

UTILITIES AND TELECOMMUNICATIONS ALERT

2.1 GHZ RELOCATION: THE SECOND WAVE IS HERE

We previously advised our clients several years ago about an approaching tide of activity with regard to utility radio licenses. Specifically, in Fall 2006, a number of cellular providers paid billions of dollars in FCC Auction 66 for rights to pathways in the 2.1 GHz band. This spectrum, however, was not vacant, and the FCC ordered the cellular companies to negotiate with incumbent licensees--many of them electric utilities--to relocate or otherwise compensate them for moving off their pathways.

Although the cellular carriers began negotiations to move incumbents in the largest markets in 2006-07, in many other areas of the country the carriers have waited to see how the market for third and fourth generation (3G and 4G) has grown. Suffice it to say, the demand has exploded, with data volume (text, emails, photos, video) now surpassing voice volume along these networks. Now, a second wave of negotiations is underway in smaller cities, college areas, and along interstate highways across the country. In short, virtually all of the country now is in play.

Licensees should expect to receive overtures from cellular companies inquiring as to whether the utility's licenses are still in use. These inquiries should not be taken lightly. Once a cellular carrier makes an inquiry, the FCC's two-year "shot clock" for negotiations has begun. Any comments made by a utility license holder will be used in negotiations by cellular carriers to drive the lowest possible cost for relocation. Utilities also should expect claims that the cellular operator is limited to offering \$250,000 per pathway. This is not the case.

If you are approached by a cellular carrier with regard to relocation in the 2.1 GHz band, the time is now to review your legal options and consider the best solution for your company. We have handled numerous relocation and cash-out transactions in the 2.1 GHz and other bands. Please let us know if we can be of assistance.

This Utilities and Telecommunications Alert is intended to keep readers current on matters affecting businesses and is not intended to be legal advice. If you have any questions please contact Charles A. Zdebski at 202.659.6605 or czdebski@eckertseamans.com or contact one of our other Utilities and Telecommunications Group attorneys at Eckert Seamans.

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