

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

In the Matter of
ADVANCED COMMUNICATIONS
SOLUTIONS, INC.
Request for Waiver of Section 1.2110(g)(4)(iv)
and Reinstatement of 900 MHz Specialized
Mobile Radio Licenses

ORDER

Adopted: February 17, 2006

Released: February 17, 2006

By the Deputy Bureau Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we waive nunc pro tunc the automatic cancellation provision of section 1.2110(g)(4)(iv) of the Commission's rules with respect to five 900 MHz Specialized Mobile Radio ("SMR") service licenses held by Advanced Communications Solutions, Inc. ("Advanced").

2. Examining the totality of the circumstances of the instant matter, we conclude that Advanced 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.

1 47 C.F.R. § 1.2110(g)(4)(iv).

2 Id.

3 Request for Waiver and Reinstatement, filed by Advanced Communications Solutions, Inc. on December 10, 2004. Advanced filed a corrected Request for Waiver and Reinstatement on January 10, 2005 ("Petition") and a Supplement to Request for Waiver and Reinstatement on February 7, 2005 ("Supplement") (jointly referred to as the "Request").

this Order, which require Advanced to fully and timely perform its remaining obligations within thirty-one (31) days from the date of this Order, i.e., by March 20, 2006.⁴

3. While we find waiver of the automatic cancellation provision appropriate in these circumstances, we note that Advanced has not sought, and we do not grant, waiver of Advanced'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.⁵ In order to provide Advanced with a reasonable amount of time to perform its obligations, and thereby satisfy the condition on the licenses, we grant Advanced thirty-one (31) days from the date of this Order to render payment in full pursuant to section 1.2110(g)(4).⁶

II. BACKGROUND

4. When the Commission established the licensing and service rules for the 900 MHz SMR service, 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.⁷ The auction for Major Trading Area ("MTA") licenses in the 900 MHz SMR service (Auction No. 7) began in November 1995, and when it concluded in April 1996, Advanced was the winning bidder on the following six licenses: the M block in the Birmingham MTA, the K block for the Louisville MTA, the M and T blocks for the Memphis MTA, and the P and R blocks for the Nashville MTA.⁸ Advanced qualified for the installment payment option and elected to pay for the six licenses under that arrangement. The Commission, therefore, granted Advanced the six 900 MHz SMR licenses from Auction No. 7 on the condition that Advanced would timely meet its payment obligations under the installment payment program.⁹ Section 1.2110(g)(4) of the Commission's rules expressly provides that "[a] license granted to an eligible entity that elects installment

⁴ 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.*

⁵ 47 C.F.R. § 1.2110(g)(4)(iv).

⁶ 47 C.F.R. § 1.2110(g)(4).

⁷ Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-553, Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, Implementation of Sections 3(n) and 322 of the Communications Act, GN Docket No. 93-252, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, 2708 ¶ 169 (1995) ("*900 MHz Second Recon. Order*"). See also 47 C.F.R. § 90.812 (1995) (installment payments for licenses won by small businesses in the 900 MHz SMR service). 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 our 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*").

⁸ See FCC Announces Winning Bidders In The Auction Of 1020 Licenses To Provide 900 MHz SMR In Major Trading Areas; Down Payments Due April 22, 1996, FCC Form 600s Due April 29, 1996, *Public Notice*, 11 FCC Rcd 18599 (1996), corrected 11 FCC Rcd 18637 (1996). In 2000, Advanced assigned the sixth license that it was awarded following Auction No. 7, and the installment debt for that license was fully satisfied.

⁹ 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*"). See also 47 C.F.R. § 1.2110(g)(4).

payments shall be conditioned upon the full and timely performance of the licensee's payment obligations under the installment plan."¹⁰

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.¹¹ 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.¹² 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.¹³ 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.¹⁴ In addition, failure to fully and timely perform payment obligations under the installment plan breaches a condition on the licenses, subjecting them to cancellation.¹⁵

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.¹⁶ 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.¹⁷

¹⁰ 47 C.F.R. § 1.2110(g)(4).

¹¹ *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.

¹² *See id.* *See* 47 C.F.R. § 1.2110(g)(4)(i).

¹³ *See Part I Third Report and Order* at 436 ¶ 106. *See also* 47 C.F.R. § 1.2110(g)(4)(ii).

¹⁴ *See Part I Third Report and Order* at 438 ¶ 107. *See also* 47 C.F.R. § 1.2110(g)(4)(iv).

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

¹⁶ *See generally* AIP brochure.

¹⁷ 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 approximately eight years, from November 1996 until August 2004, Advanced made installment payments on the five licenses in question consistent with the Commission's rules.¹⁸ During this period, Advanced, 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 on February 29, 2004. Pursuant to section 1.2110(g)(4), Advanced had until August 31, 2004, to pay the February 2004 installment payments 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 August 31, 2004, a representative from Advanced called Mellon Bank to authorize the transfer of funds, pursuant to its enrollment in the AIP program, to pay for the February 2004 installments and the associated late fees.¹⁹ As per custom, the Mellon Bank representative provided confirmation numbers to Advanced's representative for the transfer of funds. Consistent with AIP procedures, however, the Commission's account for Advanced's installment payments was credited on the business day following the telephone authorization, which, in this case, was September 1, 2004. The deadline of making a late payment in the second additional quarter for the February 2004 installments was August 31, 2004. Because Advanced failed to make its required installment payment for each of its five licenses by end of the second additional quarter, it went into default, its five licenses automatically cancelled, and it became subject to the debt collection procedures.²⁰ Advanced filed the instant request for waiver of the automatic cancellation provision shortly thereafter. During the pendency of its waiver request, Advanced continued making regular installment payments to the Commission.²¹

III. DISCUSSION

8. We now turn to Advanced's request for 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.²² We note that Advanced does not dispute that the facts set forth in its pleading constitute automatic cancellation under the Commission's rules. Rather, Advanced 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 September 1, 2004, automatic cancellation of the subject licenses.

¹⁸ As noted above, the sixth license that Advanced was awarded following Auction No. 7 was assigned and the installment debt was fully satisfied. *See* n.8 *supra*.

¹⁹ *See* Petition, Declaration of Dalleen Bradford, ¶ 3.

²⁰ The Commission's records suggest that Advanced occasionally called Mellon Bank on the last day of the quarter to authorize payment for its installment obligations. However, we note that those records also indicate that, in each of those cases, the payment deadline fell on a non-business day (i.e., either a weekend or a holiday). As a result, the deadline was extended to the following business day. Thus, when Advanced had called on the last business day of the month and its FCC account was credited the next business day, the payment was considered timely. For example, in the quarter immediately preceding the one in question, the deadline was May 31, 2004. Because that date was a holiday, the deadline for making the payment was Tuesday, June 1, 2004. When Advanced called on Friday, May 28, 2004, to authorize payment, its FCC account was credited on the next business day, June 1, 2004. Thus, Advanced made its payment by the deadline.

²¹ *See* Letters from Russell H. Fox, counsel for Advanced Communications Solutions, Inc. to Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, dated June 2, 2005, August 31, 2005, and November 27, 2005.

²² 47 C.F.R. § 1.2110(g)(4)(iv).

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 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.²³

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 high 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.²⁴ The Commission has repeatedly emphasized the importance of full and timely payment.²⁵ 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.²⁶

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

²³ 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).

²⁴ 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).

²⁵ 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).

²⁶ 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, Advanced took the actions in advance of the payment deadline that it believed were necessary to render timely payment, and the nature of its electronic processing 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.

11. Based on a totality of the circumstances, we conclude that Advanced 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, Advanced's long term and prior successful participation in the AIP program provides important evidence of its intent to render timely installment payments in compliance with the Commission's payment rules. Second, notwithstanding its failure to timely make one installment payment, Advanced contends that it can and will pay for the outstanding debt associated with the licenses.²⁷ As noted above, Advanced made its installment payments consistent with the Commission's rules for approximately eight years before it had a problem with one payment. Third, the circumstances that led to the automatic cancellation of the licenses do not to reflect an inability on Advanced's part to make payment for the five licenses. Advanced initiated the payments 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 occasions, Advanced submitted payment through the Commission's AIP program on the last day of the second additional quarter, but, because the deadline fell either on a weekend or holiday, its payment reached the Commission in a timely fashion.²⁸ It appears that these fortuitous circumstances in making payments in this manner in the past as well as Advanced'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.²⁹ Such an electronic processing error in tendering payment does not suggest an inability to pay for the licenses.

12. Other factors in the instant case diminish concern over Advanced's ability to pay for the licenses in question. As noted, Advanced made payments in accordance with the Commission's rules for approximately eight years and has continued to make regular installment payments while its request for waiver has been pending.³⁰ Moreover, Advanced's financial institutions confirm that it has procedures in place to meet its payment obligations.³¹ These factors further mitigate the concern that Advanced may not have the capital necessary to both pay for the license and provide service to the public.³²

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.³³ 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

²⁷ Supplement at 5.

²⁸ See *supra* note 20.

²⁹ Petition at 6.

³⁰ See *supra* note 21.

³¹ See Attachment to Supplement (letter of Shawn Michael Turpin, Senior Vice President and Gwinnett Market Executive, IronStone Bank, dated January 25, 2005, and letter of M. Scott Kelly, Senior Vice President, Bank of America Business Banking, dated January 21, 2005).

³² See, e.g., 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).

³³ 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 where the circumstances surrounding failure to comply with the rules suggest unintended electronic processing errors, 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 Advanced's participation in the AIP program, its payment history and the continuing condition on the licenses that Advanced must full and timely perform its current payment obligations. The automatic cancellation of the licenses resulted from a single AIP related payment error by Advanced that does not appear to reflect an inability or unwillingness on its part to comply with the Commission's rules. Moreover, Advanced's history of payment over eight years in compliance with the Commission's rules and its payments 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, Advanced'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.³⁴ 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.³⁵ Accordingly, given the totality of the circumstances, we conclude that the underlying purpose of the automatic cancellation provision would not be served in its application to the present circumstances.

15. Any one of the circumstances described above would not suffice to meet the Commission's waiver standard. 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 Advanced'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. The Commission has historically established a high bar for meeting the Commission's waiver standard in the context of failed installment payments. Advanced asserts that it is serving a specific, underserved market and that its current customers would have few, if any, other options for comparable service if it had to discontinue operations.³⁶

³⁴ 47 C.F.R. § 1.2110(g)(4). 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 Rural Telephone Cooperative, Inc. Request for Waiver and Reinstatement of Broadband Radio Service Authorization for the Hobbs, New Mexico Basic Trading Area, MDB191, Order*, DA 06-279 (rel. Feb. 3, 2006) ("*Leaco Order*").

³⁵ See, e.g., *MBO Wireless Order*; *Leaco Order*.

³⁶ Supplement at 3-4.

17. We note that the Commission has consistently denied requests to accept late payments based solely on the possibility of service disruption due to the licensee's failure to make a timely payment.³⁷ The Commission has likewise denied requests to facilitate future service based on a pending assignment where the assignee would pay the assignor's remaining installment obligations.³⁸ In each of those situations, we noted that the licensee's late payment compromised the integrity of the Commission's grant of licenses through the auction process.³⁹ In particular, simply providing service or assigning the license to a different party does not address any lingering uncertainties about the correctness and fairness of the initial assignment of a license.⁴⁰

18. In contrast, Advanced's error here in tendering payment through the AIP program and its stated intent to pay its obligation in full and continue its operations minimizes the possibility that Advanced's noncompliance reflects an erroneous initial license assignment. Moreover, as discussed above, we already have concluded that granting a *nunc pro tunc* waiver of the automatic cancellation provision will not harm the integrity of the Commission's auction and licensing process. Accordingly, we do not think that these past precedents preclude consideration here of the public benefit of preserving the past assignment of the licenses and avoiding unnecessary disruption of service. Taking these benefits into account, we find the public interest will be served by the waiver granted herein.

19. While we find that waiver of the automatic cancellation provision is warranted in the instant case, we note that the relief granted herein does not alter Advanced'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), Advanced 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 Advanced the relief described herein, we grant Advanced thirty-one (31) days from the date of this Order to make the payments required by the conditions on the licenses. Failure to render the full payments within 31 days from the date of this Order, i.e., by March 20, 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).⁴¹

³⁷ See Request for Extension of the Commission's Initial Non-Delinquency Period for C and F Block Installment Payments, *Order*, 13 FCC Rcd 22071, 22077 (1998) (discussing service provided by two licensees denied waivers of the installment payment and automatic cancellation rules). See also 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*, 18 FCC Rcd 14695 (2003) ("*GLH Order*").

³⁸ 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. See also 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) ("*Capital Two-Way Order*"); 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 (2002) ("*Nucentrix Order*") (declining to grant a waiver for an administrative oversight in payments while the licensee was in negotiations to assign its license to a third party).

³⁹ See, e.g., *GLH Order* at 14700 ("Any interest in a particular licensee providing service must be balanced against the larger public interest in preserving the integrity of the Commission's licensing process, as well as the Commission's obligation to fairly and consistently enforce its payment rules.").

⁴⁰ *Nucentrix Order* at 561-62 ("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"); *Capital Two-Way Order* at 11788. In both of these cases, the licensee intended the assignor to relieve it of its payment obligations.

⁴¹ 47 C.F.R. § 1.2110(g)(4).

IV. CONCLUSION

20. Advanced's five 900 MHz SMR licenses automatically cancelled when it failed to pay its installment payments 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 Advanced's obligation to fully and timely perform its payment obligations pursuant to section 1.2110(g)(4). As described fully above, Advanced, 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 within 31 days from the date of this Order, i.e., by March 20, 2006. If Advanced fails to make full payment for any license, that license will cancel 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 Advanced will remain subject to the Commission's debt collection procedures.

V. ORDERING CLAUSES

21. 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, Advanced 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 five 900 MHz SMR licenses.

22. 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), Advanced must render full payment of any and all outstanding installment debt connected to its five 900 MHz SMR licenses within 31 days from the date of this Order, i.e., by March 20, 2006. In the event Advanced 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.

23. 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