

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

In the matter of
Request of GLH Communications, Inc. for
Temporary Waivers of
Installment Payment Deadlines (47 C.F.R.
§1.2110(g)(4) and Debt Collection Rules (47
C.F.R. §1901 et seq.)

Order

Adopted: July 18, 2003

Released: July 18, 2003

By the Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau:

I. Introduction

1. This Order responds to the request filed on behalf of GLH Communications, Inc. ("GLH") seeking two-year waivers of the Commission's installment payment and debt collection rules ("Request"). More specifically, GLH requests waivers for two years of Section 1.2110(g)(4) and of Sections 1.1901 et seq. of the Commission's rules with respect to GLH's obligation to make overdue installment payments for six Personal Communication Services (PCS) C Block licenses. Pursuant to Section 1.2110(g)(4), if the overdue installment payments and applicable late fees are not paid by July 31, 2003, i.e., within two quarters of their original due date, GLH shall be in default, its licenses shall cancel automatically, and it will be subject to debt collection procedures. Sections 1.1901 et seq. set forth the Commission's debt collection procedures. Concurrently with the Request, GLH filed a separate petition with the Commission's Office of the Managing Director seeking to compromise GLH's debt ("Petition"). GLH requests the two-year waivers to permit consideration of its Petition. For the reasons set forth below, we deny the request for a waiver of Section 1.2110(g)(4) and dismiss without prejudice the request for a waiver of Sections 1.1901 et seq. as premature.

1 Request of GLH Communications, Inc. for Temporary Waivers of Installment Payment Deadlines (47 C.F.R. §1.2110(g)(4)) and Debt Collection Rules (47 C.F.R. §1.1901 et seq.), dated April 16, 2003 ("Request").

2 47 C.F.R. §1.2110(g)(4)(iv). Pursuant to Section 1.2110(g)(4)(iv), GLH has two quarters following the original payment due date during which it may make the overdue payments with the applicable late fees. See id.

3 See 47 C.F.R. §1.901 et seq.

4 Petition of GLH Communications, Inc. for Debt Compromise (31 C.F.R. §902 et seq.), dated April 16, 2003 ("Petition"). GLH filed the Petition with the Commission's Office of the Managing Director and it will be addressed separately from the instant Order.

5 Request at ii-iii.

II. Background

2. GLH holds six licenses, each of which authorizes GLH to use 15 megahertz of PCS C Block spectrum in each of six different markets in Tennessee and Alabama.⁶ In support of its Request, GLH claims that it provides PCS service in each of the six markets and has over 14,000 rural and low-income customers.⁷

3. When it obtained the licenses, GLH assumed the original licensee's obligation to make installment payments due for the licenses.⁸ The original licensee's obligation to make installment payments, and consequently GLH's obligation, is based on the winning bids for the licenses in Auction No. 5 and the Commission's rules regarding installment payments by small businesses.⁹ GLH states that when it assumed the obligation to make installment payments due for the licenses, GLH also obtained a secured promissory note (the "Note") from Leap Wireless International, Inc., ("Leap"), the former licensee's corporate parent.¹⁰ According to GLH, the Note obligated Leap to provide GLH with the money to make future installment payments for the licenses and was secured by stock in a Leap subsidiary.¹¹ Notwithstanding the Note, GLH asserts that Leap did not provide \$605,371.04 for the January 31, 2003 installment payments.¹² GLH states that the total payment due January 31, 2003 consists of \$458,598.06 in payments on the winning bids and \$146,718.98 in interest payments.¹³ Leap and its subsidiaries filed for bankruptcy protection on April 14, 2003.¹⁴ GLH further claims that it was unable to foreclose on its collateral under the Note before the bankruptcy filings by Leap and its

⁶ GLH identifies the following BTAs as the relevant markets: 96, 120, 146, 211, 229, and 295. *See* Request at 2.

⁷ Request at 1-2. According to GLH, it offers its customers wireless service for unlimited local calling for \$29.95 per month. Request at 2-3.

⁸ *Id.* at 4.

⁹ *See* 47 C.F.R. § 1.2110(g) (regarding installment payments). The Commission conducted competitive bidding for licenses authorizing use of C Block Spectrum in the relevant markets in Auction No. 5. The winning Auction No. 5 bidder for the relevant licenses was Chase Telecommunications, L.P. ("Chase"). *Entrepreneurs' C Block Auction Closes, Public Notice*, DA 96-716 (rel. May 8, 1996). Pursuant to Commission rules for Auction No. 5, Chase received a 25 percent discount on its gross high bids and was eligible to pay 90 percent of its net high bids in installments over ten years, paying only interest for six years and then principal and interest for four years. *See* 47 C.F.R. §§24.711 and 24.712. Following Auction No. 5, a wide variety of C Block licensees encountered difficulty making installment payments. To comply with the Commission's statutory mandate to promote dissemination of licenses among a wide variety of licensees, the Commission decided to offer C Block licensees four options to restructure their debt, including an option to disaggregate licenses so that the licensee retained use of 15 megahertz of the spectrum, returned use of 15 megahertz to the Commission, and reduced the original principal the licensee owed the Commission by 50 percent. *See* Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Second Report and Order and Further Notice of Proposed Rule Making*, 12 FCC Rcd 16,436 (1997); *on reconsideration, Order on Reconsideration of the Second Report and Order*, 13 FCC Rcd 8345 (1998). Chase elected to exercise the option to disaggregate its licenses. *See* Wireless Telecommunications Bureau Announces Broadband Personal Communications Services C Block Elections, DA 98-1168, *Public Notice*, 13 FCC Rcd 16,705 (1998). Consequently, the current licenses authorize GLH to use 15 megahertz even though Chase's original licenses authorized use of 30 megahertz.

¹⁰ Request at 4-5.

¹¹ *Id.* at 5.

¹² *Id.* at 5.

¹³ *Id.* at 4.

¹⁴ *Id.* at 5.

subsidiaries.¹⁵

4. GLH acknowledges that, pursuant to the Commission's automatic cancellation rules, if GLH does not pay the overdue January 31, 2003 installment payments together with applicable late fees by July 31, 2003, GLH shall be in default; its six licenses shall cancel automatically; and it shall be subject to debt collection procedures.¹⁶ GLH states that, as of the filing of its Request, it did not have access to capital or alternative funding to make the required payments prior to July 31, 2003.¹⁷ GLH asserts that the bankruptcy filings by Leap and its subsidiaries: make it uncertain when GLH will be able to recover the collateral for the Note; may reduce the value of the collateral; and make it "uncertain at best" whether GLH will be able to collect on any deficiencies from Leap if the collateral is insufficient.¹⁸ GLH asserts that absent relief from the Commission it may have no choice but to file for bankruptcy protection itself.¹⁹ Consequently, GLH requests a two-year waiver of the Commission's automatic cancellation and debt collection rules and asks that the Commission consider the proposals set forth in its Petition for compromising its debt.

III. Discussion

5. To obtain a waiver of the relevant rules, GLH must show either that (i) the underlying purpose of the applicable rule would not be served, or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) that the unique facts and circumstances of the particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, or that the applicant has no reasonable alternative.²⁰ As discussed below, GLH fails to make either showing necessary to support granting a waiver.

6. As an initial matter, GLH's statement that absent relief from the Commission, GLH likely will have no choice but to seek relief in bankruptcy court has no effect on our consideration of GLH's Request.²¹ As discussed below, the automatic cancellation rule protects the integrity of the Commission's auction and license assignment process. According to GLH, the recent United States Supreme Court decision in the *NextWave* case holds that filing for bankruptcy prevents the automatic cancellation of a license.²² Regardless of GLH's argument, waiving the rule in response to a licensee's threatened bankruptcy would reduce the rule's effectiveness. As the Commission has noted, "in implementing its regulatory function, [the Commission] is charged with looking at the broader public interest" and not "how best to rehabilitate a specific debtor and satisfy its creditors' claims pursuant to the Bankruptcy Code."²³ Accordingly, the Commission has concluded that to alter a licensee's installment payment obligations because the licensee may consider filing for bankruptcy "would harm the integrity of

¹⁵ *Id.* at 5.

¹⁶ See 47 C.F.R. § 1.2110(g)(4)(iv); Request at 6.

¹⁷ Request at 6.

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 7.

²⁰ 47 C.F.R. §1.925.

²¹ Request at 7.

²² *Id.* at 13 (discussing *NextWave*).

²³ See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Second Order on Reconsideration of the Second Report and Order*, 14 FCC Rcd 6571, 6580, ¶ 14 (1999).

the auctions process and encourage licensees to threaten litigation in the future.”²⁴

A. The Automatic Cancellation Rule.

7. The “temporary” two-year duration of the requested waiver of the automatic cancellation rule does not alter the standard to be applied to GLH’s Request. The Commission’s installment payment rules already provide licensees experiencing financial difficulties a substantial amount of time within which to pursue private market solutions to their financial difficulties.²⁵ The Commission repeatedly has observed that “[n]o matter what deadline we establish, it is inevitable that some licensees will seek more time to pay.”²⁶ GLH’s Request is therefore subject to the same standard as any request for postponement or waiver of the deadline established by the automatic cancellation rule.

8. GLH contends that the Commission should waive its automatic cancellation rule so that GLH can continue to provide service to more than 14,000 rural and low-income members of the public, without filing for bankruptcy, while the Commission considers the proposals in GLH’s Petition.²⁷ GLH asserts that delivery of service to the public is the primary goal of the Commission’s installment payment and automatic cancellation rules.²⁸ GLH argues that its existing service may be terminated if the requested waivers are denied and, therefore, granting the waivers would better serve the public interest.²⁹

9. The Commission’s competitive bidding rules, including the automatic cancellation rule, serve several statutory objectives enumerated in Section 309(j)(3) of the Communications Act, including the rapid deployment of services for the benefit of the public, and are not limited to assuring simply that the licensee provides service.³⁰ In designing its auctions, the Commission has determined that assigning licenses to the qualified applicant willing to pay the most for the license promotes several statutory

²⁴ See Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Second Order on Reconsideration of the Second Report and Order*, 14 FCC Rcd 6571, 6580, ¶ 16 (1999).

²⁵ Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket 97-82, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd 374, 439-440, ¶ 110 (1997) (“*Part 1 Third Report and Order*”); see also Southern Communications Systems, Inc. Request for Limited Rule Waiver to Comply with PCS Installment Payment for C Block Licenses in the Cleveland, TN BTA, *Memorandum Opinion & Order*, 15 FCC Rcd 25,103, 25,110, ¶ 15 (2000) (“*Southern Communications MO&O*”), *further reconsideration denied*, *Second Memorandum Opinion and Order*, 16 FCC Rcd 18,357 (2001); Letter to Messrs. Stephen Diaz Gavin and Paul C. Besozzi, Counsel for U.S. Telemetry Corporation, from Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 02-819, 17 FCC Rcd 6442, 6446 (2002) (“*U.S. Telemetry Corporation Letter*”).

²⁶ Requests for Extension of the Commission’s Initial Non-Delinquency Period for C and F Block Installment Payments, WT Docket No. 97-82, *Order*, 13 FCC Rcd 22,071, 22,072-73, ¶ 4 (1998) (quoting Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Order on Reconsideration of the Second Report and Order*, 13 FCC Rcd 8345, 8354, ¶ 24 (1998)). See, e.g., *Southern Communications MO&O*, 15 FCC Rcd at 25,110, ¶ 15, Letter to Mr. Kurt Schueler, President of New England Mobile Communications, Inc. from Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 16 FCC Rcd 19,355, 19,357-58 (2001) (“*New England Mobile Letter*”).

²⁷ Request at 14.

²⁸ *Id.* at 9.

²⁹ *Id.* at 3.

³⁰ See 47 U.S.C. §309(j)(3).

objectives, including the effective deployment of the service most highly valued by the public.³¹

10. The automatic cancellation rule serves a crucial function in the competitive bidding process that the Commission uses to assign licenses. Precluding winning bidders, or subsequent licensees, from keeping the licenses when the winning bids are not paid pursuant to the Commission's rules minimizes bidders' incentive to make bids that they cannot pay. This, in turn, makes it possible for other bidders that will pay their bids to win the licenses through the auction. This process protects the integrity of the competitive bidding and is essential to a fair and efficient licensing process for all participants in the Commission's auction, including both those who won licenses and those who did not, which promotes economic opportunity and competition in the marketplace.³²

11. Moreover, the Commission repeatedly has emphasized that strict enforcement of the installment payment rules enhances the integrity of the auction and licensing process by ensuring that spectrum is awarded to those qualified bidders who value the spectrum most and that winning bidders have the necessary financial capacity to build out systems and provide service.³³ GLH asserts that it has demonstrated its financial capacity as a licensee by building out a system without assuming debt other than that owed to the Commission for the licenses and offering service at below-average price to the public.³⁴ However, the original assignment of the licenses was premised on the winning bidder demonstrating the integrity of its valuation by paying the amount of the winning bids. Absent the full payment of the winning bids, GLH's ability to make some use of the licenses cannot protect the integrity of the auction and is insufficient to prevent cancellation of the licenses.

12. GLH asserts that the public interest requires waiving the automatic cancellation rule because cancellation of its licenses may result in termination of the affordable wireless service that GLH provides to many of its over 14,000 customers.³⁵ However, the Commission has determined that the provision of service by itself does not outweigh the public interest in preserving auction and licensing

³¹ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2360-61, ¶ 70 (1994) (“*Competitive Bidding Second Report and Order*”). The Commission assigns licenses based on license applicants' competing bids. Each of those bids presumably reflects the estimated value of the prospective service to the public and the applicant's effectiveness in providing it. *See id.*, 9 FCC Rcd at 2360-61, ¶ 70 (“[T]he market value assigned to licenses via the auction process can be expected to reflect the benefits to both consumers and producers, now and in the future.”) Moreover, assigning licenses based on competing bids reduces administrative and judicial delay by using a simple and objective standard to compare competing applicants.

³² *See Licenses of 21st Century Telesis, Inc. for Facilities in the Broadband Personal Communications Services, Memorandum Opinion and Order*, 15 FCC Rcd 25,113, 25,123-24, ¶ 22 (2000) (“*21st Century MO&O*”), *aff'd* 21st Century Telesis Joint Venture and 21st Century Bidding Corporation v. Federal Communications Commission, 318 F3d 192 (D.C. Cir. 2003).

³³ *Southern Communications MO&O*, 15 FCC Rcd at 25,110-11, ¶ 15; *21st Century MO&O*, 15 FCC Rcd at 25,117-18, ¶ 10. *See also* Wireless Telecommunications Bureau Will Strictly Enforce Default Payment Rules; Bureau to Re-Auction Licenses Quickly, *Public Notice*, 11 FCC Rcd 10,853 (1996). “Allowing bidders to adjust their bids post-auction would encourage insincere bidding and therefore interfere with the Commission's goal to ensure that licenses are auctioned to those parties that value them the most and have the financial qualifications necessary to construct operational systems and provide service.” Letter to James A. Stenger, Esq., Counsel for Allen Leeds, from Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 16 FCC Rcd 17,621, 17,623 (2001) (citing Application for Assignment of Broadband PCS Licenses, FCC 98-301, *Order*, 14 FCC Rcd 1126, ¶ 1 (1998)).

³⁴ Request at 2-3, 10-12.

³⁵ *Id.* at 3.

integrity and, therefore, is insufficient to merit waiver of the automatic cancellation rule.³⁶ Any interest in a particular licensee providing service must be balanced against the larger public interest in preserving the integrity and efficiency of the Commission's licensing process, as well as the Commission's obligation to fairly and consistently enforce its payment rules. Moreover, contrary to GLH's argument, applying the automatic cancellation rule will not necessarily result in the termination of service. The Commission is committed to avoiding unnecessary disruptions in service to the public. Pursuant to its rules, the Commission has authority on request or *sua sponte* to grant special temporary authority ("STA"), which allows a licensee to continue providing service after a license cancels or lapses.³⁷ In other instances, the Commission has granted STAs to licensees affected by the automatic cancellation rule.³⁸

13. Turning to the alternative standard for granting a waiver, GLH argues that it presents unique facts and circumstances that render application of the rule inequitable, unduly burdensome, and contrary to the public interest. More specifically, GLH contends that, unlike past unsuccessful applicants for a waiver,³⁹ it has engaged in substantial build-out of its system which would take considerable time for a new licensee to replicate; it had a commercially reasonable plan to finance both build-out and payments for the licenses; substantial payments have been made on its licenses; it presents a unique repayment plan in its Petition; and, finally, the protection against automatic cancellation provided by bankruptcy, as affirmed in Supreme Court's recent *NextWave* decision, renders the application of the rule to solvent licensees in GLH's circumstances inequitable.⁴⁰ Upon examination, none of these arguments is sufficient to merit granting the requested waiver.

14. First, GLH's speculation that automatic cancellation would result in a six- or seven-year interruption in service is insufficient to justify a waiver. GLH claims that it will take that long after automatic cancellation of GLH's licenses for a subsequent licensee to obtain a license and build out a system that provides service comparable to what GLH offers.⁴¹ However, given GLH's claim that its existing service is breaking even, not taking into account GLH's debt to the Commission,⁴² such a delay seems unlikely. A subsequent licensee lacking infrastructure might have every incentive to obtain use of GLH's infrastructure. Alternatively, a subsequent licensee might employ GLH to manage its operation.

³⁶ The Commission previously has denied requests for extension of payment deadlines notwithstanding the provision of service by licensees. See Request for Extensions of the Commission's Initial Non-Delinquency Period for C and F Block Installment Payments, *Order*, 13 FCC Rcd 22,071, 22,077 (1998) (discussing service provided by two licensees denied waivers of the installment payment and automatic cancellation rules).

³⁷ See 47 C.F.R. § 1.931(a); Pinpoint Wireless, Inc. Request for Waiver and Extension of the Broadband PCS Construction Requirements, DA 03-443, *Order*, 18 FCC Rcd 1904, 1910 (2003) (denying requested waiver and *sua sponte* granting STA).

³⁸ See, e.g., MBO Wireless, Inc. Requests for Extension of Special Temporary Authority to Operate PCS F Block License KNLF925, BTA311, Muskogee, Oklahoma and PCS C Block License KNLF591, BTA433 Stillwater, Oklahoma, DA 02-1428, *Order*, 17 FCC Rcd 11,257 (2002) ("*MBO STA Order*").

³⁹ Although GLH argues its facts and circumstances differ from past cases where the Commission has declined to waive the automatic cancellation rules, we find that GLH cannot satisfy the standard for receiving a waiver simply by drawing distinctions between its circumstances and the circumstances of other licensees that have been denied waivers. Rather, any such distinctions must demonstrate that application of the rule to GLH would be inequitable, unduly burdensome, or otherwise contrary to the public interest.

⁴⁰ Request at 10-13.

⁴¹ *Id.* at 10. For reasons discussed above, the fact that GLH has built-out its system and is providing service does not demonstrate by itself that application of the rule is contrary to the public interest.

⁴² *Id.* at 3.

Finally, the Commission has discretion, if it finds it necessary, to renew STAs for periods of 180 days.⁴³

15. Second, GLH's claim that it acted reasonably by commercial standards ignores Commission precedent which holds that GLH bears the full risks of any commercial arrangements it made to pay for its licenses.⁴⁴ The Commission repeatedly has held that it "cannot take into account the private business arrangements that an applicant has made to finance its successful bid."⁴⁵ Moreover, "the Commission has been consistent in strictly enforcing this standard" with respect to various payment rules, including default payments and down payments.⁴⁶ GLH made a business decision to operate without assuming any debt other than that owed to the Commission and to rely on Leap's Note for payment of the debt owed to the Commission for the licenses.⁴⁷ GLH contends that, unlike other licensees that have defaulted on installment payments, it had in place commercially reasonable arrangements to ensure both the build-out and full payment for its licenses.⁴⁸ However commercially reasonable GLH's arrangement for Leap to finance license installment payments may or may not have been, in light of Leap's default and GLH's lack of capital, it has proven insufficient. GLH cannot now look to the Commission to relieve it of its license obligations, even if GLH were reasonable in failing to anticipate the circumstances that have developed.

16. Third, GLH fails to present a persuasive argument that past payments on the licenses renders license cancellation inequitable. Even by GLH's accounting, GLH still owes slightly over 70 percent of the total due under the installment payment plan.⁴⁹ It is not inequitable to apply the sanction for not paying winning bids when most of the winning bids remain unpaid. GLH's additional contention that automatic cancellation imposes a severe forfeiture and past payments for the licenses will unjustly enrich the Commission if the licenses cancel completely ignores the regulatory purpose of the Commission's competitive bidding process. As previously discussed, the Commission's competitive bidding process assigns licenses pursuant to much broader public interest objectives than simply recovering the value of the licenses.

17. Fourth, the fact that GLH's Petition is pending is not grounds for granting a waiver of the automatic cancellation rule.⁵⁰ GLH argues that it would be inequitable to apply automatic cancellation

⁴³ See 47 C.F.R. § 1.931(a).

⁴⁴ See *Southern Communications MO&O*, 15 FCC Rcd at 25107, ¶ 10 (holding that a failure to appropriately manage business arrangements does not justify waiver of the automatic cancellation rule); *U.S. Telemetry Corporation Letter*, 17 FCC Rcd at 6447.

⁴⁵ BDPCS, Inc. BTA Nos. B008, B036, B055, B089, B110, B133, B149, B261, B298, B331, B347, B358, B391, B395, B407, B413, and B447, Frequency Block C, FCC 00-243, *Memorandum Opinion and Order*, 15 FCC Rcd 17,590, 17,606, ¶ 30 (2000) ("*BDPCS MO&O*") (quoting BDPCS, Inc., Emergency Petition for Waiver of Section 24.711(a)(2) of the Commission's Rules, *Memorandum Opinion and Order*, 12 FCC Rcd 3230, 3235, ¶ 8 (1997); Requests for Waivers in the First Auction of 594 Interactive Video and Data Service Licenses, *Order*, 9 FCC Rcd 6384, 6385 (CAB 1994) ("*IVDS Waiver Order*"), *review denied*, 10 FCC Rcd 12,153, 12,155 (1995), *recon. denied*, 11 FCC Rcd 8211, 8216-17 (1996)).

⁴⁶ *Id.* (involving default payments) (citing Requests for Waivers in the First Auction of Interactive Video and Data Service (IVDS) Licenses, *Memorandum Opinion & Order*, 10 FCC Rcd 12,153, 12,155 (1995), *recon. denied*, 11 FCC Rcd 8211, 8216-17 (1996) (involving down payments)).

⁴⁷ Request at 2-3.

⁴⁸ *Id.* at 11-12.

⁴⁹ *Id.* at 6.

⁵⁰ The Petition was filed with the Commission's Office of the Managing Director and remains pending. See n.4, *supra*.

prior to reaching a decision on the Petition, which it claims presents a unique repayment plan.⁵¹ As discussed above, however, the Commission can grant STA for GLH to continue operations after automatic cancellation while it considers the Petition. Moreover, pursuant to the Commission's rules, GLH already has had two quarters – or half a year – after the initial due date for the installment payments to attempt to meet its obligation.⁵² A need for additional time, regardless of how GLH might use it, does not constitute the type of unique circumstance required to justify a waiver.⁵³ The Commission has determined that two extra quarters after the installment payments are due is sufficient time to allow licensees to address unanticipated difficulties in making installment payments.⁵⁴

18. Finally, GLH argues that the Supreme Court's recent *NextWave* holding creates an inequitable result by permitting a bankrupt licensee to avoid its Commission obligations, or at least automatic cancellation, while a licensee offering a proposal to satisfy its entire obligation to the Commission without resort to bankruptcy may lose its licenses.⁵⁵ This argument ignores the significance of bankruptcy – different treatment based on differing circumstances is not inequitable.⁵⁶ Congress's decision to grant special, favorable treatment to entities in bankruptcy (*e.g.*, automatic stay, etc.) provides no sound basis for arguing that entities outside bankruptcy should receive similar, favorable treatment.

B. The Debt Collection Rules

19. GLH's request for waiver of the Commission's debt collection rules is premature. For reasons discussed above, GLH's request for a temporary waiver of the Commission's automatic cancellation rules is denied. Nevertheless, GLH's licenses have not yet cancelled and, accordingly, the Commission has not yet commenced debt collection procedures pursuant to the Commission's debt collection rules. As of the filing of its Request, GLH stated that it did not have access to capital or alternative funding to make the overdue payments prior to the July 31, 2003 automatic cancellation deadline.⁵⁷ If that remains the case, GLH might file for bankruptcy before the Commission commences debt collection procedures. Alternatively, however unlikely it may be, GLH might find some means to satisfy its installment payment obligations on a timely basis. These potential developments could substantially affect the application of the Commission's debt collection rules. Accordingly, we dismiss without prejudice GLH's current request for temporary waiver of the Commission's debt collection rules as premature.

IV. Conclusion and Ordering Clauses

20. For the reasons set forth above, application of the automatic cancellation rule in this case will not frustrate the underlying purpose of the rule, is not contrary to the public interest and is not inequitable, unduly burdensome, or otherwise contrary to the public interest. Furthermore, GLH's request for waiver of the Commission's debt collection rules is premature, given the likelihood of significant developments before those rules could be applied to GLH.

⁵¹ Request at 12.

⁵² See 47 C.F.R. §1.2110(g)(4).

⁵³ See, *e.g.*, *Southern Communications MO&O*, 15 FCC Rcd at 25,111, ¶ 15.

⁵⁴ See *Part 1 Third Report and Order*, 13 FCC Rcd 374, 439-440, ¶ 110.

⁵⁵ Request at 13.

⁵⁶ It is not inequitable to hold GLH to its obligations even if Leap's bankruptcy protects Leap from all of its obligations. Though GLH asserts its obligations "stem from Leap's uncured defaults to GLH," Request at 11, GLH's obligations actually stem from its acquisition of the licenses and assumption of the obligation to make future installment payments, *id.* at 4.

⁵⁷ Request at 6.

21. Accordingly, IT IS ORDERED that the Request dated April 16, 2003 filed on behalf of GLH seeking temporary waiver of the Commission's rule governing installment payment deadlines (47 C.F.R. §1.2110(g)(4)) is DENIED.

22. IT IS FURTHER ORDERED that the Request dated April 16, 2003 filed on behalf of GLH seeking temporary waiver of the Commission's debt collection rules (47 C.F.R. §1.1901 et seq.) is DISMISSED WITHOUT PREJUDICE as premature.

23. IT IS FURTHER ORDERED that a copy of this ORDER shall be sent to GLH and its representatives by certified mail, return receipt requested.

24. This action is taken pursuant to Sections 4(i), 4(j), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and 309(j), under authority delegated pursuant to Section 0.331 of the Commission's rules.⁵⁸

FEDERAL COMMUNICATIONS COMMISSION

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⁵⁸ 47 C.F.R. § 0.331.