

OPINION OF INDIVIDUAL JUSTICE
IN CHAMBERS

FEDERAL COMMUNICATIONS COMMISSION ET AL.
v. RADIOPHONE, INC.

ON APPLICATION TO VACATE STAY

No. A-368. Decided October 25, 1995

The Federal Communications Commission's application to vacate the Sixth Circuit's stay preventing the FCC from taking any action in furtherance of a nationwide auction of a portion of the electromagnetic spectrum is granted. Allowing the auction to proceed will not defeat the Sixth Circuit's power to grant appropriate relief in a pending challenge to FCC regulations that prevent respondent from bidding for 3 of the 493 licenses available. Moreover, the harm to the public caused by a nationwide postponement of the auction would outweigh the possible harm to respondent.

JUSTICE STEVENS, Circuit Justice.

The Federal Communications Commission (FCC) has applied to me in my capacity as Circuit Justice for the Sixth Circuit to vacate a stay entered by the Court of Appeals on October 18, 1995. The stay prevented the FCC from taking any action in furtherance of a nationwide auction of a portion of the electromagnetic spectrum. Apparently, the Court of Appeals feared that completion of the auction would moot a challenge pending before it to FCC regulations that prevent respondent from bidding for 3 of the 493 licenses available. I am persuaded, however, that allowing the national auction to go forward will not defeat the power of the Court of Appeals to grant appropriate relief in the event that respondent overcomes the presumption of validity that supports the FCC regulations and prevails on the merits. I am also persuaded that the harm to the public caused by a nationwide postponement of the auction would outweigh the possible

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harm to respondent. I should point out that because respondent has not filed an opposition to the application, my opinion is based on the factual representations in the FCC's papers.

Accordingly, the application to vacate the stay is granted.