

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

In the Matter of )
Morris Communications, Inc. )
Request for Waiver of Installment Payment Rules )
and Reinstatement of 900 MHz SMR Licenses )

MEMORANDUM OPINION AND ORDER

Adopted: February 20, 2008

Released: February 21, 2008

By the Commission:

I. INTRODUCTION

1. This Memorandum Opinion and Order denies an Application for Review and dismisses a Motion for Stay and a proposed Consent Decree filed on behalf of Morris Communications, Inc. ("Morris").

1 Morris Communications, Inc., Application for Review, filed May 25, 2005 ("Application for Review"); Morris Communications, Inc., Motion for Stay, filed May 25, 2005 ("Motion for Stay").

2 The licenses at issue are KNNY352 - MTA006, Channel Block O; KNNY353 - MTA044, Channel Block R; KNNY355 - MTA029, Channel Block A; KNNY356 - MTA043, Channel Block Q; KNNY357 - MTA044, Channel Block H; KNNY358 - MTA043, Channel Block C; KNNY359 - MTA006, Channel Block A; KNNY361 - MTA044, Channel Block M; and KNNY363 - MTA044, Channel Block N.

3 47 C.F.R. § 1.2110(g)(4)(iv).

4 Letter from Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, to Ronald E. Quirk, Jr., Counsel for Morris Communications, Inc., dated April 25, 2005, 20 FCC Rcd 8176 (2005) ("Division Order").

Morris to resume paying for the licenses under the terms of its original installment payment plan.<sup>5</sup> In its Motion for Stay, Morris requests that we stay the effectiveness of the *Division Order* pending our consideration of its Application for Review.<sup>6</sup> In its proposed Consent Decree, Morris requests that we permit it to become current on its original payment schedules within twelve months and then continue making quarterly installment payments on the balance of its debt.<sup>7</sup> As explained below, Morris has failed to demonstrate that the Division erred in denying its request for waiver of the Commission's installment payment rules. Because we deny Morris's Application for Review, we dismiss its Motion for Stay and its proposed Consent Decree as moot.<sup>8</sup>

## II. BACKGROUND

### A. The Commission's Installment Payment Program

2. When the Commission first adopted competitive bidding rules in 1994, it established an installment payment loan program under which qualified small businesses that won licenses in certain services were allowed to pay their winning bids in quarterly installments over the initial term of the license.<sup>9</sup> In deciding to offer installment payment loans, the Commission reasoned that in appropriate circumstances such plans would, by reducing the amount of private financing small entities needed in advance of auctions, help to provide opportunities for small businesses to participate in the provision of spectrum-based services.<sup>10</sup> Licensees paying in installments were generally allowed to pay only interest in the early years of the license term.<sup>11</sup> When in 1997, the Commission discontinued the use of installment payment loans for future auctions,<sup>12</sup> it allowed entities that were already paying for licenses

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<sup>5</sup> Application for Review at 22.

<sup>6</sup> Motion for Stay at 1, 2.

<sup>7</sup> Consent Decree at ¶¶ 7, 8. Thus, the proposed Consent Decree seeks more liberal payment terms than the Application for Review.

<sup>8</sup> The proposed Consent Decree states that if the Commission does not adopt it, the Consent Decree "shall become null and void and shall not become part of the record in this proceeding nor may it be used in any fashion by any party in a legal proceeding." Consent Decree at ¶ 12. Because Morris has not withdrawn its proposed Consent Decree, it remains part of the record.

<sup>9</sup> Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2389-91 ¶¶ 231-40 (1994). The first Commission auction for which installment payments were available was Auction No. 2 (218-219 MHz Service), which concluded on July 29, 1994.

<sup>10</sup> *Id.* at 2389-90 ¶ 233. The goal of providing opportunities for small businesses to participate in the provision of spectrum-based services is set forth at 47 U.S.C. § 309(j)(3)(B), (4)(D).

<sup>11</sup> See 47 C.F.R. § 1.2110(e)(3)(iii), (iv) (1994).

<sup>12</sup> The Commission discontinued the use of installment payments based on its findings that (1) installment payments are not necessary to ensure meaningful opportunities for small businesses to participate successfully in auctions; (2) the Commission must consider all of the objectives of Section 309(j), including the development and rapid deployment of new services for the benefit of the public; (3) filings for bankruptcy by entities unable to pay their winning bids may result in delays in the deployment of service; and (4) requiring the payment of bids in full within a short time after the close of auctions ensures greater financial accountability from applicants. Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd 374, 397-98 ¶¶ 38-39 (1998) ("*Part 1 Third Report and* (continued....)

in installments to continue doing so.<sup>13</sup>

3. Certain features of the Commission's installment payment rules have remained the same since their inception. The rules have always conditioned the grant of licenses upon the full and timely performance of licensees' payment obligations and have provided that, upon a licensee's default, the license cancels automatically and the Commission institutes debt collection procedures.<sup>14</sup> In 1997, the Commission liberalized its installment payment grace period rules for licensees that were already paying their winning bids in installments, providing these licensees with significant advantages they had not previously had. Under the rules adopted in 1994, any licensee whose installment payment was more than 90 days past due was in default, unless the licensee properly filed a grace period request.<sup>15</sup> The rules as amended in 1997, however, provided licensees with an automatic grace period, i.e., a grace period to which they were entitled without having to file a request.<sup>16</sup> The amended rules also entitled all licensees paying in installments to a grace period of 180 days. Thus, 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.<sup>17</sup> 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.<sup>18</sup> A licensee's failure to make payment, including the

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*Order*). The Commission affirmed this decision in 2000. Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15,293, 15,322 ¶ 55 (2000) ("*Part 1 Reconsideration of Third Report and Order*"). The last Commission auction for which installment payments were available was Auction No. 11 (broadband PCS F block), which ended on January 14, 1997.

<sup>13</sup> *Part 1 Third Report and Order*, 13 FCC Rcd at 436 ¶ 106.

<sup>14</sup> See, e.g., 47 C.F.R. § 1.2110(e)(4) (1994) and 47 C.F.R. § 1.2110(f)(4) (1998). See also Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Third Order on Reconsideration of the Third Report and Order*, 19 FCC Rcd 2551 (2004) ("*Part 1 Third Reconsideration of Third Report and Order*"). In this Order addressing the inapplicability of 47 C.F.R. § 1.2104 of the Commission's rules to installment payment defaults, the Commission discussed its 1997 decision not to deviate from its license-cancellation-plus-debt-collection rule for installment payment defaults and explained the reasonableness of this decision. Noting that automatic license cancellation is not unique to defaults on installment payments (licenses terminate automatically, for example, when licensees fail to build out in compliance with the Commission's rules, whether they are paying their winning bids in installments or have paid them in full in a lump sum), the Commission explained that its rules are designed to encourage entities that cannot meet their financial obligations to exit the auction process sooner rather than later in order to avoid delays in licensing spectrum to entities that are able to provide service to the public. Thus, the consequence of defaulting after the close of an auction is more severe than the consequence of withdrawing a high bid during an auction, when a new high bidder can still emerge. Similarly, the consequence of a post-licensing default, such as an installment payment default or a failure to meet construction or service requirements, is more severe than the consequence of a pre-licensing default because the former could adversely affect service to the public much longer than the latter. *Id.* at 2561-62 ¶¶ 29-31.

<sup>15</sup> 47 C.F.R. § 1.2110(e)(4)(i), (ii) (1994). Licensees were permitted to request a grace period of 90 to 180 days.

<sup>16</sup> 47 C.F.R. § 1.2110(f)(4)(i), (ii) (1998); *Part 1 Third Report and Order*, 13 FCC Rcd at 436 ¶¶ 106-07. The amended rules took effect on March 16, 1998.

<sup>17</sup> 47 C.F.R. § 1.2110(f)(4)(i) (1998); *Part 1 Third Report and Order*, 13 FCC Rcd at 436 ¶ 106.

<sup>18</sup> 47 C.F.R. § 1.2110(f)(4)(ii) (1998); *Part 1 Third Report and Order*, 13 FCC Rcd at 436 ¶ 106. (continued....)

associated late fees, by the end of the 180 day period placed it in default.<sup>19</sup>

4. In liberalizing its grace period rules, the Commission found that the amended rules eliminated uncertainty for licensees seeking to restructure other debt contingent upon the results of the Commission's installment payment provisions,<sup>20</sup> and that the added certainty the rules provided to licensees would increase the likelihood that licensees and potential investors would find solutions to capital problems before defaults occurred.<sup>21</sup> Noting that a grace period is an extraordinary form of relief in cases of financial distress and that the rules it adopted are consistent with commercial practice, the Commission declined to provide more than 180 days for licensees to make late payments and rejected the argument that licenses should not cancel automatically upon default.<sup>22</sup>

#### B. Morris

5. Morris was the winning bidder for the nine licenses at issue in Auction No. 7, the 900 MHz SMR auction that concluded in April 1996.<sup>23</sup> As a small business, Morris was eligible to participate in the Commission's installment payment plan available for qualifying entities that won licenses in Auction No. 7.<sup>24</sup> Consistent with the Commission's rules, the grant of the licenses was conditioned upon Morris's full and timely performance of its installment payment obligations.<sup>25</sup>

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<sup>19</sup> 47 C.F.R. § 1.2110(f)(4)(iv) (1998). These rules were amended in 2000 to provide licensees with two quarters (i.e., two 3-month periods), rather than two 90-day periods, in which to submit late installment payments and associated late fees. *Part 1 Reconsideration of Third Report and Order*, 15 FCC Rcd at 15,310 ¶ 28. This change aligned the schedule for late payments with the quarterly schedule of regular installment payments.

<sup>20</sup> *Part 1 Third Report and Order*, 13 FCC Rcd at 439-40 ¶ 110.

<sup>21</sup> *Id.* at 443 ¶ 116.

<sup>22</sup> *Id.* at 439-40 ¶¶ 109-10; *Part 1 Reconsideration of Third Report and Order*, 15 FCC Rcd at 15,304-05 ¶ 19.

<sup>23</sup> FCC Announces Winning Bidders in the Auction of 1,020 Licenses to Provide 900 MHz SMR in Major Trading Areas, *Public Notice*, 11 FCC Rcd 18,599 (1996).

<sup>24</sup> 47 C.F.R. §§ 1.2110(e) (1996), 90.812 (1996).

<sup>25</sup> 47 C.F.R. §§ 1.2110(e)(4) (1996) & 90.812(a) (1996). In addition, the Public Notice granting Morris's licenses stated that "grant of each license is expressly conditioned on timely execution and return by the licensee of a note documenting the licensee's installment payment obligations and a security agreement commemorating the Commission's security interest in the license in the event of default. Failure to comply with this condition in a timely manner for any license will result in revocation of the license." FCC Announces Grant of 900 MHz Specialized Mobile Radio MTA Licenses, *Public Notice*, 11 FCC Rcd 13188 (1996). Each of the licenses also stated that "this authorization is conditioned upon the full and timely payment of all moneys due pursuant to sections 1.2110 and 90.812 of the Commission's rules and the terms of the Commission's installment plan as set forth in the Note and Security Agreement executed by the licensee. Failure to comply with this condition will result in the automatic cancellation of this authorization." See Licenses for KNNY352 - MTA006, Channel Block O; KNNY353 - MTA044, Channel Block R; KNNY355 - MTA029, Channel Block A; KNNY356 - MTA043, Channel Block Q; KNNY357 - MTA044, Channel Block H; KNNY358 - MTA043, Channel Block C; KNNY359 - MTA006, Channel Block A; KNNY361 - MTA044, Channel Block M; and KNNY363 - MTA044, Channel Block N, Universal Licensing Service (ULS), <http://wireless.fcc.gov/uls/> (follow "Search Licenses" hyperlink, then search by individual call signs and click on the hyperlinked call sign).

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6. Morris began making its installment payments under the Commission's original installment payment rules. When the Commission's amended grace period rules became effective on March 16, 1998, Morris became subject to those rules.<sup>26</sup> Morris failed to render the installment payments for the licenses that were due on July 31, 2001, along with the required late fees, before the expiration of the two quarterly grace periods permitted under the rules. The licenses therefore automatically canceled on February 1, 2002, and Morris became subject to the Commission's debt collection procedures.<sup>27</sup>

7. On February 5, 2002, Morris faxed a letter to Colson Services Corporation ("Colson"), the Commission's loan servicing agent, representing that it had just received its January bills and inquiring about its payment obligations.<sup>28</sup> On the same day, Morris wired to the Commission the amounts that had been due on July 31, 2001.<sup>29</sup>

8. On May 2, 2002, Morris filed a request for waiver of the automatic cancellation of the nine licenses.<sup>30</sup> Morris argued, *inter alia*, that a waiver was warranted under Section 1.925(b)(3)(ii) of the Commission's rules because its timely submission of installment payments for approximately five years prior to the default and the circumstances surrounding Colson's administration of the Commission's loan portfolio were unique circumstances that rendered the strict application of the installment payment rules inequitable, unduly burdensome, and contrary to the public interest.<sup>31</sup> More specifically, Morris claimed that Colson's loan servicing had resulted in Morris receiving its payment notices late and in its being confused regarding the amount of its obligations.<sup>32</sup> On May 6, 2002, Morris sought a stay of the Commission's debt collection procedures.<sup>33</sup>

9. On January 21, 2003, while its initial request for waiver was pending, Morris filed a second  
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<sup>26</sup> See *Part 1 Third Report and Order*, 13 FCC Rcd at 436 ¶ 106.

<sup>27</sup> 47 C.F.R. §§ 1.2110(g)(4)(iv). See also Letter from Mark Reger, Chief Financial Officer, Federal Communications Commission, to Morris Communications, Inc., dated, April 26, 2002 ("Notice of Default and Debt Acceleration").

<sup>28</sup> Letter from W. Todd Hicks, Controller, Morris Communications, Inc., to Judith Samuel, Colson Services Corporation, dated February 5, 2002.

<sup>29</sup> Morris Communications, Inc., Request for Waiver, filed May 2, 2002, at 2 ("Waiver I Request").

<sup>30</sup> *Id.* More specifically, Morris requested a waiver of its notes and security agreements to the extent necessary to reinstate the licenses and allow Morris to continue paying for the licenses under its original installment payment plan. *Id.* at 3.

<sup>31</sup> *Id.* at 4-5. Under 47 C.F.R. § 1.925(b)(3), the Commission may grant a request for waiver if it is shown that:

(i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or

(ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

<sup>32</sup> Waiver I Request at 5.

<sup>33</sup> Morris Communications, Inc., Request for Stay, filed May 6, 2002.

request for waiver of the installment payment rules, asking that the Commission grant it relief from making any payments for the nine subject licenses for a period of one year.<sup>34</sup> Morris stated that grant of this request would enable it to use the funds it was using for installment payments to build a 900 MHz SMR network.<sup>35</sup> In this second request Morris again asserted unique circumstances, which it identified as the “regulatory uncertainty” surrounding the licenses, a lack of appropriate equipment, and the absence of demand for 900 MHz SMR service in its markets.<sup>36</sup> Morris also repeatedly stated that it was having financial difficulties, that its installment payment obligations were a severe financial burden, and that it was having difficulties obtaining financing for the licenses.<sup>37</sup> In this same request, Morris also sought additional time in which to construct all of the licenses. Specifically, Morris requested that “it be granted a one-year extension of time, up to and including December 31, 2003, to fully construct a digital 900 MHz SMR system in all its authorized MTAs.”<sup>38</sup>

10. On April 25, 2005, the Division denied both of Morris’s waiver requests, finding that Morris had failed to demonstrate under Section 1.925 of the Commission’s rules that it met either prong of the standard for waiver of the automatic cancellation rule.<sup>39</sup> In reaching this decision, the Division determined that allegations “of mistake and circumstances similar to those raised by Morris would not distinguish it from prior cases in which we determined that denying relief was essential to safeguarding the integrity of the auctions process.”<sup>40</sup> The Division also explained that “the Commission has previously

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<sup>34</sup> Morris Communications, Inc., Petition for Rule Waiver, filed January 21, 2003 (“Waiver II Request”).

<sup>35</sup> *Id.* at 6.

<sup>36</sup> *Id.* at 7.

<sup>37</sup> *Id.* at 6, 9, 13, 14.

<sup>38</sup> *Id.* at 6. Morris indicated that it needed to purchase digital equipment due to the decreasing demand for analog technology and that digital equipment was not yet available. *Id.* at 10-11.

<sup>39</sup> *Division Order*, 20 FCC Rcd at 8176, 8178-79.

<sup>40</sup> *Id.* at 8179 (citing Licenses of 21<sup>st</sup> Century Telesis, Inc. for Facilities in the Broadband Personal Communications Services, *Memorandum Opinion and Order*, 15 FCC Rcd 25,113 (2000) (“21<sup>st</sup> Century MO&O”), *recon. denied*, Licenses of 21st Century Telesis Joint Venture and 21st Century Bidding Corporation for Facilities in the Broadband Personal Communications Services, *Order on Reconsideration*, 16 FCC Rcd 17,257 (2001) (“21<sup>st</sup> Century Order on Reconsideration”), *petition dismissed in part and denied in part*, 21st Century Telesis Joint Venture v. FCC, 318 F.3d 192 (D.C. Cir. 2003); Southern Communications Systems, Inc., Request for Limited Rule Waiver to Comply with PCS Installment Payment for C Block Licenses in the Cleveland, TN BTA, *Memorandum Opinion and Order*, 15 FCC Rcd 25,103 (2000) (“Southern MO&O”), *further recon. denied*, *Second Memorandum Opinion and Order*, 16 FCC Rcd 18,357 (2001); Requests for Extension of the Commission’s Initial Non-Delinquency Period for C and F Block Installment Payments, *Memorandum Opinion and Order*, 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); Request of Inforum Communications, Inc. for Petition for Reconsideration and Waiver Request for Late Acceptance of BTA Installment Payment, *Order*, 19 FCC Rcd 83 (WTB/ASAD 2004), *recon. pending*; Request of GLH Communications, Inc. for Temporary Waivers of Installment Payment Deadlines (47 C.F.R. § 1.2110(g)(4)) and Debt Collection Rules (47 C.F.R. § 1901 et seq.), 18 FCC Rcd 14,695 (2003) (“GLH”), *recon. denied*, *Order on Reconsideration*, 22 FCC Rcd 2411 (WTB 2007) (“GLH Order on Reconsideration”), *application for review pending*; Letter from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Jorge J. Inga, M.D., and Rafael Blanco, M.D., Pan American Interactive Corporation, 18 FCC Rcd 15,314 (2003) (“Pan American Interactive”); Letter from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications (continued....)

declined to waive payment deadlines where a licensee has asserted financial difficulties or cost intensive equipment complications.”<sup>41</sup> The Division dismissed Morris’s request for stay of the Commission’s debt collection efforts as moot and did not grant its request for additional time to construct a 900 MHz SMR system.<sup>42</sup>

11. Morris filed the instant Application for Review and Motion for Stay on May 25, 2005.<sup>43</sup> In its Application for Review, Morris claims that the Division abused its discretion by denying Morris’s waiver requests despite having granted such requests to similarly situated entities, violated the Commission’s rules by failing to respond to Morris’s correspondence regarding its waiver requests during the pendency of the requests, misstated important facts and ignored critical arguments, and violated Morris’s administrative due process rights. Morris also asserts that it relied to its detriment on the Division’s actions as a constructive waiver of its installment payment deadlines and that the Division should therefore be estopped from canceling the licenses.<sup>44</sup>

12. On September 23, 2005, Morris proposed to “settle” its dispute with the Commission regarding the automatic cancellation of the licenses by consent decree.<sup>45</sup> On October 3, 2005, Morris submitted a revised proposed Consent Decree that it indicated reflected the official loan figures from the Commission that it had received subsequent to its submission of September 23, 2005.<sup>46</sup> In its proposed Consent Decree, Morris seeks reinstatement of the nine licenses. Morris also requests payment relief by asking that it be permitted to “become current in its payment schedules for all of the SMR Licenses within twelve months of the effective date of this Consent Decree” and to pay the balances on the licenses in quarterly installments.<sup>47</sup>

13. For seven of the nine licenses, Morris made three post-default payments following its late payment in February 2002, the last of which was paid on October 29, 2002. Morris continued making post-default payments on the remaining two licenses (KNNY352 and KNNY359) until January 2005.<sup>48</sup> Morris filed substantial service showings for KNNY352 and KNNY359 on January 14, 2003.<sup>49</sup>

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Bureau, to Messrs. Stephen Diaz Gavin and Paul C. Besozzi, Counsel for U.S. Telemetry Corporation, 17 FCC Rcd 6442 (2002) (“*U.S. Telemetry*”).

<sup>41</sup> *Division Order*, 20 FCC Rcd at 8182 (citing *Pan American Interactive*, 18 FCC Rcd 15,314; *U.S. Telemetry*, 17 FCC Rcd 6442).

<sup>42</sup> *Division Order*, 20 FCC Rcd at 8183.

<sup>43</sup> *See supra* note 1.

<sup>44</sup> Application for Review at 2-3.

<sup>45</sup> Letter from Frederick M. Joyce and Ronald E. Quirk, Jr., Counsel for Morris Communications, Inc., to Fred Campbell, Legal Advisor to Chairman Martin, Federal Communications Commission, dated September 23, 2005.

<sup>46</sup> *See supra* note 1.

<sup>47</sup> Consent Decree at ¶¶ 7, 8.

<sup>48</sup> Application for Review at 8.

<sup>49</sup> Morris Communications, Inc., Notification of Buildout/Coverage or Construction Requirements, ULS File Nos. 0001157612 and 0001157613, filed January 14, 2003. These filings were dismissed effective May 11, 2005. Notices of Dismissal, Reference Numbers 3497504 and 3497505, dated May 12, 2005.

### III. DISCUSSION

14. Morris asserts that the *Division Order* warrants our review under Section 1.115(b)(2) of the Commission's rules because it is in conflict with Commission rules and precedent and because it reflects erroneous findings as to important and material questions of fact.<sup>50</sup> As explained below, we disagree with all of Morris's assertions of Division error.

#### A. The Division Did Not Abuse Its Discretion By Denying Morris's Waiver Requests

15. Morris argues that the Division abused its discretion by failing to grant its waiver requests despite having granted such waivers to similarly situated entities.<sup>51</sup> Morris correctly points out that administrative agencies such as the Commission are required to follow their own precedents and that, once an agency allows exceptions to a rule, it must provide a rational explanation if it later refuses to allow exceptions in cases that appear to be similar.<sup>52</sup> At the same time, however, "an agency's refusal to grant a waiver will not be overturned unless the agency's reasons are 'so insubstantial as to render that denial an abuse of discretion.'"<sup>53</sup> We find that Morris has failed to show that, by denying its waiver requests, the Division treated it differently than similarly situated entities. The Division's denial was therefore not an abuse of discretion.

16. Morris argues in particular that its request for waiver of the installment payment rules was "virtually identical" to the request granted in *Senter* and that *Lakeland* also supports a grant of its request.<sup>54</sup> According to Morris, the Division erred in finding that *Senter* and *Lakeland* were distinguishable from the instant case and in failing to provide a rational explanation of its denial of Morris's waiver request.<sup>55</sup> Morris further claims that, in denying its waiver request, the Division relied on installment payment cases that are "easily distinguished" from its own situation.<sup>56</sup> We find, however, that Morris is not similarly situated to the licensees in *Senter* and *Lakeland* and that the Division appropriately relied on other case law in reaching its decision.

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<sup>50</sup> *Id.* at 2-3 (citing 47 C.F.R. § 1.115(b)(2)). Under Section 1.115(b)(2), two of the factors that warrant Commission consideration are: "The action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy" (47 C.F.R. § 1.115(b)(2)(i)); and "An erroneous finding as to an important or material question of fact" (47 C.F.R. § 1.115(b)(2)(iv)).

<sup>51</sup> Application for Review at 9-13.

<sup>52</sup> *Id.* at 9, 12-13 (citing *Green Country Mobilephone, Inc. v. FCC*, 765 F.2d 235, 236-38 (D.C. Cir. 1985) ("*Green Country Mobilephone*"), and *Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965) ("*Melody Music*")).

<sup>53</sup> *Mountain Solutions v. FCC*, 197 F.3d 512, 517 (D.C. Cir. 1999) (citing *Green Country Mobilephone*, 765 F.2d at 238 (quoting *Thomas Radio Co. v. FCC*, 716 F.2d 921, 924 (D.C. Cir. 1983))).

<sup>54</sup> Application for Review at 9-11 (citing Letter from Amy J. Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Meredith S. Senter, Jr., Esq., 14 FCC Rcd 5003 (1999) ("*Senter*"), and Lakeland PCS LLC and Cricket Licensee (Lakeland) Inc. for Assignment of PCS License for Station KNLG741, *Second Order on Reconsideration*, 15 FCC Rcd 23,733 (WTB/CWD/Policy & Rules Branch 2000) ("*Lakeland*")).

<sup>55</sup> Application for Review at 9-13.

<sup>56</sup> *Id.* at 12.



17. In *Senter*, decided in 1999, the former Auctions and Industry Analysis Division waived the automatic cancellation of six 900 MHz SMR licenses. The rules at issue were the Commission's installment payment rules that had been effective prior to March 16, 1998.<sup>57</sup> Thus, the licensee in *Senter* had had 90 days to render payment or request a grace period; unlike Morris, it had not had the benefit of two quarterly grace periods prior to automatic license cancellation, nor had it been entitled to an automatic grace period. The licensee had made its first installment payments more than 90 days late but subsequently had made regular post-default payments and was continuing to make such regular payments at the time the decision was issued. The Auctions and Industry Analysis Division recognized that the acceptance of the licensee's payments could have been construed as a waiver of the payment deadline and further found that its record of post-default payments was indicative of a commitment on its part to meet its payment obligations.<sup>58</sup> At the same time, emphasizing that it is every licensee's responsibility to ensure that its payments are submitted on time, the Division declined to grant a complete waiver of the payment deadline and instead assessed a late payment fee.<sup>59</sup>

18. Since *Senter*, the Commission has explained unequivocally that, because parties remain obligated for the full amount of their debt following their default on installment payments, the Commission's acceptance of a payment after such a default does not, by itself, constitute a constructive waiver of the automatic cancellation rule or revive an automatically canceled license.<sup>60</sup> In addition, after *Senter* the Commission, consistent with its obligation to collect debt, began notifying defaulting installment payors individually of the acceleration of their debt and explaining to them that the acceptance of post-default payments shall not constitute a waiver of their default.<sup>61</sup> Morris received such a letter from the Commission's Office of Managing Director dated April 26, 2002.<sup>62</sup> This letter notified Morris that it had defaulted on its installment payments, that its debt had been accelerated, and that the acceptance by the Commission of payments on Morris's debt would not constitute a waiver of the default or a reinstatement of the original installment payment schedule.<sup>63</sup> The licensee in *Senter* had not

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<sup>57</sup> 47 C.F.R. § 1.2110(e)(4) (1996).

<sup>58</sup> *Senter*, 14 FCC Rcd at 5004.

<sup>59</sup> *Id.*

<sup>60</sup> *21<sup>st</sup> Century Order on Reconsideration*, 16 FCC Rcd at 17,261 n.24 (“[E]ven when a license automatically cancels, the former licensee remains obligated to pay its debt. Accordingly, mere acceptance of a payment after cancellation would not constitute a constructive waiver of the automatic cancellation rule.”); *Lakeland*, 15 FCC Rcd at 23,735 n.11 (“[E]ven when the license automatically cancels, the former licensee remains obligated for the full amount of the debt. Accordingly, mere acceptance of a payment, by itself, would not constitute a constructive waiver.”), 23,735 ¶ 4 (“[L]ate payment could not revive an automatically cancelled license....”).

<sup>61</sup> See 31 U.S.C. § 3711 and 31 C.F.R. §§ 901.1, 901.2.

<sup>62</sup> Application for Review at 4.

<sup>63</sup> Notice of Default and Debt Acceleration, *supra* note 27. This letter stated: “This letter constitutes notice by the Commission that the Borrower has defaulted with respect to its obligations under the Loan Documents as a result, among other things, of its failure to make all payments due under the Note as and when the same are due and payable. Based upon the foregoing and in accordance with the terms of the Loan Documents, all of the obligations of the Borrower have been accelerated. This letter constitutes notice that the outstanding principal, together with all interest, late fees, and other costs and expenses advanced by the Commission, are immediately due and payable in full. The notice provided herein does not waive the right of the Commission under the Loan Documents to proceed without notice of default and/or acceleration to the Borrower, and the Commission will not provide further courtesy Notices. . . . *The acceptance by the Commission of any amounts comprising less than the entire debt* (continued....)”

received such notice, and therefore the circumstances of the instant case are different from those in *Senter*.

19. The Auctions and Industry Analysis Division found that the *Senter* licensee's record of post-default payments was indicative of a commitment on its part to meet its payment obligations. Morris argues that it has demonstrated a stronger commitment to paying its debt obligations than was shown by the licensee in *Senter* because it made pre-default payments for five years and post-default payments on two licenses for nearly three years, whereas the licensee in *Senter* missed its first installment payment deadline and made post-default payments for only two years.<sup>64</sup> We do not find, however, that Morris has demonstrated a stronger commitment to meeting its payment obligations than the *Senter* licensee, or even an equivalent commitment. Morris ceased making payment on its debt for seven of the nine licenses less than a year following its default. Moreover, as explained more fully below, we are presented here with significant evidence of Morris's inability or unwillingness to meet its financial obligations, including its cessation of post-default payments, its multiple statements indicating that it has been in financial distress, and its requests to renegotiate the terms of its payments.<sup>65</sup> None of these circumstances were present in *Senter*.<sup>66</sup> Morris is therefore not similarly situated with the *Senter* licensee, and the Division did not err in finding that Morris's reliance on *Senter* was misplaced.

20. The facts in *Lakeland* are also distinguishable from the facts presented by Morris. In *Lakeland*, a constructive waiver of the automatic cancellation rule was granted because the Commission had continued to send payment notices to the former licensee despite the automatic cancellation of the license.<sup>67</sup> As noted above, *Lakeland* specifically explained that the mere acceptance of post-default payments was insufficient to revive an automatically canceled license.<sup>68</sup> Morris fails to present any evidence in support of a claim of constructive waiver to suggest that the Commission took any actions with respect to it or the subject licenses, such as sending installment payment notices, that could be deemed inconsistent with the operation of the Commission's automatic cancellation rule. The Division's denial of Morris's waiver requests was therefore not inconsistent with the decision in *Lakeland*.

21. We further find that the Division relied on appropriate precedent in making its decision. The Division correctly found Morris's assertion that it was uncertain as to the exact amount owed, and that it received its payment notice late, insufficient by itself to justify a waiver of the installment payment rules. In doing so, the Division appropriately relied on the *21<sup>st</sup> Century MO&O*, in which the Commission had stated in response to a similar argument that it is the licensee's responsibility to know the amounts and  
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*shall not be deemed to be a cure of the Borrower's Default, a waiver of any other default under the Rules or Loan Documents, or a reinstatement by the Commission of the terms of the Loan Documents.*" *Id.* at 1-2 (emphasis added).

<sup>64</sup> Application for Review at 11.

<sup>65</sup> *See infra* paras. 36-39.

<sup>66</sup> Indeed, unlike Morris, the *Senter* licensee specifically indicated in its request for waiver of the Commission's installment payment rules that its request was unrelated to any inability to meet its payment obligations. The licensee stated that it had more than sufficient resources to fund its installment payments and submitted evidence of these resources. Letter from Meredith S. Senter, Jr., Counsel for Cordell Engineering, Inc., to William F. Caton, Federal Communications Commission, dated June 2, 1997, at 2.

<sup>67</sup> *Lakeland*, 15 FCC Rcd 23,734-35 ¶¶ 2-4.

<sup>68</sup> *Id.* at 23,735 ¶ 4.

due dates of its installment payments.<sup>69</sup> The Division also did not err in relying on the similar finding in *Lakeland* that it is every licensee's responsibility to ensure that its payments are submitted on time.<sup>70</sup>

22. We agree with Morris that there are various factual differences between its own situation and the circumstances presented in the cases cited by the Division in which requests for waivers of installment payment deadlines were denied. However, we also find that none of these differences renders the Division's denial of Morris's request erroneous. The Division correctly decided that, because Morris's claim of misunderstanding did not by itself support a waiver, that claim also did not distinguish Morris's case from those in which defaulting licensees that were unable to meet their payment obligations were denied waivers of their payment deadlines.<sup>71</sup> In addition, having considered Morris's various statements regarding its financial difficulties and its inability to meet its installment payment deadlines, the Division correctly noted that requests for waivers of such deadlines had previously been denied where defaulting licensees had asserted financial difficulties and appropriately cited cases in which such denials had been issued.<sup>72</sup>

### **B. The Division Did Not Violate the Commission's Rules**

23. Morris contends that the *Division Order* should be overturned because the Division violated Section 1.1911(e) of the Commission's rules by not ruling on Morris's waiver requests for almost three years and by not responding to Morris's correspondence regarding its waiver requests while the requests were pending.<sup>73</sup> According to Morris, it was substantially harmed by the Division's failure to follow this Commission rule.<sup>74</sup> We find, however, that this argument is without merit.

24. Section 1.1911(e) is part of the Commission's debt collection rules; it provides that the Commission will respond promptly to communications from a debtor, within 30 days whenever feasible.<sup>75</sup> This rule does not apply to requests for waivers of regulations such as the automatic

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<sup>69</sup> *Division Order*, 20 FCC Rcd at 8178-79; see also *21<sup>st</sup> Century MO&O*, 15 FCC Rcd at 25119-21 ¶¶ 15-16. The Division also appropriately cited the *Southern MO&O*, in which the Commission rejected a defaulting licensee's claim that a waiver of the installment payment rules was warranted because of, *inter alia*, its inability to ascertain from its own financial records what license payments had been submitted to the Commission. *Southern MO&O*, 15 FCC Rcd at 25,107 ¶ 8, 25107-08 ¶ 10.

<sup>70</sup> *Division Order*, 20 FCC Rcd at 8178 (citing *Lakeland*, 15 FCC Rcd at 23,734-35 ¶ 4).

<sup>71</sup> *Division Order*, 20 FCC Rcd at 8178-79. The Division cited, for example, *GLH*, 18 FCC Rcd 14,695; *Pan American Interactive*, 18 FCC Rcd 15,314; and *U.S. Telemetry*, 17 FCC Rcd 6442.

<sup>72</sup> *Division Order*, 20 FCC Rcd at 8181-82. The Division cited *Pan American Interactive*, 18 FCC Rcd 15,314, and *U.S. Telemetry*, 17 FCC Rcd 6442. This precedent has not been overturned and, indeed, since the issuance of the *Division Order* the Commission has continued to consistently deny requests for waiver of the installment payment rules in cases where defaulting licensees assert financial difficulties. See, e.g., *CommNet Communications Network, Inc., Request for Waiver and for Reinstatement of the 900 MHz Specialized Mobile Radio Service T Block License for MTA007, Dallas-Fort Worth, KNNX959, Order*, 22 FCC Rcd 8612 (WTB 2007), *recon. pending*; *Lancaster Communications, Inc., Request for Waiver of Installment Payment Rules for Auction No. 7 and Reinstatement of Licenses, Order*, 22 FCC Rcd 2438 (WTB 2007) ("*Lancaster*"), *recon. pending*.

<sup>73</sup> Application for Review at 2, 13-15 (citing 47 C.F.R. § 1.1911(e)).

<sup>74</sup> Application for Review at 13-14.

<sup>75</sup> 47 C.F.R. § 1.1911(e).  
(continued....)

cancellation rule. Therefore, the Division could not have violated the rule by not contacting Morris regarding its waiver requests during their pendency.<sup>76</sup>

25. We also note that Section 1.1911(e) does not mandate that the Commission resolve a debt dispute within a certain time frame. Instead, it states that the Commission will respond promptly to correspondence from a debtor and will do so within 30 days whenever feasible. The Commission's Office of Managing Director ("OMD") acted in accordance with Section 1.1911(e) by acknowledging Morris's request for waiver of the Commission's installment payment rules in writing within less than a week of its being filed.<sup>77</sup>

26. In addition, Morris's claim that it was harmed by not hearing from the Division during the pendency of its waiver requests is unconvincing. It is well settled that when a license automatically cancels, the former licensee remains obligated for the full amount of the debt and its debt is accelerated.<sup>78</sup> Thus, once Morris had defaulted, it was no longer eligible to pay its winning bid obligations in installments.<sup>79</sup> Moreover, even in cases where the Commission has waived the automatic cancellation of licenses following an installment payor's failure to submit an installment payment by the two-quarter grace period deadline, it has not waived the default itself and the defaulting licensee's debt has been accelerated.<sup>80</sup> Therefore, even if the Division had found that a waiver of the automatic cancellation rule had been warranted in Morris's case, and even if it had acted earlier, there would have been no precedent for waiving Morris's default and Morris would have remained subject to debt collection absent the grant of a separate stay of that debt collection by OMD. Consequently, Morris suffered no harm by making post-default payments to the Commission while it awaited the Division's decision on its waiver requests. Furthermore, because Morris has ceased making payments on its debt, it has to date avoided paying its

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<sup>76</sup> See TV Communications Network, Inc., Request for Waiver of Installment Payment Rules for Auction No. 6 and Reinstatement of Licenses, *Order*, 22 FCC Rcd 1397, 1406-07 ¶ 18 (WTB 2007), *application for review pending* ("[T]he Commission is not obligated to act within any particular timeframe on requests for installment payment grace periods that exceed the automatic grace period provided for in its rules.").

<sup>77</sup> Letter from Mark Reger, Chief Financial Officer, Federal Communications Commission, to Frederick M. Joyce and Marianne Roach Casserly, Counsel for Morris Communications, Inc., dated May 9, 2002. In this letter, the Commission's Chief Financial Officer indicated that either a resolution of Morris's request or a letter telling Morris when it could expect a resolution would be mailed within 30 days. Although OMD did not mail a resolution of the request or such a letter to Morris within 30 days, it violated no Commission rule by not meeting its own projected timetable for providing further information to Morris.

<sup>78</sup> See 47 C.F.R. § 1.2110(g)(4)(iv). See also Big Sky Wireless Partnership, Request for Waiver and Reinstatement of Broadband Radio Service Authorization for the Butte, Montana Basic Trading Area, MDB064, *Order*, 21 FCC Rcd 10,066, 10,067 ¶ 3, 10,074 ¶ 20 (WTB 2006) ("*Big Sky*"); Advanced Communications Solutions, Inc. Request for Waiver of Section 1.2110(g)(4)(iv) and Reinstatement of 900 MHz Specialized Mobile Radio Licenses, *Order*, 21 FCC Rcd 1627, 1628 ¶ 3, 1635 ¶ 22 (WTB 2006) ("*Advanced*"); *Lakeland*, 15 FCC Rcd at 23,735 n.11.

<sup>79</sup> 47 C.F.R. § 1.2110(g)(4)(iv).

<sup>80</sup> See *supra* note 78. The only cases in which installment debt has not been accelerated following a missed payment deadline have been cases involving constructive waivers and one case in which the licensee failed to timely remit only amounts equivalent to late fees. Letter from Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to David Irwin and Nathaniel Hardy, Irwin, Campbell & Tannenwald, P.C., Counsel for MBO Wireless, Inc., 19 FCC Rcd 4011 (WTB 2004).

debt in full as it is required to do under the Commission's rules.<sup>81</sup>

27. We also find that any harm Morris may have sustained from its post-default construction of two of the nine subject licenses was unrelated to any action or inaction by the Division. Morris claims that it was harmed because the Division failed to respond to its inquiries about its construction deadline, thus "permitting it to construct stations."<sup>82</sup> However, Morris was responsible for knowing that under the Commission's rules the nine licenses had canceled automatically on February 1, 2002, without the need for further action by the Commission.<sup>83</sup> Morris also knew, or should have known, that any operations on these licenses would require Commission authorization and that, without such authorization, it was constructing the two licenses at its own risk.<sup>84</sup> The Commission's rules governing these matters are clear, and it is every installment payor's responsibility to be familiar with these rules.<sup>85</sup> Therefore, Morris's submission of substantial service showings eleven months after the two licenses had automatically canceled did not require a response by the Division.<sup>86</sup> In sum, neither the timing of the *Division Order* nor the lack of correspondence to Morris from the Division during the period in which it was considering Morris's waiver requests caused Morris any harm.

### C. Morris's Claims Of Detrimental Reliance And Equitable Estoppel Are Without Merit

28. Morris argues that it detrimentally relied on the Commission's acceptance of its post-default payments, as well as the Division's "acquiescence" to its construction of stations KNNY352 and KNNY359, as a constructive waiver of its installment payment deadlines.<sup>87</sup> Morris further asserts that the Commission is therefore estopped from canceling the licenses at issue.<sup>88</sup> According to Morris, "the Division had more than ample opportunity to enforce the automatic cancellation rules, and inform Morris not to operate the subject SMR stations. Because it willfully chose not to, the Division waived its right

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<sup>81</sup> While the filing of Morris's original waiver and stay requests and its subsequent Application for Review may have suspended the Commission's actions to collect on Morris's debts, it did not relieve Morris of its obligation to pay its debts in full.

<sup>82</sup> Application for Review at 14-15. Morris states at one point that the Division's denial of its waiver requests "would cause Morris to suffer further financial losses by forcing a shut-down of Morris' stations." *Id.* at 14. It is unclear what Morris means by this, as it later asserts that it has operational stations. *Id.* at 20-21.

<sup>83</sup> 47 C.F.R. § 1.2110(g)(4)(iv); *Part 1 Third Report and Order*, 13 FCC Rcd at 436 ¶¶ 106, 107. In addition, as noted above, Morris received notice from the Commission in April 2002 that it had defaulted on the licenses and that the licenses had canceled. *See* Notice of Default and Debt Acceleration, *supra* note 63.

<sup>84</sup> *See* 47 C.F.R. §§ 1.903(a), 1.931(a). As discussed below, Morris requested special temporary authority ("STA") to operate stations KNNY352 and KNNY359 but did not do so until December 14, 2005. Morris Communications, Inc., STA Requests, YD Stations KNNY352 and KNNY359, filed December 14, 2005.

<sup>85</sup> All licensees are obligated to know the Commission's rules. Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, *Report and Order*, 12 FCC Rcd 17,087, 17,099 ¶ 22 (1997) ("The Commission expects, and it is each licensee's obligation, to know and comply with all of the Commission's rules.").

<sup>86</sup> *See supra* note 49.

<sup>87</sup> Application for Review at 15-16.

<sup>88</sup> *Id.*

to enforce the automatic cancellation rule.”<sup>89</sup> We find that Morris’s claims of detrimental reliance and equitable estoppel are without merit.

29. As discussed above, when a license automatically cancels the former licensee remains obligated for the full amount of the debt.<sup>90</sup> Accordingly, as was made clear in *Lakeland*, the acceptance of a payment, by itself, does not constitute a constructive waiver of the automatic cancellation rule.<sup>91</sup> Morris therefore knew, or should have known, that the Commission’s acceptance of post-default payments would not, absent Commission actions that could be deemed inconsistent with the operation of the Commission’s automatic cancellation rule, constitute a constructive waiver of that rule. Moreover, the Division was under no obligation to respond to Morris’s submission of substantial service showings for two licenses after those licenses had automatically canceled, and the Division’s silence regarding these submissions could not reasonably have been construed as an action inconsistent with the operation of the Commission’s automatic cancellation rule. As we have already indicated, Morris knew, or should have known, that the automatic cancellation rule operates without the need for further action by the Commission, and that, if it constructed any canceled licenses, it would do so at its own risk.<sup>92</sup>

30. The Commission’s rules and precedent regarding the automatic cancellation of licenses for failure to meet installment payment obligations are clear. Moreover, the Commission has done nothing, by either act or omission, that would have led Morris to believe that the licenses had not automatically canceled. In addition, Morris acknowledges having received OMD’s letter dated April 26, 2002, wherein the Commission’s Chief Financial Officer informed Morris of its default.<sup>93</sup> The terms of that letter were clear and concise. Among other things, the letter stated that Morris’s debt obligations had accelerated as a result of its default, that payment was due in full, and that the Commission would not provide any further courtesy notices.<sup>94</sup> As noted above, the letter also stated that the “acceptance by the Commission of any amounts comprising less than the entire debt shall not be deemed to be a cure of the Borrower’s Default, a waiver of any other default under the Rules or Loan Documents, or a reinstatement by the Commission of the terms of the Loan Documents.”<sup>95</sup> This letter, combined with the Commission’s rules and precedent, should have left no uncertainty on Morris’s part that the Commission’s acceptance of Morris’s post-default payments was based on Morris’s continuing obligation to pay its debts and did not constitute evidence of a constructive waiver of its installment payment obligations. Furthermore, Morris’s two requests for waiver of the automatic cancellation rule belie its argument that it detrimentally relied on the Commission’s acceptance of its post-default payments or on the Division’s silence regarding its construction of stations as a constructive waiver of the rule. We therefore find Morris’s assertion of detrimental reliance unconvincing.

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<sup>89</sup> See Application for Review at 16.

<sup>90</sup> See *supra* para. 26.

<sup>91</sup> *Lakeland*, 15 FCC Rcd at 23,735 n.11. See also Spectrum Resources, Inc., Request for Reconsideration of the Automatic Cancellation of Auction No. 7 Licenses, *Order on Reconsideration*, 22 FCC Rcd 2423, 2426-27 ¶ 8 (WTB 2007).

<sup>92</sup> See *supra* para. 27.

<sup>93</sup> Application for Review at 4.

<sup>94</sup> Notice of Default and Debt Acceleration, *supra* note 63.

<sup>95</sup> *Id* at 2.

31. We also find Morris's argument regarding equitable estoppel unpersuasive. Morris asserts that equitable estoppel can be raised against federal agencies "where the conduct of the agency is relied upon to the detriment of the party seeking to impose the estoppel, and where the agency's conduct threatens to work a serious injustice."<sup>96</sup> However, the courts have long held that a private litigant seeking to estop the government bears a heavy burden.<sup>97</sup> Indeed, the Supreme Court emphasized in *Office of Personnel Management v. Richmond* that, although it had left open the possibility that "some type of 'affirmative misconduct' might give rise to estoppel against the Government,"<sup>98</sup> it had reversed every finding of estoppel against the government that it had reviewed.<sup>99</sup>

32. Moreover, none of the lower court cases Morris cites is relevant here. In each of those cases, the court found, *inter alia*, that the party seeking estoppel had relied to its detriment on affirmative statements and actions of a government agency that were inconsistent with a position asserted by the agency.<sup>100</sup> In the instant case, however, the Commission has made no statements and taken no actions inconsistent with the operation of the installment payment rules. As we have already explained, it is well understood that the automatic cancellation rule operates without the need for the Division to "enforce" the rule by telling Morris not to operate stations. Morris therefore could not have reasonably relied on either the Commission's acceptance of its post-default payments or the Division's silence regarding its substantial service showings as a waiver of those rules. In short, there is no basis here for finding that the Commission is estopped from applying its rules.

**D. The Division Provided a Rational Basis for Its Decision, Did Not Make Erroneous Factual Assumptions, and Did Not Ignore Critical Arguments**

33. Morris asserts that the *Division Order* rests upon erroneous factual assumptions and that the

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<sup>96</sup> Application for Review at 15 (citing *United States v. Lazy FC Ranch*, 481 F.2d 985 (9th Cir. 1973), *Portmann v. United States*, 674 F.2d 1155 (7th Cir. 1982), *In re Nextwave Personal Communications, Inc.*, 244 B.R. 253 (Bankr. S.D.N.Y. 2000)).

<sup>97</sup> See, e.g., *Ingalls Shipbuilding, Inc. v. U.S. Dep't of Labor*, 976 F.2d 934, 937-38 (5th Cir. 1992); *Drozd v. INS*, 155 F.3d 81, 90 (2d Cir. 1998).

<sup>98</sup> *Office of Personnel Management v. Richmond*, 496 U.S. 414, 421 (1990).

<sup>99</sup> *Id.* at 422.

<sup>100</sup> In *United States v. Lazy FC Ranch*, 481 F.2d 985 (9th Cir. 1973), the U.S. Court of Appeals for the Ninth Circuit allowed an agricultural partnership that had participated in a government soil bank program to retain payments improperly received. The court found that the government was estopped from recovering the payments because, *inter alia*, the participant would not have entered the government program in the first place had it not been for the "advice and assistance" of a government agent who had helped the partnership divide the land into parcels. In *Portmann v. United States*, 674 F.2d 1155 (7th Cir. 1982), the U.S. Court of Appeals for the Seventh Circuit held that the district court had erred in concluding, as a matter of law, that equitable estoppel could not lie against the U.S. Postal Service. Finding that the plaintiff had relied to her detriment on a postal clerk's misrepresentation regarding insurance coverage, the appellate court remanded the case to the lower court for a determination regarding whether the application of estoppel to the facts of the case was warranted. In *In re Nextwave Personal Communications*, 244 B.R. 253 (Bankr.S.D.N.Y. 2000), the United States Bankruptcy Court for the Southern District of New York determined that the FCC was barred under the doctrine of equitable estoppel from asserting the cancellation of licenses where its prior course of conduct, including repeated declarations in judicial proceedings, was inconsistent with the notion that the licenses had canceled and all parties in interest had conducted themselves in a way that demonstrated reliance upon the assumption that the licenses had not canceled.

decision therefore lacks a rational basis.<sup>101</sup> In particular, Morris maintains that the Division wrongly found that Morris based its request for waiver of the installment payment rules on an inability to pay. According to Morris, it based its waiver request instead on situations beyond its control, which it describes as “regulatory uncertainty caused by the Division’s failure to respond to Morris’ inquiries” and a lack of available digital equipment.<sup>102</sup> Morris further claims that the Division ignored a number of the critical arguments presented in its waiver requests.<sup>103</sup> We find that the Division did not err in considering Morris’s statements indicating that it was experiencing financial difficulties, nor did it ignore any arguments that would have compelled a grant of Morris’s waiver requests. We find that the Division’s reasoning in its denial of Morris’s waiver request was fully consistent with the record and Commission precedent.

34. In examining whether Morris’s request for waiver of the installment payment rules met the waiver standard in Section 1.925 of the Commission’s rules, the Division considered both prongs of the standard. With respect to the first prong—whether the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case and whether a grant of the requested waiver would be in the public interest<sup>104</sup>—the Division correctly explained that the payment of winning bids in compliance with the Commission’s rules is critical to realizing the public interest objectives of Section 309(j) of the Communications Act.<sup>105</sup> The Division further explained that the Commission’s rules presume that the entity that bids the most for a license in an auction is the entity that places the highest value on the use of the spectrum; that such entities are presumed to be those best able to put the licenses to their most efficient use for the benefit of the public; and that requiring licensees to demonstrate their ability to pay as a condition of continuing to hold licenses is essential to an efficient licensing process that is fair to all auction participants, including those who win licenses and those who do not.<sup>106</sup>

35. The Commission has emphasized repeatedly that strict enforcement of the installment payment rules is necessary where the facts indicate that a defaulting licensee is unable or unwilling to meet its payment obligations.<sup>107</sup> The Commission has concluded that claims of financial distress do not meet the standard for grant of a waiver of the installment payment rules under Section 1.925. The Commission has stated, for example, “The installment payment rules are meant to preserve the reliability

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<sup>101</sup> Application for Review at 17-18.

<sup>102</sup> *Id.* at 17, 19-20. Morris also states that it requested a waiver of the construction deadline for the licenses “due to the lack of available digital equipment.” *Id.* at 17.

<sup>103</sup> *Id.* at 18-20.

<sup>104</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>105</sup> *Division Order*, 20 FCC Rcd at 8179-81 (citing 47 U.S.C. § 309(j)).

<sup>106</sup> *Id.* at 8180 (citing *21<sup>st</sup> Century MO&O*, 15 FCC Rcd 25,113). In addition, the Division correctly observed that if the Commission were to exercise much flexibility in relieving bidders from their bid obligations, the bid would cease to operate as an effective proxy for identifying those who value the spectrum the most, thereby undermining the presumption that the high bidder is best able to put the spectrum to efficient and effective use for the benefit of the public. *Id.* at 8180-81.

<sup>107</sup> *See, e.g., Southern MO&O*, 15 FCC Rcd at 25,105-06 ¶ 7, 25,110-11 ¶ 15; *21<sup>st</sup> Century MO&O*, 15 FCC Rcd at 25,122-23 ¶ 20, 25,126 ¶ 27.



and integrity of the auction and licensing process by ensuring that the applicants have the necessary financial qualifications, thereby maintaining the goal of awarding licenses to the parties who most value the spectrum and providing expeditious service to the public. . . . Thus, grant of a waiver based upon financial distress would undermine the purpose of the rule.”<sup>108</sup> Moreover, the Commission has, in each case in which it has waived the automatic cancellation rule, been very careful to ensure that there was no serious question regarding the defaulting licensee’s ability and willingness to pay its debt obligation.<sup>109</sup> Where defaulting licensees have not demonstrated their ability to pay, the Commission has denied their requests for waiver of the rule.<sup>110</sup>

36. Morris claims that it did not base its waiver request on inability to pay and that it “consistently demonstrated its commitment to honor its payment obligations” by making post-default payments and by constructing and operating the KNNY352 and KNNY359 stations.<sup>111</sup> Morris also asserts that it would have continued to make payments for all nine licenses “if there had been no regulatory uncertainty caused by OMD’s failure to communicate with Morris about the status of its licenses in conjunction with the 900 MHz SMR construction deadline.”<sup>112</sup> However, Morris clearly raised the issue of its financial distress as a factor for consideration in the record. In its January 2003 waiver request, Morris stated, “Due to the economic downturn, Morris has had reduced financial resources which have been exacerbated by its installment payments on its 900 MHz SMR licenses, which have not yet generated any revenue for Morris.”<sup>113</sup> In this same request, Morris sought relief from making any payments for the nine subject licenses for a period of one year, explaining that it had been “severely burdened financially by meeting its installment obligations. . . .”<sup>114</sup> Morris also suggested that it did not have the resources to both pay for the licenses and construct stations, stating that the one-year payment relief it sought “would allow Morris to utilize the financial resources that it was using for installment payments to build a digital 900 MHz SMR network . . . .”<sup>115</sup>

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<sup>108</sup> *Southern MO&O*, 15 FCC Rcd 25,107 ¶ 8, n.29.

<sup>109</sup> See, e.g., *Advanced*, 21 FCC Rcd at 1632 ¶¶ 11, 12, 1633 ¶ 14; *Big Sky*, 21 FCC Rcd at 10,070-71 ¶¶ 11, 12, 10,072 ¶ 14; *Leaco Rural Telephone Cooperative, Inc. Request for Waiver and Reinstatement of Broadband Radio Service Authorization for the Hobbs, New Mexico Basic Trading Area, MDB191, Order*, 21 FCC Rcd 1182, 1185-87 ¶¶ 10-12 (WTB 2006) (“*Leaco*”).

<sup>110</sup> See, e.g., *21st Century MO&O*, 15 FCC Rcd 25,113; *Lancaster*, 22 FCC Rcd 2438; *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 (WTB 2007).

<sup>111</sup> Application for Review at 17.

<sup>112</sup> *Id.* at 18. Morris asserts that it ceased paying its debt on the KNNY352 and KNNY359 licenses solely due to the release of the Division’s decision denying its waiver requests. *Id.* at 8.

<sup>113</sup> Waiver II Request at 14.

<sup>114</sup> *Id.* at 13.

<sup>115</sup> *Id.* at 6. See also *id.* at 9 (“Morris . . . is already undergoing financial difficulties.”), 14 (“Morris’ inability to generate revenue from its 900 MHz licenses, and its substantial installment payment obligations for those licenses, have resulted in financial difficulties for Morris. For example, during the past year Morris has had difficulty in obtaining additional financing as a result of its current liabilities, which include its installment payment obligations for its 900 MHz licenses. . . .”).

37. Given the fundamental importance of every licensee demonstrating its ability to pay its winning bids, which Commission precedent has emphasized repeatedly, it was entirely appropriate for the Division to consider all evidence relevant to Morris's ability to pay its obligations on the licenses, including Morris's various statements describing its financial distress and its request for additional time to meet its payment obligations. Indeed, the Division would have been remiss had it not weighed the importance of these statements. Moreover, we find no indication that the Division misconstrued any of Morris's factual assertions.

38. As discussed above, we also find unpersuasive Morris's assertion that it has consistently demonstrated its ability to pay and its commitment to honoring its payment obligations. Although Morris made certain post-default payments after the licenses had canceled, Morris has not made any payment on its debt for seven of the nine licenses since October 29, 2002, and it ceased making post-default payments for the other two licenses as of January 31, 2005.<sup>116</sup> Moreover, in addition to its January 2003 request for a one-year deferral of its payment obligations, Morris has made other requests for waiver of these obligations. In May 2002, Morris requested a stay of the Commission's debt collection procedures.<sup>117</sup> In its Application for Review, Morris asks that we allow it to pay its debt under the terms of its original installment payment plan.<sup>118</sup> In addition, in its 2005 proposed Consent Decree, Morris asks that it be permitted to "become current in its payment schedules for all the SMR Licenses within twelve months of the effective date of this Consent Decree."<sup>119</sup>

39. These requests for alternative payment schedules raise very serious doubts about Morris's financial qualifications to be a Commission licensee. Unlike other defaulting licensees that have been granted waivers of the automatic cancellation rule, Morris has neither paid its debt in full nor made an unconditional promise to pay its debt on the Commission's payment terms.<sup>120</sup> Instead, Morris proposes to pay its debt on its own terms, something the Commission has never allowed in granting waivers of the automatic cancellation rule. In light of these requests and Morris's statements regarding its financial difficulties, we find that its post-default payments are insufficient to demonstrate the ability and willingness to pay its winning bids that are required for a waiver of the Commission's installment payment rules. Moreover, Morris's construction of stations KNNY352 and KNNY359, in the absence of compliance with the Commission's installment payment rules, does not demonstrate a commitment on Morris's part to honor its payment obligations.

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<sup>116</sup> See Application for Review at 8.

<sup>117</sup> See *supra* note 33.

<sup>118</sup> Application for Review at 22.

<sup>119</sup> Consent Decree at ¶ 7.

<sup>120</sup> The licensee in *Leaco*, for example, promptly paid its debt obligation in full upon the acceleration of its debt, prior to the grant of the waiver. *Leaco*, 21 FCC Rcd at 1185-86 ¶ 10, 1187 ¶¶ 12-13. The licensee in *Tracy* also paid its debt in full prior to the grant of the waiver. *Tracy Corporation II, Request for Waiver of Installment Payment Rules for Auction No. 11 and Reinstatement of License, Memorandum Opinion and Order*, 22 FCC Rcd 4071, 4075-76 ¶ 10, 4078-79 ¶ 18 (WTB 2007) ("*Tracy*"). The licensee in *Advanced* indicated that it could and would pay its outstanding debt, and its financial institutions confirmed that it had procedures in place to do so. *Advanced*, 21 FCC Rcd at 1632 ¶¶ 11, 12. Notwithstanding the weight accorded to these demonstrations by the defaulting licensees of their ability to meet their payment obligations, Morris has not resumed making post-default payments on its debt since the issuance of these decisions.

40. Under the second prong of the Commission's waiver standard, a party may show that unique or unusual factual circumstances render application of the rule(s) in question inequitable, unduly burdensome, or contrary to the public interest.<sup>121</sup> Morris claims that it presented unique circumstances warranting a waiver of the installment payment rules and that the Division erred by ignoring a number of its critical arguments and finding that it had not presented unique circumstances.<sup>122</sup> According to Morris, it demonstrated the following unique circumstances warranting a waiver: (1) a five-year history of timely payments, (2) consistent post-default payments, (3) regulatory uncertainty caused by the Commission's failure to communicate with Morris regarding the status of the licenses while accepting its payments, and (4) a lack of available digital equipment. We find, however, that the Division was correct in determining that Morris had failed to demonstrate any unique facts or circumstances justifying a waiver of the Commission's installment payment rules.

41. We agree with Morris that payment history is relevant to determining whether a grant of a waiver is warranted under our rules. However, payment history must be evaluated in the context of other factors. The Commission has consistently found that a defaulting licensee's pre-default payment history, without more, is insufficient to support a waiver of the automatic cancellation rule.<sup>123</sup> We also find, as explained above, that Morris's post-default payments are insufficient to justify such a waiver, given Morris's statements regarding its financial distress and its requests to pay its debt on its own terms. In sum, there is nothing unique about Morris's payment history that would cause us to set aside the doubts it has raised concerning its ability to meet its financial obligations to the Commission.

42. As we have already explained, Morris's allegations of regulatory uncertainty are also without merit. The Commission's rules providing for the automatic cancellation of licenses in the event of default are clear, and Morris had unambiguous notice of its default, the acceleration of its debt, and the cancellation of the nine SMR licenses.<sup>124</sup> Therefore, Morris could not reasonably have had any doubts regarding the status of the licenses during the period in which it made post-default payments.

43. We also find that there is nothing unique about Morris's argument that it was unable to meet its payment obligations because of a lack of adequate digital equipment. All licensees face the potential risk that they will be unable to obtain the equipment they desire at the time they wish to acquire it, and such problems are not unique circumstances that render the application of the Commission's installment payment rules inequitable or unduly burdensome.

#### **E. The Division Did Not Deprive Morris of Due Process**

44. Morris asserts that the Division denied Morris's due process rights by canceling the licenses

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<sup>121</sup> 47 C.F.R. § 1.925(b)(3)(ii). Under this prong of the waiver standard an applicant may also show that it has no reasonable alternative. Morris does not argue that it meets this part of the waiver standard.

<sup>122</sup> Application for Review at 18-20.

<sup>123</sup> See, e.g., *Lancaster*, 22 FCC Rcd at 2442 ¶ 10, 2447 ¶ 21 (denying request for waiver of automatic license cancellation rule where licensee had made seven years of payments prior to experiencing financial distress); *Leaco*, 21 FCC Rcd at 1187 ¶ 13 (finding that any one of defaulting licensee's proffered facts, including seven-year history of payments, would not alone suffice to meet the Commission's waiver standard); *Advanced*, 21 FCC Rcd at 1633 ¶ 15 (finding that any one of defaulting licensee's proffered facts, including eight-year history of payments, would not alone suffice to meet the Commission's waiver standard).

<sup>124</sup> See *supra* paras. 27, 30.

“in the manner it did.”<sup>125</sup> Morris argues that it has limited property rights in the licenses and that, because it has operational stations, its customers have reliance interests in its service. According to Morris, the Division failed to honor its rights and those of its customers and the Division's decision should therefore be overturned.<sup>126</sup> Morris also asserts that it should be entitled to a hearing prior to cancellation of the licenses.<sup>127</sup> We disagree with these contentions.

45. Contrary to Morris's apparent assumption, the Division did not cancel the licenses; rather, the licenses were canceled automatically by operation of Section 1.2110(g)(4)(iv) of the Commission's rules, with no further Commission action required.<sup>128</sup> Furthermore, Morris had no rights to the licenses that precluded their automatic cancellation. Section 301 of the Communications Act makes clear that Commission licenses are granted for the use, but not the ownership, of radio frequencies and that no Commission-issued license “shall be construed to create any right, beyond the terms, conditions, and periods of the license.”<sup>129</sup> In keeping with Section 301, the Supreme Court has indicated that licensees do not hold property rights in licenses,<sup>130</sup> and the Commission has held that licensees have no vested interest in any frequency licensed to them.<sup>131</sup> Thus, Commission licensees hold only those rights established by the terms and conditions of the licenses issued to them. The 900 MHz SMR licenses issued to Morris were conditioned on its full and timely payment of its obligations under the installment payment plan in which it participated. Once Morris had failed to meet this condition by defaulting on its payments, it had no right to the licenses.<sup>132</sup> We therefore find that Morris's claim that the Division failed

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<sup>125</sup> Application for Review at 21.

<sup>126</sup> *Id.* at 20-21.

<sup>127</sup> *Id.* at 21.

<sup>128</sup> We note that Morris's request for a stay of the *Division Order* also appears to misapprehend the effect of that decision. Morris's licenses canceled automatically pursuant to Commission rules and not, as Morris appears to believe, as a result of the Division's decision. Consequently, staying the *Division Order* would have no effect on the status of the licenses.

<sup>129</sup> 47 U.S.C. § 301.

<sup>130</sup> *See, e.g., FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 475 (1940) (“The policy of the Act is clear that no person is to have anything in the nature of a property right as a result of the granting of a license.”).

<sup>131</sup> Amendment of the Commission's Rules Regarding Maritime Automatic Identification Systems, *Report and Order and Further Notice of Proposed Rule Making and Fourth Memorandum Opinion and Order*, 21 FCC Rcd 8892, 8925-26 ¶ 46 (2006) (citing *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945), and finding that the Commission has consistently upheld the principle that no licensee obtains any vested interest in any frequency).

Moreover, throughout the history of the Commission's auctions program, the consequence of defaults on installment payments has been the same for all licensees:

A default on an installment payment subjects the licensee to the license-cancellation-plus-debt-collection rule. In other words, the licensee loses the license, is not refunded its prior installment payments, and is subject to collection of the balance of the debt.

*Part I Third Reconsideration of Third Report and Order*, 19 FCC Rcd at 2561-62 ¶ 29.

<sup>132</sup> Section 303(r) of the Act authorizes the FCC to “prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter.” 47 U.S.C. § 303(r). *See also Capital Telephone Co. v. FCC*, 498 F.2d 734, 740 (D.C. Cir. 1974) (“When an applicant accepts a government permit which (continued....)”).

to consider its rights is without merit.

46. The cases Morris relies upon to support its position are inapplicable to the case at hand. In *L. B. Wilson*, the U.S. Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) held that a broadcast licensee was entitled to a hearing on the issue of whether a competing station would cause it objectionable interference within its legally protected contour before the Commission made a decision on the competing station’s application.<sup>133</sup> The court explained, *inter alia*, that the Commission in its own rules had construed the Communications Act as requiring a hearing in such circumstances.<sup>134</sup> The situation we consider here is entirely different because the Commission’s rules make no provision for a hearing prior to the cancellation of licenses for failure to meet installment payment obligations and, indeed, provide for automatic license cancellation without any action by the Commission in such circumstances.<sup>135</sup>

47. Morris also cites *Mtel*, in which the D.C. Circuit remanded a Commission decision granting a narrowband PCS license to the recipient of a pioneer’s preference and requiring the recipient to pay for the license. Finding that the Commission had stated repeatedly that Mtel would not be required to pay for the license and had then reversed itself on this issue without addressing whether its new position was consistent with Mtel’s reliance interests, the court remanded the case to the Commission for the consideration of this issue. Here, however, there has been no change in the Commission’s installment payment rules or the Commission’s application of those rules that could have caused Morris to rely on retaining the licenses following a default on its installment payments. Thus, Morris had no reliance interests that the Division should have considered, and *Mtel* does not support Morris’s claim that it was denied due process.<sup>136</sup>

48. *Achernar Broadcasting* also provides no support for Morris’s due process claim. In that case, the D.C. Circuit remanded two applications for UHF television stations to the Commission because it found that the Commission had failed to consider all aspects of potential interference problems under its quiet zone rule, as it was explicitly required to do under the rule; had not weighed the entire record; and had not adequately explained its decision.<sup>137</sup> In the instant case, the Division considered the entire record and fully explained its decision. Moreover, its decision was fully consistent with the Commission’s rules and precedent. The Division therefore did not violate Morris’s due process rights.

49. With regard to Morris’s claim that it had rights to the licenses based on the operational status (Continued from previous page) \_\_\_\_\_ is subject to certain conditions, he cannot later assert alleged rights which the permit required him to surrender in order to receive it”).

<sup>133</sup> *L. B. Wilson v. FCC*, 170 F.2d 793 (D.C. Cir. 1948) (“*L. B. Wilson*”).

<sup>134</sup> *Id.* at 801.

<sup>135</sup> Moreover, the hearing ordered in *L. B. Wilson* concerned only rights accorded by the terms of a valid license, i.e., interference protection rights. In contrast, the 900 MHz SMR licenses issued to Morris canceled by their own terms, leaving Morris no rights under the licenses that warranted an examination by hearing. The court recognized in *L. B. Wilson* that the rights conferred under a station license are limited in time and quality by the terms of the license. *Id.* at 798.

<sup>136</sup> *Mtel* is also irrelevant to Morris’s claim that it is entitled to a hearing, as it did not involve the question of whether a party was entitled to a hearing.

<sup>137</sup> *Achernar Broadcasting Co. v. FCC*, 62 F.3d 1441 (D.C. Cir. 1995).

of two stations, we note that the Commission has consistently found that a defaulting licensee's provision of service does not excuse it from meeting its installment payment deadlines and is insufficient to merit waiver of the automatic cancellation rule.<sup>138</sup> Any interest in a particular licensee providing service must be balanced against the larger public interest in preserving the integrity and efficiency of our licensing process, as well as our obligation to fairly and consistently enforce our payment rules.<sup>139</sup> We find no reason to depart from this principle here.

50. We note also that Morris has acknowledged that it constructed the two operational stations only after cancellation of the licenses, notwithstanding that it was under an obligation to abide by the Commission's rules, including the obligation not to provide service without Commission authorization.<sup>140</sup> Morris did eventually seek an STA for the two stations it built out, which the Commission granted on December 28, 2005, for a period of 180 days or until the issuance of this Order, whichever period was shorter.<sup>141</sup> Morris also requested an extension of its STA.<sup>142</sup>

51. We are committed to avoiding unnecessary disruptions in service to the public. We have authority to grant STAs, either on request or *sua sponte*, to allow former licensees to continue providing service after licenses cancel or terminate,<sup>143</sup> and we have granted STAs to parties whose licenses canceled automatically.<sup>144</sup> We hereby extend Morris's STA for 180 days from the release of this Order. In keeping with the requirements the Commission has imposed in similar circumstances, Morris shall, within five days of the release of this Order, provide written notice to each of its current subscribers (with a copy of such notice forwarded to the Commission) that it is not a licensee for the subject licenses; that it is authorized to provide service only under a grant of special temporary authority for 180 days from the release of this Order; and that subscribers must make arrangements with another carrier to obtain continued service at the end of the STA Period. After the expiration of the STA Period, Morris will not be authorized to provide further service and shall cease any and all operations on the spectrum that had been assigned under the subject licenses. Further, Morris shall notify the Commission of its cessation of operations and shall provide the date upon which its operations ceased, which in no event

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<sup>138</sup> The Commission previously has denied requests for extension of payment deadlines notwithstanding the provision of service by licensees. *GLH Order on Reconsideration*, 22 FCC Rcd at 2417-18 ¶¶ 16-17; *Duluth PCS, Inc., and St. Joseph PCS, Inc. Request for Partial Waiver of Section 1.2110(g) of the Commission's Rules, Order*, 19 FCC Rcd 7137, 7141-42 ¶¶ 8-9 (WTB/ASAD 2004).

<sup>139</sup> *GLH Order on Reconsideration*, 22 FCC Rcd at 2417-18 ¶ 17.

<sup>140</sup> Waiver II Request at 5-6.

<sup>141</sup> Application of Morris Communications for Special Temporary Authority to Continue Operating Stations KNNY352 and KNNY359, granted December 28, 2005.

<sup>142</sup> Morris Communications, Inc., Request for Extension of Special Temporary Authority to Continue Operating Stations KNNY352 and KNNY359, filed June 8, 2006.

<sup>143</sup> 47 C.F.R. § 1.931(a); Pinpoint Wireless, Inc., Request for a Waiver and Extension of the Broadband PCS Construction Requirements, *Order*, 18 FCC Rcd 1904, 1910 ¶¶ 12-13 (WTB/Comm.Wir.Div. 2003) (denying waiver and extension of construction deadlines and *sua sponte* granting STA).

<sup>144</sup> See, e.g., In Re Southeast Telephone Inc., Request for Special Temporary Authority to Operate Facilities in the Williamson, West Virginia-Pikeville, Kentucky Basic Trading Area, *Order*, 15 FCC Rcd 15,702 (WTB/Comm.Wir.Div. 2000) (granting STA following automatic license cancellation for failure to make timely installment payments).

may be later than 180 days from the release of this Order. Finally, under the limited authority granted, Morris is not permitted to solicit or add new subscribers in any of the market areas of the subject licenses.<sup>145</sup>

#### IV. CONCLUSION

52. As discussed above, Morris has not shown that the Division erred in denying its request for waiver of the Commission's installment payment rules. The Division's denial of Morris's request is supported by the record and is consistent with our rules and precedent. We therefore deny Morris's Application for Review and dismiss its Motion for Stay and proposed Consent Decree as moot.

#### V. ORDERING CLAUSES

53. 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 by Morris Communications, Inc., on May 25, 2005, in the above-captioned proceeding, is DENIED.

54. IT IS FURTHER ORDERED that the Motion for Stay filed by Morris Communications, Inc., on May 25, 2005, and the Consent Decree filed by Morris Communications, Inc., on September 23, 2005, and revised on October 3, 2005, are DISMISSED as moot.

55. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 309(f) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(f), and Section 1.931(a) of the Commission's rules, 47 C.F.R. § 1.931(a), the Request for Extension of Special Temporary Authority to Continue Operating Stations KNNY352 and KNNY359, filed by Morris Communications, Inc., on June 8, 2006, is GRANTED subject to the terms and conditions set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>145</sup> *Id.* at 15,704.