

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. 22A401

NORTHSTAR WIRELESS, LLC, and SNR WIRELESS LICENSECo, LLC,

v.

FEDERAL COMMUNICATIONS COMMISSION,

**APPLICATION TO THE HON. JOHN G. ROBERTS, JR.,
FOR A FURTHER EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE D.C. CIRCUIT**

Pursuant to Supreme Court Rule 13(5), Northstar Wireless LLC (“Applicant”) hereby moves for a further extension of 30 days, to and including January 16, 2023, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be December 16, 2022.

In support of this request, Applicant states as follows:

1. The United States Court of Appeals for the D.C. Circuit rendered its decision on June 21, 2022 (First Mot. for Extension, Ex. 1), and denied a timely petition for rehearing on August 18, 2022 (First Mot. for Extension, Ex. 2). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. On November 3, 2022, undersigned counsel, Paul D. Clement, applied on behalf of Applicant for an initial 30-day extension of time, to and including December 16, 2023, for the filing of a petition for a writ of certiorari.

3. On November 7, 2022, the Chief Justice granted this initial application.

4. As explained in the initial application, this case involves a complex issue of administrative law: An unusual *post hoc* test that the FCC applies to bidders of hundreds-million-dollars wireless spectrum auctions that raises significant due process issues. This test is applied, as is relevant here, “on a case-by-case basis,” 47 C.F.R. §1.2110(c)(2)(i), and the FCC has given bidders precious little guidance on where the line is. Those who do not satisfy this text are severely penalized *post hoc*: If the FCC determines post-auction that a winning bidder does not qualify for bidding credits, the winner does not get to walk away; it must pay the full winning price on its licenses or face default penalties.

5. Specifically, Northstar Wireless, LLC (“Northstar”) placed billions of dollars in winning bids at an FCC spectrum auction. Northstar is a small business that, as the FCC allows and economic reality mandates, partnered with a larger corporation, DISH Network Corporation (“DISH”), to make these large bids. As FCC rules also required, Northstar not only disclosed that DISH is its largest investor, but also described in detail its agreements with DISH and DISH’s financial involvement with the company, which tracked previous arrangements between small bidders and large investors. After the auction, however, the Commission denied Northstar’s application for bidding credits, finding that DISH had too much control over Northstar. Yet unlike in every other instance in which the Commission had concerns regarding an applicant’s eligibility for bidding credits as a designated entity, the FCC did not give Northstar a meaningful opportunity to cure the control issues before finding it ineligible for bidding credits. That was not for lack of trying on Northstar’s

part: The company asked the FCC to meet with it and allow it to address the FCC's specific concerns. But the FCC did not even so much as respond to Northstar's overtures in this regard. Nor did it let Northstar walk away. After having ignored Northstar for more than a year, the FCC ordered it to pay the shortfall between its winning bids and the price the FCC obtained for those licenses in later re-auctions, *plus* penalties totaling hundreds of millions of dollars.

6. Thus, a small business is now on the hook for nine-figure penalties for failing to comply with amorphous standards, posing grave due process problems.

7. Applicant's counsel, Paul D. Clement, was not involved in the proceedings below and requires additional time to familiarize himself with the record, research the legal issues presented in this case, and prepare a petition that fully addresses the important and far-reaching issues raised by the decision below in a manner that will be most helpful to the Court. Whilst counsel has been working diligently in preparing this petition, Mr. Clement also has had or will have substantial briefing and argument obligations between the date of the extension and the current due date of the petition, including a response to a motion for summary judgment and a cross-motion for summary judgment in *Moses v. Comcast*, No. 22-665 (S.D. Ind.); oral argument in *Johnson v. Tyson Foods, Inc.*, No. 22-10171 (5th Cir.); a reply brief in *Hendrix v. J-M Mfg. Co.*, No. 21-56276 (9th Cir.); and oral argument in *Smartmatic USA Corp. v. Fox Corporation*, No. 2022-1291 (N.Y. App. Div.). More time is required, commensurate with counsel's other responsibilities, adequately to

research and brief the administrative and constitutional law issues posed by this matter.

WHEREFORE, for the foregoing reasons, Applicant respectfully requests that an extension of time to and including January 16, 2022, be granted within which it may file a petition for a writ of certiorari.

Respectfully submitted,



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