

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

In the Matter of)	
Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures)	WT Docket No. 05-211
Auction of Advanced Wireless Services Licenses Scheduled for August 9, 2006)	AU Docket No. 06-30
To: The Commission)	

**PETITION FOR PARTIAL RECONSIDERATION OF
ROYAL STREET COMMUNICATIONS, LLC**

Royal Street Communications, LLC ("Royal Street"), acting through counsel and pursuant to Section 1.429(a) of the Commission's Rules, 47 C.F.R. §1.429(a), hereby respectfully petitions the Commission to reconsider in part its *Order on Reconsideration of the Second Report and Order* (FCC 06-78), as adopted and released in WT Docket No. 05-211 on June 2, 2006.¹ In support of its Petition, Royal Street respectfully submits the following:

I. INTRODUCTION

Royal Street, as a licensee of several markets auctioned in FCC Auction No. 58 ("Auction 58"), is a party in interest with a direct and fundamental concern about the impact and ultimate outcome of rule changes adopted in the original *Second Report and Order* in WT Docket No. 05-211²,

¹ *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, Order on Reconsideration of the Second Report and Order*, 21 FCC Rcd 6703 (2006) ("Reconsideration Order"). A synopsis of the *Reconsideration Order* was published in the Federal Register on June 14, 2006. See 71 Fed. Reg. 34,272 (2006). Accordingly, Royal Street's Petition for Reconsideration is timely filed. 47 C.F.R. § 1.4.

² *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, Second Report and Order and Second Further Notice of Proposed Rulemaking*, 21 FCC Rcd 4753 (2006) ("Second Report and Order").

as revised by the *Reconsideration Order*. In the case of this Petition, Royal Street's specific, narrow concern stems from the fact that the *Reconsideration Order* failed to address the application of the Commission's revised unjust enrichment rules to *pro forma* transactions, which may be undertaken by designated entities ("DEs") with grandfathered arrangements. Several parties, including Royal Street, raised this issue in *ex parte* filings made prior to the *Reconsideration Order*.³ Royal Street respectfully submits that the public interest would not be served if the Commission's rules were applied to trigger unjust enrichment penalties in connection with *pro forma* transactions relating to licenses held by DEs with grandfathered arrangements.

A. Background On Royal Street

1. **General** -- Royal Street is a State of Delaware limited liability company ("LLC") formed in November of 2004 to participate as a DE in Auction 58 as a Very Small Business. Royal Street is controlled by Robert A. Gerard, an entrepreneur with a proven background in business, finance and management, through his sole ownership of C9 Wireless, LLC ("C9"), another Delaware LLC that holds fifteen percent (15%) of the total Royal Street member interests. Mr. Gerard also serves as the Chairman and Chief Executive Officer of Royal Street. He also serves as Chairman of the Royal Street Management Committee and appoints a majority of its Members.

The non-controlling ultimate attributable investor in Royal Street is MetroPCS Communications, Inc. ("MetroPCS"), an innovative, growing, facilities-based wireless service provider currently serving selected markets in California, Texas, Georgia, Michigan and Florida.

³ *Ex Parte Letter*, Royal Street Communications, LLC, Docket No. 05-211, filed May 31, 2006 (noting the integration of the 10 year unjust enrichment into the DE rules has been written in such a manner that the 10 year unjust enrichment period can be read to apply to *pro forma* assignments of license); *Ex Parte Letter*, Coral Wireless Licenses, LLC and Coral Wireless II, LLC, et al, Docket No. 05-211, filed May 30, 2006, (stating the new 10 year unjust enrichment period can be read to "apply to any transaction for which approval is sought after April 25, 2006."); and, *Ex Parte Letter*, Aloha Partners, L.P., et al, Docket No. 05-211, File May 31, 2006 (noting their concerns including "the vagueness associated with various retroactively triggering mechanisms including assignments and transfers (are *pro forma* filings included?)" (collectively, *Ex Parte Letters*).

2. **Royal Street In Auction 58** -- Royal Street was the successful high bidder on 6 Personal Communications Services ("PCS") licenses in Auction 58 and qualified as a Very Small Business. It paid the Commission approximately \$294 million. Royal Street's wireless licenses cover Los Angeles, California and 5 markets in Northern Florida (Orlando, Gainesville, Melbourne-Titusville, Jacksonville and Lakeland-Winter Haven). Royal Street currently is actively constructing its systems and expects its first system to become operational later this year in Florida, with its California system expected to be operational sometime next year. Royal Street adopted a wholesale business model pursuant to which it decided to sell PCS services on a wholesale basis rather than a retail basis and as such has contracted to sell in excess of fifty percent (50%) of all the PCS services available through its systems. This arrangement was reviewed and approved by the Commission in granting Royal Street its PCS licenses in December of 2005.

3. **Royal Street And *The Second Report And Order*** -- Under the *Second Report and Order*, a wholesale arrangement like Royal Street's would be categorized as an impermissible material relationship, not permitted for DE licensees. However, since this arrangement was entered into and approved by the Commission in awarding Royal Street's licenses prior to April 25, 2006, this arrangement is grandfathered pursuant to Section 1.2110(b)(3)(iv)(C) of the FCC's revised rules.⁴ Nevertheless, even as a DE with a grandfathered arrangement, any assignment of license or transfer of control filed after April 25, 2006 might cause the existing arrangement to cease being grandfathered and trigger the Commission's new unjust enrichment rules.⁵ In other words, on their face the Commission's new unjust enrichment rules appear to apply equally to substantial and *pro*

⁴ 47 C.F.R. § 1.2110(b)(3)(iv)(C) ("An impermissible or attributable material relationship shall not disqualify a licensee for previously awarded benefits with respect to a license awarded before April 25, 2006, based on spectrum lease or resale (including wholesale) arrangements entered into before April 25, 2006.").

⁵ *Second Report and Order*, ¶ 29 ("Except as limited by our grandfathering provisions, the rules we adopt today will apply to . . . as well as to all applications for an authorization, an assign or transfer of control, a spectrum lease, or reports of event affecting a designated entity's ongoing eligibility filed on or after the release date of this *Second Report and Order*.").

formu assignments of license and transfers of control to DEs with grandfathered arrangements. Despite the several suggestions to do so in *Ex Parte Letters*, the *Reconsideration Order* did not address the manner in which *pro formu* transactions would be handled. Thus, for example, DEs with grandfathered arrangements who desire for legitimate business reasons to establish wholly-owned separate subsidiaries to hold FCC licenses -- a structure the Commission has approved on countless occasions -- now are uncertain whether such *pro formu* transactions might trigger the application of the revised unjust enrichment rules. Royal Street is in just that situation.⁶

II. THE COMMISSION SHOULD PERMIT PRO FORMA TRANSACTIONS BY DEs WITH GRANDFATHERED ARRANGEMENTS WITHOUT TRIGGERING UNJUST ENRICHMENT

The Commission's rules have long recognized a substantive difference where the transfer or assignment of a license is to accommodate internal business planning where there is no substantial change in control, from those situations where the real party in interest changes or where there are substantial changes in control. This is particularly true in the case of wireless licensees, where the Commission concluded that it should, in certain instances, expedite *pro formu* transactions to allow "carriers to change their ownership structure or internal organization without regulatory delay..."⁷ Included among the examples of such transactions, was the "assignment or transfer from

⁶ On June 1, 2006 Royal Street filed applications seeking *pro formu* assignment of its licenses to wholly owned license subsidiaries, which applications remain pending before the Commission. ULS File Nos. 0002638685, 0002638688, 0002638693, 0002638698, 0002638704, and 0002638708. The decision to establish these separate subsidiaries predated the revision of the DE rules by the FCC in the *Second Report and Order*.

⁷ *Federal Communications Bar Association's Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers and Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services*, 13 FCC Rcd 6293, 6303 ¶ 16 (1998); *id.*, ¶ 2 (stating that applications for *pro formu* assignments of license and transfers of control do not require "additional public interest review ... because the person or entity retaining ultimate control of the license was subject to prior public interest review and approval by the Commission when it was originally awarded the license (whether by initial licensing or by a previous transfer or assignment).").

a corporation to a wholly owned subsidiary thereof or vice versa.”⁸ Many times such *pro forma* changes are requested by lenders in consideration of providing financing. Thus, effectively denying DEs with grandfathered arrangements access to such *pro forma* transaction options could constrain their ability to raise further required capital.

In addition, the Commission has noted, correctly, that “[b]ecause *pro forma* transactions do not affect actual control of the license, they are unlikely to have any impact on licensees’ charges, practices, classification, or services.”⁹ The Commission clearly should provide that such assignments or transfers by DE’s with grandfathered arrangements are permitted, under existing FCC procedures, without triggering the revised unjust enrichment schedule adopted in the *Second Report and Order*.

Incorporating such *pro forma* transactions within the grandfathering provisions already adopted by the Commission in the *Second Report and Order* is not substantively expanding the scope of those provisions. The original licensee remains as the ultimate controlling entity over the licenses and could be subject to the revised unjust enrichment provisions if that licensee sought to make a substantial (i.e. non- *pro forma*) change in control. Using the prior examples, a decision to simply drop FCC licenses down in to a wholly-owned subsidiary should not, assuming the DE qualifications of the original licensee are maintained, trigger consideration of the previously-grandfathered material relationships and the application of unjust enrichment penalties.¹⁰ In fact, the Commission has noted that allowing these *pro forma* changes, “will promote competition by allowing carriers to change their ownership structure or internal organization without regulatory delay where such delay serves no

⁸ *Id.*, ¶ 8.

⁹ *Id.*, ¶ 12.

¹⁰ See *Second Report and Order*, ¶ 28 (“[W]e will not employ our new restrictions to reconsider any designated entity benefits previously awarded to licensees prior to the release date of this *Second Report and Order*.”).

purpose.”¹¹ Indeed, clarifying this issue is totally consistent with the decision in the *Reconsideration Order* not to retroactively apply the new unjust enrichment rules to grandfathered DEs.¹²

The Commission has not, to Royal Street’s knowledge, in any other context required the triggering of unjust enrichment penalties as a result of *pro forma* transactions, particularly the simple drop down of licenses into wholly-owned subsidiaries. To the contrary, in at least one instance the Commission unequivocally stated that unjust enrichment payments are not triggered where “the assignments and transfers... will be *pro forma* in nature. *In Re Applications of TeleCorp PCS, Inc. et al.*, 16 FCC Rcd 3716, 3733 ¶43 (Wireless Tel. Bur. 2000) (“[T]he assignments and transfers of Telecorp’s licenses to TPI will be *pro forma* in nature. Accordingly, unjust enrichment payments do not apply to the transactions involving these licenses.”) The same policy should be applied in situations involving grandfathered DE arrangements.

As noted above, Royal Street has such *pro forma* assignments of license applications pending before the Commission and in the past such applications were routinely granted without delay. Now, however, processing of Royal Street’s otherwise routine *pro forma* assignments of license applications are being delayed, perhaps because of uncertainty surrounding the application of the Commission’s DE rules to *pro forma* assignments of license for DEs with grandfathered material relationships. There may be other DEs with grandfathered material relationships who have an interest engaging in similar non-substantive restructuring for legitimate business purposes that are also stymied. Reconsideration is appropriate to settle this issue. Attached as Exhibit 1 is a proposed addition to Section 1.2110(b)(3)(iv)(C)(1) of the Commission’s rules to incorporate *pro forma*

¹¹ *Id.*, ¶ 16.

¹² See *Reconsideration Order*, ¶ 41.

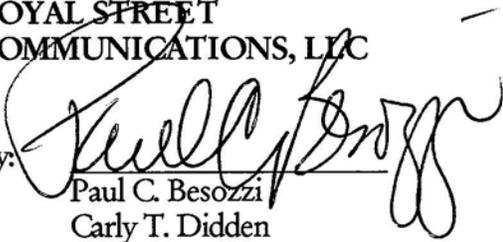
transactions within the grandfathering provisions already adopted by the Commission in the *Second Report and Order*

III. CONCLUSION

The Commission has recognized a substantive distinction between *pro forma* assignments and transfers and other transactions. It has held previously that its unjust enrichment rules do not apply to *pro forma* assignments. Royal Street respectfully requests the Commission clarify that the new unjust enrichment rules do not apply to DEs with grandfathered material relationships for purposes of such *pro forma* transactions. It would be consistent with past precedent and the policies regarding retroactivity adopted in the *Reconsideration Order*.

Respectfully submitted,

ROYAL STREET
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Dated: July 14, 2006

EXHIBIT 1

PROPOSED CLARIFICATION

Add the underlined language to the end of 47 C.F.R §1.2110(b)(3)(iv)(C)(1)

(C) Grandfathering.

(1) Licensees. An impermissible or attributable material relationship shall not disqualify a licensee for previously awarded benefits with respect to a license awarded before April 25, 2006, based on spectrum lease or resale (including wholesale) arrangements entered into before April 25, 2006. A license initially awarded before April 25, 2006 that undergoes a non-substantial, *pro forma* ownership change by assignment or transfer after April 25, 2006 shall still be considered a “license awarded before April 25, 2006” for purpose of this section.

CERTIFICATE OF SERVICE

I, Paul C. Besozzi, an attorney with Patton Boggs, LLP, certify that on this 14th day of July 2006 I did serve by electronic mail and first class U.S. Mail, postage prepaid, a copy of the foregoing "Petition For Partial Reconsideration of Royal Street Communications, LLC" on the following individuals:

Kevin J. Martin, Chairman
Federal Communications Commission
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Washington, DC 20554

Michael J. Copps, Commissioner
Federal Communications Commission
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