

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

In the Matter of
The Application for Review of the Denial of Vista
Communications, Inc.'s Request for Waiver of the
Installment Payment Rules for
the 218-219 MHz Service

MEMORANDUM OPINION AND ORDER

Adopted: August 14, 2003

Released: August 15, 2003

By the Commission:

I. INTRODUCTION

1. In this Order, we deny an Application for Review filed on behalf of Vista Communications, Inc. ("Vista").

II. BACKGROUND

2. In September 1994, the Bureau announced that Vista was the high bidder for two Interactive Video and Data Service ("IVDS") licenses.

1 Application for Review, filed by Piper Rudnick, LLP ("Petitioner") on March 24, 2003 ("Application for Review").

2 Petition for Reconsideration of the Denial of Vista Communications, Inc.'s Request for Waiver of the Installment Payment Rules for the 218-219 MHz Service, Order on Reconsideration, 18 FCC Rcd 2540 (2003) ("Vista Order on Reconsideration"); see also Letter to E. Ashton Johnston, Esq., Counsel for Vista Communications, Inc., from Margaret Wiener, Chief, Auctions and Industry and Analysis Division, 16 FCC Rcd 12,430 (2001) ("Vista Order").

3 Interactive Video And Data Service (IVDS) Applications Accepted For Filing, Public Notice, 9 FCC Rcd 6227 (1994) (Vista submitted the winning bids on license IVM135A, Eugene, OR., and license IVM148A, Salem, OR.). IVDS was later re-designated 218-219 MHz Service. See ¶ 4, infra.

4 47 C.F.R. § 1.2110(d) (1994).

conditioned upon Vista's full and timely performance of all installment payment obligations.⁵

3. Vista acknowledges that after making its March 31, 1997 installment payments, it ceased making payments on the licenses.⁶ Vista's next installment payment was due on June 30, 1997. The Commission's rules at that time provided that in the event a license holder was more than ninety days delinquent on any installment payment, its license would cancel automatically.⁷ If, during the first ninety days following any missed installment payment, a licensee required additional time to make its payment, the rules allowed the licensee to request that the Commission grant a grace period of three to six months, during which no installment payments need be made.⁸ Thus, under the Commission's rules, Vista had until September 28, 1997, to either submit the full amount of the June 30, 1997 installment payments or file a grace period request. Vista did neither,⁹ and as a result, the licenses automatically canceled on September 29, 1997.

4. On September 17, 1998, the Commission issued the *218-219 MHz Flex Order*, which, among other measures, re-designated IVDS as the 218-219 MHz Service and proposed a financial restructuring scheme that allowed non-defaulting licensees the option of retaining their licenses under reamortized payment obligations or returning their licenses to the Commission in exchange for cancellation of debt, *i.e.*, amnesty.¹⁰

5. On June 1, 1999, more than 18 months after the licenses canceled, Vista filed a request for waiver of the grace period and automatic cancellation provisions of the installment payment rules.¹¹ Vista alleged that its confusion and uncertainty over its installment payment schedule and its lack of knowledge regarding the grace period provisions justified grant of the waiver.¹² In its Waiver Request,

⁵ 47 C.F.R. § 1.2110(d)(4) (1994); Wireless Telecommunications Bureau Staff Clarifies "Grace Period" Rule for IVDS "Auction" Licensees Paying By Installment Payments, *Public Notice*, 10 FCC Rcd 10,724 (1995) (WTB) ("*IVDS Grace Period PN*").

⁶ Application for Review at 5 ("After making its interest-only payments for March 31, 1997, Vista made no further payments due to its confusion over the payment schedule and uncertainty about its obligations as a result of the changes in the overall IVDS payment program. Vista did not file a grace period request at the time because it did not know it was required to do so.").

⁷ 47 C.F.R. § 1.2110(e)(4) (1997).

⁸ 47 C.F.R. § 1.2110(e)(4)(ii) (1997).

⁹ Application for Review, 5.

¹⁰ Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service and Amendment of Part 95 of the Commission's Rules to Allow Interactive Video and Data Service Licensees to Provide Mobile Services (proceeding terminated), *Order, Memorandum Opinion and Order, and Notice of Proposed Rulemaking*, 13 FCC Rcd 19,064 (1998) ("*219-219 MHz Flex Order*").

¹¹ Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, from E. Ashton Johnston, Esq., dated June 1, 1999 ("Waiver Request"). Vista also filed a supplement to the Waiver Request: Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from E. Ashton Johnston, Esq., dated Dec. 8, 1999 ("Vista Waiver Supplement").

¹² *Id.* at 5-7.

Vista also argued that the Commission's proposal in the *218-219 MHz Flex Order* to allow licensees that had not made installment payments, but had filed timely grace period requests, to retain their license(s), while refusing to permit licensees that made "substantial payments" to retain their license(s), would be inequitable.¹³

6. On September 10, 1999, while Vista's Waiver Request remained pending, the Commission issued the *218-219 MHz Restructuring Order*, which, among other measures, adopted a financial restructuring plan for "Eligible Licensees."¹⁴ Eligible Licensees included those that: (i) were current in installment payments as of March 16, 1998; (ii) were less than ninety days delinquent on the last payment due before March 16, 1998; or (iii) had properly filed grace period requests under the former installment payment rules.¹⁵ "Ineligible Entities" were those that had made second down payments and either (i) made some installment payments, but were not current in their installment payments as of March 16, 1998, and did not have a grace period request on file in conformance with the former rules; or (ii) never made any installment payments and did not have a timely filed grace period request on file.¹⁶ Ineligible Entities were not entitled to participate in the restructuring plan for the 218-219 MHz Service because they lost their licenses through default.¹⁷ Ineligible Entities, however, were granted debt forgiveness for any outstanding balances owed and were informed that their previously paid installments would be refunded.¹⁸ Finally, the Commission also delegated to the Bureau and the Office of Managing Director ("OMD") the authority to implement the provisions in the *218-219 MHz Restructuring Order*.¹⁹

7. Subsequently, on December 3, 1999, Vista filed a petition for reconsideration of the *218-219 MHz Restructuring Order*.²⁰ In this petition, Vista raised the same arguments contained in its Waiver

¹³ *Id.* at 7.

¹⁴ Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, 15 FCC Rcd 1497, at 1506, 1517 ¶¶ 15, 31 ("*218-219 MHz Restructuring Order*").

¹⁵ *Id.* at 1520, ¶ 37.

¹⁶ *Id.* at 1520, ¶ 38.

¹⁷ *Id.* at 1518, ¶ 33 (citing 47 C.F.R. § 1.2110); *see also* Letter to J. Jeffrey Craven, Esq., Counsel for IVIDCO, L.L.C., from Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 16 FCC Rcd 7236 (2001) ("*IVIDCO Order*"); Letter to Fred D. Middleton, Jr., President, P.A.W., Inc., from Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 16 FCC Rcd 3473 (2001).

¹⁸ *218-219 MHz Restructuring Order*, 15 FCC Rcd at 1520, ¶ 38; Implementation Procedures for the Report and Order and Memorandum Opinion and Order Addressing the 218-219 MHz Services (Formerly Known As Interactive Video And Data Services (IVDS)), *Public Notice*, 15 FCC Rcd 7329 (WTB 2000) (noting that the Department of Justice authorized the reduction of debt owed to the United States in accordance with the debt relief provisions of the *218-219 MHz Order*) ("*Implementation Public Notice*"); Wireless Telecommunications Bureau Announces Revised Election Date and Amends Eligibility List for 218-219 MHz Service, *Public Notice*, 16 FCC Rcd 5937 (2001) ("*Election Public Notice*").

¹⁹ *218-219 MHz Restructuring Order*, 15 FCC Rcd at 1529, ¶ 54.

²⁰ Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, Petition for Reconsideration and Clarification, submitted by Vista Communications, Inc. (Dec. 3, 1999).

Request. On December 13, 2000, the Commission issued the *218-219 MHz Second Order on Reconsideration*,²¹ which, among other things, affirmed the definition of Eligible Licensee set forth in the *218-219 MHz Restructuring Order*²² and rejected Vista's petition for reconsideration of the *218-219 MHz Restructuring Order*.²³

8. Pursuant to its delegated authority, the Bureau sent individual letters on January 6, 2000, to former and current 218-219 MHz licensees confirming their status.²⁴ The letter sent to Vista confirmed that it was not eligible to participate in the restructuring plan.²⁵ Additionally, on April 20, 2000, the Bureau issued two public notices explaining the restructuring procedures.²⁶ One of those public notices, the *Implementation Public Notice*, included a list of entities that would be eligible to participate in the 218-219 MHz restructuring plan.²⁷ Vista was not among those listed as eligible.²⁸

9. On January 3, 2001, the Bureau released a public notice containing information regarding election procedures and also including an amended list of Eligible Licensees.²⁹ Again, Vista was not among those listed as eligible for participation in the restructuring plan. Vista did not dispute the Bureau's confirmation of Vista's status in the *Vista Ineligibility Letter*, nor did it dispute that it was not included in the list of eligible entities in the *Implementation Public Notice* or the *Election Public Notice*.

10. On April 9, 2001, Vista filed a petition for review of the orders implementing the Commission's comprehensive restructuring of the 218-219 MHz Service before the United States Court of Appeals for the District of Columbia Circuit.³⁰ It remains pending.

²¹ Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Second Order on Reconsideration of the Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd 25,020 (2000) ("*Second Order on Reconsideration*").

²² *Id.* at 25,031-33, 25,043, ¶¶ 24-29, 50.

²³ *Id.*

²⁴ See, e.g., Letter to Elizabeth Michaels, from Rachel Kazan, Chief, Auctions Finance and Market Analysis Branch, Wireless Telecommunications Bureau, dated January 6, 2000 ("*Vista Ineligibility Letter*").

²⁵ *Id.*

²⁶ *Implementation Public Notice*, 15 FCC Rcd 7329; Frequently Asked Questions Regarding the Restructuring Rules for the 218-219 MHz Service, *Public Notice*, 15 FCC Rcd 7305 (2000). The Bureau also had previously released a public notice containing preliminary implementation procedures on December 28, 1999. Wireless Telecommunications Bureau Announces Preliminary Implementation Procedures for 218-219 MHz Service (Formerly known as Interactive Video and Data Service (IVDS)), *Public Notice*, 15 FCC Rcd 22 (1998).

²⁷ *Implementation Public Notice*, 15 FCC Rcd 7329.

²⁸ *Id.*

²⁹ *Election Public Notice*, 16 FCC Rcd 5937.

³⁰ *Vista Communications, Inc. v. FCC*, No. 01-1168 (D.C. Cir, filed April 9, 2001).

11. On June 12, 2001, the Division issued an order denying Vista's Waiver Request.³¹ In the *Vista Order*, the Division described Vista's allegations in detail and explained that Vista's alleged confusion regarding the application of the installment payment rules and its installment payment schedule did not justify grant of the Waiver Request.³² As part of this determination, the Division found that Vista's assumption that it could withhold payments despite the Commission's repeated notification of the consequences that would flow from failure to make full and timely installment payments was unreasonable.³³ In making this determination, the Division took notice of the Commission's prior conclusion, in the context of Vista's challenge to the *218-219 MHz Restructuring Order*, that "even the most favorable reading of the Commission's Orders and letters to licensees would not reasonably lead a licensee to believe that it was excused from its obligation to make payments, or that it did not need to file a grace period request if it determined that it could not make timely payments."³⁴ The Division also explained that Vista, just as every Commission licensee, was charged with knowledge of the applicable regulations.³⁵ Thus, the Division found that Vista's alleged lack of knowledge with respect to the grace period rules also did not justify waiver of the rules and it had failed to demonstrate unique or unusual circumstances that would warrant waiver of the rules.³⁶

12. The Division also addressed Vista's contention that enforcement of the rules that resulted in the automatic cancellation of Vista's license would be inequitable and contrary to the underlying purpose of the rules.³⁷ Vista alleged that it would be unfair to allow licensees that made no installment payments, but filed timely grace period requests, to retain their licenses, while refusing to permit licensees that had made "substantial payments," such as Vista, to retain their licenses.³⁸ The Division noted that the Commission had previously rejected this argument when Vista raised it as part of a reconsideration petition essentially seeking to change the definition of "Eligible Licensee" to include those who had made "substantial payments."³⁹ The Division also explained that strict enforcement of the Commission's payment rules ensures that applicants have the necessary financial qualifications to be a Commission licensee and that spectrum is awarded to those qualified bidders who value the spectrum most.⁴⁰ Further, the Division stated that insisting that licensees demonstrate their ability to pay as a condition to holding

³¹ *Vista Order*, 16 FCC Rcd 12,430.

³² *Id.* at 12,433-35.

³³ *Id.*

³⁴ *Id.* at 12,433 (citing *218-219 MHz Second Order on Reconsideration*, 15 FCC Rcd at 25,032, ¶ 28).

³⁵ *Id.* at 12,434, note 38 (citing 47 C.F.R. § 0.406 "Persons having business with the Commission should familiarize themselves with those portions of its rules and regulations pertinent to such business.").

³⁶ *Id.* at 12,434-35.

³⁷ *Id.*

³⁸ Waiver Request at 7.

³⁹ *Vista Order*, 16 FCC Rcd at 12,435 (citing *218-219 MHz Second Order on Reconsideration*, 15 FCC Rcd at 25,032, ¶ 27).

⁴⁰ *Id.* at 12,436.

licenses is essential to a fair and efficient licensing process, is fair to all participants in the Commission's auctions, including those who won licenses in the auctions and those who did not, and fosters the promotion of economic opportunity and competition in the marketplace.⁴¹

13. Finally, in the *Vista Order* the Division denied Vista's request, made in the alternative, to make retroactive payment.⁴² In explaining its decision, the Division observed that, in essence, this request sought a change to the Commission's eligibility rules and this change had previously been denied by the Commission.⁴³ In the *218-219 MHz Second Order on Reconsideration*, the Commission specifically rejected Vista's proposal that the Commission reconsider the *218-219 MHz Restructuring Order* to allow retroactive payments by former licensees such as Vista.⁴⁴ The Commission determined that granting Vista's request would undermine the Commission's rules requiring timely and full payment as a condition of retaining the license.⁴⁵ The Commission concluded that in light of the ample notice provided licensees regarding the payment rules,⁴⁶ and the generous provisions for Ineligible Entities provided in the *218-219 MHz Restructuring Order*, Vista's suggestion that it be allowed to make retroactive payments was unworkable.⁴⁷ Thus, in keeping with the Commission's earlier rejection of this suggestion, the Division rejected Vista's proposal to allow it to make retroactive payments in order to become eligible for participation in the 218-219 MHz Service restructuring plan.⁴⁸

14. On July 12, 2001, Vista filed a petition for reconsideration of the *Vista Order*.⁴⁹ Vista argued that the Division failed to properly consider Vista's Waiver Request.⁵⁰ Specifically, Vista alleged

⁴¹ *Id.* at 12,436 (citing *218-219 MHz Second Order on Reconsideration*, 15 FCC Rcd at 25,033, ¶ 29).

⁴² *Id.*

⁴³ *Id.* at 12,435 (citing *218-219 MHz Second Order on Reconsideration*, 15 FCC Rcd at 25,033, ¶ 29).

⁴⁴ *218-219 MHz Second Order on Reconsideration*, 15 FCC Rcd at 25,033, ¶ 29 (cited in *Vista Order*, 16 FCC Rcd at 12,436); *see also* *IVDCO Order*, 16 FCC Rcd 7236.

⁴⁵ *218-219 MHz Second Order on Reconsideration*, 15 FCC Rcd at 25,033 ¶ 29 (cited in *Vista Order*, 16 FCC Rcd at 12,436).

⁴⁶ *Id.*; 47 C.F.R. § 1.2110(e)(4)(ii)(1994); *IVDS Grace Period PN*, 10 FCC Rcd 10724; *see also* Interactive Video and Data Service (IVDS) Licenses, Various Requests by Auction Winners, *Order*, 11 FCC Rcd 1282, at 1285 ¶ 19 (1995) ("*IVDS Omnibus Order*").

⁴⁷ *218-219 MHz Second Order on Reconsideration*, 15 FCC Rcd at 25,033 ¶ 29 (cited in *Vista Order*, 16 FCC Rcd at 12,436).

⁴⁸ *Vista Order*, 16 FCC Rcd at 12,436.

⁴⁹ Vista Communications, Inc., Petition for Reconsideration (filed July 12, 2001) ("Petition").

⁵⁰ Petition at 2, 13-14, (citing *BellSouth Corp. v. FCC*, 162 F.3rd 1215, 1224 (D.C. Cir. 1999); 21st Century Telesis, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 25,113 (2000), *aff'd on recon*, 16 FCC Rcd 17,257 (2001) ("*21st Century*"), *aff'd*, *21st Century Telesis Joint Venture and 21st Century Bidding Corporation v. FCC*, No. 01-1435, 2003 WL 203126 (D.C. Cir. Jan. 31, 2003); *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (government agencies must give waiver requests a "hard look" and not a perfunctory denial. The "hard look" requirement assures that a general rule serving the public interest for a broad range of situations will not be rigidly applied where its application would not be in the public interest).

that the Division failed to consider the effect that changes to the installment payment schedule had upon Vista.⁵¹ Vista also alleged that the 218-219 MHz restructuring plan was inequitable.⁵² Finally, Vista contended that the Division failed to address precedent cited in the Waiver Request that supported the grant of a waiver and acceptance of post-cancellation payment in this instance.⁵³

15. The Bureau considered Vista's Petition and fully examined each of Vista's allegations in detail and found in the *Vista Order on Reconsideration* that Vista's alleged lack of knowledge with respect to the grace period rules and alleged confusion failed to demonstrate unique or unusual circumstances that would warrant waiver of the rules.⁵⁴ With respect to Vista's contention that the 218-219 MHz financial restructuring plan was inequitable, the Bureau noted that the Commission previously considered and rejected this argument in the *218-219 MHz Second Order on Reconsideration*.⁵⁵

16. With respect to Vista's allegation in the Petition that the Division failed to address certain orders cited in the Waiver Request that supported its Waiver Request and the acceptance of post-cancellation payments by the Commission,⁵⁶ the Bureau found that Vista's characterization of those cases was incorrect.⁵⁷ The Bureau observed that the first line of cases cited in the Waiver Request involved requests to waive the Commission's down payment or final payment rules, not the installment payment rules. The Bureau, relying upon *Southern Communications*,⁵⁸ explained that requests for waiver of a

⁵¹ Petition at 2-11.

⁵² Petition at 6; Waiver Request at 7.

⁵³ Petition at 11-13.

⁵⁴ *Vista Order on Reconsideration*, 18 FCC Rcd 2540, at 2546-49.

⁵⁵ *Id.* at 2546-47 (citing *218-219 MHz Second Order on Reconsideration*, 15 FCC Rcd at 25,031, ¶ 25).

⁵⁶ Petition at 11; Waiver Request at 7 (citing Mountain Solutions Ltd, Inc., Emergency Petition for Waiver of Section 24.711(A)(2) of the Commission's Rules regarding Various BTA Markets in the Broadband Personal Communications Services (PCS) C Block Auction, *Memorandum Opinion and Order*, 13 FCC Rcd 21,983 (1998) ("*Mountain Solutions*"); Carolina PCS I Limited Partnership Request for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding BTA Nos. B016, B072, B091, B147, B177, B178, B312, B335, AND B436, Frequency Block C, *Memorandum Opinion and Order*, 12 FCC Rcd 22938, (1997) ("*Carolina PCS*"); Metricom, Inc.'s Request for Waiver of Section 27.208(a) of the Commission's Rules for Wireless Communications Service Markets: ME30A, ME45A, ME46A, RE01D, RE05C, RE05D, RE06C, RE06D, *Order*, 13 FCC Rcd 890 (WTB 1998) ("*Metricom*"); Magnacom Wireless, L.L.C. Request for Waiver of Section 24.716(a)(2) of the Commission's Rules, *Order*, 13 FCC Rcd 766 (1998) ("*Magnacom*"); Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, to Lloyd W. Coward, Esq., Counsel for TE-MCG Consortium, 14 FCC Rcd 2173 (1999) ("*TE-CMG*"); and Letter from Daniel B. Phythyon, Chief, Wireless Telecommunications Bureau, to Thomas Gutierrez, Esq., Counsel for Lancaster Communications, Inc., DA 98-2052 1998 WL 709412 (1998) ("*Lancaster*").

⁵⁷ *Vista Order on Reconsideration* at 2547-48.

⁵⁸ Southern Communications Systems, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd at 25109-25111, ¶¶ 13-15 (2000) ("*Southern Communications*") (distinguishing the analysis of requests for waiver of the installment payment rules from requests for waiver of the down payment rules in light of the different provisions and purposes of those rules).

winning bidder's down payment or final payment obligations are of limited applicability with respect to a licensee's request for waiver of installment payment obligations.⁵⁹ The Bureau also explained that the second line of cases cited by Vista involved the constructive waiver of the automatic cancellation rule. In those instances, as a result of administrative oversight, it was determined that a constructive waiver of the installment payment deadline had occurred. The Bureau explained that, in contrast, in this instance the Commission did not act in a way that could have been construed as waiving the installment payment deadline for the June 30, 1997 installment payments.⁶⁰ The Bureau also concluded that Vista supplied such minimal argument in support of its characterization that the Division was not required to explain how those cases were inapplicable.⁶¹

III. DISCUSSION

17. In the Application for Review, Petitioner proffers the same arguments that it advanced in prior pleadings.⁶² Specifically, Petitioner requests that the Commission review whether denial of the Waiver Request conflicts with Commission and Bureau precedent; and whether post-cancellation payment offers by Vista were properly considered by the Division and the Bureau, or presented a question of policy not previously resolved by the Commission.⁶³ We find that the Division and the Bureau each thoroughly addressed these arguments in their previous orders and correctly applied precedent. The Division and the Bureau correctly pointed out in their respective orders that the questions of policy presented in Vista's Waiver Request had, in fact, been previously resolved by the Commission in the *218-219 Second Order on Reconsideration*.⁶⁴ In rejecting Vista's request to make a post-cancellation payment, the Division noted that the same request was expressly rejected by the Commission in the *218-219 Second Order on Reconsideration*.⁶⁵ We find nothing in the arguments that Petitioner made in its

⁵⁹ *Vista Order on Reconsideration*, 18 FCC Rcd at 2548 (citing *Southern Communications*, 15 FCC Rcd 25103).

⁶⁰ *Id.* (citing Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, to Lloyd W. Coward, Esq., Counsel for TE-MCG Consortium, 14 FCC Rcd 2173 (1999) ("*TE-CMG*"); Letter from Daniel B. Phythyon, Chief, Wireless Telecommunications Bureau, to Thomas Gutierrez, Esq., Counsel for Lancaster Communications, Inc., DA 98-2052 1998 WL 709412 (1998) ("*Lancaster*").

⁶¹ *Id.* The Bureau noted that Vista's July 12, 2001 Petition for Reconsideration failed to provide any facts in support of constructive waiver, but rather took issue with the Commission's established view of the significance of the constructive waiver cases. *Id.* at note 77. Thus, the Bureau concluded that Vista's attempt to reconstrue those decisions was unavailing and, therefore, did not change the Bureau's analysis of Vista's request for waiver of the installment payment rules. *Id.*

⁶² Application for Review.

⁶³ *Id.*, 13-17.

⁶⁴ *Vista Order*, 16 FCC Rcd at 12,435-36; *Vista Order on Reconsideration*, 18 FCC Rcd at 2546-48. We also note that it is a waste of administrative resources to address arguments regarding the equity of a Commission rule through a waiver petition where the Commission has already addressed the specific arguments when they were raised in a challenge to the adoption of the rule. See *Turro v. FCC*, 859 F.2d 1498, 1500 (DC Cir. 1988) (upholding the Commission's decision to address via rulemaking, rather than through individual *ad hoc* waiver proceedings, two questions of policy that were virtually identical to each other, one raised by way of a waiver request and the other by way of petition for reconsideration).

⁶⁵ *Vista Order*, 16 FCC Rcd at 12,435-36 (citing *218-219 MHz Second Order on Reconsideration*, 15 FCC Rcd 25,020, at 25,033 ¶ 29).

Application for Review that would lead us to change the outcome of the decisions below or modify our existing precedent.⁶⁶ Accordingly, we deny Petitioner's Application for Review.

IV. ORDERING CLAUSE

18. Accordingly, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and Section 1.115(g) of the Commission's rules, 47 U.S.C. § 1.115(g), the Application for Review filed on behalf of Vista Communications, Inc. in the above-captioned proceeding is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁶⁶ 47 C.F.R. § 1.115.