

CHARLES CRAWFORD, PETITIONER v. FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA, RESPONDENTS

No. 08-1059

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

304 Fed. Appx. 882; 2008 U.S. App. LEXIS 24362

December 1, 2008, Filed

NOTICE: PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

PRIOR HISTORY: [1]**

On Petition for Review of an Order of the Federal Communications Commission.

FM Table of Allotments, Shiner, Batesville & Tilden, Tex., 23 FCC Rcd 640, 2008 FCC LEXIS 731.

COUNSEL: For Charles Crawford, Petitioner: Gene A. Bechtel, Law Office of Gene A. Bechtel, Washington, DC.

For Federal Communications Commission, Respondent: C. Grey Pash, Jr., Counsel, Pamela Louise Smith, Daniel McMullen Armstrong, Associate General Counsel, Thomas Overton Barnett, Matthew Bradley Berry, Federal Communications Commission, (FCC) Office of General Counsel, Washington, DC.

For United States of America, Respondent: Robert J. Wiggers, Attorney, Robert B. Nicholson, Attorney, U.S. Department of Justice, (DOJ) Antitrust Division, Appellate Section, Washington, DC.

JUDGES: Before: HENDERSON and ROGERS, Circuit Judges, and EDWARDS, Senior Circuit Judge.

OPINION

[*882] JUDGMENT

This cause was considered on a petition for review of an order of the Federal Communications Commission and was briefed by counsel. It is

ORDERED AND ADJUDGED that the petition for review of an order of the Federal Communications Commission ("FCC" or "Commission") is hereby denied essentially for the reasons stated by the Commission.

Crawford's claim on appeal is that he received inadequate notice that his proposals could be precluded by another applicant's earlier-filed [**2] proposal. The disposition of this claim is controlled by this court's decision in *Crawford v. FCC*, 368 U.S. App. D.C. 40, 417 F.3d 1289 (D.C. Cir. 2005). There, the court rejected Crawford's claim of inadequate notice on virtually identical facts, stating that the Notice of Proposed Rulemaking, *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations*, 15 F.C.C.R. 15,809 (2000) ("Quanah NPRM"), and the FCC's regulations, 47 C.F.R. β

1.420(d), "put all interested parties on notice that their proposals could be precluded by *any* counterproposal -- whether foreseeable or not -- that was filed by the deadline, mutually exclusive with the Quanah proposal, and mutually exclusive with their own." *Crawford*, 417 F.3d at 1296 (emphasis in original). Here, the Quanah NPRM likewise gave Crawford adequate notice that his [*883] late-filed, conflicting

proposals would be subject to the FCC's cutoff rule.

Pursuant to *D.C. Circuit Rule 36*, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing *en banc*. See *FED. R. APP. P. 41(b)*; *D.C. CIR. R. 41*.

Per Curiam