

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

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

MEMORANDUM OPINION AND ORDER

Adopted: August 21, 2009

Released: August 21, 2009

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we dismiss as untimely the Petition for Reconsideration filed by Satellite Signals of New England, Inc. (“Satellite Signals”),¹ seeking to reverse an Order of the Wireless Telecommunications Bureau (“Bureau”) released on January 31, 2007.² The Bureau Order denied a request for waiver of the Commission’s installment payment rules and reinstatement of two canceled Broadband Radio Service (“BRS”) licenses, which had automatically canceled when Satellite Signals defaulted on its installment payments. We also deny Satellite Signals’ Motion and deny the accompanying Supplement³ to the extent it asks us to waive the Commission’s deadline for filing petitions for reconsideration.⁴ We dismiss the Supplement to the extent it addresses the merits of the Petition.

¹ Satellite Signals of New England, Inc., Petition for Reconsideration and Request for Conditional Waiver of Installment Payment Rules for Auction No. 6, filed March 5, 2007 (“Petition”).

² Satellite Signals of New England, Inc., Request for Waiver of Installment Payment Rules for Auction No. 6 and Reinstatement of Licenses, *Order*, 22 FCC Rcd 1937 (2007) (“Bureau Order”). As discussed below, the Bureau’s Order denied Satellite Signals’ request for waiver of the Commission’s installment payment rules and the reinstatement of two canceled Broadband Radio Service (“BRS”) licenses.

³ Satellite Signals of New England, Inc., Motion to Accept Supplement and Clarification to Petition for Reconsideration and Request for *Nunc Pro Tunc* Waiver of Section 1.106(f) of the Commission’s Rules, filed March 26, 2007 (“Motion”); Supplement and Clarification to Petition for Reconsideration and Request for *Nunc Pro Tunc* Waiver of Section 1.106(f) of the Commission’s Rules, filed March 26, 2007 (“Supplement”) (collectively, “Motion and Supplement”).

⁴ See 47 C.F.R. § 1.106(f).

II. BACKGROUND

2. Satellite Signals was the winning bidder in Auction No. 6 for BRS licenses for the Burlington, Vermont, BTA (MDB063) and the Rutland-Bennington, Vermont, BTA (MDB388) (collectively the “Licenses”). As a small business, Satellite Signals was eligible to participate in the Commission’s installment payment plan, which was available for qualifying entities that won licenses in Auction No. 6.⁵ Pursuant to the Commission’s long-standing installment payment rules, grant of the Licenses was conditioned upon Satellite Signals’ full and timely performance of its payment obligations.⁶

3. The Commission’s rules applicable at the time of Satellite Signals’ default provided that, upon a licensee’s default, its license cancels automatically and it becomes subject to debt collection procedures.⁷ The Commission’s rules also provided licensees with an automatic grace period totaling 180 days within which to make a quarterly installment payment.⁸ More specifically, 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.⁹ 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.¹⁰ 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.¹¹

4. Satellite Signals failed to make its installment payment for the Burlington license due on March 31, 1998, along with the required late fees, before the expiration of the 180-day grace period. The Burlington license therefore automatically canceled on September 29, 1998.¹² Satellite Signals also failed to make its installment payment for the Rutland license due on May 31, 1998, along with the required late fees, before the expiration of the 180-day grace period. Therefore, the Rutland license

⁵ 47 C.F.R. § 21.960(b) (1996).

⁶ See, e.g., 47 C.F.R. § 1.2110(e)(4) (1994) and 47 C.F.R. § 1.2110(f)(4) (1998).

⁷ At the time of Satellite Signals’ failure to meet its payment obligations, the Commission’s rules governing defaults on installment payments and the resulting automatic cancellation of licenses were contained in 47 C.F.R. § 1.2110(f)(4). These provisions are now codified at 47 C.F.R. § 1.2110(g)(4). For a more complete discussion of the rules applicable to licensees such as Satellite Signals that participated in the Commission’s installment payment program, see also Bureau Order at ¶¶ 2-4.

⁸ 47 C.F.R. § 1.2110(f)(4)(i) & (ii) (1998); 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 ¶ 106 (1998) (“*Part 1 Third Report and Order*”).

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

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

¹¹ 47 C.F.R. § 1.2110(f)(4) (iv) (1998). These rules have been simplified to provide licensees with two quarters (i.e., two 3-month periods) in which to submit late installment payments and associated late fees, rather than two 90-day periods. Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and the Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15,293, 15,310 ¶ 28, 15 FCC Rcd 21,520 (2000) (“*Part 1 Reconsideration of Third Report and Order*”). This change, which aligned the schedule for late payments with the quarterly schedule of regular installment payments, had no bearing on Satellite Signals.

¹² 47 C.F.R. § 1.2110(f)(4) (iv) (1998).

automatically canceled on November 28, 1998.¹³ Under the rules, Satellite Signals also became subject to debt collection procedures with respect to its debt on the Licenses.¹⁴ On April 26, 1999, Satellite Signals filed petitions seeking waiver of the Commission's installment payment deadlines and reinstatement of the two canceled BRS licenses.¹⁵ On January 31, 2007, the Bureau released an Order denying Satellite Signals' requests.¹⁶ The Bureau rejected Satellite Signals' various arguments for grant of a waiver, stating that Satellite Signals had failed to show that the underlying purpose of the installment payment rules would be undermined by their enforcement in this case, that unique circumstances existed, or that strict application of the installment payment rules would not serve the public interest.¹⁷

5. Under the Communications Act of 1934 ("Act") and the Commission's rules, any petition for reconsideration must be filed within thirty days from the date upon which public notice is given of an action or decision for which reconsideration is sought.¹⁸ The Commission's rules provide that the date of public notice of a non-rulemaking document is the date of the document's release.¹⁹ Thus, the deadline for filing a petition for reconsideration of the Bureau Order released on January 31, 2007, was March 2, 2007. Satellite Signals, however, filed its Petition on March 5, 2007.²⁰ Three weeks later, on March 26, 2007, Satellite Signals filed its Motion and Supplement, acknowledging that it had filed its Petition late, but requesting that the Commission waive the thirty-day filing deadline and accept the

¹³ *Id.*

¹⁴ *Id.* See also *Part 1 Third Report and Order*, 13 FCC Rcd at 440, 443 ¶¶ 110, 116; *Part 1 Reconsideration of Third Report and Order*, 15 FCC Rcd at 15,315-16 ¶ 39 (2000); 47 C.F.R. § 1.1914(a) (1998); 4 C.F.R. § 102.11 (1998).

¹⁵ Satellite Signals of New England, Inc., Petition for Reinstatement of BTA Authorization and Waiver Request for Late Acceptance of BTA Installment Payments, MDBO63, filed April 26, 1999 ("Burlington Petition"); Satellite Signals of New England, Inc., Petition for Reinstatement of BTA Authorization and Waiver Request for Late Acceptance of BTA Installment Payments, MDB388, filed April 26, 1999 ("Rutland Petition"); Satellite Signals of New England, Inc., Supplement to Petition for Reinstatement of BTA Authorization and Waiver Request for Late Acceptance of BTA Installment Payments, Burlington, VT BTA (MDB063), filed April 21, 2004 ("Burlington Supplemental Petition"); Satellite Signals of New England, Inc., Supplement to Petition for Reinstatement of BTA Authorization and Waiver Request for Late Acceptance of BTA Installment Payments, Rutland, VT BTA (MDB388), filed April 21, 2004 ("Rutland Supplemental Petition").

¹⁶ See Bureau Order, 22 FCC Rcd at 1937.

¹⁷ See e.g., Bureau Order, 22 FCC Rcd at 1945-47 ¶¶ 15, 16, 18. In rejecting Satellite Signals' waiver requests, the Bureau stated that while installment payment programs were established to help small entities participate in the competitive bidding process and the provision of spectrum-based services, they were not intended to allow the retention of licenses by parties unable to pay for the licenses and provide service. *Id.* at 1942-43 ¶ 12 (2007)(citing *Competitive Bidding Second Report and Order*, 9 FCC Rcd 2348, 2388 ¶ 229 (1994)). The Bureau also noted that since the inception of the auctions program, the Commission has endeavored to ensure that the rapid deployment of service and the efficient, intensive use of spectrum are not undermined by entities that lack the financial capacity to pay their winning bids and operate communications systems. *Id.*

¹⁸ 47 U.S.C. § 405(a) provides that a "petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of." Section 1.106(f) of the Commission's rules implements section 405(a) and provides that the "petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action" 47 C.F.R. § 1.106(f).

¹⁹ 47 C.F.R. § 1.4(b)(2).

²⁰ See Petition, filed March 5, 2007.

Petition as timely filed.²¹

6. On March 6, 2008, one year after Satellite Signals filed its Petition, Utopian Wireless filed a Motion and Opposition to Satellite Signals' Petition, Motion and Supplement.²² It seeks a waiver of the Commission's rules to allow its Opposition to be accepted as timely filed.

7. By letter dated June 2, 2008, Vermont Telephone Company ("VTel") proposed that the Commission negotiate a consent decree with Satellite Signals to reinstate Satellite Signals' licenses.²³ On July 9, 2008, four months after Utopian Wireless filed its Opposition, Satellite Signals filed a Reply to the Opposition and on July 14, it filed a Service Notice to its Reply.²⁴

III. DISCUSSION

8. Satellite Signals argues that we should waive the filing deadline and accept its untimely Petition, which seeks reconsideration of the Bureau Order. Specifically, Satellite Signals argues that the circumstances of its case justify consideration of the late-filed Petition under the precedent of *Gardner v. FCC*.²⁵ Alternatively, Satellite Signals argues that consideration of its late-filed Petition would serve the public interest in light of the extraordinary circumstances it alleges. For the reasons discussed below, we find that Satellite Signals' Supplement requesting that we overlook its failure to meet the filing deadline fails to demonstrate extraordinary circumstances that would justify our consideration of the Petition under either of its arguments.²⁶

²¹ Motion at 1; Supplement at 2.

²² Utopian Wireless Corporation, Motion to Accept Opposition to Petition for Reconsideration and Request for Conditional Waiver of Installment Payment Rules for Auction No. 6, filed March 6, 2008 ("Utopian Motion"); Opposition or Informal Objection of Utopian Wireless to Petition for Reconsideration and Supplement, filed March 6, 2008 ("Utopian Opposition") (collectively "Utopian Motion and Opposition").

²³ Letter from Michel Guité, President of Vermont Telephone Company to Kevin J. Martin, Chairman, Federal Communications Commission, dated June 2, 2008 (proposing terms of a consent decree between the Commission and Satellite Signals) ("VTel Letter"); *see also* Letter from Lee Bonamico, Vice President, Satellite Signals of New England, Inc. to Kevin J. Martin, Chairman, Federal Communications Commission, dated May 30, 2008 (supporting the terms of the proposed consent decree) ("Satellite Signals Letter"); and Letter from James H. Douglas, Governor, State of Vermont, to Kevin J. Martin, Chairman, Federal Communications Commission, dated July 7, 2008 (supporting the negotiation of a consent decree) ("Governor Douglas Letter").

²⁴ Satellite Signals of New England, Inc. Reply to Opposition or Informal Objection of Utopian Wireless to Petition for Reconsideration and Supplement, filed July 9, 2008 ("Reply"); Satellite Signals of New England, Inc. Service Notice to Reply to Opposition or Informal Objection of Utopian Wireless to Petition for Reconsideration and Supplement, dated July 14, 2008 ("Service Notice") (collectively "Reply and Service Notice"). Although Satellite Signals' Reply is dated July 8, 2008, the Service Notice confirms that Satellite Signals filed its Reply on July 9, 2008. In its Reply, Satellite Signals asserts, among other things, that Utopian Wireless has a vested interest in ensuring that Satellite Signals' canceled licenses remain canceled. Satellite Signals states that Utopian Wireless "has been actively soliciting offers" for Utopian Wireless' three Rutland, Educational Broadcast Service ("EBS") leases. Reply at 2. Satellite Signals further states that if Utopian Wireless can persuade the Commission to cancel any or all competing Rutland, Vermont BRS licenses, the value of Utopian Wireless' leases should increase. *Id.*

²⁵ *See Gardner v. FCC*, 530 F.2d 1086 (D.C. Cir. 1976) ("*Gardner*") (where late filing of petition seeking reconsideration of Commission decision finding radio station had not violated personal attack rule was substantially due to the Commission's failure to give personal notice of its decision, the Commission abused its discretion in rejecting petition as untimely).

²⁶ *See* 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f).

9. We dismiss Satellite Signals' Petition as untimely filed. For the same reasons that we dismiss its Petition, we also deny Satellite Signals' Motion, which, along with the accompanying Supplement, was filed more than three weeks after the deadline for filing its Petition. We also deny Satellite Signals' Supplement to the extent it asks us to waive the deadline for filing petitions for reconsideration. We dismiss the Supplement to the extent it addresses the merits of the dismissed Petition, and we do not address arguments in the Supplement that relate to the merits of the Petition.

10. We also deny Utopian Wireless' Motion as untimely filed and do not reach the merits of its Opposition.²⁷ Because we deny Utopian Wireless' Motion, we dismiss as moot Satellite Signals' Reply and therefore do not address the arguments raised therein. Finally, in light of the actions we take herein, we do not consider the terms of the proposal submitted by VTel requesting that the Commission negotiate a consent decree to reinstate Satellite Signals' canceled licenses under conditions proposed by VTel.

A. *Gardner v. FCC* Is Inapplicable in This Case

11. Satellite Signals argues that, under *Gardner v. FCC*, based on the Commission's failure to provide written personal notice of the Bureau Order and the alleged extraordinary circumstances of its case, fairness considerations justify an exception to the 30-day statutory deadline for filing a petition for reconsideration.²⁸ We disagree. Satellite Signals fails to demonstrate that the untimely filing of its Petition resulted from extraordinary circumstances that would make application of the deadline unfair in its case.

12. A petition for reconsideration of a Commission order, whether Commission-level or on delegated authority, is required to be filed within thirty days from the date upon which public notice of the order is given.²⁹ Section 405 of the Communications Act contains no requirement of personal notice and no provision for the delay of the thirty-day deadline. Thus, Section 405(a) "is entirely clear that the thirty-day filing period runs '... from the date upon which public notice is given ...'"³⁰ In the case at hand, public notice occurred when the Bureau released its Order on January 31, 2007.³¹ Satellite Signals was required to file its petition for reconsideration and any supplement thereto no later than March 2, 2007. Satellite Signals, however, filed its Petition on March 5, 2007 and its Motion and Supplement on March 26, 2007. Thus, Satellite Signals' Petition, as well as its Motion and Supplement, were filed after the filing deadline established by statute.

13. The D.C. Circuit has held that the Commission lacks authority to waive or extend the statutory thirty-day filing period for petitions for reconsideration unless the petitioner can show that its failure to file in a timely manner resulted from "extraordinary circumstances indicating that justice would thus be served."³² The Commission has held consistently that it does not have authority to waive or extend, *even by as little as one day*, the statutory 30-day filing period for petitions for

²⁷ Section 1.106(g) of the Commission's rules requires oppositions to petitions for reconsideration to be filed within ten days after the petition is filed. 47 C.F.R. § 1.106(g).

²⁸ Supplement at 10.

²⁹ 47 C.F.R. § 1.106(f).

³⁰ *Gardner*, 530 F.2d at 1091 (quoting 47 U.S.C. § 405(a)); see 47 C.F.R. § 1.106(f).

³¹ Commission rules provide that the date of public notice of a non-rulemaking document is the date of the document's release. 47 C.F.R. § 1.4(b)(2).

³² See *Gardner*, 530 F.2d at 1091-92.

reconsideration, absent extraordinary circumstances which, as explained below, are not present in the instant case.³³ In addition, courts have long discouraged the Commission from accepting late-filed petitions and supplements.³⁴ Indeed, in *Reuters*, the D.C. Circuit concluded that the Commission acted beyond its lawful authority when it entertained a belated petition for reconsideration.³⁵

14. Satellite Signals' reliance on *Gardner* is unavailing.³⁶ In *Gardner*, the court directed the Commission to accept a late-filed petition for reconsideration because it found that the Commission had not adhered to its practice of providing personal notice of the type of decision at issue, coupled with the fact that the petitioner's late filing was substantially due to the Commission's failure to provide personal notice of any kind.³⁷ The court in *Gardner*, however, expressly limited its holding to the highly unusual circumstances presented by that case "where the late filing is in some sense attributable to a procedural violation by the Commission."³⁸ Thus, while recognizing that section 405(a) is "entirely clear" that the 30-day filing period runs from the date of public notice, the court fashioned a limited exception for situations where the Commission's failure to follow its own rules and established practice requiring personal notice within a reasonable time is the substantial cause of the petitioner's untimely filing.³⁹

³³ See, e.g., *Virgin Islands Telephone Corporation v. FCC*, 989 F.2d 1231 (D.C. Cir. 1993); *Metromedia, Inc.*, 56 FCC2d 909 (1975) (distinguishing *Gardner* and finding that the Commission may not waive the thirty day filing period to accept a petition for reconsideration filed one day late); *Ole Brook Broadcasting, Inc., Memorandum Opinion and Order*, 15 FCC Rcd 20644 (2000); Letter from Peter Doyle, Chief, Audio Division, Media Bureau to Henry Cotton, Jamie Patrick Broadcasting, Ltd., 22 FCC Rcd 18610 (2007); Letter from Peter Doyle, Chief, Audio Division, Media Bureau to Martin L. Hensley, 22 FCC Rcd 8377 (2007).

³⁴ See *Reuters, Ltd. v. FCC*, 781 F.2d 946 (D.C. Cir. 1986) ("*Reuters*") (express statutory limitations barred the Commission from acting on a petition for reconsideration that was filed after the due date); *Virgin Islands Telephone Corporation v. FCC*, 989 F.2d 1231 (D.C. Cir. 1993) (upholding the Commission's refusal to entertain a petition for reconsideration, where the petition had been filed one day late, and extenuating circumstances did not prohibit the petitioner from filing within the prescribed time limits); *21st Century Telesis Joint Venture v. FCC*, 318 F.3d 192 (D.C. Cir. 2003) (affirming the Commission's decision not to exercise its discretion to hear late-filed supplements when the petitioner offered no plausible explanation as to why supplemental arguments were not made in its initial petition); see also *Fortuna Systems Corp.*, 3 FCC Rcd 5122, 5123 (1988).

³⁵ *Reuters*, 781 F.2d 946 (D.C. Cir. 1986).

³⁶ Although Satellite Signals cites decisions in support of its claim that personal notice was required, in none of those cases was the absence of personal notice found to justify filing beyond the statutory thirty day deadline. Supplement at 10, n.2, citing 62 Applications for Authority to Construct and Operate Multipoint Distribution Service Stations at 24 Transmitter Sites, *Memorandum Opinion and Order on Reconsideration*, 10 FCC Rcd 11178 (1995); 4330 Applications for Authority to Construct and Operate Multipoint Distribution Service Stations at 62 Transmitter Sites, *Memorandum Opinion and Order*, 10 FCC Rcd 1335 (1995) (in both decisions untimely petitions for reconsideration were dismissed as procedurally defective).

³⁷ See *Gardner*, 530 F.2d at 1091.

³⁸ *Id.* at 1091-92 & n.24. Under *Gardner*, the petitioner has the burden to show: (a) when and how the petitioner received actual notice of the action complained of; (b) that the time remaining was inadequate to allow the petitioner reasonably to meet the 30-day requirement; and (c) that the petitioner moved for reconsideration promptly on receiving actual notice. The court recognized that "it will be an extraordinary case . . . where a petitioner can meet that burden." *Id.*

³⁹ *Id.* at 1091. We note that the courts have stressed that the *Gardner* court only found that substantial cause existed in light of a number of factors that, together, helped create the extraordinary circumstances necessary to support a conclusion that justice required the Commission to entertain the reconsideration petition that petitioner had filed after the statutory deadline. See, e.g., *Reuters*, 781 F.2d at 952 (citing the "great pains" that the *Gardner* court took,

15. Here, Satellite Signals fails to demonstrate that the delay in its filing is attributable to any Commission error or omission in giving notice, as required by *Gardner*.⁴⁰ Satellite Signals admits that lack of personal notice did not make it impossible for it to comply with the statutory deadline.⁴¹ It acknowledges that the Bureau released its Order on January 31, 2007.⁴² It concedes that its counsel learned about the Bureau Order “shortly after it was issued.”⁴³ Indeed, Satellite Signals initially believed that it had filed its Petition in a timely manner, erroneously asserting in its Petition that it had done so.⁴⁴ It was not until Satellite Signals filed its Supplement, over three weeks after the filing deadline, that it acknowledged its late-filed Petition and attempted to provide some rationale for its tardiness.

16. Satellite Signals not only fails to demonstrate that the agency’s failure to provide prompt personal notice of the Bureau’s Order was the substantial cause of the untimeliness of its Petition, but it also advances arguments that affirmatively demonstrate that Satellite Signals’ own conduct caused its untimely filing. Satellite Signals admits that drafting the petition “turned out to be an arduous task considering the amount of precedent that had amassed regarding the FCC auction rules that had not been developed yet when Satellite Signals made its initial filing.”⁴⁵ It complains that while the Commission spent eight years modifying its installment payment rules, “Satellite Signals had only 30 days . . . in which to digest these changes and respond . . .”⁴⁶ Most importantly, Satellite Signals admits that it “*lost sight of the filing date* for the petition for reconsideration . . .”⁴⁷

17. Satellite Signals also states that upon the release of the Bureau Order it had to “untangle itself from its contractual obligations” with Wireless Telecommunications, Inc. (“WTCI”), an entity with whom it had entered into a purchase agreement.⁴⁸ Satellite Signals also asserts that during this

“in the clearest of language to limit its holding to the highly unusual circumstances presented there,” including not only the Commission’s failure to provide the customary personal notice to the party of its action, but also the petitioner’s physical distance from Washington, D.C., where the FCC is located, his initial lack of counsel, and his prompt retention of counsel following his fortuitous receipt of informal notice of the Commission’s action).

⁴⁰ *Gardner*, 530 F.2d at 1091-92 n.24.

⁴¹ Supplement at 15 (“Satellite Signals is not arguing that the Commission’s failure to provide personal notice of its Order made it impossible for it to comply with the filing deadline.”).

⁴² Supplement at 9.

⁴³ *Id.* at 5.

⁴⁴ Petition at 2 n.4 (incorrectly asserting that the filing deadline was March 5, 2007).

⁴⁵ Supplement at 13.

⁴⁶ *Id.* Satellite Signals’ complaint about the development of Commission precedent since the filing of the Rutland Petition and the Burlington Petition does not justify its failure to file for reconsideration of the Bureau Order in a timely manner, particularly given that Satellite Signals has made more recent submissions relating to its waiver requests. In 2004, it filed supplements to its waiver requests which, among other things, cited recent Commission precedent. Burlington Supplemental Petition at 3, n.5; 5, n.11; Rutland Supplemental Petition at 3, n.5, n.11. Satellite Signals’ suggestion that Commission precedent somehow developed over the years unbeknownst to Satellite Signals strains credulity.

⁴⁷ Supplement at 11 (emphasis added).

⁴⁸ *Id.* at 5. Satellite Signals further asserts that in reviewing the provisions of this agreement, it concluded that the agreement automatically terminated upon the issuance of the Bureau Order, thus making it “free of the control of WTCI.” Satellite Signals claims that it spent several weeks “awaiting a reply” from WTCI to determine whether WTCI “was going to refute Satellite Signals’ efforts to terminate their agreement.”

time, it entered into negotiations with a local exchange carrier in Vermont to explore a leasing arrangement and acknowledges that, “[r]eaching an agreement just days before the filing deadline, counsel for Satellite Signals *set out* to draft its Reconsideration Petition.”⁴⁹

18. Satellite Signals’ explanation of the circumstances that led to the late filing of its Petition fails to bring it within the very narrow exception established in *Gardner*. Third party negotiations, an excessive workload and a miscalculation of the filing due date are not the type of extenuating circumstances contemplated by the *Gardner* decision. Indeed, the Commission has specifically held that counsel’s workload does not constitute the type of extraordinary circumstances that would justify or necessitate acceptance of a late-filed petition for reconsideration.⁵⁰ The Commission has also refused to waive the statutory deadline where, as here, the petitioner complains that negotiations delayed the filing of its petition for reconsideration.⁵¹ Reviewing the record before us, we conclude that Satellite Signals has not met the heavy burden required by *Gardner* to show that any defect in the Commission providing notification “in fact [made] it impossible reasonably for [Satellite Signals] to comply with the filing statute.”⁵² The extenuating circumstances Satellite Signals proffers as justification for its late filing are neither extraordinary nor unique and we cannot conclude that, under *Gardner*, fairness considerations require us to overlook its failure to meet the statutory deadline and consider its Petition.

B. Waiving the Statutory Deadline Is Not in the Public Interest.

19. Satellite Signals asserts that even if the Commission finds that *Gardner* does not apply, the circumstances of this case are so unique and extraordinary that grant of its waiver request is warranted. Satellite Signals acknowledges that lack of personal notice did not make it impossible for it to comply with the filing deadline. However, it asserts that lack of personal notice, “along with the extraordinary circumstance that denial of this request will result in immediate debt collection proceedings, mandate a waiver in this case.” It further states, among other things, that most if not all of the installment payment notes for Auction No. 6 have been paid off since they were ten year notes.⁵³ Under the circumstances, it asserts that not granting its waiver would be unjust, unreasonable and contrary to the public interest.

20. The circumstances raised by Satellite Signals are neither unique nor extraordinary and we cannot conclude that it would be contrary to the public interest to apply the statutory deadline despite Satellite Signals’ assertion that this will result in the institution of debt collection proceedings. Grant of Satellite Signals’ Licenses was conditioned upon the full and timely performance of its payment obligations.⁵⁴ It did not perform its payment obligations and its Licenses automatically canceled in

⁴⁹ Supplement at 6 (emphasis added).

⁵⁰ Applications of Richardson Independent School District for Licenses in the Instructional Television Fixed Service on Channels A1, A2, A3 and A4, Dallas, TX and Channels D1, D2, D3, and D4, Fort Worth, TX, Hispanic Information and Telecommunications Network, Inc., for Licenses in the Instructional Television Fixed Service on Channels A1, A2, A3 and A4, Dallas, TX and Channels D1, D2, D3, and D4, Fort Worth, TX, *Memorandum Opinion and Order*, 5 FCC Rcd 3135, 3136 ¶ 8 (1990) (“Counsel’s workload does not constitute the “extraordinary circumstances” necessary to justify or necessitate acceptance of a late-filed petition for reconsideration.”).

⁵¹ Petition for Rulemaking to Reclassify AT&T Corp. as Having Dominant Carrier Status, *Order on Reconsideration, Order Denying Petition for Rulemaking, Second Order on Reconsideration*, 12 FCC Rcd 20787, 20809 ¶ 44 (1997) (negotiations did not meet the narrow exception of an extraordinary case in which the Commission may extend or waive the statutory deadline for filing petitions for reconsideration).

⁵² *Gardner*, 530 F.2d at 1092 n.24.

⁵³ Supplement at 15 & n.17.

⁵⁴ See, e.g., 47 C.F.R. § 1.2110(e)(4) (1994) and 47 C.F.R. § 1.2110(f)(4) (1998).

1998. Pursuant to the Commission's rules, Satellite Signals' debt was accelerated and it became subject to debt collection procedures.⁵⁵ There is nothing unique or extraordinary about this result. Accordingly, the public interest is better served by adhering to, not deviating from, the statutory filing period for petitions for reconsideration.

C. Disposition of Additional Requests and Related Filings

21. Utopian Wireless seeks a waiver of the Commission's rules and requests that the Commission accept its Opposition as timely filed in accordance with Section 1.106(g).⁵⁶ For the reasons discussed below, we find that Utopian Wireless fails to meet the Commission's standard for granting a waiver. As justification for its waiver request, Utopian Wireless asserts that Satellite Signals' Petition was unavailable through the Commission's online databases and the Commission's public reference room and that Satellite Signals' Petition "was filed in a closed proceeding regarding a cancelled license."⁵⁷ Utopian Wireless claims that it was unaware that Satellite Signals filed its Petition until it was noted in the bankruptcy proceeding of WTCL, at which point, Utopian Wireless states, it received a copy of the Petition from Bureau staff on February 20, 2008.⁵⁸

22. Utopian Wireless has failed to meet the Commission's standard for granting a waiver. Section 1.106(g) of the Commission's rules requires oppositions to petitions for reconsideration to be filed within ten days after the petition is filed.⁵⁹ Utopian Wireless filed its Motion and Opposition on March 6, 2008, one year after the deadline. Once the Bureau released its Order denying Satellite Signals' waiver requests on January 31, 2007, Utopian Wireless had public notice of the Bureau Order and should have been aware of the required timing for the filing of Satellite Signals' Petition as well as any oppositions thereto. Utopian Wireless fails to present any specific or plausible explanation as to why its Opposition was a year late. Consequently, we find that Utopian Wireless has not presented any unique facts and circumstances that would render application of Section 1.106(g) inequitable, unduly burdensome or otherwise contrary to the public interest.

23. As a result of Utopian Wireless' failure to present any unique facts or circumstances to justify a waiver of the filing deadline for its Opposition, we deny its Motion and dismiss its Opposition as untimely.⁶⁰ In light of our decision, we also dismiss as moot Satellite Signals' Reply to Utopian Wireless' Opposition.

24. Although VTel is not a party to this proceeding, it submitted a letter on June 2, 2008, requesting that the Commission negotiate a consent decree to reinstate the licenses that were the subject of the Bureau Order, under conditions proposed by VTel.⁶¹ In its letter, VTel asserts that it has entered an agreement to lease the spectrum for which Satellite Signals formerly held licenses.⁶² In light of our

⁵⁵ See *supra* ¶¶ 3-4.

⁵⁶ Utopian Motion at 1.

⁵⁷ *Id.* at 2.

⁵⁸ *Id.* at 1-2.

⁵⁹ 47 C.F.R. § 1.106(g).

⁶⁰ In light of our decision to dismiss Satellite Signals' Petition, we also find that Utopian Wireless' Opposition is moot.

⁶¹ See VTel Letter; Satellite Signals Letter; and Governor Douglas Letter.

⁶² VTel Letter at 2.

decision, we reject VTel's request that the Commission negotiate a consent decree to reinstate the licenses that were the subject of the Bureau Order.

IV. CONCLUSION

25. For the reasons discussed above, we dismiss as untimely Satellite Signals' Petition for Reconsideration, without reaching the merits of its Petition. We also deny both Satellite Signals' Motion to Accept its Supplement and Clarification to its Petition and the Supplement itself. The circumstances cited by Satellite Signals are not highly unusual and do not support consideration of its late-filed Petition.

V. ORDERING CLAUSES

26. 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 Petition for Reconsideration filed by Satellite Signals of New England, Inc., on March 5, 2007, is DISMISSED.

27. IT IS FURTHER ORDERED that the Motion to Accept Supplement and Clarification to its Petition filed by Satellite Signals on March 26, 2007 is DENIED. IT IS FURTHER ORDERED that the Supplement and Clarification to its Petition filed by Satellite Signals on March 26, 2007 is DENIED IN PART and DISMISSED IN PART to the extent set forth above.

28. IT IS FURTHER ORDERED that the Motion to Accept the Opposition filed by Utopian Wireless on March 6, 2007 is DENIED.

29. IT IS FURTHER ORDERED that the Opposition filed by Utopian Wireless on March 6, 2008 is DISMISSED as moot.

30. IT IS FURTHER ORDERED that the Reply to Utopian Wireless' Opposition filed by Satellite Signals on July 8, 2008 is DISMISSED as moot.

31. 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

Ruth Milkman
Chief, Wireless Telecommunications Bureau