099-W-L-95; call signs KNLF 204 through KNFL 302 (filed July 21, 1995) ("Application for Review of Licensing Order"). The Petitioners have also filed a Petition for Review of the Deferral Order with the Federal Court of Appeals for the District of Columbia Circuit. Petition for Review, *NABOB et al. v. FCC*, (D.C. Cir.) (No. 95-1392). WirelessCo and PhillieCo have moved to intervene in this proceeding and opposed Petitioners' Emergency Motion for Stay filed with the Court.

[12] While Petitioners' Application for Review of the Licensing Order does not reargue or expressly seek review of the Bureau's denial of the stay, it refers to their stay argument in their Application in this proceeding and states that this "adequately presents the stay issue to the Commission." Application for Review of Licensing Order at 2.

ARGUMENT

I. THE PETITIONERS EFFECTIVELY SEEK UNTIMELY APPEAL OF THE COMMISSION'S PCS AUCTION RULES, WHICH COMPLY WITH THE STATUTORY MANDATE

A. The Decisions Ultimately Challenged by Petitioners Were Resolved in Rulemakings Completed Long Ago

The Bureau's Deferral Order properly concluded that to the extent Petitioners seek reconsideration of the Commission's rules with respect to the structure and sequencing of PCS auctions, their request is untimely.[13] The Bureau correctly held that the method of minority participation in the Commission's PCS auctions was decided, as it should have been, in a rulemaking proceeding completed long ago. The Commission should uphold the Bureau's finding in that respect, rather than allowing Petitioners to seek reconsideration of that rulemaking now in an Application for Review.

As the Bureau decision found, the principal arguments advanced in Petitioners' Application were properly considered and rejected by the Commission in a long-ended rulemaking proceeding. Nonetheless, the Application repeats challenges to the Commission's initial decisions to: (1) auction A and B block licenses separately from C block licenses; (2) conduct the A and B block auctions prior to the auction of C block licenses; and (3) provide incentives for designated entity participation in only the C and F block auctions, rather than all auctions.[14] The Commission answered each of these challenges in a series of orders adopted approximately a year ago as part of an exhaustive

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[13] Deferral Order at ¶19.

[14] Application at 9.

rulemaking proceeding addressing PCS market structure and auction procedure. The fact that the Petitioners, after several opportunities to present their views, still disagree with the Commission's ultimate decisions with respect to the auction structure does not entitle them to now belatedly appeal the Commission's decisions.

Significantly, the Commission has at least twice previously held that such challenges were untimely requests for reconsideration when it rejected not only the Petitioners' earlier request for stay but also a similar request for stay of the A and B block auctions filed by Communications One, Inc., which advanced arguments similar to those raised by the Petitioners.[15] The Commission correctly viewed both of these requests as merely "untimely petition[s] for reconsideration" of the Commission's order establishing the structure of the auctions.[16] The Petitioners have presented no reason why their Application should be viewed any differently—*i.e.*, why it should not also be treated as an untimely appeal of a long-decided Commission rulemaking. As a result, the Commission should deny the Application.

B. These Earlier Commission Decisions Show Compliance with the Statutory Mandate

Even if the Commission considers Petitioners' arguments in the present context, it is clear that the Commission has complied with its statutory mandate. As the Bureau found in its decision, the Commission has taken more than adequate steps over the last

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[15] Communications One, Inc., Emergency Motion to Defer MTA PCS Licensing (filed Mar. 8, 1995).

[16] *See Deferral of Licensing of MTA Commercial Broadband PCS*, 77 Rad. Reg. 2d (P & F) 1354, ¶5 (Apr. 12, 1995) ("CommOne Order"). The Commission rejected the suggestion that the C block delay presented a new circumstance not previously considered by the Commission. *Id.*

year and a half to ensure that minority-owned businesses are "given the opportunity to participate" in the provision of broadband spectrum-based services. Moreover, as the Bureau noted, Section 309(j) establishes several objectives to be implemented in the Commission's competitive bidding proceedings.[17] These other three objectives were fully satisfied by the Commission's procedures, as discussed in part III below.

With respect to minority participation in PCS services, the Commission initially set out in a Notice of Proposed Rulemaking a number of specific proposals designed to satisfy the requirements of Section 309(j) in an auction context.[18] It received almost 400 comments and replies,[19] and carefully considered its own proposals as well as the variations suggested by the commenters before establishing the eligibility criteria and general rules that would be used to implement the special measures instituted for minority-owned businesses.[20]

In adopting rules specifically governing broadband spectrum auctions, the Commission undertook a similarly careful and conscientious approach. Rather than provide these incentives in all blocks, the Commission set aside the separate entrepreneur blocks (*i.e.*, the C and F blocks) for minority-owned businesses and other designated entities because of Congress' concern, echoed by many commenters, that the difficulty

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[17] 47 U.S.C. §309(j)(3).

[18] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Notice of Proposed Rule Making, 8 FCC Rcd 7635 (1993).

[19] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2401-05 (App. A) (1994) ("Second Report and Order").

[20] *See, e.g.*, *id.* at 2389, 2391-94. In fact, the Second Report and Order explicitly addressed and adopted some of NABOB's comments regarding the designated entity proposals. *Id.* at 2389, 2391.

experienced by minority-owned firms in obtaining capital would effectively prevent such smaller companies from bidding competitively against the larger, established telecommunications players.[21]

Following these decisions, however, the Supreme Court recently established that the constitutionality of all racial preferences, including those adopted for purposes of redressing past discrimination, must be evaluated under strict judicial scrutiny.[22] In light of that decision, the Commission became "concerned that our present record would not adequately support the race- and gender-based provisions in our C block competitive bidding rules under a strict scrutiny standard of review."[23] As a result, the Commission issued a Further Notice of Proposed Rule Making,[24] followed by its Sixth Report and Order, making all small businesses eligible for the preferences designed to benefit minority- and female-owned applicants.[25] Not only was the Commission concerned that its rules containing preferences for minorities would be overturned in light of *Adarand*, but the Commission also feared that legal uncertainty resulting from use of race- and gender-preferences would cast a cloud over the C block auction and any licenses granted

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21 *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Fifth Report and Order, 9 FCC Rcd 5532, 5584-85, 87 (1994) ("Fifth Report and Order"), *aff'd on recon., Fourth Memorandum Opinion and Order*, 9 FCC Rcd 6858 (1994) ("Fourth Memorandum Opinion and Order").

22 *Adarand Constructors, Inc. v. Pena*, 115 S. Ct. 2097 (1995).

23 *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Sixth Report and Order, FCC 95-301, at ¶11 (July 18, 1995) ("Sixth Report and Order").

24 *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Further Notice of Proposed Rule Making, FCC 95-263 (June 23, 1995) ("Further Notice").

25 *Id.*

to minorities and women pursuant to such preferences.[26] In modifying its C-block rules to allow all small businesses to benefit from the most favorable bidding credits and installment payment plans (previously available only to minorities and women), the Commission expressly found that many minority- and women-owned businesses would benefit from the rule changes.[27] In other words, by minimizing uncertainty and further delay, the Commission has given women- and minority-owned companies a better chance of actually becoming successful PCS providers.[28]

In sum, the Commission ultimately reserved one third of the broadband spectrum, the C and F blocks (40 MHz out of a total of 120 MHz), for designated entities including minorities.[29] These entrepreneur blocks constitute almost 50 percent of the available 2,074 licenses.[30] Taken as a whole, the Commission has adopted sufficient measures—particularly in light of the *Adarand* decision—to ensure participation in the broadband PCS market by minority-owned businesses. The fact that the Petitioners now disagree with the method ultimately chosen by the Commission after such careful deliberation does not establish that the Commission has "failed" to satisfy its statutory obligations. The Commission should therefore deny the Application.

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[26] *Id.* at ¶11-12.

[27] *Id.* at ¶11.

[28] Further Notice at ¶10.

[29] Fifth Report and Order at 5535-36.

[30] *Id.* at 5536.

II. THE PETITIONERS' WHOLLY UNSUPPORTED CLAIMS OF COLLUSION MUST BE REJECTED AGAIN

The Wireless Bureau properly rejected Petitioners' claim, reasserted here, that timely grant of the A and B block PCS licenses is anti-competitive. As the Bureau noted, prompt introduction of PCS is necessary to establish competition with entrenched cellular providers.[31] The Bureau correctly concluded that Petitioners "ignore economic reality" by considering only concentration of the PCS market without evaluating the overall benefits to competition in wireless services that prompt introduction of PCS provides.[32]

Moreover, Petitioners again raise—without providing a shred of supporting evidence—allegations of collusion among the A and B block auction winners, including WirelessCo.[33] WirelessCo strongly objects to any insinuation that it has been involved in any collusion or other improper conduct during the auction process and refers Petitioners (and the Commission) to its anti-collusion certification filed with its Form 600 applications.[34] In fact, the June 23 Licensing Order by the Wireless Bureau found that Petitioners failed to provide even a "modicum of a factual showing that collusion occurred" and that "Petitioners' conclusory allegations [of collusion are] wholly inadequate."[35] Given

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[31] Deferral Order at ¶¶23-24.

[32] *Id.*

[33] Application at 11-14.

[34] *See, e.g.*, WirelessCo, L.P. Form 600—M001, Block B, New York, Agreements Exh. A at Tab 2 (filed Apr. 5, 1995). Identical certifications were filed with all of WirelessCo's Form 600 applications.

While the Minority Petitioners did not specifically raise these allegations with respect to PhillieCo, PhillieCo also notes that it did not engage in any collusion or other improper conduct during the auction process and filed its own anti-collusion certification with its Form 600 application.

[35] Licensing Order at ¶14.

the completely unsubstantiated nature of these allegations, the Commission should deny the Application.

III. THE PETITIONERS FAIL TO MEET THE FOUR-PRONGED TEST FOR GRANT OF A STAY

In its Deferral Order, the Bureau properly concluded that the Petitioners failed to satisfy the test for justifying a stay of the A and B block licensing.[36] As the Petitioners acknowledged, in order to obtain a stay of the A and B block licenses, they must demonstrate that: (1) they are likely to prevail on the merits; (2) they will suffer irreparable harm if a stay is not granted; (3) no other interested parties will be harmed if a stay is granted; and (4) the public interest favors grant of a stay.[37] The Bureau properly determined that the Petitioners' fail to meet even one of these requirements.

First, the Petitioners do not have a substantial likelihood of prevailing on the merits of their Application. As described above, the Commission carefully considered its statutory mandate to ensure minority participation in the auctions and determined that the structure ultimately adopted best served this goal. In its Deferral Order, the Bureau found that the Commission's PCS auction rules struck a "proper[ ] balance[ ]" between the goal of diversity in license ownership and the other objectives in Section 309(j)(3).[38] Specifically, the Bureau found that the following three other statutory objectives are

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[36] Deferral Order at ¶19.

[37] *See Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977).

[38] Deferral Order at ¶21. *See* 47 U.S.C. §309(j)(3).

served by the structure of the Commission's rules, even if promotion of diversity in license ownership is delayed:

> (1) development and rapid deployment of services with a minimum of administrative and judicial delay;
>
> (2) recovery for the public of a portion of the value of the spectrum; and
>
> (3) promoting efficient and intensive use of the spectrum.[39]

The Bureau found that the statute does not require elevation of one of these objectives to a paramount position—as done by Petitioners—"at the cost of delaying much-needed service that could otherwise be provided to the public."[40]

Disregarding the Bureau's balanced approach, Petitioners argue that holding the C block auctions after the A and B block auctions will result in competitive disadvantages for C block participants. However, the Commission explicitly found in its rulemaking process that staggered timing of PCS auctions would *foster* designated entity participation. The Commission reached this conclusion, in part, because non-designated entities who were unsuccessful in the A and B block auctions would have the incentive to establish partnerships with, or invest in, designated entities in order to gain an interest in C block licenses. Until A and B block licenses were finally awarded, A and B block participants were unable to make final decisions about C block applicants with whom they wish to participate or in which C block markets they could participate. Moreover,

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[39] Deferral Order at ¶21; 47 U.S.C. §309(j)(3)(A), (C) and (D).

[40] Deferral Order at ¶21.

staggered auctions would provide the designated entities with important information regarding the value of PCS licenses generally that would assist them in formulating bidding strategies.[41]

These auction timing and license issuance decisions were made after reviewing almost 400 comments and reply comments in the proceeding—including NABOB's comments urging that some form of minority incentives be provided for the A and B block auctions as well as the C block auctions.[42] Because the Commission carefully considered these arguments in the context of the rulemaking and appropriately rejected them,[43] it is unlikely that the Petitioners will be successful in changing the rules at this point.[44]

In addition, by requesting a stay, the Petitioners are essentially asking that the A and B block winners not be granted a "headstart."[45] The Commission already explicitly

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[41] Fifth Report and Order at 5547.

Indeed, one potential designated entity, BET Holdings, Inc., explicitly supported the auction sequence, arguing that any market disadvantage resulting from later market entry would be "more than offset" by the increased availability of price information and the increased accessibility of capital from unsuccessful early bidders. Fourth Memorandum Opinion and Order at 6863.

[42] Comments of NABOB at 9-10, Implementation of Section 309(j) of the Communications Act—Competitive Bidding (filed Nov. 10, 1993).

[43] Fifth Report and Order at 5536.

[44] *See, e.g.*, *Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries*, 4 FCC Rcd 6476, 6477 (1989) (declining to find likelihood of success on the merits where Commission had already considered and rejected challenges identical to those raised in stay request); *Cuomo v. United States Nuclear Regulatory Commission*, 772 F.2d 972, 975 (D.C. Cir. 1985) (same).

[45] The term "headstart" is something of a misnomer given that the A and B block winners will be attempting to "catch up" with their competitors, the incumbent cellular providers.

rejected this argument during the reconsideration of the rulemakings in this context.[46] Given the Commission's explicit findings in this regard, the Petitioners have not presented any evidence that indicates a different outcome is likely here. For all of these reasons, the Petitioners therefore fail to satisfy the first prong of the test for stay.

Second, as the Bureau's Deferral Order found, the claims of the Petitioners that they will be irreparably harmed without a stay are extremely speculative.[47] The Petitioners argue that C block bidders will suffer a loss of access to capital if the A and B block licenses are awarded before the C block auctions. The Commission, however, has already explicitly found that this staggered timing will *increase* their access to capital.[48] Further, the Commission has previously found that possible financing difficulties are "far too speculative to constitute irreparable injury."[49] The Petitioners' other claims of irreparable harm—loss of cell sites, loss of access to distributors and retailers, and loss of market share—are extremely speculative at best, and thus provide insufficient reason for granting the requested stay.[50] Finally, any possible harm to Petitioners (or other C block

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[46] Fourth Memorandum Opinion and Order at 6863-64.

[47] *See, e.g.*, *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (to show irreparable harm, "the injury must be both certain and great; it must be actual and not theoretical"; here, "unsubstantiated and speculative" allegations of injury lead court to deny motion for stay).

[48] Fifth Report and Order at 5547. In denying a previous similar request for stay of the A and B block licensing, the Commission found similar claims of irreparable injury to be "purely speculative"; instead, the Commission found that "numerous competitive opportunities remain open" to C block participants. Comm One Order at ¶6. *See also* Deferral Order at ¶29 ("sequential licensing is just as likely to provide strategic advantages as disadvantages to C Block licensees.").

[49] *Application of Satellite Television Corporation for Authority to Construct an Experimental Direct Broadcast Satellite System*, 91 F.C.C.2d 953, 996 (1982). *See also* Deferral Order at ¶29.

[50] Even if the Commission were to find that such claims of harm were not speculative—contrary to what WirelessCo and PhillieCo believe to be the case—this is only *one* prong of a four-pronged test. The other three prongs clearly weigh in favor of denying the stay.

applicants) resulting from a denial of the stay is clearly eclipsed by the tremendous harm (as described in detail in the following paragraph) that would be suffered by WirelessCo and PhillieCo if the stay were granted.

Third, contrary to the Petitioners' arguments, the requested stay would substantially harm other parties. WirelessCo, PhillieCo and other winning bidders in the A and B block auctions have already been required to pay 100% of their winning bids for the licenses—an amount of over $2.1 billion in the case of WirelessCo, early $85 million for PhillieCo., and over $7 billion for all A and B block licensees combined. The delay requested by the Petitioners *after* WirelessCo and PhillieCo have paid such large sums results in significant harm in the form of lost returns because the money has been deposited in the U.S. Treasury rather than profitably invested elsewhere (including, potentially, in other competitive services). Because of this, the Bureau's Deferral Order found that Petitioners' continued claim that a stay would not cause harm to others "ignores economic reality."[51] Further, WirelessCo and PhillieCo have taken significant steps toward providing PCS service, including entering into negotiations with equipment manufacturers for subscriber equipment, network equipment, switching equipment and cell sites and negotiating relocation agreements with incumbent microwave licensees that occupy spectrum to be used by PCS licensees. Moreover, WirelessCo has hired employees in more than 20 cities and is negotiating facility leases in multiple locations.

Additionally, the winning A and B block bidders are not the only parties who would be affected by the requested stay, contrary to the Petitioners' assertions. The

[51] Deferral Order at ¶31.

public will also be substantially harmed by the grant of a stay because the entry of PCS providers into the wireless market is expected to significantly increase competition to the incumbent cellular providers. A delay in this competition will therefore harm customers in the form of reduced choice and in all likelihood, higher, less competitive prices for wireless service.

Fourth and finally, a grant of the requested stay will not serve the public interest. While minority participation in the PCS auctions is one element of the public interest, the Commission was of course required to balance *all* elements of the public interest—including the Congressional mandate to rapidly deploy PCS for the benefit of the public without administrative delay[52]—and it has done so, carefully considering minority participation in the process. The Commission has repeatedly found that a further delay of the A and B block licensing will harm the public interest as a whole by delaying the realization by wireless customers of the benefits arising from rapid deployment of new and innovative PCS services, including increased competition to incumbent cellular providers.[53] The stay requested by the Petitioners should therefore be denied.

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[52] 47 U.S.C. § 309(j)(3)(A).

[53] *See* Fourth Memorandum Opinion and Order at 6864; *see also* CommOne Order at ¶7 ("We believe that the public interest in rapidly providing new competitive sources of wireless services outweighs any possible competitive harm that might result from the A and B block licensees being licensed ahead of auction winners in other PCS blocks.").

CONCLUSION

For the foregoing reasons, WirelessCo and PhillieCo request that the Commission affirm the Bureau's Deferral Order in all respects and deny the Petitioners' Application for Review.

Respectfully submitted,

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Dated: August 10, 1995

3333 (25391/1)

CERTIFICATE OF SERVICE

I, Joan E. Neal, an attorney in the law firm of Morrison & Foerster, do hereby certify that copies of the foregoing Opposition to Application for Review were served this 10th day of August, 1995 by first class mail, or as otherwise indicated by hand delivery, to the persons on the attached service list.

Joan E. Neal

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