

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

In the Matter of
BIG SKY WIRELESS PARTNERSHIP
Request for Waiver and Reinstatement of
Broadband Radio Service Authorization for the
Butte, Montana Basic Trading Area, MDB064

ORDER

Adopted: September 11, 2006

Released: September 11, 2006

By the Deputy Bureau Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we grant Big Sky Wireless Partnership ("Big Sky") a nunc pro tunc waiver of section 1.2110(g)(4)(iv) of the Commission's rules with respect to automatic cancellation of a Broadband Radio Service ("BRS") license for the Butte, Montana Basic Trading Area ("BTA"). As explained below, Big Sky was paying for the subject license through the Commission's installment payment loan program. When the Commission did not receive Big Sky's installment payment as required by section 1.2110(g)(4)(iv) of the Commission's rules, Big Sky was in default, the license automatically cancelled, and Big Sky was subject to debt collection procedures. Big Sky now seeks relief from the automatic cancellation provision of section 1.2110(g)(4)(iv).

1 On July 29, 2004, the Commission released a Report and Order and Further Notice of Proposed Rulemaking that modified the rules governing the Multipoint Distribution Service ("MDS") in order to encourage the deployment of broadband services by commercial and educational entities. Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, et al.; WT Docket Nos. 03-66, et al., Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004). To better reflect the forward-looking vision for these services, the Commission renamed MDS as BRS. Because the new rules are now in effect, we will refer to the service by its new name.

2 This Order responds to the Motion for Leave to File a Supplement to Petition for Reconsideration ("Motion for Leave") and the Supplement to Petition for Reconsideration, or in the Alternative, Petition for Reinstatement ("Supplement") (both filed by Big Sky on October 10, 2003) and the Further Supplement to Petition for Reconsideration, or in the Alternative, Petition for Reinstatement ("Further Supplement") (filed by Big Sky on April 18, 2006).

3 47 C.F.R. § 1.2110(g)(4)(iv).

4 Id. Insofar as we are addressing Big Sky's request for waiver of section 1.2110(g)(4)(iv) affirmatively, its petition for reconsideration and its request for reinstatement are moot. We note that Big Sky's BTA authorization expired by its original terms on March 28, 2006. Because the authorization was considered cancelled, Big Sky was not able to utilize the Commission's Universal Licensing System to apply for renewal of the BTA authorization within the time frame required under Section 1.949(a) of the Commission's Rules. Once the BTA authorization is restored on the Universal Licensing System, Big Sky will be required to apply for renewal of the authorization. We therefore direct Big Sky to file an application for renewal of license for the BTA authorization (call sign B064) within sixty days of

(continued....)

2. Examining the totality of the circumstances of the instant matter, we conclude that Big Sky has met the Commission's standard for waiver with respect to the automatic cancellation provision of section 1.2110(g)(4)(iv) of the Commission's rules. Specifically, we find that the underlying purposes of the automatic cancellation rule would not be served by application to the instant case in light of the particular error that Big Sky committed in making electronic payment through the Auction Installment Payment ("AIP") program, Big Sky's overall history of payments for the license in question, the public interest benefit in preserving the prior assignment of license, and the condition under section 1.2110(g)(4) and the terms of this Order, which require Big Sky to fully and timely perform its remaining obligations no later than October 12, 2006.⁵

3. While we find waiver of the automatic cancellation provision appropriate in these circumstances, we note that Big Sky has not sought, and we do not grant, waiver of Big Sky's default or the Commission's debt collection. In this regard, we conclude that it does not serve the public interest to waive the default and debt collection provisions of section 1.2110(g)(4)(iv) because doing so would subject the licenses to prolonged risk of recurrent automatic cancellation.⁶ In order to provide Big Sky with a reasonable amount of time to perform its obligations, and thereby satisfy the condition on the licenses, we grant Big Sky thirty-one (31) days from the date of this Order, i.e., until October 12, 2006, to render payment in full pursuant to section 1.2110(g)(4).⁷

II. BACKGROUND

4. When the Commission established the licensing and service rules for BRS, it provided an option to those entities that qualified as small businesses to pay for licenses won at auction in installments over the initial ten-year license term.⁸ The auction for BTA licenses in BRS (Auction No. 6) began on November 13, 1995, and when it concluded on March 28, 1996, Big Sky was the winning bidder on the Butte, Montana BTA.⁹ Big Sky qualified for the installment payment option and elected to pay for the license under that arrangement.¹⁰ The Commission, therefore, granted Big Sky a BRS license for the

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the release of this Order. On our own motion, we waive Section 1.949(a) of the Commission's Rules to allow consideration of the late-filed renewal application. The renewal application must be accompanied by request for waiver of Section 1.949(a). Such waiver request may refer to the waiver grant contained in this Order without further argument.

⁵ 47 C.F.R. § 1.2110(g)(4). For these same reasons and to the extent necessary, the public interest further mandates that we waive any cancellation that may have resulted from any existing breach of the licensing condition in section 1.2110(g)(4). *Id.* In a prior Order granting similar relief, we allowed the petitioner thirty-one (31) days from the date of the Order to render payment in full. *See* Advanced Communications Solutions, Inc. Request for Waiver of Section 1.2110(g)(4)(iv) and Reinstatement of 900 MHz Specialized Mobile Radio Licenses, Order, 21 FCC Rcd 1627, 1628 ¶ 2 (2006) ("*Advanced Order*").

⁶ 47 C.F.R. § 1.2110(g)(4)(iv).

⁷ 47 C.F.R. § 1.2110(g)(4).

⁸ *See* 47 C.F.R. § 21.960(c) (1996). In 1997, the Commission determined that installment payments will not be used in the immediate future as a means of financing small business participation in its auction program. *See* Amendment of Part 1 of the Commission's Rules – Competitive Bidding, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 397 ¶ 38 (1997) ("*Part 1 Third Report and Order*").

⁹ Supplement at 2; Further Supplement at 2.

¹⁰ *Id.*

Butte, Montana BTA on the condition that Big Sky would timely meet its payment obligations under the installment payment program.¹¹

5. Pursuant to the Commission's rules, a licensee participating in the installment payment program has additional time beyond the initial payment deadline to make an installment payment provided the licensee meets certain requirements.¹² Under the current rules, which were in effect in the period in question, a licensee may make a payment on or before the last day of the quarter following its payment deadline without being in default (i.e., the "first additional quarter") so long as it also pays a late payment fee equal to five percent of the amount of its past due installment payment.¹³ Moreover, if a licensee fails to make its required installment payment on or before the last day of the first additional quarter, it may still make its required installment payment on or before the last day of the second quarter following its payment deadline without being in default (i.e., the "second additional quarter") so long as it also pays an additional late payment fee of ten percent of the amount of the past due required installment payment.¹⁴ If a licensee obligated to make installment payments fails to pay the total required installment payment and any late payment fees associated with that payment within two quarters of the installment due date (i.e., after the second additional quarter), it shall be in default, its license shall automatically cancel, and it will be subject to debt collection procedures.¹⁵ In addition, failure to fully and timely perform payment obligations under the installment plan breaches a condition on the licenses, subjecting them to cancellation.¹⁶

6. In conjunction with the installment payment program, the Commission and Mellon Bank (the financial institution responsible for processing installment payments owed to the Commission) offered licensees the option of participating in AIP, a program designed, at least in part, to facilitate and expedite installment payments. As stated in its promotional literature, the AIP program was established in an effort to help licensees avoid delays in making installment payments.¹⁷ Under the AIP program, a licensee provides certain financial information to the Commission and Mellon Bank thereby allowing it or its representative to call Mellon Bank and authorize the initiation of a payment from the licensee's designated account. The licensee (or its representative) can specify the date that Mellon Bank processes the licensee's payment to the Commission, but the procedures established for the AIP program specifically state that the earliest the licensee's installment payment account with the Commission will be credited is the business day following the telephone authorization.¹⁸

¹¹ See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2391 ¶ 240 (1994) (“*Competitive Bidding Second Report and Order*”).

¹² *Competitive Bidding Second Report and Order* at 2391 ¶ 240. Initially, licensees were required to request this additional time period. *Id.* The Commission, however, eventually instituted an automatic grace period. See *Part I Third Report and Order* at 436 ¶106.

¹³ See *id.* See 47 C.F.R. § 1.2110(g)(4)(i).

¹⁴ See *Part I Third Report and Order* at 436 ¶106. See also 47 C.F.R. § 1.2110(g)(4)(ii).

¹⁵ See *Part I Third Report and Order* at 438 ¶107. See also 47 C.F.R. § 1.2110(g)(4)(iv).

¹⁶ 47 C.F.R. § 1.2110(g)(4). At the time Big Sky's licenses were originally granted, this language was codified at section 1.2110(e)(4). See 47 C.F.R. § 1.2110(e)(4)(1995).

¹⁷ See generally AIP brochure.

¹⁸ The brochure that accompanied the set-up form for the AIP program specifically states: “you simply call Mellon's toll-free telephone number or input your payment via a computer terminal at least one business day before your payment is due....” It also states that “[the licensee's] bank account will be debited and your FCC customer account will be credited the business day after you report your payment information (if it is reported by 9:30 P.M. EST).”

7. For nearly five years, from November 1996 until August 2001, Big Sky made installment payments on the license in question consistent with the Commission's rules. During this period, Big Sky, on several occasions, took advantage of the grace periods allowed by the Commission, but in each case, made its installment payments, along with any corresponding late fees, before the end of the second additional quarter. A problem arose, however, with regard to the installment payments due in August 2001. Pursuant to section 1.2110(g)(4), Big Sky had until February 28, 2002, to pay the August 2001 installment payment without defaulting, so long as it also paid the combined late fees (i.e., the five percent late fee for the first additional quarter and the ten percent late fee from the second additional quarter). On February 28, 2002, a representative from Big Sky called Mellon Bank to authorize the transfer of funds, pursuant to its enrollment in the AIP program, to pay for the August 2001 installment and the associated late fees.¹⁹ As per custom, the Mellon Bank representative provided a confirmation number to Big Sky's representative for the transfer of funds. Consistent with AIP procedures, however, the Commission's account for Big Sky's installment payments was credited on the business day following the telephone authorization, which, in this case, was March 1, 2002. The deadline for making a late payment in the second additional quarter for the August 2001 installments was February 28, 2002. Because Big Sky failed to make its required installment payment for the license in question by end of the second additional quarter, it went into default, the license automatically cancelled, and it became subject to the debt collection procedures.²⁰ Shortly thereafter, Big Sky filed several pleadings related to the default, including a request for waiver of the automatic cancellation provision of section 1.2110(g)(4)(iv).²¹ During the pendency of its waiver request, Big Sky has continued to make regular payments on its debt to the Commission.²²

III. DISCUSSION

8. Big Sky requests a waiver of section 1.2110(g)(4)(iv), the provision of the Commission's rules which holds that a licensee that fails to make its installment payment, interest, and any late fees by the end of the second additional quarter will be in default, its license will automatically cancel and it will be subject to debt collection procedures.²³ We note that Big Sky does not dispute that the facts set forth in its pleadings constitute automatic cancellation under the Commission's rules. Rather, Big Sky argues that the rule should not be applied in its particular circumstances, and it therefore seeks relief solely from the provision of section 1.2110(g)(4)(iv) that resulted in the March 1, 2002, automatic cancellation of the subject license.²⁴

9. As a general matter, to obtain a waiver, a party must show either that: (i) the underlying purpose of the applicable rule would not be served, or would be frustrated by its application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) the unique facts and

¹⁹ See Further Supplement at 3.

²⁰ Big Sky notes, and Commission's records confirm, that, on a number of previous occasions, Big Sky contacted Mellon Bank on the last business day of the quarter to authorize payment for its installment obligations, but because the payment deadline fell on a non-business day (i.e., either a weekend or a holiday) – thus extending the deadline to the following business day – the payment was considered timely. Further Supplement at n.18.

²¹ See n. 2 *supra* (listing various pleadings).

²² See Further Supplement at 1, 6.

²³ 47 C.F.R. § 1.2110(g)(4)(iv).

²⁴ See Further Supplement at 1.

circumstances of the particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, or the applicant has no reasonable alternative.²⁵

10. The Commission created section 1.2110(g)(4) to provide licensees a degree of flexibility while, at the same time, to protect the integrity of the Commission's assignment of licenses based on winning bids in an auction and to help ensure that licensees have access to the capital necessary to both pay for the license and provide service to the public.²⁶ The Commission has repeatedly emphasized the importance of full and timely payment.²⁷ As the Commission has noted:

Insisting that licensees demonstrate their ability to pay as a condition to continuing to hold licenses is essential to a fair and efficient licensing process, is fair to all participants in our auctions, including those who won and those who did not, and fosters the promotion of economic opportunity and competition in the marketplace. When licensees fail to pay winning bids, or the principal and related interest when paying winning bids in installments, on a timely basis in compliance with the Commission's rules, the presumption that the auction assigned the license to the party that placed the highest value on the license is lost.²⁸

Absent that presumption, the integrity of the Commission's licensing process may be compromised.

11. Based on a totality of the circumstances, we conclude that Big Sky has satisfied the Commission's standard for waiver with respect to the automatic cancellation provision of section 1.2110(g)(4)(iv) of the Commission's rules. First, Big Sky's participation in the AIP program provides important evidence of its intent to render timely installment payments in compliance with the

²⁵ 47 C.F.R. § 1.925; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *Thomas Radio Co. v. FCC*, 716 F.2d 921 (D.C. Cir. 1983); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1972) *cert. denied*, 409 U.S. 1027, 93 S.Ct. 461 (1972).

²⁶ Amendment of the Commission's Rules Regarding Installment Payment Financing of Personal Communications (PCS) Licensees, WT Docket No. 97-82, *Order on Reconsideration of the Second Report and Order*, 13 FCC Rcd 8345, 8348 ¶ 8 (1998).

²⁷ *See, e.g.*, Licenses of 21st Century Telesis, Inc. for Facilities in the Broadband Personal Communications Services, *Memorandum Opinion and Order*, 15 FCC Rcd 25113, 25117-18 ¶ 10 (2000) ("*21st Century Order*"), *reconsideration denied*, Licenses of 21st Century Telesis Joint Venture, *Order on Reconsideration*, 16 FCC Rcd 17257 (2001), *review denied in part, dismissed in part*, *21st Century Telesis Joint Venture v. F.C.C.*, 318 F3d 192 (D.C. Cir. 2003). *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 and Order*, 15 FCC Rcd 25103 (2000), further reconsideration denied, *Second Memorandum Opinion and Order*, 16 FCC Rcd 18357 (2001); Wireless Telecommunications Bureau Will Strictly Enforce Default Payment Rules; Bureau to Re-Auction Licenses Quickly, *Public Notice*, 11 FCC Rcd 10853 (1996).

²⁸ Letter to David Irwin and Nathaniel Hardy, Counsel for MBO Wireless, Inc., from Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 19 FCC Rcd 4011, 4016 (2004) ("*MBO Wireless Order*") (citing *21st Century Order*, 15 FCC Rcd at 25123-24 ¶ 22). In the *21st Century Order*, the Commission determined that a party that lacked the financial wherewithal to make its installment payment by the deadline was not entitled to a waiver to give it additional time to find the requisite funds because grant of such a waiver would be unfair to auction participants, and would undermine the integrity of the auction and the Commission's rules. *21st Century Order* at 25123-24 ¶ 22. In the instant matter, however, Big Sky took the actions in advance of the payment deadline that it believed were necessary to render timely payment, and the nature of its error does not call into question whether it had the requisite funds to do so. Therefore, our grant of a waiver in these circumstances is neither unfair nor harmful to the integrity of the Commission's rules and processes.

Commission's payment rules.²⁹ Second, notwithstanding its failure to timely make one installment payment, Big Sky specifically states that it "can and will pay for the outstanding debt associated with the License."³⁰ Third, the circumstances that led to the automatic cancellation of the licenses do not tend to reflect an inability on Big Sky's part to make payment for the license.³¹ Big Sky initiated the payment in question through the Commission's AIP program on the last day of the second additional quarter, in advance of the payment deadline. On a number of previous occasions, Big Sky submitted payment through the Commission's AIP program on the last business day of the second additional quarter, but, because the payment deadline fell either on a weekend or holiday, its payment reached the Commission in a timely fashion.³² It appears that these fortuitous circumstances in making payments in this manner in the past as well as Big Sky's general misunderstanding of its ability to rely on confirmation numbers from Mellon Bank, resulted in its belief, albeit mistaken, that it had rendered timely payment in this instance.³³ Such an error in tendering payment does not suggest an inability to pay for the licenses.

12. Other factors in the instant case diminish concern over Big Sky's ability to pay for the licenses in question. As noted, in total, Big Sky has made payments to the Commission for over nine years, including making regular payments on its debt while its request for waiver has been pending.³⁴ Moreover, Big Sky's financial institution has confirmed that it "had sufficient funds on hand to make the payment initiated on February 28, 2002."³⁵ These factors further mitigate the concern that Big Sky may not have the capital necessary to both pay for the license and provide service to the public.³⁶

13. Demonstrating ability to pay in compliance with the Commission's installment payment rules, however, does not satisfy all the purposes underlying the automatic cancellation rule. As noted above, automatic cancellation of licenses when a licensee fails to comply with the installment payment rules also safeguards the integrity of the Commission's competitive bidding process. In addition to ability to pay, a licensee's willingness to fulfill all of its obligations created by the winning bid helps ensure that the license was assigned to the party that valued it most highly. Indeed, pursuant to section 1.2110(g)(4), the very existence of the license is conditioned upon the licensee's full and timely performance of its payment obligations under the installment plan.³⁷ Absent the licensee's compliance with the Commission's installment payment rules, there is inevitably uncertainty regarding whether the license should have been assigned to another party. The existence of uncertainty, of course, does not prove that the license should have been assigned to another party. Nevertheless, a licensee's failure to comply with

²⁹ See *Leaco Rural Telephone Cooperative, Inc. Request for Waiver and Reinstatement of Broadband Radio Service Authorization for the Hobbs, New Mexico Basic Trading Area, MDB191, Order*, 21 FCC Rcd 1182, 1186 ¶ 10 (2006) ("*Leaco Order*"); *Advanced Order*, 21 FCC Rcd 1627, 1632 ¶ 11.

³⁰ Further Supplement at 6.

³¹ Big Sky's financial institution confirmed that it "had sufficient funds on hand to make the payment initiated on February 28, 2002." See Attachment to Further Supplement (letter of Eileen Bradley, Vice President, Bank of Kirksville, dated April 13, 2006).

³² See n.20 *supra*.

³³ Further Supplement at 3.

³⁴ *Id.* at 1, 6.

³⁵ See Attachment to Further Supplement (letter of Eileen Bradley, Vice President, Bank of Kirksville, dated April 13, 2006).

³⁶ See *Leaco Order* at 1186 ¶ 11 and n. 32, citing Amendment of the Commission's Rules Regarding Installment Payment Financing of Personal Communications Service (PCS) Licensees, WT Docket No. 97-82, *Order on Reconsideration of the Second Report and Order*, 13 FCC Rcd 8345, 8348-49 ¶ 8 (1998).

³⁷ 47 C.F.R. § 1.2110(g)(4).

the Commission's installment payment rules calls into question whether the licensee's winning bid actually demonstrated that it valued the license more highly than other applicants or simply demonstrated its willingness to outbid other applicants regardless of its ability to pay on equal terms. While the extent of this doubt may be minimal given the particular error Big Sky made in tendering payment, we can not easily dismiss the concern that another applicant who would have complied with all the Commission's rules should have been assigned the license.

14. In this case, however, we conclude that automatic cancellation is not necessary to protect against lingering doubts regarding the integrity of the initial license assignment given the totality of the circumstances in Big Sky's participation in the AIP program, its payment history and the continuing condition on the licenses that Big Sky must fully and timely perform its current payment obligations. The automatic cancellation of the licenses resulted from a single AIP related payment error by Big Sky that does not appear to reflect an inability or unwillingness on its part to comply with the Commission's rules. Moreover, Big Sky's payment history, including payments rendered during the pendency of its waiver request, reflect a longstanding willingness and ability to satisfy the payment obligations created by the winning bids for the licenses. Finally, pursuant to section 1.2110(g)(4) and the terms of this Order, Big Sky's licenses remain subject to the condition that it comply with its obligations, which pursuant to the notes and security agreements, as well as the Commission's debt collection procedures, require it to pay the entire outstanding amount.³⁸ Big Sky has specifically stated that it "can and will pay for the outstanding debt associated with the License."³⁹ While strict enforcement of the Commission's installment payment rules furthers the policies behind creating the rules, and while the payment rules are strictly enforced in all but the most unusual circumstances, we have permitted waiver in extremely narrow circumstances where it appeared that the underlying purposes of the rules would not be served by their enforcement, and where cancellation seemed inequitable in those circumstances.⁴⁰ Accordingly, given the totality of the circumstances, we conclude that the underlying purpose of the automatic cancellation provision would not be served by its application to the present circumstances.

15. As stated in recent decisions, "[a]ny one of the circumstances described above would not suffice to meet the Commission's waiver standard."⁴¹ Yet, when taken together, we find that automatic cancellation of the license in this case would not serve the underlying purposes of the Commission's payment rules. For these reasons, we conclude that automatic cancellation of the license is not necessary to serve the underlying purposes of the payment rule to either preserve the integrity of the auction and licensing process or to ensure Big Sky's financial qualifications to be a Commission licensee.

16. Equally important, we find that the public interest will be served by granting the foregoing relief. Given the totality of the facts, we find the present circumstances distinguishable from those cases in which we have denied waiver of the automatic cancellation rule for late payment despite a debtor's assurance of a future ability to pay debt. For instance, there have been several cases where a licensee has requested a waiver in order to assign the license to an entity that can pay the Commission in full. Assignment to a different party cannot protect against any lingering uncertainties about the initial assignment of the licenses and cannot safeguard the integrity of the Commission's licensing and auction

³⁸ 47 C.F.R. § 1.2110(g)(4).

³⁹ Further Supplement at 6. Full and timely payment of the entire outstanding debt would also diminish doubts regarding a licensee's financial ability and willingness to pay for the licenses and strongly indicate its intent and ability to provide service to the public. *See Leaco Order* at 1187 ¶ 12.

⁴⁰ *See, e.g., MBO Wireless Order; Leaco Order; Advanced Order.*

⁴¹ *See, e.g., Advanced Order* at 1633 ¶ 15.

process.⁴² In contrast, Big Sky's error in tendering payment through the AIP program and the payment in full, in accordance with the terms of its notes, security agreements and the terms of this Order,⁴³ diminishes the possibility that Big Sky's noncompliance reflects an erroneous initial license assignment and protects general auction or licensing integrity. Moreover, Big Sky's circumstances are distinguishable from those cases where installment payments were initiated only after the final grace period deadline had lapsed.⁴⁴ Contrary to such cases, and as explained fully above, Big Sky's failure to successfully render installment payments through the AIP program is not reflective of whether it had the necessary financial qualifications to be a Commission licensee and does not cast doubt upon the license assignment. Thus, unlike cases where we have denied relief from section 1.2110(g)(4)(iv), we believe that automatic cancellation of this BRS license is not required to protect the integrity of the auction and licensing process. Furthermore, based on all the facts before us, we believe that the public will benefit by eliminating the possibility of disruption to the Commission's prior assignment of this BRS license. Under these particular circumstances, where the question of the licensee's financial qualifications will be eliminated by full payment of the obligation, the benefit of preserving the license assignment outweighs any public benefit gained by the automatic cancellation of a license.

17. While we find that waiver of the automatic cancellation provision of section 1.2110(g)(4)(iv) is warranted in the instant case, we note that the relief granted herein does not alter Big Sky's default under the terms of the applicable notes and security agreements. Accordingly, in order to satisfy the condition on the licenses created by section 1.2110(g)(4), Big Sky must satisfy its default obligations pursuant to the notes and security agreements, as well as the Commission's debt collection procedures, in order to continue to hold the licenses. In light of our decision to grant Big Sky the relief described herein, we grant Big Sky until October 12, 2006, to make the payments required by the conditions on the licenses. Failure to render the full payments no later than October 12, 2006, will result in cancellation of the licenses for failure to comply with the condition on the licenses established by section 1.2110(g)(4).⁴⁵

IV. CONCLUSION

18. Big Sky's BRS license for the Butte, Montana BTA automatically cancelled when it failed to pay its installment payment by the deadline of the second additional period. Given the totality of the circumstances, however, we find that the public interest is best served by a *nunc pro tunc* waiver of the automatic cancellation of the licenses and a waiver of any cancellation resulting from the prior breach of Big Sky's obligation to fully and timely perform its payment obligations pursuant to section 1.2110(g)(4). As described fully above, Big Sky, however, remains subject to the condition placed on the licenses by section 1.2110(g)(4), the default provisions of the installment notes and security agreements, as well as the Commission's debt collection procedures, and therefore, must render full payment no later than October 12, 2006. If Big Sky fails to make full payment for the license, that license will cancel

⁴² See Letter to J. Curtis Henderson, Senior Vice President and & General Counsel for Nucentrix Spectrum Resources, Inc., from Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 17 FCC Rcd 559, 561-62 (2002) ("Strict enforcement of the payment rules . . . is fair to all participants in our auctions, including those who won licenses in the auction and those who did not"); Letter to Russell H. Fox, Esq., Counsel for Capital Two-Way Communications, from Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 16 FCC Rcd 11786, 11787-88 (2001). In both of these cases, the licensee intended the assignor to relieve it of its payment obligations.

⁴³ See para. 17 *infra*.

⁴⁴ See Request of Inforum Communications, Inc. for Petition for Reconsideration and Waiver Request for Late Acceptance of BTA Installment Payment, *Order*, 19 FCC Rcd 83, 86 (2004), petition for reconsideration pending.

⁴⁵ 47 C.F.R. § 1.2110(g)(4).

pursuant to the terms of this Order and the condition placed on the license by section 1.2110(g)(4) of the Commission's rules, and Big Sky will remain subject to the Commission's debt collection procedures.

V. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED that, pursuant to the authority granted in Sections 4(i) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(j), and sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, Big Sky is GRANTED, to the extent described herein, a *nunc pro tunc* waiver of the automatic cancellation provision of section 1.2110(g)(4)(iv), 47 C.F.R. § 1.2110(g)(4)(iv), for its BRS license for the Butte, Montana BTA.

20. IT IS FURTHER ORDERED that, pursuant to the authority granted in Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.2110(g)(4) of the Commission's rules, 47 C.F.R. § 1.2110(g)(4), Big Sky must render full payment of any and all outstanding installment debt connected to its BRS license for the Butte, Montana BTA no later than October 12, 2006. In the event Big Sky fails to comply with the condition of full and timely payment of its default obligations required by section 1.2110(g)(4), 47 C.F.R. § 1.2110(g)(4), pursuant to the terms of this Order, the applicable notes and security agreements, and the Commission's debt collection procedures, the applicable licenses will cancel.

21. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

James D. Schlichting
Deputy Chief
Wireless Telecommunications Bureau