

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

In the Matter of)
)
Motion for Temporary Stay)
of the 220 MHz Service Auction)
Scheduled for September 15, 1998)

ORDER

Adopted: September 14, 1998

Released: September 14, 1998

By the Chief, Wireless Telecommunications Bureau:

1. We have before us a Motion for Temporary Stay filed by Net Radio Group Communications, L.L.C. ("NRG") on August 10, 1998, which seeks to stay the start of the Phase II 220 MHz Service auction, scheduled to begin September 15, 1998.¹ NRG specifically requests a stay of the auction start date at least until a date not less than 90 days following Commission clarification of the status of all Phase I 220 MHz renewal applications. NRG argues that prospective bidders lack certainty regarding levels of incumbency in Phase II 220 MHz geographic license areas because the Commission's database shows that certain renewal applications submitted by incumbent Phase I 220 MHz licensees are pending. In essence, NRG asks the Commission to resolve all pending renewal requests and presumably to predict the outcome of all future renewal requests, prior to the start of the auction.

2. NRG relies on the four prong test for issuance of a stay set forth in *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*² Under that test, a stay is warranted if the movant can demonstrate that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm, absent a stay; (3) other interested parties will not be harmed if the stay is

¹ NRG also seeks a stay of the mandatory filings, leading up to qualification for participation in the auction. Because NRG has filed an FCC Form 175, and has otherwise met the requirements to become a qualified bidder in the auction, we deem this argument now moot.

² 182 U.S. App. D.C. 220, 559 F.2d 841 (D.C. Cir. 1977). See also *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 104 U.S. App. D.C. 106, 259 F.2d 921 (D.C. Cir. 1958).

granted; and (4) the public interest would favor a grant of the stay.³ Upon examination of the stay request, we find that NRG's arguments fail to meet this standard.

3. We note that the Commission database shows that approximately one-half of Phase I licensees have already been granted license renewals. We believe NRG, as an interested bidder, has had an adequate opportunity, through due diligence, to evaluate which, if any, of the incumbent licensees that have renewal applications pending in the markets for which it intends to bid will have their licenses renewed. On numerous occasions, both in auction documentation and at the 220 MHz Service bidders' seminar, Commission staff has urged prospective bidders to investigate thoroughly the status of incumbents in the markets for which they plan to bid.⁴ Investigation of Commission databases and, if necessary, actual on-site visits to the locations at which licensees are currently operating, should permit the reasonably diligent bidder to assess levels of incumbency. Moreover, all prospective bidders are in the same position and have access to the same information.

4. Accordingly, we find that NRG has not met any of the elements of the test for a stay.

5. IT IS ORDERED, pursuant to Sections 1, 4(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303(r), and the authority delegated pursuant to Section 0.331 of the Commission's rules, as amended, 47 C.F.R. § 0.331, that NRG's request for stay IS DENIED.

6. IT IS ORDERED that NRG's Motion for Temporary Stay IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Daniel B. Phythyon, Chief
Wireless Telecommunications Bureau

³ *Washington Metropolitan Area Transit Commission*, 182 U.S. App. D.C. at 222, 559 F.2d at 843.

⁴ See "Auction of Phase II 220 MHz Service Licenses, 54 Qualified Bidders," *Public Notice*, DA 98-1787 (Wireless Tel. Bur.) (September 4, 1998) at 6; see also "Auction of the Phase II 220 MHz Service Licenses, Auction Notice and Filing Requirements for 908 Licenses Consisting of Economic Area (EA), Economic Area Grouping (EAG), and Nationwide Licenses, Scheduled for September 15, 1998, Minimum Opening Bids and Other Procedural Issues," *Public Notice*, DA 98-1010 (Wireless Tel. Bur.) (May 29, 1998) at 4-5 and Attachment B.