

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Weblink Wireless, Inc.
Petition for Reconsideration of
DA 01-1143

MEMORANDUM OPINION AND ORDER

Adopted: December 6, 2002

Released: December 6, 2002

By the Deputy Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us two Petitions for Reconsideration, requesting reconsideration of the Wireless Telecommunications Bureau's ("Bureau") order dismissing Weblink Wireless, Inc.'s ("Weblink") request for retroactive bidding credits for the narrowband Personal Communications Service ("PCS") licenses it won in the nationwide and regional narrowband PCS auctions in 1994. For the reasons set forth below, we deny Weblink's Petition, affirm the Bureau's Order, and dismiss the Myers Lazrus Petition.

II. BACKGROUND

2. Weblink was the high bidder on one license in the nationwide narrowband PCS auction ("Auction No. 1") that concluded on July 29, 1994 and five licenses in the regional narrowband PCS auction ("Auction No. 3") that concluded on November 8, 1994. At that time, Commission rules

1 Petition for Reconsideration, filed by WebLink Wireless, Inc. on June 4, 2001 ("Petition"). Petition for Reconsideration, filed by Myers Lazrus Technology Law Group on June 4, 2001 ("Myers Lazrus Petition"). On June 18, 2001, Weblink filed a Response to Myers Lazrus's Petition for Reconsideration ("Weblink Response").

2 Weblink Wireless, Inc Request for a Remedial Bidding Credit, Order, 16 FCC Rcd 9420 (2001) ("Order").

3 At the time of its participation in Auction No. 1 and Auction No. 3, Weblink was known as Pagemart Wireless, Inc. Pagemart Wireless, Inc. changed its name to WebLink Wireless, Inc. on December 1, 1999. Pagemart Wireless, Inc. participated in Auction Nos. 1 and 3, through its subsidiary Pagemart II, Inc. Petition at 1, n.1; Order, 16 FCC Rcd at 9421, n.8 and n.14.

4 "Announcing the High Bidders in the Auction of Ten Nationwide Narrowband PCS Licenses; Winning Bids Total \$617,006,674," Public Notice, PNWL 94-004 (rel. Aug. 2, 1994) ("Nationwide Narrowband PCS Closing PN"); "Narrowband PCS Nationwide Auction Winners," Public Notice, PNWL 94-009, Report No. PCS-NB-94-1 (rel. Aug. 17, 1994) ("Nationwide Narrowband PCS Accepted for Filing PN"); "Announcing the High Bidders in the Auction of 30 Regional Narrowband (PCS) Licenses; Winning Bids Total \$490,901,787," Public Notice, PNWL 94-27 (rel. Nov. 9, 1994) ("Regional Narrowband PCS Closing PN").

provided bidding credits for designated entities.⁵ In Auction No. 1, Commission rules provided a 25% bidding credit for women- and/or minority-owned businesses on three of the ten available licenses in that auction.⁶ None of the winning bidders in that auction, including Weblink, qualified for the 25% bidding credit offered to women- and/or minority-owned businesses.⁷ Weblink was the winner of one of the three licenses for which a bidding credit would have been available for women- and/or minority-owned businesses.⁸ In Auction No. 3, Commission rules provided a 40 % bidding credit for women- and/or minority-owned businesses on 10 out of the 30 available licenses.⁹ Weblink did not qualify for the bidding credit offered in Auction No. 3. At the close of Auction No. 3, women- and/or minority-owned entities won all of the ten licenses for which a bidding credit could be applied.¹⁰

3. In 1995 the Supreme Court decided *Adarand Constructors v. Pena*,¹¹ in which it held that any federal program wherein the “government treats any person unequally because of his or her race” must satisfy the “strict scrutiny”¹² constitutional standard of review. In response to the Court’s holding, but without rendering a decision on the constitutionality of its designated entity rules, the Commission decided to refrain in the future from providing bidding credits to women- and/or minority-owned businesses until it developed a record that would provide the evidentiary support necessary to withstand strict scrutiny review.¹³

4. In its June 2000 Request, Weblink sought a 25% reduction/bidding credit for the license won in Auction No. 1 and a 40% reduction/bidding credit for the licenses won in Auction No. 3.¹⁴ The Bureau, pursuant to delegated authority, dismissed Weblink’s request.¹⁵ The Bureau observed that

⁵ Implementation of Section 309(j) of the Communications Act -- Competitive Bidding and Amendment of the Commission’s Rules to Establish New Narrowband Personal Communication Services, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2398-2400 (1994) (“*Competitive Bidding Second Report and Order*”); Implementation of Section 309(j) of the Communications Act -- Competitive Bidding and Amendment of the Commission’s Rules to Establish New Narrowband Personal Communication Services, PP Docket No. 93-253, *Third Report and Order*, 9 FCC Rcd 2941 (1994) (“*Competitive Bidding Third Report and Order*”).

⁶ *Competitive Bidding Third Report and Order*, 9 FCC Rcd at 2970 ¶ 72.

⁷ *Nationwide Narrowband PCS Closing PN*; *Nationwide Narrowband PCS Accepted for Filing PN*. *Regional Narrowband PCS Closing PN*; “FCC Announces the Receipt of Down Payments from The High Bidders in the Auction of 30 Regional Narrowband PCS Licenses,” *News Release* (rel. Nov. 29, 1994) (“*November 29th News Release*”).

⁸ *Nationwide Narrowband PCS Closing PN*; *Nationwide Narrowband PCS Accepted for Filing PN*.

⁹ Implementation of Section 309(j) of the Communications Act -- Competitive Bidding and Amendment of the Commission’s Rules to Establish New Narrowband Personal Communication Services, PP Docket No. 93-253, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 201 ¶ 58, 215-16 ¶ 87 (1994).

¹⁰ *Regional Narrowband PCS Closing PN*; *November 29th News Release*.

¹¹ *Adarand v. Pena*, 515 U.S. 200 (1995).

¹² “[A]ll racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests.” *Id.* at 227.

¹³ Implementation of Section 309(j) of the Communications Act – *Competitive Bidding, Tenth Report and Order*, 11 FCC Rcd 19,974, 19,975-19,977, ¶¶ 1-3 (1996) (“*Competitive Bidding Tenth Report and Order*”); see Implementation of Section 309(j) of the Communications Act – *Competitive Bidding, Sixth Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 19,341, 19,369 ¶ 67 (1996) (proposed rules for the then-planned second IVDS auction)

¹⁴ Weblink Request for Remedial Bidding Credit and Refund, filed June 8, 2000 (“Request”).

¹⁵ *Order*, 16 FCC Rcd at 9425.

Weblink did not file the Request until approximately six years had passed since the Commission had promulgated the rules for the nationwide and regional narrowband PCS auctions, the auctions had concluded, and the Commission had awarded the licenses to Weblink.¹⁶ The Bureau found that Weblink had waived its challenge and, therefore, the Bureau dismissed its request.¹⁷

5. Weblink now challenges the Bureau's *Order* arguing that the waiver doctrine is inapplicable to its request for retroactive bidding credits and also alleging that the Commission in prior orders has found bidding credits for women and minorities to be unconstitutional in the context of the 218-219 MHz service.¹⁸ Weblink argues that the principle of finality does not operate to limit the principle of retroactivity and, therefore, the waiver doctrine should not preclude the retroactive application of *Adarand* to the results of Auction Nos. 1 and 3.¹⁹ Myers Lazrus Technology Law Group ("Myers Lazrus") similarly contends in its Petition that the Commission should give *Adarand* full retroactive effect with respect to Auction Nos. 1 and 3.²⁰

III. DISCUSSION

A. Weblink

6. By statute, Congress limited the Commission's jurisdiction to review petitions for reconsideration to those filed within a specific time.²¹ Sections 1.106(f) and 1.429(d) of the Commission's rules implement this statutory mandate and require that a petition for reconsideration be filed within thirty days from the date of public notice of the Commission's action.²² Weblink's initial Request filed in 2000 operated as nothing more than an untimely petition for reconsideration of the competitive bidding rules adopted for Auction Nos. 1 and 3. As the Bureau noted, Weblink did not file the Request until approximately six years had passed since the Commission had promulgated the rules for the nationwide and regional narrowband PCS auctions, Auction Nos. 1 and 3 had concluded, and the

¹⁶ *Order*, 16 FCC Rcd at 9422-23.

¹⁷ Under the doctrine of waiver, a party with sufficient opportunity to raise a challenge in a timely manner, but who fails to do so, is deemed to have waived the challenge and is precluded from waiving it in subsequent proceedings. *Adelphia Communications Corp. v. FCC*, 88 F.3d 1250, 1256 (D.C. Cir. 1996); *Northwestern Indiana Telephone Co., Inc. v. FCC*, 872 F.2d 465, 470 (D.C. Cir. 1989); In the Matter of Community Teleplay, Inc., et. al., *Order*, 13 FCC Rcd 12,426, 12,428 ¶ 5 (WTB 1998) ("*Community Teleplay*"); *Jerome Thomas Lamprecht*, 7 FCC Rcd 6794, 6794 (1992).

¹⁸ Petition at 3-5. In the *218-219 MHz Third Order on Reconsideration*, the Commission provided a detailed history of the Commission's actions in the 218-219 MHz Service. Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Third Order on Reconsideration of the Report and Order and Memorandum Opinion and Order*, 17 FCC Rcd 8520, 8521-8526, ¶¶ 2-13 (2002) ("*218-219 MHz Third Order on Reconsideration*"). In light of our determination regarding the untimely nature of Weblink's actions, we see no reason to substantively explain how Weblink has mischaracterized the Commission's reasoning regarding the basis for the Commission's decision to eliminate bidding credits previously offered to women- and minority-owned businesses in the 218-219 MHz Service. We note, however, that Weblink's characterization is not in line with the Commission's statements in that order. *Id.*

¹⁹ Petition at 3-5.

²⁰ Myers Lazrus Petition at 13-15.

²¹ 47 U.S.C. § 405 (limiting the Commission's power to consider petitions for reconsideration to those filed within 30 days from public notice of the order, decision, report or action complained of); *see also Reuters Limited v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986) (narrowly construing judicially created "extraordinary circumstances" exception to statutory time limit for filing petitions for reconsideration.)

²² 47 C.F.R. §§ 1.106(f), 1.429.

Commission had awarded the licenses to Weblink.²³ Accordingly, the Bureau appropriately dismissed Weblink's Request.²⁴

7. Weblink's specific arguments in support of its Petition do not meet the standards for reconsideration required under the Commission's rules.²⁵ Weblink continues to argue that the waiver doctrine does not preclude retroactive application of *Adarand* to the auction results in Auction Nos. 1 and 3, citing to a Supreme Court case and an appellate case, both of which held that judicial decisions were applicable retroactively. Weblink cites to the Supreme Court's decision in *Harper v. Virginia Dept. of Taxation*²⁶ to support its argument that the Commission should grant its request for a remedial bidding credit on the grounds that judicial precedent normally has retroactive as well as prospective effect.²⁷ In *Harper*, the Virginia Department of Taxation had refused to retroactively apply the Supreme Court's holding in *Davis v. Michigan Department of Treasury*,²⁸ which invalidated a particular taxation practice in Michigan, to a judicially contested Virginia taxation scheme in spite of its being on review at the same time as *Davis*.²⁹ In *Harper*, the Court held "[w]hen this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be give full retroactive effect in all cases still open on direct review, regardless of whether such events predate or postdate announcement of the rule."³⁰ In this instance, Weblink had no pending claims at the time *Adarand* was adjudicated. Accordingly, the *Harper* decision is inapplicable and does not excuse Weblink's failure to seek relief for over six years.

8. Weblink also cites to the Court of Appeals for the D.C. Circuit's decision in *National Association of Broadcasters v. FCC*³¹ to support its claim for a bidding credit.³² In *NAB*, broadcasters sought review of several Commission orders denying refunds of fees paid under the Commission's 1970 fee schedule (which had been challenged earlier in the U.S. Supreme Court and remanded to the Commission for further proceedings). The D.C. Circuit held that the broadcasters were not barred from suing for refunds in spite of their failure to appeal from an earlier decision upholding the validity of the fees because they justifiably relied on statements by the Commission to the effect that action on refunds would be taken by the Commission on its own initiative.³³ The appellate court further held that the Supreme Court decision holding such fees invalid was applicable retroactively and that the broadcasters were entitled to the return of funds collected illegally.³⁴ The facts presented by Weblink are not analogous to those in *NAB*. Weblink does not allege, and the record does not support, that the Commission ever stated that it would refund funds submitted to pay for the licenses won at Auctions Nos.

²³ Order, 16 FCC Rcd at 9422-9424 ¶¶ 6-7.

²⁴ Letter to Thomas Gutierrez, Esq. from Kathleen O'Brien Ham, Deputy Chief, Wireless Telecommunications Bureau, 17 FCC Rcd 13,289 (2002) (denying request by Instapage Network Ltd. for remedial bidding credit for license won at Auction No. 3) ("*Instapage Letter*").

²⁵ 47 C.F.R. § 1.106(b)(1) (2001).

²⁶ *Harper v. Virginia Dept. of Taxation*, 509 U.S. 86 (1993) ("*Harper*").

²⁷ Petition at 4.

²⁸ *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803 (1989) ("*Davis*").

²⁹ *Harper*, 509 U.S. 86.

³⁰ *Harper*, 509 U.S. at 97.

³¹ *National Association of Broadcasters v. FCC*, 554 F.2d 1118 (D.C. Cir. 1976) ("*NAB*").

³² Petition at 4-5.

³³ *NAB*, 554 F.2d at 1127.

³⁴ *Id.*

1 and 3 or that the *Adarand* decision required that the Commission issue a remedial bidding credit or refund to the winning bidders in those auctions.³⁵ Therefore, Weblink cannot establish any reasonable reliance on Commission decisions to support its six-year delay in filing its refund request. We find NAB does not support Weblink's request for a retroactive bidding credit and therefore, no reason to reverse the decision in the Bureau's *Order*.

9. In its Petition, Weblink once again relies upon *Graceba Total Communications, Inc. v. FCC*³⁶ to support its argument that the constitutional nature of its claim excuses the untimely nature of Weblink's original Request and precludes application of the waiver doctrine.³⁷ We reiterate our earlier decision that Weblink's argument misconstrues the court's findings.³⁸ The D.C. Circuit's decision in *Graceba* relied on its decision in *Meredith Corporation v. FCC*³⁹ in which it stated that the Commission has an obligation to address "properly presented" constitutional claims.⁴⁰ In *Graceba*, the D.C. Circuit found that *Graceba*'s claim was properly, *i.e.*, timely, presented.⁴¹ As the Bureau has already observed, Weblink has had numerous opportunities on other occasions to challenge the bidding credits offered in Auction Nos. 1 and 3 in a timely fashion but it failed to do so.⁴² In fact, after no minority- or women-owned entities won licenses in the nationwide narrowband PCS auction, Weblink filed comments supporting both bidding credits and entrepreneur blocks for women and minorities participating in the subsequent regional narrowband PCS auction.⁴³ Weblink's request filed in 2000 was not timely and thus did not constitute a properly presented constitutional claim. Weblink's case is analogous to the facts in *Community Teleplay*, where the Bureau found that *Community Teleplay* had neglected numerous procedural opportunities to challenge the IVDS bidding credits and, therefore waived its right to a constitutional challenge on the grounds that its filing was untimely.⁴⁴ Similarly, the Bureau appropriately dismissed Weblink's untimely request.

B. Myers Lazrus

10. Myers Lazrus, a law firm filing on its own behalf, requests reconsideration of the

³⁵ See, e.g., In the Matter of Associated Broadcasters Licensee of KVEO-TV, Brownsville, Texas Request for Return of Forfeiture Payment, *Memorandum Opinion and Order*, 12 FCC Rcd 3324, 3329 (1997) (denying request that the Commission recalculate its forfeiture payment on the grounds that party failed to make a timely challenge to a Notice of Apparent Liability, stating that "[u]nlike the facts of *NAB v. FCC*, Associated points to no instance where the Commission suggested that it would issue refunds to parties who paid forfeitures imposed using the Policy Statement.")

³⁶ *Graceba Total Communications, Inc. v. FCC*, 115 F.3d 1038 (D.C. Cir. 1997).

³⁷ Petition at 5.

³⁸ *Order*, 16 FCC Rcd at 9424-25, ¶¶ 6-7.

³⁹ *Meredith Corp. v. FCC*, 809 F.2d 863 (D.C. Cir. 1987).

⁴⁰ *Id.* at 869-870.

⁴¹ 115 F.3d 1038, 1041.

⁴² *Order*, 16 FCC Rcd at 9422-9423 ¶6 (noting that Weblink had the opportunity to file comments objecting to the constitutionality of the proposed bidding credit rules in the proceedings resulting in the *Competitive Bidding Second Report and Order*, *Competitive Bidding Third Report and Order*, and the *Narrowband Third Memorandum Opinion and Order*, but did not do so).

⁴³ Comments of Pagemart, Inc., In the Matter of Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS, PP Docket No. 93-253 (filed September 16, 1994); see also *Competitive Bidding Third Report and Order*, 10 FCC Rcd at 201 ¶ 58 (Commission increased the bidding credit to 40 percent because women- and minority-owned bidders did not win any licenses in the nationwide narrowband PCS auction).

⁴⁴ *Community Teleplay*, 13 FCC Rcd 12,428.

Bureau's *Order*.⁴⁵ Although Myers Lazrus did not previously participate in the Weblink proceeding, it asserts standing to participate in the reconsideration under Section 1.106(b)(1) of the Commission's rules and, alternatively, under the third party standing doctrine.⁴⁶ As we explain below, Myers Lazrus has failed to establish standing under Section 1.106(b) and its alternative third party standing argument is inapplicable in this instance.

11. To establish standing to file its Petition under Section 1.106(b)(1) of the Commission's rules, Myers Lazrus must show that its interests are adversely affected by the action taken by the Bureau and that it did not have the opportunity to participate in the earlier stages of the proceeding.⁴⁷ To determine if a party's interests have been adversely affected, the Commission frequently relies upon the three-pronged standing test under which a party must establish: (1) a distinct and palpable personal injury-in-fact that is (2) traceable to the respondent's conduct and (3) redressable by the relief requested.⁴⁸

12. Myers Lazrus bases its claim of standing on the Bureau's description of the Commission's grant of a retroactive bidding credit in the 218-219 MHz service as non-remedial. Myers Lazrus alleges this description has injured it by affecting the contractual relationship between the law firm and its client, the Ad Hoc Coalition. Specifically, Myers Lazrus alleges that its compensation for services was based on the achievement of a remedial action in the 218-219 MHz service.⁴⁹ Myers Lazrus suggests that if the Bureau's characterization of a Commission level order is not revised it may have to return the funds paid for its services.⁵⁰ Myers Lazrus also alleges that the Bureau's *Order* interferes with its ability to develop contingency fee agreements with prospective narrowband PCS clients.⁵¹

13. The issues raised by Myers Lazrus stem from a fee dispute between an attorney and its client. This is not a matter regulated by the Commission and therefore does not form a redressable injury for which the Commission may provide relief. The Commission has a long-standing practice of not addressing matters related to private contractual agreements.⁵² The Commission has previously observed, "private disputes are beyond our regulatory jurisdiction and must be resolved in a local court of competent jurisdiction."⁵³ By failing to articulate how its interests have been adversely affected in a

⁴⁵ In its June 18, 2001 Response to the Myers Lazrus Petition for Reconsideration, Weblink stated that Myers Lazrus does not represent Weblink and was not authorized to file a Petition for Reconsideration on its behalf. Weblink Response at 1.

⁴⁶ Myers Lazrus Petition at 1-5. In order to assert third party standing: (1) the litigant must have suffered injury in fact, thus giving him or her sufficiently concrete interest in outcome of issue in dispute; (2) the litigant must have close relation to the third party; and (3) there must exist some hindrance to third party's ability to protect his or her own interests. *Powers v. Ohio*, 499 U.S. 400, 411 (1991).

⁴⁷ 47 C.F.R. § 1.106(b)(1) provides that "any party to the proceeding, or any other person whose interests are adversely affected by any action taken by the Commission or by the designated authority, may file a petition requesting reconsideration of the action taken."

⁴⁸ See *AT&T Corp., Complainant, v. Business Telecom, Inc., Defendants, Order on Reconsideration*, 16 FCC Rcd 21,750, 21,753-21,754 ¶ 7 (2001); Chris C. Hudgins, *Order on Reconsideration*, 16 FCC Rcd 7941 (2001).

⁴⁹ Myers Lazrus Petition at 2.

⁵⁰ *Id.*

⁵¹ *Id.* at 3.

⁵² See *State Street Bank and Trust Company v. Arrow Communications*, 833 F.Supp. 41 (U.S.D.C. D.Mass. 1993) (court noting that objection of unsecured creditor of licensee to the assignment of license is a private matter outside Commission jurisdiction.)

⁵³ *Id.*, at 45 (citing *In re: KMJC-FM, Clinton, Iowa, Assignment of License*, File No. BALH-921008HF, *Letter Ruling* (Feb. 25, 1993)); see also *Banks Broadcasting Company*, 60 Rad. Reg. 2d (P & F) 1454 (1986) ("*Banks*"). *Banks* concerned an attempt to involve the Commission in a private dispute between the petitioners and their Board

(continued....)

manner cognizable by the Commission, Myers Lazrus does not establish any of the elements for standing under Section 1.106(b)(1).

14. With respect to the third party standing alternative argument, we note that it has been generally disfavored by the Commission.⁵⁴ This is not surprising because third-party standing contravenes a basic prudential principle that a party “generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.”⁵⁵ Myers Lazrus has failed to provide a basis to diverge from this principle here. Although we are not persuaded by Weblink’s arguments, clearly nothing has prevented Weblink, or any other nationwide or regional narrowband PCS licensee from pursuing the particular claim at issue here.⁵⁶ Thus, it would be inappropriate to recognize third party standing in this instance.

15. In essence, Myers Lazrus is using the Petition for Reconsideration of the Weblink *Order* as an opportunity to re-argue the issues raised by its request for a determination that it is entitled to a “common fund award” in connection with the 218-219 MHz service and the regional and nationwide narrowband PCS services.⁵⁷ The request was denied initially and we affirmed on reconsideration.⁵⁸ Myers Lazrus currently has an application for review of the order on reconsideration pending with the Commission. Accordingly, a petition for reconsideration of the Weblink *Order* is an inappropriate vehicle for a collateral attack on the *Common Fund Orders*.⁵⁹ We, therefore, dismiss the Myers Lazrus Petition for lack of standing.⁶⁰

IV. ORDERING CLAUSES

16. Accordingly, for the foregoing reasons, IT IS ORDERED that the Petition for Reconsideration filed by Weblink Wireless, Inc. on June 4, 2001, IS HEREBY DENIED.

17. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by Myers Lazrus Technology Group on June 4, 2001, IS HEREBY DISMISSED.

(...continued from previous page)

of Directors. The Commission rejected their arguments, finding that the petitioners failed to show that their interests had been adversely affected where their argument was premised upon the assumption that the modification of a Commission order would cause licensees to terminate an existing agreement and negotiate a more favorable one).

⁵⁴ Application of G & S Television Network, Inc. for Authority to Construct and Operate A Multichannel Multipoint Distribution Service Station on F-Group Channels at Phoenix, Arizona, *Memorandum Opinion and Order*, 7 FCC Rcd 4509 (1992) (stating that party filing petition to deny impermissibly asserted third party standing).

⁵⁵ *Warth v. Seldin*, 422 U.S. 490, 499 (1975).

⁵⁶ *See, e.g., Instapage Letter*, n.23 *supra*.

⁵⁷ *See* Petition for Order to Declare a Common Fund, filed by Hill & Welch and Myers Keller Communications Law Group on March 8, 2000; *compare with* Myers Lazrus Petition.

⁵⁸ Hill and Welch and Myers Keller Communications Law Group, Request for Attorney Fees in Connection with 218-219 MHz Service Proceeding and Regional Narrowband PCS Service, *Order*, 15 FCC Rcd 2432 (2000), *aff’d on recon*, Hill and Welch and Myers Keller Communications Law Group, Request for Attorney Fees in Connection with 218-219 MHz Service Proceeding and Regional Narrowband PCS Service, *Order on Reconsideration*, 16 FCC Rcd 9485 (2001) (“*Common Fund Orders*”).

⁵⁹ In this instance, the expense of time and resources to address what appear to be frivolous arguments is a detriment to the public interest. We therefore put Myers Lazarus and any others similarly disposed on notice, that we are prepared to impose abuse of process remedies should meritless petitions be filed in the future. *See* Commission Taking Tough Measures against Frivolous Pleadings, *Public Notice*, FCC No. 96-42, 11 FCC Rcd 3030 (1996).

⁶⁰ *See* Applications of No Wire, LLC, *Order on Reconsideration*, 15 FCC Rcd 10,257 (2000).

18. These actions are taken pursuant to authority delegated by Section 0.331 of the Commission's Rules, 47 C.F.R. § 0.331.

19. It is FURTHER ORDERED that copies of this Order will be sent to the Weblink Wireless, Inc., its representatives, and Myers Lazrus Technology Law Group by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen O'Brien Ham
Deputy Chief, Wireless Telecommunications Bureau