

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

In the Matter of )  
 )  
Reauction of Defaulted )  
PCS C Block Licenses )  
 )  
Emergency Motion for Stay of )  
Mountain Solutions, Ltd., Inc. )  
 )

**ORDER**

Adopted: June 28, 1996

Released: June 28, 1996

By the Chief, Wireless Telecommunications Bureau:

1. We have before us an Emergency Motion for Stay (Stay Request) filed by Mountain Solutions, Ltd, Inc. (Mountain Solutions) on July 11, 1996. The Stay Request seeks to stay the reauction of broadband PCS C Block licenses, scheduled to begin on July 3, 1996.<sup>1</sup> For the reasons discussed below, we hereby deny Mountain Solutions' Stay Request.

2. Background. On May 30, 1996, the Bureau announced that the Commission would reauction 18 broadband PCS C Block licenses upon which the winning bidders had defaulted when they failed to submit their required down payments by the May 15, 1996 deadline.<sup>2</sup> Mountain Solutions now requests that the Commission stay the reauction of license numbers B089 and B149, covering the Basic Trading Areas (BTAs) for Fort Collins, Colorado and Colorado Springs, Colorado, for which it was the second highest bidder. Mountain Solutions maintains that a stay should be granted because it is likely to succeed on the merits of its claim. In that regard, Mountain Solutions alleges that the Commission's decision to reauction

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<sup>1</sup> At the same time, Mountain Solutions filed an Application for Review of the Wireless Telecommunications Bureau's ("Bureau") decision to reauction those licenses. This Order does not address that pleading.

<sup>2</sup> See *Public Notice*, "18 Defaulted PCS Licenses to be Reauctioned, DA 96-872" (rel. May 30, 1996); *Order*, Emergency Petition for Waiver of Deadline for Submission of Down Payment for the Broadband PCS C Block Auction filed by BDPCS, Inc., DA 96-811 (rel. May 29, 1996); *Order on Reconsideration*, Emergency Petition for Waiver of Deadline for Submission of Down Payment for the Broadband PCS C Block Auction filed by BDPCS, Inc., DA 96-874 (rel. May 30, 1996).

was arbitrary and capricious and that reauction would constitute an unconstitutional taking of Mountain Solutions' property interest in the Fort Collins and Colorado Springs licenses. Mountain Solutions also maintains that it would suffer irreparable harm absent a stay and that granting a stay would not substantially harm other parties. Finally, Mountain Solutions maintains that a stay would serve the public interest.

3. Discussion. We find that Mountain Solutions has failed to demonstrate the threshold requirement for obtaining a stay -- that it would suffer irreparable harm in the absence of a stay. An injury qualifies as "irreparable harm" only if it is "both certain and great; it must be actual and not theoretical."<sup>3</sup> Therefore, to demonstrate irreparable harm, Mountain Solutions must provide "proof indicating that the harm [it alleges] *is certain to occur* in the near future."<sup>4</sup> Mountain Solutions has supplied no such proof. It merely asserts that it would suffer harm *if* it failed to submit the winning bids for the Fort Collins and Colorado Springs licenses in the reauction. Mountain Solutions also speculates that any delay associated with the reauction might harm its competitive position in the wireless communications market. Such unsubstantiated speculation provides an insufficient basis to justify a stay of the reauction. In fact, Mountain Solutions is a qualified bidder in the C block reauction who ultimately may submit the winning bid for those two licenses in the reauction and therefore has no basis for claiming irreparable harm. Although the Commission also reserved the discretion to offer defaulted licenses to the second highest bidder at its final bid level, such reservation did not confer any rights upon such bidders that would be infringed by the Bureau's decision to reauction the licenses. Rather, this would most appropriately be characterized as an exception to the general rule of reauctioning in these circumstances. Furthermore, the Commission stated that such an approach is appropriate to avoid the cost of a reauction in cases where defaults occur on only a few relatively low value licenses. In this case, because the C Block defaults encompass 18 licenses and not just the two of interest to Mountain Solutions, with high bids in excess of \$873 million, the Bureau did not find a sufficient basis for deviating from the Commission's general rule and elected to reauction the subject licenses. Moreover, Mountain Solutions has failed to explain how any harm it might suffer as a result of the reauction would be "irreparable."

4. Further, we find that grant of Mountain Solutions' Stay Request would not serve the public interest. In announcing the reauction, we stated that we chose to reauction the defaulted licenses instead of offering them to other highest bidders because "a reauction will rapidly and efficiently assign the licenses."<sup>5</sup> This decision is based on the Commission's established policy

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<sup>3</sup> *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985); see *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921 (D.C. Cir. 1958).

<sup>4</sup> *Wisconsin Gas*, 758 F.2d at 674 (emphasis added).

<sup>5</sup> *Public Notice*, "18 Defaulted PCS Licenses to be Reauctioned," DA 96-872 (rel. May 30, 1996).

that in cases of default, the best course of action is to reauction the licenses.<sup>6</sup> In the *Fifth Report and Order*, the Commission acknowledged that a reauction may cause a brief delay in the initiation of service to the public. The Commission reasoned, however, that during the time between the original auction and the disqualification, circumstances may have changed so significantly as to alter the value of the license to auction participants as well as to parties who did not participate.<sup>7</sup> In such instances, the Commission stated that awarding licenses to the parties that value them most highly can best be assured through reauction.<sup>8</sup>

5. We observe that considerable information relating to the value of the defaulted licenses has become available since the close of the C Block auction, which must be taken into account for any efficient allocation of these licenses. As noted *supra*, the best way to accomplish this is through reauction. In such a reauction, Mountain Solutions and other interested parties will have an opportunity to bid for the licenses based on the most current information regarding the PCS industry and the value of these licenses. Finally, contrary to Mountain Solutions' argument, a reauction will not significantly delay the award of the licenses. The reauction is scheduled to begin on July 3, 1996, less than two months after the default occurred. The Bureau expects that the reauction of the defaulted licenses will be completed quickly, and with minimal delay in the provision of service to the public.

6. Mountain Solutions has failed to make the showings of irreparable harm and public interest that are necessary to justify the extraordinary relief it seeks. For these reasons, Mountain Solutions' Emergency Motion for Stay IS DENIED.

#### FEDERAL COMMUNICATIONS COMMISSION

Michele C. Farquhar, Chief  
Wireless Telecommunications Bureau

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<sup>6</sup> See *Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, Fifth Report and Order in PP Docket No. 93-253, 9 FCC Rcd 5532, 5565 at ¶¶ 78-80 (1994) (*Fifth Report and Order*); see also *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, Second Report and Order in PP Docket No. 93-253, 9 FCC Rcd 2348, 2383-84 (1994) at ¶ 204.

<sup>7</sup> *Fifth Report and Order*, 9 FCC Rcd 5532 at ¶ 79.

<sup>8</sup> *Id.*