



Federal Communications Commission  
Washington, D.C. 20554

November 3, 2004

DA 04- 3508

David L. Hill  
Audrey P. Rasmussen  
Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.  
1120 20<sup>th</sup> Street, N.W.  
Suite 700 North Building  
Washington, D.C. 20036-3406

Re: Tracy Corporation II -- Petition for Reinstatement of F Block License and Request for Waiver of 47 C.F.R. 1.2110(g)(4)

Dear Mr. Hill and Ms. Rasmussen:

This letter responds to the Petition for Reinstatement and Request for Waiver filed by Tracy Corporation II ("Tracy") seeking reinstatement of its license and waiver of the Commission's installment payment rules.<sup>1</sup> Specifically, Tracy requests that the Commission waive the installment payment due dates and reinstate its PCS F block license for BTA 411F-KNLH752 (Scottsbluff, Nebraska) (the "License"). For the reasons set forth below, we deny Tracy's Petition.

**Background**

On January 15, 1997, the Commission announced that Tracy was the high bidder for two licenses, BTA 411F and BTA270F,<sup>2</sup> in Auction No. 11.<sup>3</sup> As a small business, Tracy was eligible to participate in the Commission's installment payment plan.<sup>4</sup> The grant of Tracy's licenses was conditioned upon full and timely remittance of its installment payments.<sup>5</sup> Tracy concedes that the License automatically cancelled when Tracy failed to make the quarterly installment payment that was due on July 31, 2000 within the two quarterly grace periods permitted by the Commission's rules.<sup>6</sup>

---

<sup>1</sup> Petition of Tracy Corporation II for Reinstatement of F Block License and Request for Waiver of 47 C.F.R. § 1.2110(g)(4), filed June 26, 2001 ("Petition"). Subsequently, Tracy filed a supplement to its Petition. *See* Supplement to Petition for Reinstatement of F Block License and Request for Waiver of 47 C.F.R. § 1.2110(g)(4), filed September 10, 2001 ("Supplement").

<sup>2</sup> Tracy sold BTA270 in 1999. *See* ULS file number 0000010960.

<sup>3</sup> "D, E, and F Block Auction Closes, Winning Bidders in the Auction of 1,479 Licenses To Provide Broadband PCS in Basic Trading Areas," *Public Notice*, DA 97-81 (rel. January 15, 1997).

<sup>4</sup> 47 C.F.R. §§ 1.2110(g) and 24.716.

<sup>5</sup> 47 C.F.R. § 1.2110(g)(4).

<sup>6</sup> *See* Petition at 1-2; Supplement at 2.

Section 1.2110(g)(4) of the Commission's rules provides an automatic grace period (the "first additional quarter grace period") of one quarter (3 months) after the installment payment due date provided the licensee also submits a five percent late fee.<sup>7</sup> If the licensee does not pay those amounts on or before the end of the first additional quarter, the rule allows for a second quarterly period (the "second additional quarter grace period") provided the licensee submits an additional late fee equal to ten percent of the missed payment.<sup>8</sup> If after the expiration of two quarters (six months), the licensee fails to pay the total Required Installment Payment,<sup>9</sup> interest and any late payment fees associated with the Required Installment Payment, the licensee is in default, its license shall automatically cancel, and the licensee will be subject to debt collection procedures.<sup>10</sup> Tracy did not make its installment payment by the end of the second quarterly period (six months after the July 31, 2000 payment deadline) and as a result its license automatically cancelled on February 1, 2001, without further action by the Commission and it became subject to debt collection procedures.<sup>11</sup> Pursuant to Commission rules, Tracy became liable upon its default for the entire amount of its outstanding debt.<sup>12</sup> On June 26, 2001, nearly five months after the license had cancelled, Tracy submitted its waiver request.<sup>13</sup>

### Discussion

Despite its failure to make payments in satisfaction of its July 2000 quarterly installment payment for over ten months, Tracy requests waiver of the automatic cancellation rule and reinstatement of the License, generally arguing that it was not given adequate notice of its payment obligations.<sup>14</sup> By

---

<sup>7</sup> 47 C.F.R. § 1.2110(g)(4)(i) and (iii); *see also* In Re Amendment of Part 1 of the Commission's Rules - Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293, 15310 ¶ 28 (2000).

<sup>8</sup> 47 C.F.R. § 1.2110(g)(4)(ii).

<sup>9</sup> The Required Installment Payment is the amount that a licensee must pay each quarter in order to satisfy obligations under an installment payment plan. *See* 47 C.F.R. § 1.2110(g)(4).

<sup>10</sup> 47 C.F.R. § 1.2110(g)(4)(iv).

<sup>11</sup> *See id.*

<sup>12</sup> *See* 47 C.F.R. § 1.2110(g)(4); Amendment of Part 1 of the Commission's Rules - Competitive Bidding Procedures, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd 374, 443 ¶ 116 (1997); *see also* Amendment of Part 1 of the Commission's Rules - Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd 15293, 15317 ¶ 43 (2000) (in relevant part, "*Order on Reconsideration of the Third Report and Order.*")

<sup>13</sup> *See supra*, note 1.

<sup>14</sup> We note that the Commission has observed that "except in extraordinary circumstances, it will not entertain waiver requests and requests for extension of payment deadlines filed after default and the operation of the automatic licenses cancellation rules." *See* 21<sup>st</sup> Century Telesis, Inc. for Facilities in the Broadband Personal Communications Services, *Memorandum Opinion and Order*, 15 FCC Rcd 25113, 25116 (2000) ("*21<sup>st</sup> Century MO&O*"), *affid. 21st Century Telesis Joint Venture and 21st Century Bidding Corporation v. FCC*, 318 F.3d 192

operation of Section 1.2110(g)(4) of the Commission's rules, Tracy's license cancelled automatically on February 1, 2001 because Tracy had not made its July 2000 installment payment before the end of the two quarters it was permitted (*i.e.*, by January 31, 2001, within six months after the payment deadline).<sup>15</sup> For the reasons discussed below, we reject Tracy's argument that it lacked sufficient notice of its payment obligations. Further, we determine that Tracy has provided no basis for waiver of the installment payment rules and no grounds for reinstatement of the License.

To obtain a waiver of the Commission's installment payment rules, Tracy must show that: (i) the underlying purpose of the rule would not be served, or would be frustrated, by its application in this particular case, and that grant of the requested waiver would be in the public interest; or (ii) 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.<sup>16</sup> Tracy fails to show how the underlying purpose of our installment payment rules would not be served, or would be frustrated, by application of the rules in this instance, or that grant of the requested waiver would be in the public interest.

Tracy offers several bases to support its Petition and Supplement: (1) the Commission's installment payment notices did not include disclaimers that they should not be relied upon in determining the date that such payments are due; (2) the installment payment notices were sent on an erratic basis and the practice of sending the notices was discontinued without notice to the licensee;<sup>17</sup> (3) the license was cancelled without notice; (4) the public interest favors granting the Petition because Tracy is a small business that proposes to provide service to rural areas;<sup>18</sup> (5) the failure to make the installment payment was unintentional;<sup>19</sup> and (6) Tracy's customers will be adversely impacted if the License is not reinstated.

In support of its waiver request, Tracy argues it did not have adequate notice of its payment obligations. For example, Tracy claims that it did not receive a billing statement for the July 31, 2000 installment payment and that based on prior practices, Tracy believed that the Commission would send a billing statement when the installment payment was due.<sup>20</sup> Further, Tracy claims that the Commission sent payment statements on an erratic basis which included confusing language, without any disclaimer that the notices should not be relied upon in determining due dates for installment payments.<sup>21</sup> Tracy claims that it was not aware until June 7, 2001 of the automatic cancellation of its license and that upon

---

(D.C. Cir. 2003) ("*21<sup>st</sup> Century Appeals Court Decision*"). Tracy has presented no extraordinary circumstances in support of its Petition.

<sup>15</sup> 47 C.F.R. § 1.2110(g)(4).

<sup>16</sup> 47 C.F.R. § 1.925.

<sup>17</sup> *See* Petition at 4, Supplement at 3, Declaration of Michael J. Tracy at 2.

<sup>18</sup> *See* Petition at 7-8; Supplement at 4.

<sup>19</sup> *See* Supplement at 2.

<sup>20</sup> *See* Petition at 3-4, 7.

<sup>21</sup> *See* Petition at 5.

learning of its missed payment, Tracy states that it sent a payment to Mellon Bank overnight for receipt on June 8, 2001.<sup>22</sup>

According to Tracy, the Commission did not alert the licensee that the July, 2000 payment had not been made.<sup>23</sup> Tracy claims that under *Trinity Broadcasting of Florida, Inc. v. FCC*, the Commission cannot cancel Tracy's license without notice.<sup>24</sup> Tracy also cites the D. C. Circuit Court of Appeals' *NextWave* decision in support of its assertion that the FCC, acting in its capacity as a creditor, must provide notice of a repossession.<sup>25</sup> Last, Tracy cites a separate bankruptcy court decision in arguing that the Commission does not have the authority to automatically cancel a license.<sup>26</sup>

We are unpersuaded by Tracy's arguments that it relied on the Commission to send statements as to the due date of Tracy's installment payments, that the payment notices were confusing, issued by the Commission on an "erratic" basis, and do not include disclaimers warning it not to rely on the notices to determine payment due dates.<sup>27</sup> Contrary to Tracy's arguments, the Commission provided Tracy with an installment payment plan, which was agreed to by Tracy and executed by the president of the corporation, that set forth the terms for participation in the installment program. Second, Tracy's license contains specific language informing Tracy of the relevant Commission rules that set forth the time frames for submitting installment payments. Third, the Wireless Telecommunications Bureau (the "Bureau") emphasized its payment policy in a Public Notice in which it warned licensees that failure to pay on or before the end of the two grace periods shall put them in default and their license shall automatically cancel.<sup>28</sup> Fourth, the Commission emphasized the importance of full and timely payments in the restructuring orders issued in October of 1997 and March 1998.<sup>29</sup> Notices in this form are very much in line with the notices sent to inform the licensee of due dates for installment payments in the *21<sup>st</sup> Century* case, notices that the District of Columbia Circuit Court of Appeals found sufficient to inform the licensee of when installment payments are due.<sup>30</sup> Beyond that, it was and remains the licensee's obligation to keep

---

<sup>22</sup> See Petition at 2, 4-5.

<sup>23</sup> See Petition at 4.

<sup>24</sup> *Trinity Broadcasting of Florida, Inc. v. FCC*, 211 F.3d 618 (D.C. Cir. 2000).

<sup>25</sup> See Petition at 6, citing *NextWave Personal Communications, Inc. and NextWave Power Partners Inc., Petitioners, v. FCC*, 254 F.3d 130 (D.C. Cir. 2001), *aff'd* 537 U.S. 293 (2003).

<sup>26</sup> See Petition at 6, citing *In Re NextWave PCS Communications, Inc et al.*, 244 B.R. 253, 257-58, 267-68, and 270 (Bankr. S. D. N. Y. 2000).

<sup>27</sup> See Petition at 3-4; Supplement at 3, Declaration of Michael J. Tracy at pp. 2-3.

<sup>28</sup> "Wireless Telecommunications Bureau Provides Guidance on Grace Period and Installment Payment Rules," *Public Notice*, 13 FCC Rcd 18213 (1998) ("*WTB Guidance PN*").

<sup>29</sup> See in the Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, *Second Report and Order*, 12 FCC Rcd 16436 (1997); In the Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, *Order on Reconsideration of the Second Report and Order*, 13 FCC Rcd 8345 (1998) ("*Installment Payment Order on Reconsideration of the Second Report and Order*").

<sup>30</sup> *21<sup>st</sup> Century Appeals Court Decision*, 318 F.3d 192 at 201.

track of the correct amounts and due dates of its installment payments, without individual notice of payment due.<sup>31</sup> Tracy can not absolve itself from this obligation merely by claiming there was no intent to violate its responsibility. Moreover, the Commission's practice of sending out individual notices is not required, but has been performed as a courtesy to licensees.<sup>32</sup>

Even *arguendo*, if the Commission were to excuse Tracy's failure to timely make its scheduled July 31, 2000 installment payment within the two quarterly grace periods, there is still Tracy's failure to timely make its scheduled October 2000 installment payment within the two quarterly grace periods. Tracy admits in its Petition that it received a payment notice for the October 2000 installment payment.<sup>33</sup> Tracy asserts that because its January [2001] payment notice included the amount due for October 31, 2000 and January 31, 2001, a newly appointed member of Tracy's accounting team incorrectly determined that no payment needed to be made until April 2001.<sup>34</sup> Here too, Tracy points the finger back at the Commission, explaining that it was waiting for yet another payment notice from the Commission,<sup>35</sup> ignoring the notices provided in the Restructuring Orders, the Commission's rules and decisions, and a Public Notice issued by the Bureau.

In support of its arguments, Tracy cites to the Commission's ruling in *21<sup>st</sup> Century*,<sup>36</sup> the Court decision in *Trinity Broadcasting*,<sup>37</sup> and a then pending Petition filed by MBO Wireless. Rather than supporting Tracy's position, *21<sup>st</sup> Century* provides a solid basis to reject Tracy's Petition. In *21<sup>st</sup> Century*, the Commission dealt with a set of facts similar to Tracy's. In that case, the licensee's claims of inadequate notice were rejected based on the Auctions and Industry Analysis Division's (the "Division")<sup>38</sup> findings that the licensee, like Tracy: had notice of the due date when it signed its installment plan documents; notice from the face of each license; notice from a public notice reminding licensees of the importance of promptly meeting installment payment due dates; and notice from the Commission's restructuring orders emphasized the importance of full and timely payments.<sup>39</sup> The Division's decision was affirmed both by the Commission<sup>40</sup> and on review by the United States Court of Appeals for the

---

<sup>31</sup> *21<sup>st</sup> Century MO&O*, 15 FCC Rcd at 25120; see also *Lakeshore Broadcasting, Inc. v. FCC*, 199 F.3d 468 (D.C. Cir. 1999).

<sup>32</sup> *21<sup>st</sup> Century MO&O*, 15 FCC Rcd at 25120.

<sup>33</sup> See Petition at 4-5.

<sup>34</sup> See Petition at 4; Supplement at 3, Declaration of Michael J. Tracy at 1-2.

<sup>35</sup> See Petition at 4.

<sup>36</sup> *21<sup>st</sup> Century MO&O*, 15 FCC Rcd. 25113 (2000).

<sup>37</sup> *Trinity Broadcasting of Florida, Inc. v. FCC*, 211 F.3d 618 (D.C. Cir. 2000).

<sup>38</sup> On November 13, 2003, the Commission reorganized the Wireless Telecommunications Bureau, creating six Divisions, including the Auctions and Spectrum Access Division. See *In Re Reorganization of the Wireless Telecommunications Bureau, Order*, 18 FCC Rcd 25414 (2003).

<sup>39</sup> See *In Re 21<sup>st</sup> Century*, 15 FCC Rcd. 14814, 14816 (2000).

<sup>40</sup> See *21<sup>st</sup> Century MO&O*, 15 FCC Rcd. 25113 (2000).

District of Columbia Circuit.<sup>41</sup> The Court made clear that the licensee had received adequate notice because, among other forms of notice, the face of each license stated that full and timely payment was required to avoid license cancellation and the Commission issued orders and public notices that reminded and warned licensees against missing payment due dates.<sup>42</sup>

Tracy's reliance on *Trinity Broadcasting* is equally misplaced. Tracy cites to *Trinity Broadcasting* for the proposition that where the notice given is not sufficiently clear to warn a party about what is expected of it, an agency may not impose liability.<sup>43</sup> In *Trinity Broadcasting*, the court found that a newly announced rule could not be used against a licensee because the rule was not "ascertainably certain" and the licensee did not have notice of the new requirement.<sup>44</sup> Here, Tracy had full notice of what the rule required: that it make timely installment payments.<sup>45</sup> Tracy had advance notice of the required installment payments at the time it entered the installment payment agreement with the Commission. In addition, the D. C. Circuit Court in *21<sup>st</sup> Century* found that *Trinity* was distinguishable on account of the licensee's failure to attempt to comply with the rules: "Unlike *Trinity*, *21<sup>st</sup> Century* never attempted to comply with the Commission's rule by making its July, 2000 payment in a timely manner[.]"<sup>46</sup> Similarly, in this case, Tracy has never attempted to comply by making its July, 2000 or its October, 2000 payments within the respective two grace periods. Clearly, the failing in this case does not arise from confusion over what the Commission's rules require, rather the failing in this case is Tracy's failure to meet its installment payment requirements.<sup>47</sup>

In its Petition, Tracy also cites circumstances involving MBO Wireless, Inc. ("MBO") in support of Tracy's request for a waiver.<sup>48</sup> When Tracy filed its Petition, MBO had a request for waiver of the Commission's installment payment rules pending and a waiver subsequently was granted.<sup>49</sup> MBO forwarded an installment payment due July 31, 2000, to the Commission on July 28, 2000, but the payment was not received by the Commission until after the due date.<sup>50</sup> Accordingly, the Commission

---

<sup>41</sup> See *21<sup>st</sup> Century Appeals Court Decision*, 318 F.3d 192.

<sup>42</sup> *Id.*, 318 F.3d at 201.

<sup>43</sup> See Petition at 5.

<sup>44</sup> 211 F. 3d at 628.

<sup>45</sup> See 47 C.F.R. § 1.2110(g)(4).

<sup>46</sup> 318 F.3d at 201.

<sup>47</sup> We see no merit in reliance on the *NextWave* cases, which involved, unlike Tracy, a licensee already in bankruptcy. Petition at 6-7. As the Bureau has stated, only in cases where the licensee is under the protection of Chapter 11 of the U.S. Bankruptcy Code at the time it defaulted on its license payment obligation, will the Commission's automatic cancellation rule be ineffective. In *Re Urban Comm-North Carolina, Inc.*, Petition for Reconsideration of Public Notice Announcing Auction of C and F Block PCS Spectrum, Petition for Stay, *Order*, 18 FCC Rcd 18791 (2003).

<sup>48</sup> See Petition at 5.

<sup>49</sup> *In Re MBO Wireless, Inc.*, 19 FCC Rcd 4011 (2004).

<sup>50</sup> 19 FCC Rcd 4011-12.

imposed a late payment fee.<sup>51</sup> MBO subsequently elected to make use of the Commission's automatic grace periods with respect to the next two installment payments.<sup>52</sup> On March 14, 2001, in advance of the regularly scheduled deadline for MBO's next installment payment of principal and interest on April 30, 2001, MBO paid all amounts outstanding in connection with its July 31, 2000, October 31, 2000, and January 31, 2001 installment payments, including all amounts assessed as late fees.<sup>53</sup> However, the assessment of a late fee for the tardy arrival of MBO's July 31, 2000 installment payment in conjunction with MBO's decision to make use of the Commission's automatic grace periods for its October 31, 2000 and January 31, 2001 installment payments meant that for more than two quarters MBO had an outstanding balance in the amount assessed as the July 31, 2000 late fee, triggering automatic cancellation of MBO's licenses. Unlike Tracy, therefore, MBO only failed to pay an amount assessed as a late fee within the time allowed under the Commission's rules. Because MBO made its July 31, 2000 installment payment within a few days of the due date and paid all amounts then-outstanding, including the overdue late fee, on March 14, 2001, review of MBO's waiver request concerned the purpose underlying the rules imposing *late fees*, rather than the purposes underlying rules for *installment payments of principal and/or interest*.<sup>54</sup> In light of the underlying purpose of the relevant rules and taking into account all the circumstances of the case, the Division granted MBO's waiver request. In contrast, Tracy's circumstances involve a failure to make payments of principal and/or interest.

Finally, Tracy argues that the public interest favors granting its Petition because Tracy proposes to provide service in rural areas and denial of its request would necessitate the re-auction of the License, with the possibility that no other entity would purchase the license. We find no merit in Tracy's argument that denial of the waiver request would be contrary to the public interest.<sup>55</sup> The Commission has consistently rejected arguments that Sections 309(j)(3)(B) and 309(j)(4)(C), which are the statutory basis pursuant to which the Commission has adopted provisions to provide greater opportunities to small businesses and rural entities to participate in the provision of spectrum-based service, also obligate the Commission to afford such entities special treatment under its general competitive bidding rules.<sup>56</sup> The Commission fulfills competitive bidding statutory mandates and policy goals with appropriate rule provisions; not by forbearing from enforcing its competitive bidding rules. We believe it speculative and unsubstantiated for Tracy to argue that the "public interest is better served by accepting Tracy's late-filed payment, thereby allowing it to offer service earlier to subscribers than to start over by re-auctioning the license."<sup>57</sup> In every case with factors such as these, a licensee who failed to honor its payment obligations

---

<sup>51</sup> *Id.*, 19 FCC Rcd at 4012.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 4014-15.

<sup>54</sup> *Id.* at 4016.

<sup>55</sup> *See* Petition at 3, 8.

<sup>56</sup> *See, e.g.*, TPS Utilicom, *Order on Reconsideration*, 18 FCC Rcd 2516, 2522-23 ¶ 12 and n. 39 (WTB 2003) and cases cited therein. *Cf.* Reallocation and Service Rules for the 698-746 Spectrum MHz Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022, 1089-90 ¶ 175 (rejecting arguments that Sections 309(j)(3)(B) and 309(j)(4)(C) amount to a "congressional mandate" to establish a special bidding credit for rural telephone companies).

<sup>57</sup> *See* Supplement at 4.

could speculatively argue that it would be more expedient to provide “another second chance” rather than allowing other entities an opportunity to purchase the license and initiate service. As the Commission observed in its *Order on Reconsideration of the C Block Second Report and Order*, “[n]o matter what deadline we establish, it is inevitable that some licensees will seek more time to pay.”<sup>58</sup> Thus, the Commission has strictly enforced these payment deadlines. Accordingly, as a result of Tracy’s default, the License cancelled on February 1, 2001, the entire outstanding debt obligation is subject to debt collection procedures, and this spectrum formerly licensed to Tracy will be subject to auction at a future date.<sup>59</sup>

In designing a licensing system that employs competitive bidding pursuant to Section 309(j)<sup>60</sup> of the Communications Act, the Commission determined that the Act’s objectives would best be served by awarding licenses to those who value them most highly.<sup>61</sup> The Commission has repeatedly emphasized that strict enforcement of the installment payment rules enhances the integrity of the auction and licensing process by ensuring that winning bidders have the necessary financial capacity to build out their systems and provide service, and that spectrum is awarded to those qualified bidders who value the spectrum most.<sup>62</sup> Requiring licensees to comply with the full and timely payment rule is essential to a fair and efficient licensing process.<sup>63</sup> Moreover, it is fair to all participants in our auctions, including those who

---

<sup>58</sup> See *Installment Payment Order on Reconsideration of the Second Report and Order*, 13 FCC Rcd 8345, 8354 ¶ 24.

<sup>59</sup> In the *Order on Reconsideration of the Third Report and Order*, the Commission specifically stated that “when a licensee defaults on an installment payment, its license automatically cancels without any action by the Commission and the entire outstanding debt obligation becomes subject to debt collection procedures. *Order on Reconsideration of the Third Report and Order*, 15 FCC Rcd at 15317 ¶ 43 (emphasis added); see also 47 C.F.R. § 1.2110(g)(4); Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, *Third Order on Reconsideration of the Third Report and Order*, 19 FCC Rcd 2551 ¶ 29 (2004) (“In sum, when a license cancels because of a post-licensing default, the defaulter remains obligated for the entire license price, whether or not that amount has yet been fully paid.”).

<sup>60</sup> 47 U.S.C. § 309(j).

<sup>61</sup> Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348 ¶ 70 (1994).

<sup>62</sup> 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 25103, 25110-11 at ¶ 15 (2000) (“*Southern Communications MO&O*”), further recon. denied *Second Memorandum Opinion and Order*, 16 FCC Rcd 18357 (2001); *21<sup>st</sup> Century MO&O*, 15 FCC Rcd 25113, 25117-18 ¶ 10, *aff’d 21<sup>st</sup> Century Appeals Court Decision*, 318 F.3d 192; “Wireless Telecommunications Bureau Will Strictly Enforce Default Payment Rules; Bureau to Re-Auction Licenses Quickly,” *Public Notice*, 11 FCC Rcd 10853 (1996); see also *WTB Guidance PN*, 13 FCC Rcd 18213, 18214.

<sup>63</sup> *Installment Payment Order on Reconsideration of the Second Report and Order*, 13 FCC Rcd 8345, 8348 at ¶ 8; see also In the Matter of Amendment of Part 1 of the Commission’s Rules, Competitive Bidding Procedures, WT Docket No. 97-82, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, ET Docket No. 94-32, 4660- 4685 MHz, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 429, 430 ¶¶ 95-96 (1998); *Southern Communications MO&O*, 15 FCC Rcd at 25106, ¶ 7; 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, 17 FCC Rcd 6442, 6446 (2002).



*David L. Hill*  
*Audrey P. Rasmussen*  
*November 3, 2004*

won licenses in the auction and those who did not, and it fosters the promotion of economic opportunity and competition in the marketplace and rapid deployment of new services for the benefit of the public.<sup>64</sup>

For the foregoing reasons, we deny Tracy's Petition. This action is taken on delegated authority pursuant to Section 0.331 of the Commission's rules.<sup>65</sup>

Sincerely,

Margaret W. Wiener  
Chief, Auctions and Spectrum Access Division  
Wireless Telecommunications Division

---

<sup>64</sup> See 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 19355, 19357-58 (2001).

<sup>65</sup> 47 C.F.R. § 0.331.