

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

In the Matter of )
SATELLITE SIGNALS OF NEW ENGLAND, )
INC. )
Request for Waiver of Installment Payment Rules )
for Auction No. 6 and Reinstatement of Licenses )

ORDER

Adopted: January 31, 2007

Released: January 31, 2007

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we address petitions filed on behalf of Satellite Signals of New England, Inc. ("Satellite Signals"), seeking a waiver of the Commission's installment payment rules and the reinstatement of two Broadband Radio Service ("BRS") licenses.1 Having won the BRS licenses for the Burlington, Vermont, BTA (MDB063) and the Rutland-Bennington, Vermont, BTA (MDB388) (collectively the "Licenses") in Auction No. 6, Satellite Signals defaulted on its installment payments for the Licenses, which resulted in their automatic cancellation.2 Satellite Signals requests that the

1 Satellite Signals of New England, Inc., Petition for Reinstatement of BTA Authorization and Waiver Request for Late Acceptance of BTA Installment Payments, MDB063, filed April 26, 1999 ("Burlington Petition"); Satellite Signals of New England, Inc., Petition for Reinstatement of BTA Authorization and Waiver Request for Late Acceptance of BTA Installment Payments, MDB388, filed April 26, 1999 ("Rutland Petition"); Satellite Signals of New England, Inc., Supplement to Petition for Reinstatement of BTA Authorization and Waiver Request for Late Acceptance of BTA Installment Payments, Burlington, VT BTA (MDB063), filed April 21, 2004 ("Burlington Supplemental Petition"); Satellite Signals of New England, Inc., Supplement to Petition for Reinstatement of BTA Authorization and Waiver Request for Late Acceptance of BTA Installment Payments, Rutland, VT BTA (MDB388), filed April 21, 2004 ("Rutland Supplemental Petition").

On July 29, 2004, the Commission released a Report and Order and Further Notice of Proposed Rulemaking that amended 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, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004) ("BRS Report and Order"). 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 refer to the service by its new name.

2 At the time of Satellite Signals' failure to meet its payment obligations, the Commission's rules governing defaults on installment payments and the resulting automatic cancellation of licenses were contained in 47 C.F.R. § 1.2110(f)(4). These provisions are now codified at 47 C.F.R. § 1.2110(g)(4).

(continued...)

Commission waive its installment payment deadlines and automatic cancellation rule with respect to the Licenses, arguing that for a number of reasons the Licenses should not be deemed to have canceled. Satellite Signals further contends that, if the Licenses canceled, they should be reinstated. For the reasons set forth below, we find the arguments presented on behalf of Satellite Signals to be without merit and we deny its requests.

## II. BACKGROUND

### A. The Commission's Installment Payment Program

2. When the Commission first adopted competitive bidding rules in 1994, it established an installment payment program under which qualified small businesses that won licenses in certain services were allowed to pay their winning bids in quarterly installments over the initial term of the license.<sup>3</sup> In deciding to offer installment payment plans, the Commission reasoned that in appropriate circumstances such plans would, by reducing the amount of private financing small entities needed in advance of auctions, help to provide opportunities for small businesses to participate in the provision of spectrum-based services.<sup>4</sup> Licensees paying in installments were generally allowed to pay only interest in the early years of the license term.<sup>5</sup> When in 1997 the Commission discontinued the use of installment payments for future auctions,<sup>6</sup> it allowed entities that were already paying for licenses in installments to continue doing so.<sup>7</sup>

3. Certain features of the Commission's installment payment rules have remained the same since they were first adopted in 1994. Thus, the rules have always conditioned the grant of licenses upon the full and timely performance of licensees' payment obligations and have provided that, upon a licensee's default, the license cancels automatically and the Commission institutes debt collection

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<sup>3</sup> Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2389-91 ¶¶ 231-40 (1994) (“*Competitive Bidding Second Report and Order*”). The first Commission auction for which installment payments were available was Auction No. 2 (218-219 MHz Service), which concluded on July 29, 1994.

<sup>4</sup> *Id.* at 2389-90 ¶ 233. The goal of providing opportunities for small businesses to participate in the provision of spectrum-based services is set forth at 47 C.F.R. §§ 309(j)(3)(B) & 309(j)(4)(D).

<sup>5</sup> See 47 C.F.R. §§ 1.2110(e)(3)(iii) & (iv) (1994).

<sup>6</sup> The Commission discontinued the use of installment payments based on its findings that (1) installment payments are not necessary to ensure meaningful opportunities for small businesses to participate successfully in auctions; (2) the Commission must consider all of the objectives of Section 309(j), including the development and rapid deployment of new services for the benefit of the public; (3) filings for bankruptcy by entities unable to pay their winning bids may result in delays in the deployment of service; and (4) requiring the payment of bids in full within a short time after the close of auctions ensures greater financial accountability from applicants. 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, 397-98 ¶¶ 38-39 (1998) (“*Part 1 Third Report and Order*”). The Commission affirmed this decision in 2000. 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 15,293, 15,322 ¶ 55. The last Commission auction for which installment payments were available was Auction No. 11 (broadband PCS F block), which ended on January 14, 1997.

<sup>7</sup> *Part 1 Third Report and Order*, 13 FCC Rcd at 436 ¶ 106.

procedures.<sup>8</sup> In 1997, however, the Commission liberalized its installment payment grace period rules for those licensees that were already paying their winning bids in installments, providing these licensees with significant advantages they had not previously had. Under the rules adopted in 1994, any licensee whose installment payment was more than 90 days past due was in default, unless the licensee properly filed a grace period request.<sup>9</sup> The rules as amended in 1997, however, provided licensees with an automatic grace period, i.e., a grace period to which they were entitled without having to file a request.<sup>10</sup> The amended rules also entitled all licensees paying in installments to a grace period of 180 days. If a licensee did not make full and timely payment of an installment, it was automatically granted a 90-day period during which it was allowed to pay the installment along with a 5 percent late fee.<sup>11</sup> If it did not submit the missed installment payment and the 5 percent late fee before the expiration of this 90-day period, the licensee was automatically granted a second 90-day period during which it could remit payment along with an additional late fee equal to 10 percent of the missed payment.<sup>12</sup> A licensee's failure to make payment, including the associated late fees, by the end of the second 90-day period placed it in default.<sup>13</sup>

4. In liberalizing its grace period rules, the Commission found that the amended rules eliminated uncertainty for licensees seeking to restructure other debt contingent upon the results of the Commission's installment payment provisions,<sup>14</sup> and that the added certainty the rules provided to licensees would increase the likelihood that licensees and potential investors would find solutions to

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<sup>8</sup> See, e.g., 47 C.F.R. § 1.2110(e)(4) (1994) and 47 C.F.R. § 1.2110(f)(4) (1998). See also 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 (2004). In this Order addressing the inapplicability of 47 C.F.R. § 1.2104 of the Commission's rules to installment payment defaults, the Commission discussed its 1997 decision not to deviate from its license-cancellation-plus-debt-collection rule for installment payment defaults and explained the reasonableness of this decision. Noting that automatic license cancellation is not unique to defaults on installment payments (licenses terminate automatically, for example, when licensees fail to build out in compliance with the Commission's rules, whether they are paying their winning bids in installments or have paid them in full in a lump sum), the Commission explained that its rules are designed to encourage entities that cannot meet their financial obligations to exit the auction process sooner rather than later in order to avoid delays in licensing spectrum to entities that are able to provide service to the public. Thus, the consequence of defaulting after the close of an auction is more severe than the consequence of withdrawing a high bid during an auction, when a new high bidder can still emerge. Similarly, the consequence of a post-licensing default, such as an installment payment default or a failure to meet construction or service requirements, is more severe than the consequence of a pre-licensing default because the former could adversely affect service to the public much longer than the latter. *Id.* at 2561-62 ¶¶ 29-31.

<sup>9</sup> 47 C.F.R. § 1.2110(e)(4)(i) & (ii) (1994). Licensees were permitted to request a grace period of 90 to 180 days.

<sup>10</sup> 47 C.F.R. § 1.2110(f)(4)(i) & (ii) (1998); *Part 1 Third Report and Order*, 13 FCC Rcd at 436 ¶¶ 106-07. The amended rules took effect on March 16, 1998.

<sup>11</sup> 47 C.F.R. § 1.2110(f)(4)(i) (1998); *Part 1 Third Report and Order*, 13 FCC Rcd at 436 ¶ 106.

<sup>12</sup> 47 C.F.R. § 1.2110(f)(4)(ii) (1998); *Part 1 Third Report and Order*, 13 FCC Rcd at 436 ¶ 106.

<sup>13</sup> 47 C.F.R. § 1.2110(f)(4) (iv) (1998). These rules have been simplified to provide licensees with two quarters (i.e., two 3-month periods) in which to submit late installment payments and associated late fees, rather than two 90-day periods. 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 the Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15,293, 15,310 ¶ 28, 15 FCC Rcd 21,520 (2000) ("*Part 1 Reconsideration of Third Report and Order*"). This change, which aligned the schedule for late payments with the quarterly schedule of regular installment payments, does not affect our evaluation of the instant case.

<sup>14</sup> *Part 1 Third Report and Order*, 13 FCC Rcd at 439-40 ¶ 110.

capital problems before defaults occurred.<sup>15</sup> Noting that a grace period is an extraordinary form of relief in cases of financial distress and that the rules it adopted are consistent with commercial practice, the Commission declined to provide more than 180 days for licensees to make late payments and rejected the argument that licenses should not cancel automatically upon default.<sup>16</sup>

## B. Satellite Signals

5. Satellite Signals describes itself as a small wireless cable operator that wished to acquire the Licenses to enhance its service offerings in southern Vermont.<sup>17</sup> According to Satellite Signals, it participated in Auction No. 6, which concluded on March 28, 1996, “[d]espite the financial hardship it would cause” because it “had no choice” if it was to acquire use of the channels it wanted.<sup>18</sup> Satellite Signals also indicates that bidding for the Licenses went higher than it expected.<sup>19</sup> Nevertheless, Satellite Signals was the winning bidder for the Licenses.<sup>20</sup>

6. As a small business, Satellite Signals was eligible to participate in the Commission’s installment payment plan available for qualifying entities that won licenses in Auction No. 6.<sup>21</sup> In keeping with the Commission’s rules, grant of the Licenses was conditioned upon Satellite Signals’ full and timely performance of its payment obligations.<sup>22</sup> Satellite Signals was scheduled to make interest-only payments for the first two years of the ten-year license term. Payments of interest and principal were to be amortized over the remaining eight years.<sup>23</sup>

7. Satellite Signals began making its installment payments under the Commission’s original installment payment rules. When the Commission’s amended grace period rules became effective on March 16, 1998, Satellite Signals became subject to those rules.<sup>24</sup> Satellite Signals failed to pay the installment payment due on the Burlington license on March 31, 1998, along with the required late fees, before the expiration of the 180 days it was permitted under the rules. The Burlington license therefore

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<sup>15</sup> *Id.* at 443 ¶ 116.

<sup>16</sup> *Id.* at 439-40 ¶¶ 109-10; *Part 1 Reconsideration of Third Report and Order*, 15 FCC Rcd at 15,304-05 ¶ 19.

<sup>17</sup> Burlington Petition at 2; Rutland Petition at 2; Burlington Supplemental Petition at 3; Rutland Supplemental Petition at 3.

<sup>18</sup> Burlington Petition at 2; Rutland Petition at 2.

<sup>19</sup> Burlington Petition at 3; Rutland Petition at 3.

<sup>20</sup> *See Public Notice*, “Winning Bidders in the Auction of Authorizations to Provide Multipoint Distribution Service in 493 Basic Trading Areas,” rel. March 29, 1996. Satellite Signals’ net high bid for the Burlington BTA license was \$229,000; its net high bid for the Rutland BTA license was \$122,000. *Id.*, Attachment A.

<sup>21</sup> 47 C.F.R. § 21.960(b) (1996).

<sup>22</sup> 47 C.F.R. §§ 1.2110(e)(4) (1996) and 21.960(b)(4) (1996) (“A BTA authorization issued to an eligible winning bidder that elects installment payments shall be conditioned upon the full and timely performance of the BTA authorization holder’s payment obligations under the installment plan.”). *See also Public Notice*, “FCC Announces Grant of MDS Authorizations,” Report No. D-871, rel. Aug. 16, 1996; *Public Notice*, “FCC Announces Grant of MDS Authorizations,” Report No. D-902-A, rel. Dec. 30, 1996.

<sup>23</sup> 47 C.F.R. §§ 1.2110(e)(3)(iii) & (iv) (1996) and 21.960(b)(3) (1996).

<sup>24</sup> *See Part 1 Third Report and Order*, 13 FCC Rcd at 436 ¶ 106.

automatically canceled on September 29, 1998.<sup>25</sup> Satellite Signals failed to pay the installment payment due on the Rutland license on May 31, 1998, along with the required late fees, before the expiration of 180 days. The Rutland license therefore automatically canceled on November 28, 1998.<sup>26</sup> Satellite Signals accordingly became subject to debt collection procedures.<sup>27</sup> In April 1999, Satellite Signals submitted funds to the Commission in association with each of the Licenses and subsequently submitted no further monies.<sup>28</sup>

8. In its Burlington Petition and Rutland Petition, filed on April 26, 1999, Satellite Signals states that it missed payments on the Licenses because of financial stress placed on it as a result of being “forced to participate” in Auction No. 6.<sup>29</sup> Satellite Signals indicates that it has taken steps to remedy its situation by seeking a waiver of its installment payment deadlines and by accepting an offer to purchase its assets in both the Burlington and Rutland markets that would enable it to fulfill its financial obligations. Satellite Signals states, however, that the contemplated transaction has been delayed because of the buyer’s financial difficulties.<sup>30</sup> Satellite Signals also asserts that there were errors in the Commission’s records with respect to its payment obligations and that it contacted the Commission multiple times to obtain clarification of these obligations.<sup>31</sup> In these petitions, Satellite Signals argues that the Commission must act affirmatively before a license holder will be held in default,<sup>32</sup> and that the Commission should not find Satellite Signals to be in default because it meets the standard for grant of a rule waiver set forth in 47 C.F.R. § 21.19.<sup>33</sup> Satellite Signals further argues that if the Commission has placed it in default, it may seek reinstatement of the Licenses under 47 C.F.R. § 21.44(b).<sup>34</sup>

9. In its Burlington Supplemental Petition and Rutland Supplemental Petition, filed on April 21, 2004, Satellite Signals reiterates that it missed payments because of “adverse financial circumstances” and again argues in essence that it meets the standard for grant of a rule waiver.<sup>35</sup> Satellite Signals also

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<sup>25</sup> 47 C.F.R. § 1.2110(f)(4) (iv) (1998).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* See also *Part 1 Third Report and Order*, 13 FCC Rcd at 440, 443 ¶¶ 110, 116; *Part 1 Reconsideration of Third Report and Order*, 15 FCC Rcd at 15,315-16 ¶ 39 (2000); 47 C.F.R. § 1.1914(a) (1998); 4 C.F.R. § 102.11 (1998).

<sup>28</sup> See Burlington Supplemental Petition at 4; Rutland Supplemental Petition at 4.

<sup>29</sup> Burlington Petition at i, 1-3, 6; Rutland Petition at i, 1-3, 7. See also Burlington Petition at 10; Rutland Petition at 10-11.

<sup>30</sup> Burlington Petition at 8-9; Rutland Petition at 8-9.

<sup>31</sup> Burlington Petition at 4-5; Rutland Petition at 3-6.

<sup>32</sup> Burlington Petition at 6; Rutland Petition at 6-7.

<sup>33</sup> Burlington Petition at 7-9; Rutland Petition at 7-9. In the *BRS Report and Order*, adopted in June 2004, the Commission eliminated Part 21 of its rules and consolidated its rules for BRS in Part 27. *BRS Report and Order*, 19 FCC Rcd at 14,236-38 24 ¶¶ 186-90. Requests for BRS rule waivers are now governed by 47 C.F.R. § 1.925, which is substantially similar to the former Section 21.19.

<sup>34</sup> Burlington Petition at 9-11; Rutland Petition at 10-11. As noted above, in its *BRS Report and Order* the Commission eliminated Part 21 of its rules and consolidated its rules for BRS in Part 27. *BRS Report and Order*, 19 FCC Rcd at 14,236-38 24 ¶¶ 186-90. See *supra* note 33. Pursuant to the *BRS Report and Order*, the former Section 21.44 was superseded by 47 C.F.R. § 1.955.

<sup>35</sup> Burlington Supplemental Petition at 1, 2-5; Rutland Supplemental Petition at 1, 2-5.

argues that the Commission has constructively waived the installment payment rules with respect to the Licenses.<sup>36</sup> Finally, Satellite Signals indicates that it has an agreement to assign the Licenses to Wireless Telecommunications, Inc. (“WTCI”), and argues that automatic cancellation of the Licenses is prohibited because WTCI entered bankruptcy on May 16, 2000.<sup>37</sup>

### III. DISCUSSION

#### A. Request for Waiver of Installment Payment Deadlines

10. To obtain a waiver of the Commission’s rules, a party must show: (i) that the underlying purpose of the rule would not be served, or would be frustrated, by its application in the particular case, and that grant of the requested waiver would be in the public interest; or (ii) that the unique facts and circumstances of the particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, or that the party has no reasonable alternative.<sup>38</sup> For the reasons discussed below, we find that Satellite Signals’ request for waiver of the installment payment deadlines it missed and the automatic cancellation rule fails to meet the Commission’s standard for granting a waiver.

11. Satellite Signals fails to establish that the underlying purpose of the Commission’s rules would not be served by their application in this instance. Asserting in its initial petitions that the overall purpose of the installment payment rules is to ensure that small businesses and other designated entities are given the opportunity to participate in the provision of spectrum-based services, Satellite Signals contends that requiring designated entities to strictly comply with these payment rules is contrary to Congress’s intent of encouraging small businesses.<sup>39</sup> Acknowledging in its supplemental petitions that the Commission’s competitive bidding rules are intended to award licenses to the entities that value them most highly, and that strict enforcement of the installment payment rules ensures that licenses are assigned to such parties,<sup>40</sup> Satellite Signals nevertheless asserts that its record of past service, its efforts to acquire the Licenses to enhance its offerings, its more than two years of payments, and its attempts to clarify and fulfill its payment obligations demonstrate that it is the entity that values the Licenses most highly.<sup>41</sup>

12. We reject Satellite Signals’ assertion that requiring it to comply with the Commission’s payment rules would be inconsistent with Congress’s goal of encouraging the participation of small businesses in spectrum-based services. The Commission’s competitive bidding system was designed to serve a number of statutory purposes, including the rapid deployment of new technologies and services to

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<sup>36</sup> Burlington Supplemental Petition at 6-7; Rutland Supplemental Petition at 6-7.

<sup>37</sup> Burlington Supplemental Petition at 7-8; Rutland Supplemental Petition at 7-8. Satellite Signals states that on August 19, 1997, it entered into an asset purchase agreement with WTCI and Wireless Ventures III, Inc., under which these entities would have the option of purchasing the Licenses if they paid a certain number of installment payments; that a dispute then arose between itself and these entities, which led to “a great deal of civil litigation on the rights that agreement afforded [the] parties”; and that it subsequently entered into a new asset purchase agreement to assign all of its licenses to WTCI, pending bankruptcy court approval. Burlington Supplemental Petition at 4, 8 n.18; Rutland Supplemental Petition at 4, 8 n.18.

<sup>38</sup> 47 C.F.R. §§ 21.19 (1998) and 1.925.

<sup>39</sup> Burlington Petition at 7-8; Rutland Petition at 7-8; Burlington Supplemental Petition at 4-5; Rutland Supplemental Petition at 4-5.

<sup>40</sup> Burlington Supplemental Petition at 2-3; Rutland Supplemental Petition at 2-3.

<sup>41</sup> Burlington Supplemental Petition at 3-4; Rutland Supplemental Petition at 3-4.

the public and the efficient and intensive use of spectrum.<sup>42</sup> Installment payment programs were established to help small entities participate in the competitive bidding process and the provision of spectrum-based services;<sup>43</sup> they were not, however, intended to allow the retention of licenses by parties unable to pay for the licenses and provide service. Indeed, since the inception of the auctions program, the Commission has endeavored to ensure that the rapid deployment of service and the efficient, intensive use of spectrum are not undermined by entities that lack the financial capacity to pay their winning bids and operate communications systems.<sup>44</sup>

13. In keeping with this objective, the Commission has determined that strict enforcement of its installment payment rules enhances the integrity of the auction and licensing process.<sup>45</sup> The Commission has consistently rejected arguments that Sections 309(j)(3)(B) and 309(j)(4)(D), the statutory bases for designated entity benefits, obligate the Commission to forbear from enforcing its rules.<sup>46</sup> Precluding licensees from keeping licenses when they do not pay their winning bids pursuant to the

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<sup>42</sup> 47 U.S.C. §§ 309 (j)(3)(A) & (D). *See also* H.R. Rep. No. 103-111, at 253 (1993), reprinted in 1993 U.S.C.C.A.N. 378, 580 (finding that “a carefully designed system to obtain competitive bids from competing qualified applicants can speed delivery of services, promote efficient and intensive use of the electromagnetic spectrum, prevent unjust enrichment, and produce revenues to compensate the public for the use of the public airwaves.”).

<sup>43</sup> *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 229.

<sup>44</sup> As noted above, for example, when the Commission amended its grace period rules in 1997, it declined to provide more than 180 days for licensees to make late payments and rejected the argument that licenses should not cancel automatically upon default. *See supra* paragraph 4. *See also Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2381-82 ¶¶ 189-192 (discussing importance of down payments that will ensure that winning bidders are able to pay full amount of their winning bids, rapidly deploy their systems, and operate them in an efficient manner); *id.* at 2390 ¶ 237 (deciding not to allow installment payments for large spectrum blocks in order to avoid delay of service to public that could result from encouraging undercapitalized firms to acquire licenses they lack the resources to finance adequately).

<sup>45</sup> *See, e.g.*, Southern Communications Systems, Inc., Request for Limited Rule Waiver to Comply with PCS Installment Payment for C Block License in the Cleveland, TN BTA, *Memorandum Opinion and Order*, 15 FCC Rcd 25,103, 25,110-11 ¶ 15 (2000) (“*Southern MO&O*”), *further recon. denied*, *Second Memorandum Opinion and Order*, 16 FCC Rcd 18,357 (2001) (“*Southern Second MO&O*”); Licenses of 21st Century Telesis, Inc. for Facilities in the Broadband Personal Communications Services, *Memorandum Opinion and Order*, 15 FCC Rcd 25,113, 25,117-18 ¶ 10 (2000) (“*21st Century MO&O*”), *recon. denied*, Licenses of 21st Century Telesis Joint Venture and 21st Century Bidding Corporation for Facilities in the Broadband Personal Communications Services, *Order on Reconsideration*, 16 FCC Rcd 17,257 (2001), *petition dismissed in part and denied in part*, *21st Century Telesis Joint Venture v. FCC*, 318 F.3d 192 (D.C. Cir. 2003).

<sup>46</sup> *See, e.g.*, Mountain Solutions Ltd., Inc. Emergency Petition for Waiver of Section 24.711(A)(2) of the Commission's Rules Regarding Various BTA Markets in the Broadband Personal Communications Services (PCS) C Block Auction, *Memorandum Opinion and Order*, 13 FCC Rcd 21,983, 21,994 ¶ 20 (1998) (“Neither its mandate to provide opportunities for small businesses nor its finding that small businesses have difficulty obtaining capital requires the Commission to waive payment deadlines for small businesses in this instance.”), *aff'd in part and dismissed in part*, *Mountain Solutions, Ltd., Inc., v. Federal Communications Commission*, 197 F.3d 512 (D.C. Cir. 1999); Styles Interactive, Inc. Application for Review of Denial of Petition for Reconsideration Seeking Waiver of IVDS Final Down Payment Deadline, *Memorandum Opinion and Order*, 12 FCC Rcd 17,987, 17,991-92 ¶ 7 (1997) (“The Commission has fulfilled its mandate and acted consistently with its own findings by making bidding credits and installment payment plans available to small businesses participating in the IVDS auction. Neither its mandate to provide opportunities nor its finding that small businesses have difficulty obtaining capital requires the Commission to waive payment deadlines for small businesses.”); TPS Utilicom, Inc., *Order on Reconsideration*, 18 FCC Rcd 2516, 2522-23 ¶ 12 (WTB 2003) (“*TPS Utilicom Order on Reconsideration*”).

Commission's rules reduces the incentive for bidders to make bids they cannot pay and increases opportunities for other bidders to win licenses. Thus, strict enforcement of the automatic cancellation rule is essential to a fair and efficient licensing process for all participants in Commission auctions, including both those that win licenses and those that do not, which in turn promotes economic opportunity, competition in the marketplace, and the rapid deployment of services for the benefit of the public.<sup>47</sup>

14. We are also not persuaded by Satellite Signals' assertion that it is the entity that values the Licenses most highly. The Commission's rules presume that the entity that bids the most for a license in an auction is the entity that places the highest value on the use of the spectrum, and such entities are presumed to be those best able to put the licenses to their most efficient and effective use for the benefit of the public. However, when licensees that are paying winning bids in installments fail to pay the principal and related interest 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.<sup>48</sup> Such circumstances raise the prospect that the defaulting licensee outbid others regardless of, or without reasonable consideration for, its ability to pay. Satellite Signals' own account of its failure to make timely installments on the Licenses indeed suggests that it went into the auction knowing that it would have difficulty paying for the Licenses and that it outbid other participants in the auction without sufficient regard to its ability to pay the amounts it bid. Satellite Signals repeatedly states in its petitions that it was unable to make timely installment payments because it was "forced to participate" in Auction No. 6 and bidding for the Licenses went higher than it expected.<sup>49</sup> We need not determine, however, whether Satellite Signals bid irresponsibly in Auction No. 6, because in any event it was unable to pay its bids due to a lack of funds.<sup>50</sup> Parties demonstrate that they value licenses more highly than others by paying the amounts they bid. Given its inability to pay the amounts it bid, Satellite Signals' arguments regarding its

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<sup>47</sup> See, e.g., *21<sup>st</sup> Century MO&O*, 15 FCC Rcd at 25,123-24 ¶ 22. See also *Mountain Solutions, Ltd., Inc. v. FCC*, 197 F.3d at 518. ("Having established a more lenient payment structure for designated entities, which by definition usually faced problems of accessing financial resources, the Commission could reasonably focus on the importance of meeting payment deadlines to deter such entities from abusing the lenient structure by "shop [ping]" a winning bid in order to obtain financing for a payment. The Commission also could reasonably rely on strict enforcement of the deadlines to provide an 'early warning' that a winning bidder unable to comply with the payment deadlines may be financially unable to meet its obligation to provide service to the public.") (citations omitted).

<sup>48</sup> See, e.g., *21<sup>st</sup> Century MO&O*, 15 FCC Rcd at 25,123-24 ¶ 22.

<sup>49</sup> See Burlington Petition at i, Rutland Petition at i ("Petitioner has suffered financial stress as a result of the MDS auction..."); Burlington Petition at 1, Rutland Petition at 1 ("[D]ue to the financial stress placed on it as a result of the MDS auction, Satellite Signals has missed payments..."); Burlington Petition at 2-3, Rutland Petition at 2-3 ("Despite the financial hardship it would cause, Satellite Signals put together the necessary funds to be named an eligible bidder..."); Burlington Petition at 3, Rutland Petition at 3 ("[U]nexpected events during the MDS auction caused both BTA prices to be driven higher than expected."); Burlington Petition at 7, Rutland Petition at 7 ("Having been forced into an auction in which it had to participate to protect its operating system, Satellite Signals now finds itself facing bankruptcy."); Burlington Petition at 8-9, Rutland Petition at 8-9 ("[T]he MDS auction placed it in such dire financial straights [sic] that it was compelled to accept an offer to purchase its assets in both the Rutland and Burlington markets in order to fulfill its financial obligations."); Burlington Petition at 10-11, Rutland Petition at 10-11 ("... Satellite Signals has been placed in dire financial straits by its participation in the MDS auction.").

<sup>50</sup> See *BDPCS, Inc.*, BTA Nos. B008, B036, B055, B089, B110, B133, B149, B261, B298, B331, B347, B358, B391, B395, B407, B413, and B447, Frequency Block C, *Memorandum Opinion and Order*, 15 FCC Rcd 17,590, 17,607-08 ¶ 31 (2000) ("*BDPCS MO&O*") (emphasizing that defaulting licensee's motivation in not withdrawing from auction was not relevant to decision regarding default payment because rules do not require finding of "bad faith" as a prerequisite to imposition of full default payment).

past service, its acquisition of the Licenses to expand its service, its payment history,<sup>51</sup> its efforts to obtain guidance from Commission staff regarding its payment obligations,<sup>52</sup> and its failed attempts to enter into asset purchase agreements that would ensure the payment of its bids by third parties all fail to demonstrate that it is the party best able to put the spectrum to efficient and effective use.

15. Thus, Satellite Signals has presented no facts to support a conclusion that the purposes of the Commission's installment payment rules would be undermined by their enforcement in this case. These rules provide licensees with a substantial amount of time in which to pursue private market solutions to financial problems.<sup>53</sup> To allow Satellite Signals additional time to secure financing to meet its payment obligations would only serve to undermine the purposes of the Commission's installment payment rules. A grant of its waiver request would undermine the integrity of the auction process and increase the likelihood that winning bidders in the future will not be the parties that can put licenses to their highest use, but will be the parties that are the most optimistic regarding their chances of obtaining post-auction financing or post-auction relief similar to the relief requested by Satellite Signals.<sup>54</sup>

16. Furthermore, we disagree with Satellite Signals' argument that strict application of the installment payment rules in this case would not serve the public interest. According to Satellite Signals, this is so because the cancellation of the Licenses would deprive the communities in question of competitive services and cause Satellite Signals' contemplated license assignment transaction to fail, "thus subjecting the [Licenses] to the continued uncertainties inherent in the current marketplace."<sup>55</sup> Satellite Signals asserts that the Commission might take months or years to auction new licenses for the same spectrum, with no guarantee of receiving bids comparable to those of Satellite Signals.<sup>56</sup> Satellite Signals further contends

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<sup>51</sup> By its own accounting, Satellite Signals made timely payments for less than three years of its ten-year installment payment term. Satellite Signals states, "Following the auction, Satellite Signals made payments to the Commission for more than two years." Burlington Supplemental Petition at 3; Rutland Supplemental Petition at 3. *See also 21<sup>st</sup> Century MO&O*, 15 FCC Rcd at 25,127 ¶ 28 ("The fact that Petitioner had previously been complying with the rules and paying towards its debt does not excuse it from making all of its installment payments on a timely basis"); Duluth PCS, Inc., and St. Joseph PCS, Inc. Request for Partial Waiver of Section 1.2110(g) of the Commission's Rules, *Order*, 19 FCC Rcd 7137, 7140 ¶ 7 (WTB/ASAD 2004) ("*Duluth PCS Order*") (declining to grant waiver of installment payment rules where licensee owed nearly 75 percent of winning bids); 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 14,695, 14701 ¶ 16 (WTB/AIAD 2003), *recon. pending* ("*GLH Order*") (rejecting argument that past payments on licenses render license cancellation inequitable where most of winning bids remain unpaid).

<sup>52</sup> It is every winning bidder's responsibility to keep track of the correct amounts and due dates of its installment payments. *See, e.g., Southern MO&O*, 15 FCC Rcd at 25,107-08 ¶ 10 ("The inability of a licensee to obtain up to the minute information from the Commission regarding the processing of payments does not relieve a licensee of the responsibility to manage its own financial records.").

<sup>53</sup> *Part 1 Third Report and Order*, 13 FCC Rcd at 439-40 ¶ 110 (discussing consistency of rules with standard commercial practice); Letter to Mr. John Jung, Jung on Jung, from Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 18 FCC Rcd 14,427, 14,430 (2003) ("*Jung Letter*"); 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) ("*U.S. Telemetry Letter*").

<sup>54</sup> *TPS Utilicom Order on Reconsideration*, 18 FCC Rcd at 2523-24 ¶ 13.

<sup>55</sup> Burlington Petition at 8-9; Burlington Supplemental Petition at 4-5; Rutland Petition at 9; Rutland Supplemental Petition at 4-5.

<sup>56</sup> Burlington Petition at 9; Rutland Petition at 9.

that a waiver of the automatic cancellation rule and reinstatement of the Licenses will enable it to consummate an asset purchase agreement that will result in the spectrum being put to use in rural areas.<sup>57</sup>

17. The Commission has found that enforcing its installment payment rules serves the public interest better than relying on unsubstantiated speculation that a party that has defaulted might provide service sooner than a future auction winner.<sup>58</sup> Even where a licensee was providing service at the time of its waiver request, such service did not excuse the licensee from meeting its installment payment deadlines.<sup>59</sup> Furthermore, neither an asserted intent to provide service to rural areas nor actual service to rural areas warrants a waiver of the Commission's competitive bidding payment rules.<sup>60</sup> Maintaining the integrity of the auctions process benefits all applicants, including those that intend to serve rural areas. Moreover, the Commission's competitive bidding process assigns licenses pursuant to much broader public interest objectives than simply recovering the value of the licenses.<sup>61</sup> We therefore find that neither Satellite Signals' past service nor any service its intended assignee might provide warrants a waiver of the Commission's installment payment rules.

18. We also reject Satellite Signals' contention that the circumstances of this case are unique. There is nothing unusual about Satellite Signals' operation of a wireless cable system prior to its participation in Auction No. 6 or the steps it took to remedy its inability to pay for the Licenses. Satellite Signals has repeatedly stated that it was unable to meet its payment obligations because of financial stress caused by its participation in Auction No. 6. Such financial difficulties do not constitute unique circumstances sufficient to justify waiver of the Commission's late payment rules.<sup>62</sup> The delay of Satellite Signals' contemplated license assignment due to the potential buyer's financial difficulties and its representation that this assignment would provide Satellite Signals with the funds to pay its remaining

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<sup>57</sup> Burlington Petition at 8-9; Burlington Supplemental Petition at 5; Rutland Petition at 9; Rutland Supplemental Petition at 5.

<sup>58</sup> See Burlington Supplemental Petition at 5; Rutland Supplemental Petition at 5. See also *Southern Second MO&O*, 16 FCC Rcd at 18,360-61 ¶ 9; *21<sup>st</sup> Century MO&O*, 15 FCC Rcd at 25126-27 ¶¶ 28-29.

<sup>59</sup> See *Duluth PCS Order*, 19 FCC Rcd at 7141-42 ¶¶ 8-9.

<sup>60</sup> See, e.g., *id.* at 7141-42 ¶¶ 8-9, 11 (denying waiver of installment payment deadlines based on licensee's service to rural areas and tribal lands); *TPS Utilicom Order on Reconsideration*, 18 FCC Rcd at 2522 ¶ 12 (asserted intent to provide service to Native Americans does not excuse defaulting party from complying with the Commission's competitive bidding rules); *Application of AirCom Communications Consultants, Inc., Order*, 16 FCC Rcd 17,685, 17,690 ¶ 13 (WTB/PSPWD 2001) (intent to serve Native Americans does not outweigh public interest in consistent enforcement of rules).

<sup>61</sup> *GLH Order*, 18 FCC Rcd at 14,701 ¶ 16. See also Letter to James K. Davis, Vice President/General Manager, Vero Beach Broadcasting, LLC, from Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, 20 FCC Rcd 19,346 (2005) (denying request for waiver of auction application deadline and finding that any public benefit to be derived from adding an additional auction participant would be far outweighed by the public benefit in fair and predictable application of auction rules, including enforcement of deadlines).

<sup>62</sup> See, e.g., *Southern MO&O*, 15 FCC Rcd at 25,107, ¶ 10 (failure to appropriately manage business arrangements is not unique circumstance justifying waiver of the automatic cancellation rule); *Jung Letter*, 18 FCC Rcd at 14,430-31 (contention that downturn in economic conditions and lack of lender participation decreased ability to fund system and make installment payments is not a unique circumstance justifying waiver of the payment rules); *U.S. Telemetry Letter*, 17 FCC Rcd at 6447 (claim that decline in financial markets decreased ability to fund system and make installment payments is not unique circumstance justifying waiver of payment rules and licensee is responsible for consequences of its business decisions).

obligation are also unremarkable.<sup>63</sup> The Commission has repeatedly held that “the existence of a potential assignee does not negate the licensee’s failure to comply with the Commission’s rules.”<sup>64</sup> It has also previously held that “the Commission cannot take into account the private business arrangements that an applicant has made to finance its successful bid”<sup>65</sup> and that an unanticipated lack of financing is not a special circumstance warranting a deviation from the Commission’s payment rules.<sup>66</sup> In sum, Satellite Signals has not presented unique or unusual facts that would support the grant of a waiver.

## B. Claim of Constructive Waiver

19. In its 2004 supplemental petitions, Satellite Signals contends that the Commission has constructively waived the installment payment deadlines for the Licenses by accepting installment payments after expiration of the 180 days allowed under the rules.<sup>67</sup> According to Satellite Signals, a constructive waiver occurred when the Commission accepted payments in April 1999, which was “well after automatic cancellation should have been deemed to have occurred.”<sup>68</sup>

20. Satellite Signals’ arguments are unpersuasive. When a license automatically cancels, the former licensee remains obligated for the full amount of the debt. Accordingly, mere acceptance of a payment, by itself, does not constitute a constructive waiver of the automatic cancellation rule,<sup>69</sup> nor does it revive an automatically canceled license.<sup>70</sup> Furthermore, contrary to Satellite Signals’ assertions,<sup>71</sup>

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<sup>63</sup> Burlington Petition at 8-9, 10-11; Rutland Petition at 8-9, 11.

<sup>64</sup> See *Duluth PCS Order*, 19 FCC Rcd at 7142 ¶ 10 (declining to grant waiver of installment payment rules on basis of funds expected from pending loan application at an “advanced and active processing stage”); Letter to J. Curtis Henderson, Senior Vice President and General Counsel, Nucentrix Spectrum Resources, Inc., from Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 17 FCC Rcd 559, 561 (2002) (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); Letter to Russell H. Fox, Esq., and Russ Taylor, Esq., Counsel for Capital Two-Way Communications, Inc., from Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 16 FCC Rcd 11,786, 11,788 (declining to grant a waiver of the installment payment rules while the licensee was in negotiations to assign its license to a third party).

<sup>65</sup> See, e.g., *BDPCS MO&O*, 15 FCC Rcd at 17,606-07 ¶ 30.

<sup>66</sup> See, e.g., *id.*; Requests for Extension of the Commission’s Initial Non-Delinquency Period for C and F Block Installment Payments, *Order*, 13 FCC Rcd 22,071, 22,072, ¶ 4 (1998) (“The challenge of raising capital to finance ... licenses exists in varying degrees for all licensees and does not constitute ‘unique facts and circumstances.’”), *petitions for recon. denied*, 14 FCC Rcd 6080 (1999), *aff’d.*, *SouthEast Telephone v. FCC*, No.99-1164, 1999 WL 1215855 (D.C. Cir. Nov. 24, 1999) (unpublished decision).

<sup>67</sup> Burlington Supplemental Petition at 5-7; Rutland Supplemental Petition at 5-7.

<sup>68</sup> Burlington Supplemental Petition at 6; Rutland Supplemental Petition at 6.

<sup>69</sup> Lakeland PCS LLC and Cricket Licensee (Lakeland) Inc. for Assignment of PCS License for Station KNLG741, *Second Order on Reconsideration*, 15 FCC Rcd 23,733, 23,735 n. 11 (WTB/CWD 2000) (“*Lakeland*”).

<sup>70</sup> *Id.* at 23,735 ¶ 4.

<sup>71</sup> Burlington Supplemental Petition at 7; Rutland Supplemental Petition at 7.

neither the timing of the Commission's notice to a former licensee of its default and the acceleration of its debt,<sup>72</sup> nor the pendency of a waiver request, has any effect on the automatic cancellation of a license.

21. We disagree with Satellite Signals' contention that the circumstances in this case are consistent with those of previous cases in which it was determined that a constructive waiver of installment payment deadlines occurred as a result of administrative oversight.<sup>73</sup> In *Lakeland*, the licensee missed one installment payment deadline and thereafter timely made all of its installment payments after receiving payment notices from the Commission.<sup>74</sup> In contrast, Satellite Signals missed numerous deadlines and made no payments after April 1999. Moreover, in the instant case the Commission did not send payment notices and did not act in any other way that could reasonably be construed as waiving the licensee's late payment deadlines.<sup>75</sup>

22. In *Lancaster*, *TE-MCG*, and *Cordell*, the Wireless Telecommunications Bureau ("Bureau") addressed situations involving the Commission's rules that were effective prior to March 16, 1998, under which a licensee whose installment payment was more than 90 days past due was in default unless the licensee properly filed a grace period request.<sup>76</sup> In these cases the Bureau granted partial waivers of certain installment payment deadlines, i.e., it waived the deadlines on condition that the licensees pay late fees, where the licensees had made payments more than 90 days late and filed late grace period requests and the Commission had accepted the payments. The instant case involves different rules, which give licensees more time to submit installment payments before licenses cancel and more certainty regarding both their obligations and the consequences of failing to meet these obligations. Satellite Signals' reliance on the partial waivers granted in *Lancaster*, *TE-MCG*, and *Cordell* is therefore misplaced.

### C. Claim Regarding Bankruptcy Law

23. Citing the Supreme Court's decision in *Federal Communications Commission v. NextWave Personal Communications Inc.*, 537 U.S. 293 (2003) ("*NextWave*"), Satellite Signals argues that bankruptcy law prohibits the automatic cancellation of the Licenses because its 1997 asset purchase agreement with WTCI was still in effect when the latter declared bankruptcy.<sup>77</sup> Satellite Signals contends that the asset purchase agreement gave WTCI an ownership interest in the Licenses that bars their cancellation.<sup>78</sup>

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<sup>72</sup> The Commission's Chief Financial Officer sent a letter to Satellite Signals on August 8, 2003, notifying it that it had defaulted on its loan obligations and that these obligations had been accelerated. Letter to Satellite Signals of New England from Mark Reger, Chief Financial Officer, Federal Communications Commission, dated August 8, 2003.

<sup>73</sup> Burlington Supplemental Petition at 6-7; Rutland Supplemental Petition at 6-7 (citing *Lakeland*; Letter to Meredith S. Senter, Jr., Esq., Counsel for Cordell Engineering, Inc., from Amy J. Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 14 FCC Rcd. 5003 (1999) ("*Cordell*"); Letter to Lloyd W. Coward, Esq., Counsel for TE-MCG Consortium, from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, 14 FCC Rcd 2173 (1999) ("*TE-MCG*"); and Letter to Thomas Gutierrez, Esq., Counsel for Lancaster Communications, Inc., from Daniel B. Phythyon, Chief, Wireless Telecommunications Bureau, 1998 WL 709412 (1999) ("*Lancaster*").

<sup>74</sup> *Lakeland*, 15 FCC Rcd at 23,734.

<sup>75</sup> See *Southern Second MO&O*, 16 FCC Rcd at 18,360 ¶ 8.

<sup>76</sup> 47 C.F.R. § 1.2110(e)(4)(ii) and (iii) (1996).

<sup>77</sup> Burlington Supplemental Petition at 7-8; Rutland Supplemental Petition at 7-8.

<sup>78</sup> Burlington Supplemental Petition at 7; Rutland Supplemental Petition at 7.

24. We find no merit in Satellite Signals' reliance on *NextWave*, which involved, unlike the instant case, a licensee already in bankruptcy when the default occurred. Only in cases where the licensee is under the protection of Chapter 11 of the U.S. Bankruptcy Code at the time it defaulted will the Commission's automatic cancellation rule be ineffective.<sup>79</sup> As noted above, Satellite Signals defaulted on the Burlington license on September 29, 1998, and on the Rutland license on November 28, 1998.<sup>80</sup> Satellite Signals was the licensee at the time of these defaults and was not in bankruptcy. WTCI was not the licensee at the time of these defaults and indeed, under Section 310(d) of the Communications Act, could not have been the licensee because the Commission had not approved an assignment of the Licenses to WTCI.<sup>81</sup> Moreover, even if WTCI had been the licensee at the time of default, which it was not, it did not enter bankruptcy until 2000, well after the Licenses had canceled.<sup>82</sup>

25. Satellite Signals' argument that WTCI had an interest in the Licenses at the time it entered bankruptcy is also baseless. As explained above, the Licenses canceled in 1998.<sup>83</sup> Notwithstanding any interest it may have had in the Licenses prior to their cancellation,<sup>84</sup> WTCI could not have had an interest in them when it entered bankruptcy in 2000. We therefore need not consider whether, if WTCI had had an interest in the Licenses at the time of its bankruptcy, such interest would have been sufficient to preclude automatic cancellation of the Licenses.

#### D. Request for Reinstatement of the Licenses

26. Satellite Signals seeks reinstatement of the Licenses pursuant to Section 21.44(b) of the Commission's rules.<sup>85</sup> Section 21.44(b), which, as noted above, has been superseded by Section 1.955 of

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(...continued from previous page)

<sup>79</sup> Since the *NextWave* decision, the Bureau has found that the U.S. Bankruptcy Code rendered the Commission's automatic cancellation rule ineffective only in such cases. See *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 (WTB 2003); *Airadigm Communications, Inc.*, *Order*, 18 FCC Rcd 16,296 (WTB 2003), *recon. dismissed*, *Airadigm Communications, Inc.*, *Order on Reconsideration*, 21 FCC Rcd 3893 (WTB 2006). See also *GLH Order*, 18 FCC Rcd at 14,697 (finding that licensee's statement that absent waiver of installment payment rules it will seek relief in bankruptcy court has no effect on consideration of waiver request).

<sup>80</sup> See *supra* paragraph 7.

<sup>81</sup> See 47 U.S.C. § 310(d) (prohibiting the transfer or assignment of licenses except upon a finding by the Commission that the public interest, convenience, and necessity will be served thereby).

<sup>82</sup> Burlington Supplemental Petition at 7; Rutland Supplemental Petition at 7. See *In re Personal Communications, Network, Inc.*, 249 B.R. 233, 237 (Bankr.E.D.N.Y. 2000) ("the Licenses having cancelled prepetition, [the bankrupt] brought no ownership interests in respect of the Licenses to the bankruptcy estate[.]")

<sup>83</sup> See *supra* paragraphs 7 and 24.

<sup>84</sup> Satellite Signals indicates that "there was a great deal of civil litigation on the rights that [the 1997 asset purchase] agreement afforded both parties," that the parties never resolved their dispute regarding the agreement, and instead decided to enter a new agreement. Burlington Supplemental Petition at 8 n.8; Rutland Supplemental Petition at 8 n.8. This account does not enable us to determine what interest WTCI had in the Licenses prior to their cancellation, but such a determination is in any event not material to our analysis.

<sup>85</sup> Burlington Petition at 9-11; Rutland Petition at 10-11.

the Commission's rules,<sup>86</sup> provided that a license forfeited for failure to timely file a certification of completion of construction or renewal application, or for the voluntary removal or alteration of facilities so as to render a station nonoperational, may be reinstated under certain conditions.<sup>87</sup>

27. Satellite Signals' reliance on Section 21.44(b) is misplaced. By its terms this rule applies only to licenses forfeited for failure to timely file a certification of completion of construction or renewal application, or the voluntary removal or alteration of facilities so as to render a station nonoperational; it does not apply to situations in which automatic license cancellation occurred because of a licensee's failure to make timely installment payments. Furthermore, for reasons discussed above, we find unpersuasive Satellite Signals' argument that reinstatement of the Licenses would be in the public interest because it is committed to providing service to rural communities.<sup>88</sup>

#### **E. Issues Regarding Automatic Nature of License Cancellation and Notice of Default**

28. Finally, we address Satellite Signals' argument, presented in its 1999 petitions, that the Commission was required to "take an affirmative action" in order for it to be held in default and the Licenses to be canceled and that the Commission failed to take such action in this case.<sup>89</sup> This contention is without merit, as is Satellite Signals' assertion in its 1999 petitions that it received no notice that it was in default on the Licenses.<sup>90</sup> It is well established that when a licensee fails to pay an installment payment on a license in accordance with the Commission's rules, it has defaulted on that license and the license cancels automatically without action by the Commission.<sup>91</sup> Moreover, Satellite Signals had notice of its payment obligations, which were included in the installment plan documents it signed. Satellite Signals also had notice of the consequence of failing to pay an installment payment within 180 days of the due date from Commission orders.<sup>92</sup> Thus, Satellite Signals had full notice that the grant of the Licenses was conditioned upon its full and timely performance of its payment obligations and compliance with the Commission's installment payment rules.

29. Satellite Signals makes much of asserted errors in the Commission's records and what it describes as the "extraordinary steps" it took to "obtain clarification of its outstanding obligations and receive credit for its payment submissions."<sup>93</sup> However, as noted above, it is every licensee's

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<sup>86</sup> See *supra* note 34. Section 1.955 does not provide for the reinstatement of forfeited licenses, as did Section 21.44(b). However, this change in the Commission's rules is not relevant to our analysis, because we find that Section 21.44(b) does not entitle Satellite Signals to reinstatement of the Licenses.

<sup>87</sup> 47 C.F.R. § 21.44(b) (1998).

<sup>88</sup> See *supra* paragraph 17.

<sup>89</sup> Burlington Petition at 6; Rutland Petition at 6-7.

<sup>90</sup> Burlington Petition at 10; Rutland Petition at 10.

<sup>91</sup> See, e.g., *Part 1 Third Report and Order*, 13 FCC Rcd at 437, 446, ¶¶ 107, 122 ("[Upon default on an installment payment, a license will automatically cancel without further action by the Commission. . . ."]; *Public Notice*, "Wireless Telecommunications Bureau Provides Guidance on Grace Period and Installment Payment Rules," 13 FCC Rcd 18,213 (WTB 1998) ("*1998 Installment Payment Public Notice*").

<sup>92</sup> See, e.g., *Part 1 Third Report and Order*, 13 FCC Rcd at 437, 446, ¶¶ 107, 122. See also *1998 Installment Payment Public Notice*.

<sup>93</sup> Burlington Petition at 4-5; Burlington Supplemental Petition at 3-4; Rutland Petition at 3-6; Rutland Supplemental Petition at 3-4.

responsibility to keep track of the correct amounts and due dates of its installment payments.<sup>94</sup> Moreover, Satellite Signals does not claim that its failure to timely pay its installment payments was caused by confusion regarding the amounts owed and acknowledges that its failure to pay was due to its lack of funds. Indeed, Satellite Signals states that it “stresses the fact that payments were missed not because of a faulty accounting system but due to lack of funds. . . .”<sup>95</sup> In an analogous case, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the Commission’s denial of a defaulting licensee’s request for an extension of an installment payment deadline and request for waiver of the automatic cancellation rule, stating:

. . . 21st Century may not “turn a clerical error into a windfall of ‘rights it would not otherwise enjoy.’” 21st Century’s first two post-default-cancellation letters indicate that the reason 21st Century missed the payment deadline was because it was unable to arrange for timely financing; 21st Century sought a waiver of the automatic cancellation rule not because of confusion about the amount it owed but because it was not in possession of sufficient funds to make timely payment. Furthermore, even if it was uncertain about the precise dollar amount, a prudent licensee would have attempted to make “a reasonable effort to comply.” As the Commission states in its brief, “discrepancies in payment notices, even had they produced some genuine uncertainty, would hardly have justified 21st Century’s decision to make no payment at all.”<sup>96</sup>

Satellite Signals was unable to fulfill its payment obligations for the Licenses because it did not have the necessary funds. Reinstatement of the Licenses is therefore unwarranted.

#### IV. CONCLUSION

30. Satellite Signals states that its “only failure has been in not meeting the financial obligations imposed on it by the [BRS] auction.”<sup>97</sup> Satellite Signals itself established its financial obligations on the Licenses by choosing to outbid other bidders. Moreover, licensees’ payment of their financial obligations is a critical component of the Commission’s auction process. Satellite Signals is not absolved of these obligations because the business decisions it made, including its decision to enter into assignment agreements with particular parties, did not yield the results it desired. Satellite Signals has not satisfied the standard for a waiver of the Commission’s installment payment rules, nor has it demonstrated that the automatic cancellation of the Licenses was ineffective or that the Licenses should be reinstated. Accordingly, Satellite Signals’ entire outstanding debt obligation is subject to debt collection procedures.

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<sup>94</sup> See *supra* note 52.

<sup>95</sup> Burlington Petition at 11; Rutland Petition at 11.

<sup>96</sup> *21st Century Telesis Joint Venture v. FCC*, 318 F.3d at 202 (citations omitted).

<sup>97</sup> Burlington Petition at 11; Rutland Petition 11.

**V. ORDERING CLAUSE**

31. 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) and 309(j), the Petitions for Reinstatement and Waiver Requests filed by Satellite Signals of New England, Inc., on April 26, 1999, and April 21, 2004, are DENIED. 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

Fred B. Campbell, Jr.  
Chief, Wireless Telecommunications Bureau