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

In the Matter of	)	
	)	
LANCASTER COMMUNICATIONS, INC.	)	
	)	
Request for Waiver of Installment Payment Rules for Auction No. 7 and Reinstatement of Licenses	)	
	)	File No. 0001568625
Application for Assignment of 900 MHz Specialized Mobile Radio Licenses	)	
	)	

ORDER

Adopted: February 7, 2007 **Released: February 7, 2007**

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we deny (1) a request for waiver of the Commission's installment payment rules;[1] (2) a petition for reconsideration of the dismissal of an Assignment Application;[2] and (3) a motion for stay of that dismissal,[3] all filed on behalf of Lancaster Communications, Inc. ("Lancaster") regarding installment payments for twenty-two 900 MHz Specialized Mobile Radio ("SMR") licenses ("Licenses").[4] Having won the Licenses in Auction No. 7, Lancaster subsequently defaulted on its installment payments for the Licenses, which resulted in their automatic cancellation pursuant to section 1.2110(g)(4) of the Commission's rules.[5]

2. Lancaster seeks a waiver of 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, or if they canceled, they should be reinstated. Lancaster also asks the Commission to reconsider the dismissal an application to assign twenty of the Licenses to Choice Phone LLC, and seeks a stay of the dismissal.[6] For the reasons set forth below, we find the arguments presented on behalf of Lancaster to be without merit. Therefore, we deny the Waiver Request, affirm the dismissal of the assignment application and deny Lancaster's Petition, and dismiss the associated Motion for Stay.

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[1] Petition for Waiver – Expedited Action Requested, filed by Lancaster Communications, Inc. on May 28, 2004 ("Waiver Request").

[2] ULS File. No. 0001568625 ("Assignment Application"). Petition for Reconsideration filed by Lancaster Communications, Inc. on August 6, 2004 ("Petition").

[3] Motion for Stay filed by Lancaster Communications, Inc. on August 6, 2004 ("Motion for Stay").

[4] The call signs for the Licenses were KNNY301 through KNNY306 and KNNY310 through KNNY323.

[5] 47 C.F.R. § 1.2110(g)(4).

[6] On August 6, 2004, Lancaster also filed, with the Commission's Office of Managing Director, a motion for stay and a petition for reconsideration in response to the Commission's standard debt acceleration letters for the Licenses.

II. BACKGROUND

A. The Commission's Installment Payment Program

3. 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.[7] 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.[8] Licensees paying in installments were generally allowed to pay only interest in the early years of the license term.[9] When in 1997 the Commission discontinued the use of installment payments for future auctions,[10] it allowed entities that were already paying for licenses in installments to continue doing so.[11]

4. 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 procedures.[12] In 1997, however, the Commission liberalized its installment payment grace period rules

[7] 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.

[8] *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).

[9] *See* 47 C.F.R. §§ 1.2110(e)(3)(iii) & (iv) (1994).

[10] 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 15293, 15322 ¶ 55 *("Part 1 Reconsideration of Third Report and Order").* The last Commission auction for which installment payments were available was Auction No. 11 (broadband PCS F block), which ended on January 14, 1997.

[11] *Part 1 Third Report and Order,* 13 FCC Rcd at 436 ¶ 106.

[12] *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

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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.[13] 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.[14] 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.[15] 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.[16] 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.[17]

5. 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,[18] and that the added certainty the rules provided to licensees would increase the likelihood that licensees and potential investors would find solutions to capital problems before defaults occurred.[19] 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.[20]

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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.

[13] 47 C.F.R. § 1.2110(e)(4)(i) & (ii) (1994). Licensees were permitted to request a grace period of 90 to 180 days.

[14] 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.

[15] 47 C.F.R. § 1.2110(f)(4)(i) (1998); *Part 1 Third Report and Order,* 13 FCC Rcd at 436 ¶ 106.

[16] 47 C.F.R. § 1.2110(f)(4)(ii) (1998); *Part 1 Third Report and Order,* 13 FCC Rcd at 436 ¶ 106.

[17] 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. *Part 1 Reconsideration of Third Report and Order*, 15 FCC Rcd at 15310 ¶ 28. 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.

[18] *Part 1 Third Report and Order,* 13 FCC Rcd at 439-40 ¶ 110.

[19] *Id.* at 443 ¶ 116.

[20] *Id.* at 439-40 ¶¶ 109-10; *Part 1 Reconsideration of Third Report and Order*, 15 FCC Rcd at 15304-05 ¶ 19.

B. Lancaster Communications, Inc.

6. Lancaster describes itself as a very small business "engaged in the provision of SMR services to the public."[21] According to Lancaster, it used the Licenses to build and operate 900 MHz SMR systems.[22] As a small business, Lancaster was eligible to participate in the Commission's installment payment plan available for qualifying entities that won licenses in Auction No. 7.[23] In keeping with the Commission's rules, grant of the Licenses was conditioned upon Lancaster's full and timely performance of its payment obligations.[24] Lancaster was scheduled to make interest-only payments for the first five years of the ten-year license term. Payments of interest and principal were to be amortized over the remaining five years.[25] Lancaster 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, Lancaster became subject to those rules.[26]

7. On January 6, 2004, Lancaster filed the Assignment Application to assign twenty of the Licenses to Choice Phone LLC.[27] Shortly thereafter, problems arose with Lancaster's installment payments for the Licenses. Lancaster failed to pay, for two of the Licenses,[28] the entire installment payment that was due on September 1, 2003, along with all of the required late fees, before the expiration of the two quarters that was permitted under the rules (i.e., by March 1, 2004). Those two licenses automatically canceled on March 2, 2004,[29] and Lancaster became subject to debt collection procedures for those two licenses.[30]

8. Lancaster owed its November 30, 2003 payments for the remaining twenty Licenses, along with the applicable late fees, before the expiration of the two quarters that was permitted under the rules (i.e., May 31, 2004). On May 28, 2004, three days prior to this deadline, Lancaster filed its Waiver Request seeking additional time to "allow for its installment payments for [all 22 Licenses] through July 31, 2004."[31] Lancaster suggests that it should be granted "flexibility concerning its imminent payment

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[21] Petition at 2.

[22] *Id*. According to Lancaster, it notified the Commission that it had met the "substantial service" build-out requirement for the Licenses. *Id*.

[23] 47 C.F.R. § 90.812(a) (1996).

[24] 47 C.F.R. §§ 1.2110(e)(4) (1996) and 90.812(a) (1996). ("An MTA license issued to an eligible small business that elects installment payments will be conditioned on the full and timely performance of the license holder's quarterly payments."). *See also 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).

[25] 47 C.F.R. § 90.812(a)(1) (1996).

[26] *See Part 1 Third Report and Order,* 13 FCC Rcd at 436 ¶ 106.

[27] The Assignment Application included all the Licenses except KNNY305 and KNNY306.

[28] The call signs for these two licenses were KNNY305 and KNNY306.

[29] 47 C.F.R. § 1.2110(g)(4)(iv). Normally, licensees would have until, and including, the last day of February to pay an installment payment due at the end of August, but here both the original payment deadline and the second grace period deadline fell on a non-business day, so the deadlines were extended to the next business day.

[30] *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 15315-16 ¶ 39 (2000); 47 C.F.R. § 1.1914(a) (1998); 4 C.F.R. § 102.11 (1998).

[31] Waiver Request at 1.

deadline" because grant of a waiver would not affect the timing of any auction or the Commission's review of Lancaster's qualifications.[32] Asserting that it has already demonstrated its financial capacity to be a licensee, Lancaster argues that the public interest would be served by granting a waiver because automatic cancellation would disrupt service to its existing customers.[33] Lancaster states that, "given the imminent payment deadline and its current lack of available funds," it has no reasonable alternative but to request a waiver.[34]

9. Lancaster failed to pay the November installment payments prior to May 31, 2004.[35] As a result, the remaining twenty Licenses automatically canceled on June 1, 2004.[36] Lancaster accordingly became subject to debt collection procedures for those licenses as well.[37]

10. After the Commission dismissed the above-mentioned Assignment Application, on the basis that the Licenses had canceled, Lancaster filed the Petition seeking a reversal of that dismissal. In the Petition, Lancaster reiterates the position made in its Waiver Request that it had already established its financial capacity to be a licensee, pointing to the seven years of payment prior to its current financial distress.[38] Citing financial difficulties, Lancaster notes that it had found a prospective purchaser for its SMR systems serving Guam and the Northern Mariana Islands (presumably, although not clearly stated, the proposed assignee).[39] Lancaster further argues that the Commission had an obligation to address the Waiver Request before canceling the Licenses.[40] Lancaster further asserts that cancellation would only result in "the loss of competitive SMR services to the public in the affected Major Trading Areas, perhaps indefinitely," and suggests that the only interest served by strict enforcement of the installment payment deadline is "that of raising revenue – an objective that cannot serve as a predominant goal for the Commission's licensing activities."[41]

III. DISCUSSION

A. Request for Waiver of Installment Payment Deadlines

11. 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.[42] For the reasons

[32] *Id*. at 3-4.

[33] *Id*. at 2.

[34] *Id*.

[35] Lancaster submitted funds to the Commission in February and March 2004, but these funds were insufficient to prevent default. Lancaster submitted no further monies to the Commission after March 2004.

[36] 47 C.F.R. § 1.2110(g)(4)(iv).

[37] *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 15315-16 ¶ 39 (2000); 47 C.F.R. § 1.1914(a) (1998); 4 C.F.R. § 102.11 (1998).

[38] Petition at 5.

[39] *Id*. at 3.

[40] *Id*. at 4, citing *WAIT Radio, Morris Communications, Inc. v. FCC* (D.C. Circuit Judgment entered April 17, 2002).

[41] Petition at 6, citing 47 USC § 309(j)(7)(b).

[42] 47 C.F.R. § 1.925.

discussed below, we find that Lancaster's Waiver Request fails to meet the Commission's standard for granting a waiver, and therefore, affirm the dismissal of the Assignment Application.

12. Lancaster fails to establish that the underlying purpose of the Commission's installment payment rules would not be served by their application in this instance. Lancaster, in essence, asserts that payment deadlines closer in time to the auction are most relevant for determining an entity's commitment and qualifications.[43] Contrasting itself from the "typical 'defaulting bidder,' whose failure to pay may delay the auction process or impact the Commission's consideration of bidder qualifications,"[44] Lancaster suggests that it has already established its financial capacity, its value for the spectrum, and its capability in utilizing the spectrum.[45] As a result, Lancaster argues, the Commission should have no difficulty in waiving its installment payment deadlines late in its license terms, and states that the only interest served by strict enforcement of the Commission's payment rules is that of raising revenue.

13. The Commission's competitive bidding system was designed to serve a number of statutory purposes, including, as Lancaster acknowledges, the rapid deployment of new technologies and services to the public and the efficient and intensive use of spectrum.[46] The Commission established installment payment programs to help small entities participate in the competitive bidding process and the provision of spectrum-based services,[47] but has endeavored to ensure that entities that lack the financial capacity to pay their winning bids and operate communications systems do not undermine the rapid deployment of service and the efficient, intensive use of spectrum.[48]

14. 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.[49] Precluding

[43] Petition at 5.

[44] *Id*.

[45] *Id*.

[46] 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.").

[47] *Competitive Bidding Second Report and Order,* 9 FCC Rcd at 2388 ¶ 229.

[48] 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).

[49] *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 25103, 25110-11 ¶ 15 (2000), *further recon. denied, Second Memorandum Opinion and Order,* 16 FCC Rcd 18357 (2001); 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 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 17257 (2001), *petition dismissed in part and denied in part, 21st Century Telesis Joint Venture v. FCC*, 318 F.3d 192 (D.C. Cir. 2003).

licensees from keeping licenses when they are not able to pay their winning bids pursuant to the Commission's rules reduces the incentive for bidders to make bids they cannot pay and increases opportunities for other bidders to win licenses. In this manner, strict enforcement of installment payment deadlines preserves 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.[50] Thus, contrary to Lancaster's arguments, licensees paying through installments must, throughout their license terms, continue to demonstrate their financial qualifications to be Commission licensees in order to protect the integrity of the Commission's auction and licensing process.[51]

15. We are similarly not persuaded by Lancaster's assertion that a waiver is justified because it has already demonstrated that it values the spectrum.[52] 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, as Lancaster has, the presumption that the auction assigned the license to the party that placed the highest value on the license is lost.[53]

16. In certain circumstances a party that loses this presumption may be able to show that its failure to meet a payment deadline was not due to an inability to pay and that there is no question as to whether the auction assigned the license to the party best able to put the spectrum to efficient and effective use.[54] In the this case, however, Lancaster's own characterization of its circumstances – e.g., "its current lack of available funds,"[55] "began to experience financial difficulties,"[56] "confront with financial hardship,"[57] – indicate that Lancaster missed its installment payments because it could not pay for the Licenses as promised. Accordingly, Lancaster has failed to demonstrate that it values the licenses more highly than others. Its circumstances are neither unique nor distinguishable from those of others to whom we have denied waivers of the installment payment rules. In short, an entity must demonstrate its financial qualifications to be a Commission licensee by both paying for its spectrum license and providing service to the public.

17. We are similarly unpersuaded by Lancaster's argument that it had a potential buyer for its SMR systems, which ostensibly could have made its installment payments. As described above, the installment payment rules provide licensees with a substantial amount of time in which to pursue private market solutions to financial problems.[58] Moreover, the Commission has repeatedly held that "the

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[50] *See, e.g., 21st Century MO&O*, 15 FCC Rcd at 25123-24 ¶ 22.

[51] *See, e.g.,* Leaco Rural Telephone Cooperative, Inc. Request for Waiver and Reinstatement of Broadband Radio Service Authorization for the Hobbs, New Mexico Basic Trading Area, MDB191, *Order*, 21 FCC Rcd 1182 (2006); Advanced Communications Solutions, Inc. Request for Waiver of Section 1.2110(g)(4)(iv) and Reinstatement of 900 MHz Specialized Mobile Radio Licenses, *Order,* 21 FCC Rcd 1627 (2006) *("Advanced Order")*.

[52] Petition at 5.

[53] *See, e.g., 21st Century MO&O,* 15 FCC Rcd at 25123-24 ¶ 22.

[54] *See supra* n.48.

[55] Waiver Request at 2.

[56] Petition at 3.

[57] *Id*. at 5.

[58] *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

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existence of a potential assignee does not negate the licensee's failure to comply with the Commission's rules."[59] 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"[60] and that an unanticipated lack of financing is not a special circumstance warranting a deviation from the Commission's payment rules.[61] In sum, Lancaster has not presented unique facts or circumstances that would support the grant of a waiver.

18. Furthermore, we disagree with Lancaster's arguments that strict application of the installment payment rules in this case would not serve the public interest. Lancaster argues that a denial of its waiver request would only "result in the loss of competitive SMR services to the public [in those markets] perhaps indefinitely."[62] Lancaster also asserts that the only interest served by strict enforcement in this case is that of raising revenue.[63] The Commission has found that, 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.[64] 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,[65]and maintaining the integrity of the auction and licensing process benefits all applicants. By increasing the likelihood that winning bidders will be entities that are able to pay their bids and provide service to the public, the Commission also furthers economic opportunity and competition in the marketplace.[66] Thus, the Commission's competitive bidding process assigns licenses

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Analysis Division, Wireless Telecommunications Bureau, 18 FCC Rcd 14427, 14430 (2003); 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).

[59] *See* 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, 7142 ¶ 10 (WTB/ASAD 2004) *("Duluth PCS Order")* (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 11786, 11788 (declining to grant a waiver of the installment payment rules while the licensee was in negotiations to assign its license to a third party).

[60] *See, e.g.,* 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 17590, 17606-07 ¶ 30 (2000).

[61] *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 22071, 22072, ¶ 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).

[62] Petition at 6.

[63] *Id*.

[64] *See Duluth PCS Order,* 19 FCC Rcd at 7141-42 ¶¶ 8-9.

[65] *See also Advanced Order*, 21 FCC Rcd at 1631-32, ¶ 13.

[66] *See, e.g., 21st Century MO&O*, 15 FCC Rcd at 25123-24 ¶ 22.

pursuant to much broader public interest objectives than simply recovering the value of the licenses.[67] Based on Lancaster's missed payments and inability to pay for the Licenses, we conclude that the public interest is best served by enforcing the installment payment deadline.

19. Finally, we disagree with Lancaster's argument that the Commission was required to act on its waiver request before the Licenses automatically canceled. We first note that two of the Licenses had already automatically canceled before Lancaster filed its waiver request, and that the request was filed only three days before the end of the second grace period for the remaining Licenses. We also note that the Commission is not obligated to act within any particular timeframe on requests for installment payment grace periods that exceed the automatic grace period provided for in its rules.[68] The Commission established an automatic grace period for licensees paying in installments in part because such a grace period would ease the burden on the Commission of considering individual grace period requests.[69] To require that the Commission act on every individual grace period request within the automatic grace period – especially one like Lancaster's, filed after some licenses canceled and a mere three days before the others canceled – would defeat one of the purposes of making grace periods automatic. Moreover, the Commission adopted these provisions for "extraordinary circumstances – instances of financial distress – for which temporary relief is appropriate."[70] The Commission has recognized that although there is considerable flexibility in its payment rules, "it is inevitable that some licensees will seek more time to pay," and, in this respect, the Commission's rules cannot accommodate every licensee's business plans.[71]

B. Petition for Reconsideration and Motion for Stay

20. Having addressed the arguments submitted by Lancaster in support of its Petition in our analysis of its arguments for a waiver of the Commission's installment payment rules, we find that they similarly lack merit as the basis for reconsideration of the dismissal of the pending Assignment

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[67] 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, 14701 ¶ 16 (WTB/AIAD 2003), *recon. pending*. *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 19346 (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).

[68] *See* TV Communications Request for Waiver of Installment Payment Rules for Auction No. 6 and Reinstatement of Licenses, *Order*, DA 07-315, ¶ 18.

[69] *Part 1 Third Report and Order*, 13 FCC Rcd at 440, ¶ 110.

[70] *Part 1 Reconsideration of Third Report and Order,* 15 FCC Rcd at 15304-05, ¶ 19; *Part 1 Third Report and Order,* 13 FCC Rcd at 440, ¶ 110.

[71] Amendment of the Commission's Rules Regarding Installment Financing for Personal Communications Services ("PCS") Licensees, *Order on Reconsideration of the Second Report and Order,* 13 FCC Rcd 8345, 8354 at ¶ 24 (1997) ("No matter what deadline we establish, it is inevitable that some licensees will seek more time to pay."); *see also* Southern Communications Systems, Inc. Request for Limited Rule Waiver to Comply with PCS Installment Payment for C Block Licenses in the Cleveland, TN BTA, *Memorandum Opinion & Order*, 15 FCC Rcd 25103, 25110 ¶ 15 (2000); Letter to Mr. Kurt Schueler, President, New England Mobile Communications, Inc., from Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 16 FCC Rcd 19355, 19357-58 (2001) (noting that the Commission's payment rules cannot accommodate every business plan).

Application. The standard for a petition for reconsideration is provided in Section 1.106 of the Commission's rules.[72] As the Commission has stated, "Reconsideration is warranted only if the petitioner cites material error of fact or law or presents new or previously unknown facts and circumstances which raise substantial or material questions of fact that were not considered and that otherwise warrant [the] review of [the] prior action."[73] Lancaster has neither cited errors nor presented new facts that meet this standard. Therefore, we deny the Petition, and dismiss the associated Motion for Stay.

IV. CONCLUSION

21. Lancaster has not satisfied the standard for a waiver of the Commission's installment payment deadlines for the Licenses. We therefore find that application of the Commission's installment payment rules in this case will serve rather than frustrate their underlying purpose, is not inequitable or unduly burdensome, and is in the public interest, and we deny Lancaster's Waiver Request. Because the Licenses canceled, we affirm the dismissal of the Assignment Application and deny Lancaster's Petition. Accordingly, Lancaster's entire outstanding debt obligation is subject to debt collection procedures.

V. ORDERING CLAUSE

22. 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 Request for Waiver filed by Lancaster Communications, Inc. on May 28, 2004, is DENIED.

23. IT IS FURTHER ORDERED that, pursuant to the authority granted in Section 4(i) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 309(j), and Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition for Reconsideration and the associated Motion for Stay filed by Lancaster Communications, Inc. on August 6, 2004, is DENIED, and the associated Motion for Stay also filed on August 6, 2004, is DISMISSED.

24. This action is taken pursuant to delegated authority granted under provision of Sections 4(i) and 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), and 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

[72] 47 C.F.R. § 1.106.

[73] Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules, *Order on Reconsideration*, 16 FCC Rcd 5022, 5028 ¶ 18 (2001) (citing 800 Data Base Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Services, *Order on Reconsideration*, 12 FCC Rcd 5188, 5202 n.84 (1997) (citing D.W.S., Inc., *Memorandum Opinion and Order*, 11 FCC Rcd 2933 ¶ 4 (1996))).