

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 07-1454

September Term, 2008

COUNCIL TREE COMMUNICATIONS, INC.,
PETITIONER

FILED ON: MARCH 26, 2009

v.

FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA,
RESPONDENTS

GOOGLE, INC., ET AL.,
INTERVENORS

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

Before: BROWN and GRIFFITH, *Circuit Judges*, and SILBERMAN, *Senior Circuit Judge*

J U D G M E N T

This petition for review was considered on the administrative record and on the briefs filed by the parties. *See* FED. R. APP. P. 34(a)(2); D.C. CIR. RULE 34(j). It is

ORDERED and **ADJUDGED** that we lack jurisdiction to consider petitioner's claims that the decision of the Federal Communications Commission ("FCC") to use its existing bidding rules for a particular auction was arbitrary and capricious or otherwise not in accordance with law.

Under 28 U.S.C. § 2344, "[a]ny party aggrieved by the final order" of the Federal Communications Commission has only "60 days after its entry" to seek judicial review of the order. This time limit is jurisdictional, *see, e.g., Charter Commc'ns, Inc. v. FCC*, 460 F.3d 31, 38 (D.C. Cir. 2006), and was not met in this case. Jurisdiction thus lies only if the FCC has somehow "reopened" the decision that petitioner now challenges. For this exception to apply, "[t]he Commission's intention to initiate a reopening must be clear from the administrative record." *Biggerstaff v. FCC*, 511 F.3d 178, 185 (D.C. Cir. 2007). Thus, "if an agency in the course of a rulemaking proceeding solicits comments on a pre-existing regulation or otherwise indicates its willingness to reconsider such a regulation by inviting and responding to comments, then a new review period is triggered." *Kennecott Utah Copper Corp. v. Dep't of Interior*, 88 F.3d 1191, 1213 (D.C. Cir. 1996) (citing *Ohio*

