

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

In the Matter of)	
)	
Application for Consent to Assignment of PCS)	
Licenses KNLH651 and KNLH653 from)	File No. 0001941306
Northstar Technology, LLC to Banana)	
Communications, LLC)	
)	
Applications of Northstar Technology, LLC for)	
Renewal of Licenses for PCS Stations KNLH651)	File Nos. 0002985320, 0002985315
and KNLH653)	

MEMORANDUM OPINION AND ORDER

Adopted: June 9, 2008

Released: June 9, 2008

By the Managing Director and Deputy Chief, Wireless Telecommunications Bureau:

1. We have under consideration a request for waiver¹ of section 1.1910 of the Commission's rules (the "Red Light Rule")² in connection with the above-referenced application ("Application")³ proposing the assignment of Personal Communications Services ("PCS") licenses KNLH651 and KNLH653 (the "Licenses") from Northstar Technology, LLC ("Northstar") to Banana Communications, LLC ("Banana"). At issue is debt owed by Northstar to the Commission. For the reasons set forth below, we grant the Waiver Request and consent to the Application, as well as a waiver request regarding pending renewal applications for these Licenses.⁴

I. BACKGROUND

2. Northstar and Banana (together, the "Applicants" or "Parties") filed the Application on November 17, 2004. Northstar had previously acquired the Licenses from Banana pursuant to an application filed on September 6, 2001.⁵ Banana claims that the agreement between the Parties associated with the 2001 application provided that, in the event Northstar failed to make certain post-closing payments to Banana, the Parties would cooperate to seek Commission consent to assign the Licenses back

¹ Letter to Katherine M. Harris, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, from Russell H. Fox and Christopher R. Bjornson, Counsel for Banana Communications, LLC (July 24, 2006) ("Waiver Request").

² See discussion of Red Light Rule *infra* ¶ 9.

³ Application of Northstar Technology, LLC and Banana Communications, LLC for Consent to Assignment of Licenses, File No. 0001941306 (filed Nov. 17, 2004) ("Application").

⁴ Letter to Marlene H. Dortch, Secretary, FCC, from Thomas Gutierrez, Counsel for Northstar Technology, LLC (May 10, 2007) ("Northstar Renewal Waiver Request"). See also *infra* ¶ 7.

⁵ See Application of Banana Communications, LLC and Northstar Technology, LLC for Consent to Assignment of Licenses, File No. 0000557822 (filed Sept. 6, 2001 and granted Feb. 8, 2002). Northstar notified the Commission of the consummation of the transaction on February 4, 2003. The Red Light Rule took effect the following year. See *infra* note 28.

to Banana.⁶ Banana further claims that Northstar failed to make those post-closing payments,⁷ and on November 17, 2004, the Parties filed the Application that is before us. Pursuant to section 1.1910(b)(2) of the Commission's rules,⁸ the Commission sent Northstar a Notice of Withholding of Action ("Withholding Notice") on November 18, 2004, informing Northstar that it was then delinquent on debt to the Commission in the amount of \$954,105.91.⁹ The Withholding Notice further stated that if full payment or a satisfactory arrangement to pay the delinquent debt was not made within 30 days, the Application would be dismissed.

3. Despite the fact that the debt was not resolved by payment or other arrangement, the Application was inadvertently and erroneously processed, and was ultimately granted on December 16, 2004. On December 28, 2004, Banana submitted a notice of consummation of the assignment of the Licenses pursuant to the consent granted by the Commission. Because Northstar's delinquent debt remained outstanding, however, and pursuant to the Commission's Red Light Rule, the notification of consummation was not implemented. As a result, the Licenses have not been issued to Banana, and the call signs for the Licenses have remained held in the name of Northstar in Commission records.¹⁰

4. On July 8, 2005, the Bureau dismissed the Application, consistent with section 1.1910(b)(2), but inadvertently failed to provide public notice of this dismissal, so the dismissal did not become effective.¹¹ In view of this procedural anomaly, the Bureau returned the Application to pending status by letter to both parties dated July 5, 2006 (the "Staff Letter"), and gave public notice of such action on the same day.¹² The Staff Letter included the determination that, as of July 5, 2006, Northstar was delinquent on the payment of debt owed to the Commission in the amount of \$1,102,685.03 (\$992,588.00 plus accrued interest). The Staff Letter also indicated that if, within 30 days (*i.e.*, by August 4, 2006), the debt was not addressed or, in the alternative, if no satisfactory reasons were provided as to why the Red Light Rule should not apply in this case, the Application would be dismissed. Banana then filed its Waiver Request.¹³ Northstar did not respond to the Staff Letter.

⁶ Waiver Request at 2. *See also* Supplement of Banana Communications, LLC, File No. 0001941306 (filed May 10, 2007) ("Banana May 10 Supplement"), Exhibit A.

⁷ Waiver Request at 2.

⁸ 47 C.F.R. § 1.1910(b)(2).

⁹ The outstanding debt resulted from Northstar's default on installment payments for a PCS license other than one of those being assigned here. Specifically, the debt identified in the November 18, 2004 letter related to the license for PCS call sign KNLF370. Northstar acquired that license in 2001 from Third Kentucky Cellular. *See* Application of Third Kentucky Cellular and Northstar Technology, LLC for Consent to the Assignment of Licenses, File No. 0000606759 (filed Sept. 27, 2001 and granted Dec. 21, 2001). Northstar was required to make installment payments on the outstanding balance associated with the license. Because of Northstar's failure to make the requisite installment payments for KNLF370, the Commission terminated the authorization for that station. *See* ULS record for PCS call sign KNLF370.

¹⁰ Banana states that, "out of an abundance of caution," it will not begin to offer services pursuant to the Licenses until the Commission issues the Licenses to Banana. Waiver Request at 2.

¹¹ *See* Letter to Messrs. Carlos Carpenter, Harry Hudson, and Russell Fox from Katherine M. Harris, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau (July 5, 2006) ("Staff Letter"); 47 C.F.R. § 1.102(b)(1).

¹² *See* Staff Letter; Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, *De Facto* Transfer Lease Applications and Spectrum Manager Lease Notifications Action, *Public Notice*, Report No. 2566 (rel. July 5, 2006).

¹³ Banana first argues that the Red Light Rule does not apply here and thus a waiver is not required. On this basis, Banana contends that the Commission should promptly issue the Licenses to Banana. Waiver Request at 1-4. As discussed *infra*, we disagree, but do find that grant of a waiver of the Red Light Rule is appropriate in this case.

5. The Rural Utilities Services (“RUS” or “Petitioner”) filed a Petition to Deny the Application on August 4, 2006 (“Petition”), reporting that Northstar currently owes the United States Department of Agriculture (“USDA” or “USG”) nearly \$8 million in principal, interest, and fees pursuant to loans through USDA’s Rural Development Utilities Programs.¹⁴ RUS included with its Petition a copy of each of the following documents: (a) Banana-Northstar Purchase and Sale Agreement entered into on August 7, 2001, as amended (the “2001 Sale Agreement”);¹⁵ (b) the Northstar-USG Telephone Loan Agreement;¹⁶ and (c) the Mortgage between Northstar and the USG to “secure [Northstar’s] obligations to the USDA.”¹⁷ The Petition also includes a “UCC Financing Statement,” which reflects that it was filed February 19, 2002, and a “UCC Financing Statement Addendum,” which reflects that it also was filed February 19, 2002.¹⁸

6. Banana filed an Opposition to Petition to Deny on August 14, 2006 (“Opposition”), arguing that the Petition is procedurally flawed and should not be considered because: (a) it was late-filed; and (b) RUS lacks standing as a party in interest.¹⁹ Banana also contends that the Petition is substantively flawed and should be dismissed. First, Banana argues that RUS does not possess a security interest in the Licenses.²⁰ Second, Banana asserts that the dispute between USDA and Northstar is a private contractual

¹⁴ RUS administers the USDA’s Rural Development Utilities Programs, which makes loans pursuant to the Rural Electrification Act of 1936, as amended, 7 U.S.C. § 901 *et seq.* See Petition at 1.

¹⁵ Petition, Exhibit A. The three Amendments are dated, respectively, September 6, 2001, February 18, 2002, and May 28, 2002. The 2001 Sale Agreement triggered the filing on September 6, 2001 of the Application to assign the Licenses from Banana to Northstar, File No. 0000557822. See *supra* note 5.

¹⁶ Petition, Exhibit B, “Telephone Loan Contract Dated as of September 28, 2001 among Northstar Technology, LLC, United States of America and Rural Telephone Bank” (the “Loan Agreement”).

¹⁷ Petition, Exhibit C, “Mortgage, Security Agreement and Financing Statement made by and among Northstar Technology, LLC [address omitted], as mortgagor and debtor, and United States of America, Rural Utilities Service [address omitted], as mortgagee and secured party, and Rural Telephone Bank, c/o Rural Utilities Service [address omitted], as mortgagee and secured party, Dated as of September 28, 2001” (the “Mortgage”).

¹⁸ Petition, Exhibit D. The Petition (at 10 n.6) claims that Exhibit D includes a Uniform Commercial Code (“UCC”) Financing Statement that was filed on February 19, 2005, with the Secretary of State of Kentucky, but the included pages reflect a filing date of February 19, 2002. The UCC Financing Statement notes that it covers “[a]ll Collateral described in the Mortgage . . .” and names the “United States of America” as the secured party.

¹⁹ Opposition at 4-7. With respect to the issue of timeliness, Banana asserts that because the Public Notice listing the Application as accepted for filing was released on November 24, 2004, any petition to deny was required to be filed by December 10, 2004. See 47 C.F.R. § 1.948(j)(1)(iii). As to standing, Banana asserts that RUS has failed to show: (a) how it would be directly injured by grant of the Application, given that RUS is already injured by Northstar’s default on its USDA Loan; or (b) how any injury could be prevented or redressed by the Commission’s dismissal of the Application. See Opposition at 4-7. We need not resolve the issues of timeliness and standing because we do not find Petitioner’s arguments for denial of the Application to be persuasive. See, e.g., Applications of Nextel Communications, Inc. and Sprint Corporation, WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13967, 14021 n.335 (2005) (“*Sprint-Nextel*”) (citing Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp., *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21547 n.196 (2004)). However, even if RUS lacks standing and/or did not file its Petition in a timely manner, we have discretion under 47 C.F.R. § 1.41 to consider the Petition as an informal request for Commission action (sometimes referred to as an “informal objection”). See, e.g., *Sprint-Nextel*, 20 FCC Rcd at 14021 n.335 (citing Nextel License Holdings 4, Inc., *Order*, 17 FCC Rcd 7028, 7033 (WTB 2002) (noting “there is no standing requirement to file an informal objection pursuant to [47 C.F.R. § 1.41].”)); Application of Tabback Broadcasting Company for Renewal of License of Station KAZM(AM), Sedona, Arizona, *Memorandum Opinion and Order*, 15 FCC Rcd 11899, 11900 (2000) (denying standing but treating petition to deny as informal objection). Accordingly, in the interest of having a full and complete record, we consider the merits of Petitioner’s arguments herein.

²⁰ See Opposition at 7-12.

matter beyond the scope of the Commission's jurisdiction, and that USDA is required to pursue its dispute in a court of competent jurisdiction.²¹

7. The term of the Licenses was to expire on April 28, 2007. On April 9, 2007, Northstar filed renewal applications for the Licenses, as well as for two other broadband PCS licenses that it holds (call signs KNLH637 and KNLH638).²² On April 10, 2007, Notices of Withholding of Action were automatically sent to Northstar at its address of record in the Commission Registration System (CORES). These Notices indicated that, in light of Northstar's delinquent debt to the Commission, action would be withheld on the renewal applications pursuant to 47 C.F.R. § 1.1910(b), and if full payment or a satisfactory arrangement to pay the debt were not made within 30 days of the date of the Notices of Withholding of Action, the applications would be dismissed. On May 10, 2007, Northstar filed a letter indicating that it was a petition for reconsideration of these Notices, but also seeking a waiver of the applicable rules.²³ Northstar argues that the renewal applications are part of an effort to preserve Northstar's assets in an effort to repay its debt to the government, so a waiver is needed in order to preserve the intent of the Red Light Rule – *i.e.*, to protect the U.S. Government's financial position.²⁴ Northstar also asserts that it will not benefit financially from grant of the renewals.²⁵

8. On May 30, 2008, Northstar entered into a settlement agreement with the United States resolving certain disputes arising from Northstar's indebtedness to the United States and providing a framework for repayment of such debts, including the delinquent debt to the Commission, to the extent funds are available to do so.²⁶

II. DISCUSSION

9. In April 2004, to implement the Debt Collection Improvement Act of 1996,²⁷ the Commission adopted rules and policies known as the Red Light Rule and codified in part at 47 C.F.R. § 1.1910.²⁸ Under section 1.1910, “[a]ction will be withheld on applications . . . by any entity found to be delinquent in its debt to the Commission . . .”²⁹ and the application or request for authorization will be dismissed “if a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days” of notice of such delinquency.³⁰ We are unpersuaded by Banana's assertion that the rule does not apply in this case where Commission action has already been taken. Notably, the rule also states

²¹ See *id.* at 12-14. Banana also reiterates certain of its arguments already raised in its Waiver Request. See *id.* at 14-15.

²² See File Nos. 0002985320 (call sign KNLH651), 0002985315 (call sign KNLH653), 0002985324 (call sign KNLH637), and 0002985321 (call sign KNLH638) (filed Apr. 9, 2007).

²³ See Northstar Renewal Waiver Request, *supra* note 4.

²⁴ *Id.* at 2.

²⁵ *Id.*

²⁶ Agreement Acknowledging Liabilities and Structuring a Mechanism for Making Payments on Them, entered into by North Star Technology LLC et al. and the United States, May 30, 2008 (“Northstar Settlement”).

²⁷ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (“DCIA”). The DCIA was enacted to assist government agencies in the collection of delinquent debts owed to the U.S. Government by denying Federal benefits to delinquent debtors.

²⁸ Amendment of Parts 0 and 1 of the Commission's Rules – Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors, *Report and Order*, 17 FCC Rcd 23096 (2004).

²⁹ 47 C.F.R. § 1.1910(b)(2) (noting exceptions not applicable here).

³⁰ 47 C.F.R. § 1.1910(b)(3).

that “[a]ny Commission action taken prior to the payment of delinquent non-tax debt owed to the Commission is *contingent and subject to rescission*”³¹ and that, if a delinquency “has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided . . . , the application or request for authorization *will be dismissed*.”³² We likewise reject Banana’s assertion that the Red Light Rule should never apply to an assignment application when the assignor is the party owing the debt, not the assignee, as such an assertion runs counter to the plain text of the applicable regulation.³³

10. Setting forth its case for a waiver, Banana argues that strict application of the rule here “punish[es] the wrong party” – not the debtor.³⁴ By allowing Northstar to retain the Licenses, Banana contends, Northstar continues to derive “a Federal benefit [whereas] the purpose of the [Red Light Rule] was to insure that ‘debtors who are delinquent in payment to the government should not receive benefits from the federal government while the delinquency is outstanding.’”³⁵ Banana also argues that the public interest is not served by denial of its Waiver Request. In light of Northstar’s obvious financial difficulties, Banana asserts, Northstar “is unlikely to aggressively market and promote the services covered by the Licenses,”³⁶ whereas Banana is ready to “assume the facilities covered by the Licenses and provide services to the public.”³⁷ Banana further asserts that Northstar will not receive any benefit if we grant the Waiver Request. According to Banana, “Northstar has not received and will not receive any compensation for the assignment of the Licenses to Banana” and, furthermore, “is not entitled to receive any refund from Banana with respect to payments it already made.”³⁸

11. In its Petition, RUS does not address Banana’s specific arguments for waiver of the Red Light Rule. Rather, it asserts that the Commission’s prior consent should be rescinded and the Application dismissed under the Red Light Rule.³⁹ In support of that assertion, it cites to the rule provisions discussed above⁴⁰ and argues that the requested assignment would be inconsistent with the public interest. The Petition’s primary focus is Northstar’s outstanding debt to USDA. RUS’s overarching argument is that grant of the Application is “at variance with the public’s interest” given that it would “jeopardize [USDA’s] ability to realize its collateral and collect on Northstar’s defaulted loan.”⁴¹ Specifically, RUS claims that, in executing the Mortgage, Northstar “conveyed to [USDA] a security interest in the Licenses and to their proceeds,” and that “USDA took a senior perfected lien on the Licenses and to any and all proceeds resulting therefrom” upon the filing of the Mortgage and UCC Financing Statement.⁴² Granting Clause III in the Mortgage states, in pertinent part, that Northstar pledged as security:

³¹ *Id.* (emphasis added).

³² 47 C.F.R. § 1.1910(b)(3) (emphasis added).

³³ *See id.*

³⁴ Waiver Request at 4.

³⁵ *Id.* (citing *Report and Order*, *supra* note 28, 17 FCC Rcd at 23101-02).

³⁶ *Id.* at 5.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Petition at 3.

⁴⁰ *See supra* ¶ 9.

⁴¹ Petition at 2.

⁴² *Id.*

All right, title and interest of the Mortgagor in, to and under any and all licenses . . . heretofore granted, issued or executed, or which may hereafter be granted, issued or executed, to it . . . by the United States of America . . . insofar as the same may by law be assigned, . . . mortgaged or pledged.⁴³

On the basis of this language and certain other language in the Mortgage, RUS asserts that its alleged perfected secured interest was purposely crafted to include property acquired after the Mortgage was executed, such as the Licenses.⁴⁴ According to RUS, in awarding Banana the Licenses, the Commission would be “treating Banana as if it held a security interest in the Licenses,” whereas USDA is “Northstar’s only secured creditor.”⁴⁵

12. After carefully considering the policies underlying the Red Light Rule and the unique circumstances of this case, we find that the public interest, convenience and necessity would be served by granting a limited waiver of such rule.⁴⁶ We note that Northstar recently entered into the Northstar Settlement with the United States, which provides a framework for repaying its delinquent Commission debt (as well as other debts to the U.S. Government), to the extent there are sufficient funds to do so. However, because the Northstar Settlement was reached outside the 30-day payment period contemplated under the Red Light Rule, it did not satisfy the requirements of section 1.1910(b)(3) of the Commission’s rules and a waiver of the Red Light Rule is necessary. Based on the totality of the circumstances, including the procedural anomalies discussed in paragraphs 3 and 4 above, we do not believe it is appropriate to continue to withhold action on the Application. Northstar owed multiple government agencies more than \$10 million, only \$992,588.00 of which involves the Commission. This sizable indebtedness to the U.S. Government led to a consolidated settlement process headed by the Department of Justice and involved ultimately protracted negotiations on how to satisfy Northstar’s various debts given its limited assets. Now that the Northstar Settlement has been reached, the delinquent Commission debt either will be paid pursuant to that omnibus settlement or not at all.

13. We are mindful that a limited waiver of the Red Light Rule will allow the Licenses to be transferred to an entity that is poised to immediately put the spectrum into use for the benefit of the public. In addition, as noted above, Banana claims that this transaction stems from an agreement made by Banana and Northstar with respect to the Licenses in 2001, which was *prior* to the adoption of the Red Light Rule. Specifically, at the time that Banana decided to sell the Licenses to Northstar, the parties apparently reached an understanding that, in the event that Northstar failed to make certain post-closing payments to Banana, the Parties would cooperate to seek Commission consent to assign the Licenses back to Banana.⁴⁷ Therefore, applying the Red Light Rule to block the transfer of the Licenses back from Northstar to Banana at present would deprive Banana of an agreement made in good faith at the time that it sold the Licenses to Northstar. And, because Banana negotiated its deal at a time when the Red Light Rule did not exist, Banana’s claim that it would be unjust to penalize it under these circumstances has

⁴³ *Id.*, Exhibit C, Mortgage at 4.

⁴⁴ RUS also states that Northstar pledged “all right, title and interest of the Mortgagor in and to all other property, real or personal, tangible or intangible, of every kind, nature and description and wheresoever situated, *now owned or leased or hereafter acquired* by the Mortgagor . . . [t]ogether with all . . . *proceeds, profits and benefits* at any time derived, received or had from any and all of the above-described property of the Mortgagor.” Petition at 1-2 (citing Mortgage at 4, Granting Clause V) (Petitioner’s emphasis)).

⁴⁵ *Id.* at 2.

⁴⁶ See 47 C.F.R. § 1.3 (the Commission may waive any provision of its rules “if good cause therefore is shown”). See also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”) (“waiver is appropriate . . . if special circumstances warrant a deviation from the . . . rule and such deviation will serve the public interest”); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969); 47 U.S.C. § 310(d).

⁴⁷ See Banana May 10 Supplement, Exhibit A at 2-3.

some force. Banana would not receive the post-closing payments owed to it by Northstar and would have the return of the Licenses blocked by the Red Light Rule, a circumstance it could not have reasonably anticipated in 2001.

14. While none of the factors discussed above standing alone would be sufficient to warrant relief, taken together, the unique circumstances of this case—the procedural anomalies, the existence of the multi-party settlement, the benefit of putting the Licenses into immediate use, and the disappointed contractual expectations—persuade us that “deviation from the general rule . . . better serves the public interest.”⁴⁸ Therefore, we grant a limited waiver of the Red Light Rule.

15. We find unpersuasive RUS’s claims that its security interest in the Licenses or the proceeds from the sale of the Licenses should preclude the relief granted herein. To begin with, although RUS asserts that it has perfected a security interest in the Licenses, the evidence on the record does not substantiate that assertion. At the time Northstar and USDA entered into the Loan Agreement and the Mortgage in 2001, the Licenses at issue in this proceeding had not yet been assigned to Northstar. In addition, as RUS acknowledges,⁴⁹ it was not until 2004 that the Commission revised its policy to permit RUS to hold a security interest in Commission licenses in certain circumstances.⁵⁰ RUS claims that USDA has “refiled its UCC Financing Statement covering the Licenses” and that, as a result, “the FCC’s present grant of a security [interest] in the Licenses themselves should be legally effective.”⁵¹ The website for the Kentucky Secretary of State shows that RUS did file an initial financing statement on August 4, 2006. While Banana is aware that RUS filed this new UCC Financing Statement, “allegedly designed to perfect [RUS’s] supposed new interest in the Licenses,” Banana asserts that such filing “also fails to provide RUS a security interest.”⁵² We agree. The Commission required that “any security interest granted to RUS must be expressly conditioned, in writing as part of all applicable financing documents, upon the Commission’s prior approval of any assignment of the license . . . to the secured party or other person or entity.”⁵³ The Mortgage has not been amended, as far as we can discern from the documents submitted by RUS, to include this condition.⁵⁴ On the record before us, it does not appear that

⁴⁸ *Northeast Cellular*, 897 F.2d at 1166.

⁴⁹ *See id.* at 10 n.16.

⁵⁰ *In re Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, 19 FCC Rcd 19078, 19107 (2004) (“*Rural Order*”). A Summary of the *Rural Order* was published in the Federal Register on December 15, 2004, and the rules and policies adopted in the *Rural Order* took effect on February 14, 2005. Based on the timing of the policy changes and their effective date, Banana asserts that “RUS and Northstar could not have intended for Northstar to grant to RUS a security interest in the Licenses,” Opposition at 8, and that “the test as to whether a security interest includes property acquired after the date of the security agreement is governed by the intent of the parties as expressed in the agreement.” *Id.* at 10 n.37 (emphasis deleted). Banana further asserts that the collateral description must be clearer than that in the Mortgage. *See id.*

⁵¹ Petition at 10 n.16.

⁵² Opposition at 11 (emphasis omitted).

⁵³ *Rural Order*, 19 FCC Rcd at 19107. At the time, we noted, “by conditioning any assignment or transfer of *de facto* or *de jure* control of the license on prior Commission approval pursuant to [47 U.S.C. Section 310(d)], we ensure that the Commission retains ultimate control over the spectrum. Thus, the FCC’s approval must be obtained before RUS can foreclose on a security interest it may hold in an FCC license or before RUS or any other entity may otherwise obtain control of the license or licensee.” *Id.*, 19 FCC Rcd at 19109.

⁵⁴ Banana states that “[t]here was no agreement by Northstar to amend or modify the original [Mortgage] to provide RUS with additional collateral . . . by granting to RUS a security interest in the Licenses themselves.” Opposition at 11.

USDA had a security interest in the Licenses during the relevant period, and thus we need not determine here what consequences would follow if it did.⁵⁵

16. Given the basis of the limited waiver we grant herein, we need not address the other arguments proffered by Banana and RUS about their relative rights under the UCC, and nothing in this decision is intended to prejudice any arguments that the parties may make under commercial or contractual law. It is simply beyond the scope of our jurisdiction to resolve the contractual disputes between these parties, including assessing the merits of Petitioner's assertions that Northstar has breached its contractual obligations under the Loan Agreement and/or the Mortgage.⁵⁶ The Commission has routinely acted favorably on license assignment applications notwithstanding pending unresolved contractual disputes to which the Commission is not a party.⁵⁷ Commission grant of an application is permissive only and does not prejudice any civil suit in a court of competent jurisdiction.⁵⁸

17. We likewise waive the application of the Red Light Rule to the renewal applications for KNLH651 and KNLH653. It would defeat the purpose of the relief we hereby grant to Banana if these renewal applications were dismissed, resulting in the termination of the Licenses. Therefore, we grant renewal of the Licenses, conditioned upon consummation of their assignment from Northstar to Banana within the ordinary consummation period of 180 days from approval of the assignment application. Thus, if a consummation notification is not filed within this period, the Licenses will expire.

18. We emphasize that our decision is limited to this case and in no way absolves Northstar of its obligation to pay its outstanding debt to the Commission or any other U. S. Government entity. We are waiving the Red Light Rule only as it applies to the assignment Application before us, and to the renewal applications for KNLH651 and KNLH653.

⁵⁵ While RUS further asserts that it has a security interest in any proceeds of the Licenses, we also need not decide that question here. The extent to which RUS can recover against these proceeds, and the question of whether a security interest in proceeds survives a transfer of collateral, are matters of federal common law. *See Clearfield Trust Co. v. United States*, 318 U.S. 363, 367 (1943) (in absence of an applicable act of Congress fixing rights and duties of the United States on commercial paper which it issues, it is for the federal courts to fashion the governing rule of law according to their own standards). Similarly, any dispute that RUS may have regarding the proceeds received in any transfer of the Licenses is a matter between RUS and the holder of the Licenses, and cannot be resolved by the Commission. Additionally, while RUS claims that it will be "ill-equipped to effectively monitor a disposition of the Licenses" and take action to protect its alleged interest in the proceeds within appropriate deadlines, *see* Petition at 5, the status of the Licenses may be monitored through ULS, a publicly available Commission database.

⁵⁶ Banana alleges that, "[i]f RUS has any rights to the Licenses, those rights should have been properly established through the Kentucky state courts (or any court of competent jurisdiction) and the result of that determination presented to the FCC." Opposition at 13.

⁵⁷ *See, e.g., In the Matter of A.L.Z. Broadcasting, Inc.*, 15 FCC Rcd 23200, 23201 (2000) (finding contractual dispute concerning payment obligations to be within the province of a court of competent jurisdiction, not the Commission) (citations omitted); *In the Matter of Applications of Verestar, Inc.*, 19 FCC Rcd 22750, 22756 (IB & WTB 2004) (declining to defer action on assignment applications pending resolution of litigation, noting it is "long-standing Commission policy not to involve itself with private contractual disputes") (citations omitted).

⁵⁸ While we in no way attempt to interpret the various provisions of the contractual arrangements between Northstar and USDA, we observe that the Mortgage contains Article III, "Remedies of the Mortgagees and Noteholders," and that this Article includes, *inter alia*, a provision under which protection and enforcement of the rights of the mortgagees and noteholders may be pursued "by suits or actions in equity or at law in any court or courts of competent jurisdiction . . ." Mortgage at 13, Art. III, Sec. 2(b).

III. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED that the Petition to Deny the Application, filed by the Rural Utilities Service on August 4, 2006, IS DENIED.

20. IT IS FURTHER ORDERED that the request for waiver of 47 C.F.R. § 1.1910 in connection with the assignment of the Licenses for PCS stations KNLH651 and KNLH653 from Northstar Technology, LLC to Banana Communications, LLC (File No. 0001941306) IS GRANTED.

21. IT IS FURTHER ORDERED that the request for waiver of 47 C.F.R. § 1.1910 in connection with the applications for renewal of Licenses for PCS stations KNLH651 and KNLH653 (File Nos. 0002985320 and 0002985315) IS GRANTED.

22. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and 310(d), the above-referenced application for the assignment of licenses from Northstar Technology, LLC to Banana Communications, LLC IS GRANTED.

23. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), the above-referenced applications for renewal of Licenses for PCS stations KNLH651 and KNLH653 ARE GRANTED CONDITIONED UPON consummation of the assignment of these licenses from Northstar Technology, LLC to Banana Communications, LLC within 180 days from the date of release of this Order.

24. These actions are taken under delegated authority pursuant to sections 0.11, 0.231, 0.131, and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.11, 0.231, 0.131, and 0.331.

OFFICE OF MANAGING DIRECTOR

Anthony Dale
Managing Director

and

WIRELESS TELECOMMUNICATIONS BUREAU

James D. Schlichting
Deputy Chief