

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
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)	
To: The Commission)	
)	

REPLY COMMENTS OF
ROYAL STREET COMMUNICATIONS, LLC

Royal Street Communications, LLC ("Royal Street"), acting through counsel and pursuant to Section 1.415(c) of the Commission's Rules, 47 C.F.R. § 1.415(c), hereby respectfully replies to certain comments received by the Commission in response to its *Second Report and Order and Second Further Notice of Proposed Rule Making* (FCC 06-78), released in WT Docket No. 05-211 on April 25, 2006.¹ Royal Street respectfully submits the following:

I. INTRODUCTION AND SUMMARY

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

¹ *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) (collectively "Second R&O/FNPRM" or individually "Second R&O" or "Second FNPRM"), as revised by *Order On Reconsideration of the Second Report and Order*, 21 FCC Rcd 6703 (2006) ("Reconsideration Order"). A synopsis of the *Second FNPRM* was published in the Federal Register on June 21, 2006. See 71 Fed. Reg. 35,594 (2006). On August 10, 2006, the Commission extended the deadline for filing initial and reply comments in connection with the *Second FNPRM* until September 20, 2006 and October 20, 2006, respectively. *Order*, 21 FCC Rcd 9119 (Wireless Tel. Bur. 2006) and published in the Federal Register on August 25, 2006. 71 Fed. Reg. 50,739 (2006). Accordingly, Royal Street's Reply Comments are timely filed. 47 C.F.R. § 1.4.

outcome of rule changes adopted in the original *Second R&O*, as revised by the *Reconsideration Order*, and any new rules adopted in response to the *Second FNPRM*.

In these Reply Comments Royal Street supports those commenters advocating that designated entities (“DEs”) with grandfathered arrangements under the DE rules should be able to effectuate *pro forma* corporate reorganizations without risking their grandfathered status and triggering unjust enrichment penalties. Indeed, Royal Street already has raised that very issue with the Commission in connection with the *Reconsideration Order*. Further, Royal Street also agrees with those commenters who oppose the Commission adopting a personal net worth restriction for DEs. Finally, Royal Street believes that no further generic changes to the DE rules are warranted. However, any further modifications that the Commission may adopt as a result of the *Second FNPRM* cannot have retroactive effect or apply to any licenses granted prior to the effective date of such new rules.

A. Background On Royal Street

1. **General** – Royal Street was 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”), which 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.

2. **Royal Street In Auction 58** – Royal Street was the successful high bidder on six (6) Personal Communications Services (“PCS”) licenses in Auction 58 and was found by the Commission to be qualified as a Very Small Business. Royal Street paid the Commission approximately \$294 million for its licenses. Royal Street’s wireless licenses cover Los Angeles, California and five (5) markets in Northern Florida (Orlando, Gainesville, Melbourne-Titusville, Jacksonville and Lakeland-Winter Haven). Royal Street currently is actively constructing its systems and its first system (in Lakeland-Winter Haven Florida) has become operational. The others in Florida are expected to soon follow, with Royal Street’s California system expected to be operational next year. In accordance with the operating agreements that were reviewed and approved by the Commission in granting Royal Street its PCS licenses in December of 2005, Royal Street is implementing a wholesale business model. Under this model, Royal Street will sell in excess of fifty percent (50%) of all the PCS services available through its systems on a wholesale basis rather than a retail basis.

3. **Royal Street And *The Second R&O*** – Under the *Second R&O*, a wholesale arrangement like Royal Street’s is categorized as an impermissible material relationship, generally not permitted on a going forward basis for DE licensees. However, since Royal Street’s 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.² Nevertheless, even as a DE with a grandfathered arrangement, because of the breadth of the language in the new rules, any assignment of license or transfer of control filed after April 25, 2006 might be construed to cause the existing arrangement to cease being grandfathered and trigger the

² 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.”).

Commission's new unjust enrichment rules.³ In other words, on their face the Commission's new unjust enrichment rules appear to apply equally to substantial and *pro forma* assignments of license and transfers of control to DEs with grandfathered arrangements. Despite the several suggestions to do so in *ex parte* letters filed after the *Second R& O/FNPRM*, the *Reconsideration Order* did not address the manner in which *pro forma* 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 licensees – a structure the Commission has approved on countless occasions – now are uncertain whether such *pro forma* transactions if consummated, might trigger the application of the revised unjust enrichment rules.⁴ Royal Street is in just that situation.⁵

4. Royal Street's Petition For Partial Reconsideration Regarding Pro Forma Transactions – As a result, on July 14, 2006, Royal Street filed a Petition For Partial Reconsideration of the *Reconsideration Order*, limited to the issue of *pro forma* transactions (“Royal Street Petition”), urging the Commission to clarify that pro forma assignments or transfers of control by DE's with grandfathered arrangements would not trigger unjust enrichment penalties. The Commission announced the Royal Street Petition by Public Notice released August 9, 2006.⁶ That announcement was published in the Federal Register on August 23, 2006,⁷ with oppositions

³ *Second R& O*, ¶ 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 assignment or transfer of control, a spectrum lease, or reports of events affecting a designated entity's ongoing eligibility filed on or after the release date of this *Second Report and Order*.”) (emphasis in original).

⁴ Such an arrangement facilitates financing arrangements among other things.

⁵ On June 1, 2006 Royal Street filed applications seeking *pro forma* 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 R& O*. These applications remain pending.

⁶ FCC Public Notice, Report No. 2787, released August 9, 2006.

⁷ 71 Fed. Reg. 49,456 (2006).

due by September 7, 2006. No oppositions were filed and the Royal Street Petition remains pending.⁸

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

Royal Street supports the comments filed by Cook Inlet Region, Inc. (“Cook Inlet”) in connection with the *Second FNPRM* advocating that grandfathered DEs should be able to “undertake a company reorganization, which may involve *pro forma* assignments or transfers of control of previous licenses, without running afoul of new standards for transfer or assignment.”⁹ In its earlier Petition, Royal Street laid out the cogent reasons why the Commission should clarify that its unjust enrichment rules do not apply to grandfathered DE *pro forma* assignments and transfers. For example, the Commission’s rules have long recognized a substantive difference where the transfer of control 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 forma* transactions to allow “carriers to change their ownership structure or internal organization without regulatory delay...”¹⁰ Included among the examples of such transactions, was the

⁸ A copy of Royal Street’s Petition For Partial Reconsideration is attached as Exhibit 1 hereto.

⁹ Comments of Cook Inlet Region, Inc., Dkt. No. 05-211, filed on Sept. 20, 2006 at 6.

¹⁰ *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 forma* 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).”).

“assignment or transfer from a corporation to a wholly owned subsidiary thereof or vice versa.”¹¹ Many times such *pro forma* changes are requested by lenders in consideration of providing financing. Thus, denying DEs with grandfathered arrangements access to such *pro forma* transaction options could constrain their ability to raise further required capital and to build-out their systems and offer service. For these and all the other reasons outlined in its Petition, Royal Street supports Cook Inlet’s request and urges the Commission to promptly clarify that its unjust enrichment rules do not apply to grandfathered DE *pro forma* assignments and transfers of control.¹²

This *pro forma* issue now has been directly raised with the Commission in two procedural contexts: (1) on further reconsideration of the *Reconsideration Order* and (2) in connection with the *Second FNPRM*. Although raised as a discrete issue in connection with the *Reconsideration Order*, Royal Street is indifferent as to the procedural context in which the Commission adopts the requested clarification, provided that the Commission does so expeditiously. Royal Street’s Petition was filed almost five months ago, is unopposed and sets forth ample justification for the Commission, consistent with the fundamental changes that it made in the *Second R&O* and established precedent,¹³ to adopt the requested clarification. Royal Street respectfully submits that there is no need for the Commission to wait until it resolves each and every issue that it might consider in connection with the *Second FNPRM* to address such *pro forma* transactions. Continuing to put off the resolution of this issue can only raise the prospects for the potential deleterious effects that Royal Street outlined in its Petition. Therefore, the Commission should not further delay, particularly when

¹¹ *Id.*, ¶ 8.

¹² By attaching its Petition to its Reply Comments herein Royal Street incorporates by reference all of the arguments set forth therein.

¹³ *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 issue has been raised by other parties, there is no objection or opposition and other licensees are potentially affected.

III. THE COMMISSION SHOULD NOT ADOPT A PERSONAL NET WORTH RESTRICTION FOR DE APPLICANTS

In the *Second FNPRM*, the Commission sought comment on whether it should prohibit an investor with personal net worth above \$3 million from having a controlling interest in a DE or impose other personal net worth restrictions.¹⁴ Under the current DE rules, even after the *Second R&O*, the personal net worth of an investor who is deemed a controlling interest is not attributable for purposes of determining such DE eligibility.¹⁵

None of the comments received in response to the *Second FNPRM* support such a change in the rules. On the other hand, Royal Street agrees with the position of CTIA – The Wireless Association and others that such a personal net worth cap should not be adopted and would be further harmful to DEs.¹⁶

The impact of such a limitation would only further restrict sources of capital available for small or start up companies that generally form part of DEs. Many small businesses get their start first by funds committed or borrowed by their owners based on their own assets, such as homes, and investments, etc. Indeed, a net worth restriction would limit the participation by many of those very persons in the telecommunications industry that may have had some prior success. Further, a personal net worth limit would require applicants to publicly disclose detailed personal and generally private financial information about their investors' personal assets, a factor which would no doubt

¹⁴ *Second FNPRM*, ¶ 87.

¹⁵ 47 C.F.R. § 1.2110(c)(2)(ii)(F).

¹⁶ Comments of Wirefree Partners III, LLC (“Wirefree”) on the Second Further Notice of Proposed Rulemaking, Dkt. No. 05-211, filed on Sept. 20, 2006, at pp. 17-19; Comments of CTIA – The Wireless Association (“CTIA”), Dkt. No. 05-211, filed on Sept. 20, 2006, at pp. 10-11; and Comments of the Blooston Rural Carriers (“Blooston”), Dkt. No. 05-211, filed on Sept. 20, 2006, at pp. 9-10.

discourage interested persons from participating as DEs.¹⁷ Yet successful and sophisticated private investors are among the primary individuals with the capital available to invest in and control a complicated and inherently risky enterprise such as the development and operation of a wireless business. A wealthy individual will have the assets available to invest a meaningful sum in a DE and still maintain a diversified investment portfolio. On the contrary, an investor with less than \$3 million in net worth might be decidedly reluctant to tie up his or her entire nest egg in such a venture and as a result would not be able to obtain sufficient equity in the venture to ensure a satisfactory return on his or her investment. Such a limitation could result with DEs that could have a very limited financial stake in the overall endeavor.¹⁸

Royal Street also agrees that DEs need the benefit of successful experienced business people, including those from the wireless industry, to lead or assist in management and to attract capital.¹⁹ One common attribute of successful entrepreneurs is that they may enjoy a comfortable net worth. The proposed net worth restriction could weed out such veterans. If DEs are required to choose between business experience and maintaining DE status, then DEs are going to be at a disadvantage if they choose to retain their DE status in lieu of adding to their control group experienced executives that are favored by venture capitalists. Moreover, this will create a situation where there would have to be even greater reliance on other substantial, but permitted non-controlling investors. Finally, past experience confirms that a personal net worth restriction is difficult to manage and is susceptible to being manipulated.²⁰

¹⁷ Blooston Comments, at p. 9; Wirefree Comments, at p. 17.

¹⁸ Further, persons with limited net worth may also be more prone to cede control to non-qualified DEs if all or substantially all of their net worth is tied up in an enterprise. On other circumstances, the amount of a person's net worth in an enterprise is a meaningful factor as to whether they can truly be disinterested.

¹⁹ Blooston Comments, at p. 10; Wirefree Comments, at pp. 17-18.

²⁰ Wirefree Comments, at p. 19.

For all these reasons, Royal Street opposes the imposition of a \$3 million personal net worth restriction. The Commission has conducted many successful auctions with the current rules, where personal net worth is not attributable revenue to the applicant for DE purposes. There has been no demonstrated basis for changing that rule and it is clear that such a dramatic change is generally not supported.²¹

IV. ANY CHANGES ADOPTED PURSUANT TO THE SECOND FNPRM SHOULD ONLY BE PROSPECTIVE

Royal Street opposes further substantive changes in the DE rules as modified by the *Second R& O*. The comments filed to date generally reflect a similar position. However, in the event that the Commission decides that further substantive changes are warranted, they should be applied prospectively only. The Commission should not seek to apply retroactively any such revisions to previously awarded licenses. Such a result would be unfair, particularly in an auction context where bidders acquired and paid for their licenses based on an understanding about what the applicable rules were at the time that they agreed to pay, in Royal Street's case, several hundred million dollars.

²¹ The Commission previously abandoned personal net worth requirements. *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*, 18 FCC Rcd 10180, ¶ 8 (2003); *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems; Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030, ¶ 100 (1999) (“The Commission concluded that ‘the affiliation rules make the personal net worth rules largely unnecessary since most wealthy individuals are likely to have their wealth closely tied to ownership of another business.’”) (citing *Implementation of Section 309(j) of the Communications Act – competitive Bidding, Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403, ¶ 30 (1994)); *Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS; Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Narrowband PCS, Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 12972, ¶ 72 (1997) (“We eliminated the personal net worth limits for broadband PCS . . . [because] we determined that the obstacles faced by minorities and minority-controlled businesses in raising capital are not necessarily confined to minorities with limited personal net worth. . . . [W]e eliminated the requirement for all applicants because such limits are difficult to apply and enforce.”); *Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403, ¶ 30 (1994) (“[W]e will eliminate the [personal net worth] requirement for all applicants because personal net worth limits are difficult to apply and enforce and may be easily manipulated. We do not believe that eliminating the personal net worth limits will facilitate significant encroachment by ‘deep pockets’ that can be accessed by wealthy individuals through affiliated entities because . . . the affiliate rules . . . continue to apply and require that such an entity's assets and revenues be included in determining an applicant's size.”).

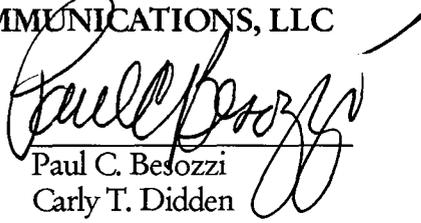
V. CONCLUSION

Royal Street supports prompt clarification that the Commission's unjust enrichment rules are not triggered by *pro forma* transactions by grandfathered DEs. The Commission has held previously that its unjust enrichment rules do not apply to *pro forma* assignments because there is a substantive distinction between *pro forma* assignments and transfers and other transactions. Royal Street also agrees that a personal net worth restriction would compromise the ability of a DE to attract experienced executive and venture capital and has proven to be difficult to manage in the past. Finally, if the Commission adopts any further substantive rule changes in response to the *Second FNPRM*; they should not be applied retroactively.

Respectfully submitted,

ROYAL STREET
COMMUNICATIONS, LLC

By:



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Dated: October 20, 2006

EXHIBIT 1

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*.").

forma 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 forma* 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 forma* 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 forma* 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 forma* 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 forma* 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.

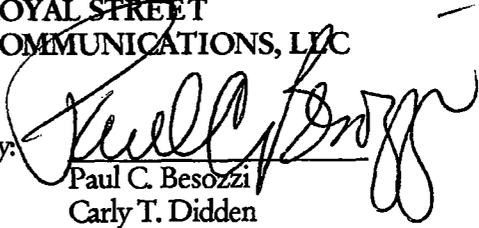
transactions within the grandfathering provisions already adopted by the Commission in the *Second Report and Order*

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
COMMUNICATIONS, LLC

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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
455 12th Street, SW Room: 8-B201
Washington, DC 20554

Michael J. Copps, Commissioner
Federal Communications Commission
455 12th Street, SW Room: 8-B115
Washington, DC 20554

Jonathan S. Adelstein, Commissioner
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Wireless Telecommunications Bureau
Federal Communications Commission
455 12th Street, SW Room: 3-C255
Washington, DC 20554


Paul C. Besozzi



Federal Communications Commission

The FCC Acknowledges Receipt of Comments From ... **Royal Street Communications, LLC** ...and Thank You for Your Comments

Your Confirmation Number is: '2006714393632 '	
Date Received:	Jul 14 2006
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**The FCC Acknowledges Receipt of Comments From ...
 Royal Street Communications, LLC
 ...and Thank You for Your Comments**

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updated 12/11/03

CERTIFICATE OF SERVICE

I, Paul C. Besozzi, an attorney with Patton Boggs, LLP, certify that on this 20th day of October 2006 I did serve by electronic mail and first class U.S. Mail, postage prepaid, a copy of the foregoing "Reply Comments of Royal Street Communications, LLC" on the following individuals:

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