

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

In the Matter of)
)
Alpine PCS, Inc.)
) AU Docket No. 08-46
Request for Stay of Auction 78 for the)
Broadband PCS C Block Licenses in the)
San Luis Obispo, CA and the Santa Barbara-Santa)
Maria, CA Basic Trading Areas)

ORDER

Adopted: July 7, 2008

Released: July 7, 2008

By the Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us a request filed by Alpine PCS, Inc. ("Alpine") to stay the upcoming auction of Advanced Wireless Service and broadband Personal Communication Services ("PCS") licenses (Auction 78) or remove from the auction inventory six broadband PCS licenses for spectrum upon which Alpine was previously licensed to operate. The Auction 78 inventory includes six 10-megahertz C block licenses for the San Luis Obispo, California and the Santa Barbara-Santa Maria, California Basic Trading Areas ("BTAs"), which were reconfigured from two 30-megahertz C block licenses for those BTAs formerly held by Alpine. Those two licenses automatically cancelled when Alpine failed to make timely payments of its installment debt. For the reasons discussed below, we dismiss Alpine's Stay Request.

II. BACKGROUND

2. When the Commission established the initial licensing and service rules for broadband PCS, it provided an option to those entities that qualified as entrepreneurs to pay for C Block licenses won at auction in installments over the initial ten-year license term. An auction for C Block licenses (Auction 5) began on December 18, 1995, and when it concluded on May 6, 1996, Alpine was the winning bidder for the C block licenses in the San Luis Obispo, California BTA and the Santa Barbara-Santa Maria,

1 Alpine PCS, Inc., Motion for Stay, filed April 18, 2008 ("Stay Request"). The Auction 78 inventory includes 30 Advanced Wireless Service ("AWS") licenses and 25 broadband PCS licenses. See "Auction of AWS-1 and Broadband PCS Licenses Rescheduled for August 13, 2008; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 78," Public Notice, DA 08-1090 (rel. May 16, 2008) ("Auction 78 Procedures Public Notice").

2 The six 10 megahertz C Block licenses are designated as the C3, C4, and C5 frequency blocks in the San Luis Obispo, California BTA (BTA405) and the Santa Barbara-Santa Maria, California BTA (BTA406).

3 See 47 C.F.R. § 21.960(c) (1996). In 1997, the Commission discontinued the use of installment payments for future auctions. See Amendment of Part 1 of the Commission's Rules - Competitive Bidding, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, Third Report and Order and Second Further Notice of Proposed Rule Making, 13 FCC Rcd 374, 397 ¶ 38 (1997) ("Part 1 Third Report and Order").

California BTA (collectively, the “Licenses”).⁴ Alpine qualified for the installment payment option and elected to pay for the Licenses under that arrangement.⁵ The Commission, therefore, granted Alpine the Licenses on the condition that Alpine would timely meet its payment obligations under the installment payment program throughout the initial license term.⁶

3. Alpine made its installment payments for the Licenses in accordance with the Commission’s rules until it failed to make the installment payments due on January 31, 2002, along with the required late fees, before the expiration of the two-quarter grace period permitted under the rules.⁷ On July 31, 2002, rather than make the required payments, Alpine filed a request for waiver of the Commission’s rules in order to have additional time beyond the second grace period. Pursuant to the Commission’s rules, the Licenses automatically canceled on August 1, 2002, and Alpine accordingly became subject to debt collection procedures.⁸

4. In January 2007, the Bureau denied Alpine’s request for waiver (“*Alpine Waiver Denial*”).⁹ Alpine filed a petition for reconsideration and a motion for stay of the Bureau’s decision.¹⁰ Several months later, Alpine submitted a “request for restructuring debt” with regard to its installment payment obligations.¹¹

5. On April 4, 2008, the Bureau released a public notice announcing Auction 78 and seeking comment on a variety of procedures for the auction.¹² The *Auction 78 Comment Public Notice* listed the inventory of licenses to be auctioned, which included six 10-megahertz C block licenses for the spectrum on which Alpine previously had been licensed to operate.¹³ Alpine filed its Stay Request on April 18, 2008, asking the Bureau to stay the auction or revise the *Auction 78 Comment Public Notice* to remove the six C block licenses from the auction pending a decision on Alpine’s Petition for Reconsideration and consideration of its Restructuring Request.

⁴ See “Entrepreneurs’ C Block Auction Closes; FCC Announces Winning Bidders in the Auction of 493 Licenses to Provide Broadband PCS in Basic Trading Areas,” *Public Notice* (rel. May 8, 1996); Stay Request at 2.

⁵ Stay Request at 2.

⁶ See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2391 ¶ 240 (1994) (“*Competitive Bidding Second Report and Order*”).

⁷ 47 C.F.R. 1.2110(g)(4)(ii) (providing licensees with two automatic grace period of 90 days, for a total of 180 days beyond the deadline, to pay with applicable late fees)

⁸ See 47 C.F.R. 1.2110(g)(4)(iv).

⁹ Alpine PCS, Inc. Request for Waiver of Automatic Cancellation Rule for Auction No. 5 C Block Licenses for Santa Barbara (Mkt. No. 406-C) and San Luis Obispo (Mkt. No. 405-C), *Order*, DA 07-338, 22 FCC Rcd 1492 (2007).

¹⁰ Alpine PCS, Inc. Petition for Reconsideration, filed February 28, 2007; Alpine PCS, Inc. Motion for Stay, filed February 28, 2007 (“Petition for Reconsideration”).

¹¹ See Letter from Frederick M. Joyce and Christine McLaughlin, counsel for Alpine PCS, Inc., to Anthony Dale, Office of Managing Director, dated December 18, 2007 (“Restructuring Request”).

¹² “Auction of AWS-1 and Broadband PCS Licenses Scheduled for July 29, 2008; Comment Sought on Competitive Bidding Procedures For Auction 78,” *Public Notice*, DA 08-767, 23 FCC Rcd 5484 (2008) (“*Auction 78 Comment Public Notice*”).

¹³ *Auction 78 Comment Public Notice* 23 FCC Rcd at 5507.

6. On April 29, 2008, the Commission's Office of Managing Director ("OMD") dismissed Alpine's Restructuring Request without prejudice, finding the request to be both "premature and incomplete."¹⁴

7. On May 16, 2008, the Bureau released the *Auction 78 Procedures Public Notice*, which announced the notice and filing requirements, minimum opening bids, upfront payments and other procedures for Auction 78. The auction inventory remained the same as announced in the *Auction 78 Comment Public Notice*, and the Bureau noted that Alpine's Stay Request was pending.¹⁵

III. DISCUSSION

8. Under Section 1.102(b)(2) of the Commission's rules, the Commission may grant a stay pending review of a petition for reconsideration.¹⁶ A stay is grantable if the petitioner can show that: (i) it is likely to prevail on the merits; (ii) it will suffer irreparable harm, absent a stay; (iii) other interested parties will not be harmed if the stay is granted; and (iv) the public interest would favor a grant of the stay.¹⁷ We find that Alpine fails to meet this standard. Alpine has not demonstrated that it is likely to prevail on the merits, that it will be irreparably harmed, and that other parties will not be harmed if the auction is stayed. Moreover, the public interest does not favor a stay.

9. As an initial matter, Alpine asserts that the Commission may grant a stay even if Alpine has not met all four criteria of this standard, so long as there is a particularly overwhelming showing with respect to at least one of the criteria.¹⁸ In support of its assertion, Alpine cites three Commission decisions.¹⁹ Each of those decisions, however, is distinguishable from the instant case. In both *Lompoc Valley Cable TV* and *Angeles Broadcasting Network*, the Commission granted stays based on the potential risk of signal interference that would disrupt service to the public, even though the petitioners had not shown that they were likely to succeed on the merits.²⁰ In the *Refarming Order*, the Commission stayed implementation of a rule prohibiting applications for new or expanded wideband operations because

¹⁴ Letter from Regina Dorsey, Deputy Chief Financial Officer, Federal Communications Commission, to Frederick M. Joyce and Christine McLaughlin, Counsel for Alpine PCS, Inc., dated April 29, 2008.

¹⁵ *Auction 78 Procedures Public Notice* at n.3 and n.95.

¹⁶ 47 C.F.R. § 1.102(b)(2).

¹⁷ See *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958).

¹⁸ Stay Request at 3.

¹⁹ *Lompoc Valley Cable TV (KGT-30) for Operational Fixed Stations in the Business Radio Service*, Memorandum Opinion and Order, FCC 64-73, 1 R.R.2d 1081 (1964) ("*Lompoc Valley Cable TV*"); *Applications of Angeles Broadcasting Network, San Bernardino, California, Marantha Broadcasting Co., Inc., San Bernardino, California, for Interim Authority to Operate the Facilities of Former Station KHOF-TV Channel 30, San Bernardino, California*, Order, FCC 85-662, 59 R.R.2d 758 (1985) ("*Angeles Broadcasting Network*"); *Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended*, WT Docket No. 99-87, Order, 18 FCC Rcd 25491 (2003) ("*Refarming Order*").

²⁰ In *Lompoc Valley Cable TV*, the petitioner alleged that operation of a microwave relay system would result in multiple television signals that would make it impossible to operate its television broadcast station. *Lompoc Valley Cable TV*, 1 R.R.2d at 1082 ¶ 4. The Commission also expressed concern over the possibility of excessive concentration of media ownership. *Id.* Noting that petitioner's allegations might not support a claim of "likelihood of success on the merits," the Commission nonetheless found the potential risk of harmful interference could "infringe on one of [the Commission's] basic policy principles," and therefore granted a brief stay. *Id.* In *Angeles Broadcasting Network*, the Commission acknowledged that the petitioner seeking the stay had not shown a likelihood of prevailing on the merits, but granted a stay to avoid a possible second disruption of service, which it concluded would be contrary to the public interest. *Angeles Broadcasting Network*, 59 R.R.2d at 760 ¶ 7.

enforcement of the rule might adversely affect public safety communications and critical infrastructure operations.²¹ In each of these three decisions, the Commission granted a stay despite petitioners' failure to meet one of the elements of the four-pronged test, based on an overriding public policy concern. In contrast, Alpine does not meet any prong of the test, nor does it articulate any overriding public policy principle that would make a stay of Auction 78 in the public interest.²² Therefore, we find Alpine's request to stay the auction fails to satisfy the asserted alternative standard as well as the four-pronged standard that is traditionally used to determine if a stay should be granted.

A. Likelihood of Success

10. Alpine argues that its pending Petition for Reconsideration raises "many serious questions that are at least 'fair ground' for agency review," of which Alpine provides three examples.²³ First, Alpine alleges different treatment of "similar applicants," citing specifically "NextWave Communications" ("NextWave").²⁴ Second, Alpine contends that the *Alpine Waiver Denial* ignored evidence of "havoc wreaked on the telecommunications industry by the actions of NextWave and 'sham' designated entity participants in Auction No. 5."²⁵ Third, Alpine claims that the Commission violated its debt collection rules by failing to "afford any consideration whatsoever to Alpine's Restructuring Request."²⁶ Apart from these claims, Alpine also contends that it has never been, nor is it presently, in default under the installment payment loan agreement and notes ("Notes").²⁷

11. We are not persuaded by Alpine's claim of dissimilar treatment. NextWave filed for protection under Chapter 11 of the United States Bankruptcy Code ("Bankruptcy Code") before its licenses were cancelled. In *FCC v. NextWave Personal Communications, Inc.*, the Supreme Court ruled that the Bankruptcy Code barred the Commission from enforcing its automatic license cancellation rule against NextWave, a debtor in bankruptcy, upon the debtor's failure to make timely payments for the licenses.²⁸ Alpine, which was not in bankruptcy when its licenses cancelled, fails to explain how its

²¹ Implementation of Sections 309(j) and 337 of the Communications Act of 1934, as Amended, WT Docket No. 99-87, *Order*, 18 FCC Rcd 25,491, 25,493-94 ¶¶ 6-7, 9 (2003).

²² *See infra* paras. 21-24.

²³ Stay Request at 3. Alpine's assertion that its petition for reconsideration need only raise "many serious questions" is unavailing. The case Alpine cites in support of this assertion, *Bankwelder Furniture Co. v. Seilig Mfg. Co.*, is inapposite. In *Bankwelder*, the U.S. Court of Appeals for the Fourth Circuit reversed the district court because it had not applied a "balance-of-hardship" test, which the Fourth Circuit held was the applicable standard to be applied by a trial court presented with a request for injunctive relief. *Bankwelder Furniture Co. v. Seilig Mfg. Co.*, 550 F.2d 189, 193-195 (4th Cir. 1977). The court in *Bankwelder* also stated that the four-pronged test for issuing a stay was appropriate in appellate cases and cases in which a judicial or quasi-judicial body has already passed upon the merits of a question and a stay is being sought pending review of that decision. *Id.* at 194. In the instant case, the four-pronged standard is appropriate because Alpine seeks a stay pending the Bureau's decision on its petition for reconsideration of the *Alpine Waiver Denial*. The Commission has consistently applied the four-pronged standard in deciding requests for stay of its decisions. *See, e.g.*, In Re Application of Liberty Productions, *Order*, 16 FCC Rcd 18,966, 18,969 ¶ 14 (2001); In the Matter of the 4.9 GHz Band Transferred from Federal Government Use, *Order*, 19 FCC Rcd 15,270, 15,272 ¶ 5 (2004); In the Matter of Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Order*, 18 FCC Rcd 25,491, 25,493 ¶ 6 (2003).

²⁴ Stay Request at 4.

²⁵ *Id.*

²⁶ *Id.* at 3-4.

²⁷ *Id.* at 5.

²⁸ *FCC v. NextWave Personal Communications Inc.*, 537 U.S. 293 (2003), *aff'g* 254 F.3d 130 (D.C. Cir. 2001) (affirming the D.C. Circuit's decision that because NextWave was under protection of Chapter 11 of the United States Bankruptcy Code, its licenses did not automatically cancel for nonpayment while it was in bankruptcy.).

circumstances are similar to NextWave's with respect to the Licenses. Accordingly, Alpine's claim of dissimilar treatment is unsubstantiated and fails to demonstrate a likelihood of success on the merits.

12. With respect to Alpine's contention that the *Alpine Waiver Denial* did not consider evidence of "havoc" in the telecommunications industry, Alpine fails to explain how such circumstances would support its underlying request for waiver of the installment payment rules. The Commission has repeatedly refused to grant a waiver of automatic cancellation under its installment payment rules based on a petitioner's claim that its failure to pay stems from financial difficulties arising from general economic conditions in the industry.²⁹ Alpine thus fails to establish a serious legal question on this issue.

13. We likewise find unavailing Alpine's claim that the Commission violated its own debt collection rules by not considering Alpine's Restructuring Request.³⁰ Alpine fails to provide any support for this contention, including even the identification of the rules that the Commission is allegedly violating, that would either raise a serious legal question or demonstrate any likelihood of success on the merits of such an argument.

14. Finally, Alpine's assertion that it has never been in default likewise fails to establish a serious legal question or likelihood of success on the merits.³¹ Alpine bases its claim on the Commission's installment payment rules adopted at the inception of the auction program. Those rules permitted a licensee that anticipated a default on one or more installment payments to request that the Commission grant a three to six month grace period during which no installment payments would be required to be made. A licensee would not be declared in default during the pendency of such request.³² Alpine cites to language in the default provision of the Notes that states a default shall occur if the licensee has not "submitted a request, in writing, for a grace period or extension of payments."³³ Alpine's argument fails, however, because it ignores the immediately following language which makes clear that with respect to "grace periods" the Notes are worded conditionally -- "if any such grace period or extension of payments is provided for in the then-applicable orders and regulations of the Commission."³⁴ In 1997, the

²⁹ See Requests for Extension of the Commission's Initial Non-Delinquency Period for C and F Block Installment Payments, *Order*, FCC 98-290, 13 FCC Rcd 22,071, 22,072-73 ¶ 4 (1998), *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). See also *Morris Communications, Inc. Request for Waiver of Installment Payment Rules and Reinstatement of 900 MHz SMR Licenses*, *Memorandum Opinion and Order*, FCC 08-57, 23 FCC Rcd 3179 (2008); *Rapid Wireless Ltd. Request for Waiver of Installment Payment Rules for Auction No. 7 License*, *Order*, DA 07-316, 22 FCC Rcd 1410 (WTB 2007); Letter to Mr. John Jung, Jung on Jung, from Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 03-2273, 18 FCC Rcd 14,427, 14,430-31 (WTB/ASAD 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, DA 02-819, 17 FCC Rcd 6442, 6446-47 (WTB/ASAD 2002); *Duluth PCS, Inc., and St. Joseph PCS, Inc. Request for Partial Waiver of Section 1.2110(g) of the Commission's Rules*, *Order*, DA 04-1075, 19 FCC Rcd 7137, 7143 (WTB/ASAD 2004).

³⁰ Stay Request at 4. We note that on April 29, 2008, shortly after the filing of Alpine's Stay Request, the Commission's Office of Managing Director considered and dismissed without prejudice Alpine's Restructuring Request. See *supra* paragraph 6.

³¹ Stay Request at 5.

³² 47 C.F.R. § 1.2110(b)(4)(ii)(1994).

³³ Stay Request at 5.

³⁴ *Id.* See also *Part 1 Third Report and Order*, 13 FCC Rcd at 436-38 ¶¶ 106-107. The Commission has addressed this specific provision in the installment notes, finding it to be a clear reference to the rules that would be applicable at the time when a grace period is sought. 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, 15,309 ¶ 26 (2000).

Commission eliminated individual grace period requests, replacing them with automatic grace periods, within which licensees could make installment payments after the deadline for two quarters with a late fee.³⁵ If a licensee failed to pay within those two quarters, as Alpine did, it would be in default and its licenses would automatically cancel. Thus, when Alpine failed to make payment by July 31, 2002, of its payment due on January 31, 2002, plus applicable late fees, it defaulted and the licenses cancelled automatically, consistent with the provisions in the Note and the Commission's rules. Thus, Alpine's claim that it has not defaulted is without merit.

15. In sum, we find that none of Alpine's claims in the Stay Request presents a substantial legal question. Therefore, we conclude that Alpine has not adequately demonstrated that it is likely to succeed on the merits.

B. Irreparable Harm

16. Alpine argues that any action by the Commission to auction the spectrum on which Alpine was previously licensed to operate would destroy "any hope of preserving Alpine's remaining assets and business good will."³⁶ Alpine adds that the harm to its business reputation and its financial investment would occur even if the matter on reconsideration were subsequently resolved in Alpine's favor.³⁷

17. In order to demonstrate "irreparable harm," the injury must be "both certain and great [and] it must be actual and not theoretical."³⁸ Therefore, to demonstrate irreparable harm, Alpine must provide "proof indicating that the harm [it alleges] is certain to occur in the near future."³⁹

18. Alpine has supplied no such proof. Offering the licenses in Auction 78 will have no effect on the power of the Commission to decide Alpine's Petition for Reconsideration or to grant appropriate relief if Alpine were to ultimately prevail on the merits of that petition.⁴⁰ The Commission and courts have consistently rejected requests to stay Commission auctions based on matters pending before the Commission.⁴¹ Thus, Alpine has not shown any irreparable harm that would warrant a stay.

C. Harm to Others

19. Alpine also contends that no parties would be harmed by grant of a stay. Alpine maintains that no major carrier was providing service in these markets when it constructed and operated its facilities, and therefore asserts that "it cannot be claimed that there's now some pent-up demand in these areas for these licenses."⁴² In fact, Alpine adds that no other entity has "any legitimate interests in these

³⁵ See 47 C.F.R. § 1.2110(g)(4)(iv).

³⁶ Stay Request at 6.

³⁷ *Id.* at 6.

³⁸ *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985).

³⁹ *Id.*

⁴⁰ See *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) ("The possibility that adequate ... relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.").

⁴¹ See, e.g., *FCC v Radiophone, Inc.*, 516 U.S. 1301, 116 S.Ct. 283 (1995) (Justice Stevens vacating a stay of an auction); *Central Wyoming College and State Board of Education, State of Idaho*, 2002 U.S. App. Lexis 12184 (D.C. Cir. 2002); *Council Tree Communications, Inc. v. FCC*, No. 06-2943 (3d Cir. June 15, 2006) (per curiam) (denying a motion for stay of Auction 66 pending judicial review of movants' challenge to the revised designated entity rules).

⁴² Stay Request at 7.

particular licenses.”⁴³ Such claims, however, are unsubstantiated. We believe that offering this spectrum through competitive bidding, consistent with Section 309(j) of the Communications Act, will best indicate the demand for the broadband PCS spectrum in question.

D. Public Interest

20. We also find that Alpine has not shown that granting a stay of Auction 78 would serve the public interest. Alpine argues that staying the auction of the broadband PCS spectrum in question is in the public interest because the Commission has not made a decision on Alpine’s request to renegotiate its installment payment debt.⁴⁴ Alpine, however, fails to demonstrate how a final decision on that request, which might affect Alpine’s own economic interest, would do anything to promote the public interest.

21. Alpine also argues that offering the spectrum upon which Alpine was previously licensed to operate would be contrary to what Alpine characterizes as a Commission “policy pledge” to support “modest and prudent” requests to restructure installment payment debt.⁴⁵ In support of this supposed “policy pledge,” Alpine cites to a single sentence in 2002 congressional testimony by then Commission Chairman Michael Powell in which he stated: “It is difficult to imagine the industry stabilizing without some modest and prudent restructuring.”⁴⁶ Alpine, however, takes this statement out of context and mischaracterizes it for its own purpose.⁴⁷ Chairman Powell’s statement cannot be interpreted to be a “policy pledge” that outweighs the various public interest objectives promoted by the Commission’s auction rules and justifies a stay.⁴⁸

22. Contrary to Alpine’s assertions, a stay of Auction 78 would harm the public interest because it would frustrate the clear policy objective of Section 309(j) of the Communications Act of promoting the “rapid deployment of new technologies, products and services for the benefit of the public,”⁴⁹ Pending administrative and judicial appeals may often be associated with licenses offered at auction.⁵⁰ If

⁴³ *Id.* Although Alpine asserts that no other entity has a legitimate interest in the six licenses, it also argues that an auction of the licenses would cause harm to any third party that might spend time and money to bid on the licenses. *See* Stay Request at 7. Alpine’s claim of harm to third parties is without merit because the Bureau has advised prospective participants in Auction 78 that, in formulating their business strategies, they should take into account the impact of pending and future proceedings on the spectrum licenses available in Auction 78. “Auction of AWS-1 and Broadband PCS Licenses Rescheduled for August 13, 2008; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 78,” *Public Notice*, DA 08-1090 (rel. May 16, 2008).

⁴⁴ Stay Request at 7.

⁴⁵ *Id.* at 5-8, citing Written Statement of Michael K. Powell before the Senate Committee on Commerce, Science and Transportation, released July 30, 2002.

⁴⁶ Stay Request at 8.

⁴⁷ The “restructuring” referred to in this statement had nothing to do with restructuring installment payment debt. Chairman Powell was discussing industry restructuring that occurs when the forces of supply and demand are out of balance.

⁴⁸ *See* 47 U.S.C. § 309(j)(3).

⁴⁹ 47 U.S.C. § 309(j)(3)(A).

⁵⁰ *See, e.g.,* Northcoast Communications L.L.C. *et al., Order*, DA 01-1885, 16 FCC Rcd 15,637, 15,641 ¶ 6 (WTB/CWD 2001), citing *Bachow Communications, Inc. v. Federal Communications Commission*, 237 F.3d 683 (D.C. Cir. 2001) (applicants for licenses in the 39 GHz band sought review of FCC interim procedures adopted during transition from comparative to competitive application process); *PLMRS Narrowband Corp. v. Federal Communications Commission*, 182 F.3d 995 (D.C. Cir. 1999) (applicants for licenses in the 220 MHz band sought review of FCC decision to assign licenses by auction rather than lottery); *Fresno Mobile Radio, Inc. v. Federal*

we were to accept Alpine's arguments for granting a stay, we would risk delay of future auctions for review by the Commission and courts of the myriad issues parties could raise in attempts to circumvent auctions for their individual purposes.⁵¹ In addition, staying Auction 78 with respect to spectrum on which Alpine was licensed to operate prior to its default would simply reward a party who failed to make timely payments at the expense of the public interest.⁵² Such action could frustrate the business plans of entities that intend to bid on, and pay for, their licenses and, as a result, undermine the integrity of the auction process.

IV. ORDERING CLAUSE

23. Accordingly, IT IS ORDERED, pursuant to the authority granted in Sections 4(i), 4(j), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and 309(j), that the Motion for Stay filed by Alpine PCS, Inc. on April 18, 2008 IS 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

Margaret W. Wiener, Chief
Auctions and Spectrum Access Division
Wireless Telecommunications Bureau

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Communications Commission, 165 F.3d 965 (D.C. Cir. 1999) (incumbent licensees sought review of FCC decision to allocate licenses in the 800 MHz band by auction).

⁵¹ See, e.g., Motion of Ranger Cellular and Miller Communications, Inc. for a Stay of Auction No. 45, *Order*, DA 02-1135, 17 FCC Rcd 9320, 9323 (WTB 2002).

⁵² See 21st Century Telesis, Inc. Request for Partial Reconsideration and Request for Stay of Public Notice, *Order*, DA 00-2889 ¶ 6 (rel. Dec 21, 2000).