

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

In the Matter of)
)
 GLH Communications, Inc.)
)
 Requests for Waiver of the Installment Payment)
 Rules and Reinstatement of Licenses)

ORDER ON RECONSIDERATION

Adopted: June 7, 2018

Released: June 8, 2018

By the Commission:

I. INTRODUCTION

1. In this Order on Reconsideration, we deny the petition of GLH Communications, Inc. (GLH), for reconsideration of the Commission’s decision that denied requests by several parties, including GLH, to reverse staff-level decisions denying those parties’ requests for waiver of section 1.2110 of the Commission’s installment payment rules. This Order on Reconsideration is the fourth consecutive rejection by the Commission or its staff of GLH’s attempts to avoid the consequences of its failure to comply with Commission rules requiring timely and full payment of installment obligations. For the reasons stated below, its claims are wholly without merit.

II. BACKGROUND

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 installments over the initial term of the license.¹ Licensees paying in installments were generally allowed to pay only interest in the early years of the license term.² When the Commission discontinued the use of installment payment loans for future license auctions in 1997, it allowed entities that were already paying for licenses in installments to continue doing so.³

3. GLH acquired the four relevant broadband Personal Communications Services (PCS) C block licenses by an assignment authorized in 2001.⁴ As an eligible entity, GLH elected to assume the

¹ See *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2389-91, 2410-11, paras. 231-40, Appx. B (Section 1.2110(d)) (1994).

² See 47 CFR § 1.2110(d)(3)(iii), (iv) (1994).

³ See *Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, Third Report and Order and Second Further Notice of Proposed Rule Making, 13 FCC Rcd 374, 436, para. 106 (1998) (*Part 1 Third Report and Order*).

⁴ A more detailed background of GLH’s acquisition of these four licenses and its participation in the installment payment program may be found in the prior decisions. See *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.)*, Order, 18 FCC Rcd 14695, 14696-97, paras. 2-4 (WTB/AIAD 2003) (*GLH Order*), recon. denied, Order on Reconsideration, 22 FCC Rcd 2411, 2414-15, paras. 6-8 (WTB 2007) (*GLH Order on Reconsideration*). GLH initially sought waiver of the automatic cancellation rule for six broadband PCS licenses but paid the outstanding

debt associated with the licenses and to participate in the Commission's installment payment program.⁵ Installment payments for the four GLH licenses were due on January 31, 2003.⁶ Under the Commission's rules, GLH had two quarterly grace periods beyond the payment due date, i.e., until July 31, 2003, to render its payments along with associated late fees.⁷ On April 16, 2003, while within a grace period, GLH filed a request seeking a two-year waiver of the Commission's automatic cancellation rule.⁸ The Auctions and Industry Analysis Division rejected the request on July 18, 2003.⁹ GLH failed to submit the required installment payments and the associated late fees for the four licenses by July 31, 2003, and the licenses therefore automatically canceled on August 1, 2003.¹⁰

4. GLH filed a petition for reconsideration of the July 2003 denial of its waiver request, and, in February 2007, the Wireless Telecommunications Bureau (Bureau) denied that reconsideration request.¹¹ GLH filed an application for review seeking reversal of the Bureau's denial, and GLH later filed a supplement to its application for review.¹²

5. The Commission denied GLH's application for review and dismissed its supplement in its 2010 *Installment Payment Order*.¹³ As pertinent here, the Commission rejected GLH's claim that it should have been permitted to restructure its debt just as its predecessor-in-interest had done through bankruptcy; the Commission pointed out that the automatic license cancellation rule at issue here had been inapplicable in bankruptcy only because of the unique operation of section 525(a) of the Bankruptcy Code, barring the Commission from enforcing that rule in bankruptcy.¹⁴ The Commission then rejected GLH's two arguments for setting off against the amount of its outstanding debt the amount of the Commission's proceeds in the subsequent 2005 auction of new initial licenses for operation on the spectrum that had previously been licensed for GLH's use.¹⁵ First, the Commission found that its rules governing *post-licensing* defaults, by those designated entity licensees failing to make timely payments

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obligations on two of the licenses and assigned them to NTCH, Inc. *See GLH Order on Reconsideration*, 22 FCC Rcd at 2411, 2415, paras. 1 n.3, 8 & n.29.

⁵ *GLH Order on Reconsideration*, 22 FCC Rcd at 2414, para. 6.

⁶ *Id.* at 2414, para. 7.

⁷ *See* 47 C.F.R. § 1.2110(f)(4)(i), (ii) (2002); *see also Part 1 Third Report and Order*, 13 FCC Rcd at 436-38, paras. 106-07.

⁸ *GLH Order on Reconsideration*, 22 FCC Rcd at 2414, para. 7. At the same time, GLH filed a separate petition with the Commission's Office of the Managing Director seeking to compromise GLH's debt. *GLH Order*, 18 FCC Rcd at 14695, para. 1. That petition was dismissed without prejudice as premature because the licenses for which payment was at issue had not yet canceled in July 2003; accordingly, the Commission had not yet begun debt collection procedures. *Id.* at 14695, 14702, 14703, paras. 1, 19, 22.

⁹ *GLH Order*, 18 FCC Rcd at 14703, para. 21. The Auctions and Industry Analysis Division was the predecessor of the current Auctions and Spectrum Access Division.

¹⁰ *GLH Order on Reconsideration*, 22 FCC Rcd at 2415, para. 8.

¹¹ *Id.* at 2415, 2422, paras. 10, 27.

¹² Application for Review of GLH Communications, Inc. (filed Mar. 9, 2007) (GLH Application for Review); Supplement to Application for Review of GLH Communications, Inc. (filed Nov. 1, 2007) (GLH Supplement).

¹³ *See Alpine PCS, Inc. et al., Requests for Waiver of the Installment Payment Rules and Reinstatement of Licenses*, Memorandum Opinion and Order, 25 FCC Rcd 469, 470-71, 479-80, 510, paras. 1, 16, 89 (2010) (*Installment Payment Order*). In the same Order, the Commission also denied the requests of seven other parties for reversal of staff-level decisions denying requests for waiver of section 1.2110 of the Commission's rules governing installment payments and dismissed all supplements that had been filed by other parties in this case. *Id.* at 470-71, 479-80, 509-10, paras. 1, 16, 87-94.

¹⁴ *Installment Payment Order*, 25 FCC Rcd at 497, para. 48.

¹⁵ *Id.*, 25 FCC Rcd at 500-04, paras. 58 – 68.

under the Commission's prior installment plan approach, provide for no such setoff. Rather, they provide for automatic license cancellation and that the licensee will be subject to debt collection procedures.¹⁶ Second, the Commission found that federal common law and not the Uniform Commercial Code ("UCC") governs on this question, and that federal law extinguishes any rights in the license collateral by virtue of cancellation and requires that all proceeds from a spectrum auction (including a subsequent auction) be deposited in the U.S. Treasury.¹⁷ Finally, the Commission declined to consider a supplement filed by GLH to its application for review, noting that the Commission had not yet had an opportunity to consider the issue presented by the 2007 staff decision upon which GLH relied in its supplement, and that the staff decision had addressed rules and policies governing bid withdrawals that are inapposite to failures to make timely installment payments by those who have already been awarded licenses.

6. GLH petitioned the Commission for reconsideration of the *Installment Payment Order*.¹⁸ It makes three arguments on reconsideration. First, it repeats its prior argument that the UCC requires setoff of the subsequent auction proceeds against its debt (and, indeed, payment to GLH of any "overage"). Second, it repeats its argument based on the 2007 staff decision concerning bid withdrawal penalties that it had relied upon in its supplement. Third, it repeats its argument about the disparity in treatment between bankrupt and non-bankrupt debtors, conceding that the Commission was "technically correct" about the distinction but arguing that the Commission should not "[f]orc[e] installment payors into bankruptcy in order to stave off license cancellation."¹⁹ For the reasons explained fully below, we confirm the Commission's prior conclusion that GLH's three arguments are without merit.

III. DISCUSSION

7. The Commission will entertain a petition for reconsideration after it has denied an application for review only if the petition relies on (1) facts or arguments relating to events which have occurred or circumstances which have changed since the petitioner's last opportunity to present such matters, or (2) facts or arguments previously unknown, about which the petitioner could not have learned earlier through ordinary diligence.²⁰ The Commission will dismiss a petition as repetitious if it fails to introduce relevant new facts or changed circumstances.²¹ In addition to being new, the facts or circumstances offered in a petition must be relevant to the question under consideration.²² Petitions failing to meet these narrow grounds are subject to dismissal.²³

8. *Applicability of UCC Setoff Provisions.* GLH states that its claims relating to the proceeds from the subsequent auction arise from "errors in the Commission's analysis which were set

¹⁶ *Installment Payment Order*, 25 FCC Rcd at 500-02, paras. 58-63. See also notes 37, 42 and 50 *infra*.

¹⁷ *Installment Payment Order*, 25 FCC Rcd at 502-03, paras. 64-66.

¹⁸ Petition for Reconsideration of GLH Communications, Inc. (filed Feb. 3, 2010) (Petition).

¹⁹ Petition at 11.

²⁰ 47 CFR § 1.106(b)(2).

²¹ See *id.*; see also *id.* § 1.106(b)(3), (p)(3); *WKMJ Radio Live the People Station, Inc., Application for a Construction Permit for a New LPFM Station at Pinellas Park, Florida*, Memorandum Opinion and Order, 31 FCC Rcd 4306, 4306-07, para. 2 (2016) (*WKMJ Radio*).

²² *Warren C. Havens*, Third Order on Reconsideration, 26 FCC Rcd 10888, 10891, para. 9 (2011) (*Havens*) ("[U]nder Section 1.106(b)(2), a petition for reconsideration of an order denying an application for review must rely on new facts or circumstances. Such new facts or circumstances must also be relevant to the question before the Commission. While Havens' allegations arguably were new, they were irrelevant."); *Application of Anniston Seventh-Day Adventist Church for a New Noncommercial Educational FM Station at Anniston, Alabama*, Order on Reconsideration, 30 FCC Rcd 6057, 6058, para. 3 & n.6 (MB 2015).

²³ See 47 CFR § 1.106(b)(2).

forth for the first time” in the *Installment Payment Order*.²⁴ Disposition by the Commission of GLH’s arguments does not by itself constitute “changed circumstances” under section 1.106(b)(2).²⁵ GLH clearly does not agree with the outcome of that decision.²⁶ We note, however, that none of GLH’s claims are new or based upon changed circumstances, and GLH does not purport to offer any new argument in support of those claims in response to something that it could not have anticipated in that decision.²⁷ “It is settled Commission policy that petitions for reconsideration are not to be used for the mere reargument of points previously advanced and rejected.”²⁸

9. In any event, there is no merit to GLH’s argument concerning the application of federal common law to the terms of the Security Agreement at issue here. This argument was thoroughly considered and rejected in the *Installment Payment Order*.²⁹ The Commission explained:

Although GLH acknowledges that it signed a security agreement with the Commission stating that GLH has no right or interest in any proceeds of the Commission’s subsequent sale of a license for spectrum that had been covered by GLH’s defaulted licenses, GLH contends that the UCC voids such language. However, GLH provides no authority that dictates the application of the UCC to its situation.

Furthermore, the Commission has long advised licensees that the UCC does not govern the consequences of installment payment defaults.³⁰

The terms of the Security Agreement (which was attached to the GLH Application for Review) make clear that (1) the provisions of the installment payment plan are governed by “regulatory action upon a default” as prescribed by Section 1.2110 of the Commission’s rules,³¹ (2) nothing in the agreement “shall be deemed to modify” Commission rules, (3) the Commission is entitled to collect the outstanding balance of unpaid obligations under the note (defined to include default payments), (4) GLH “has no right or interest in any moneys . . . given to the Commission” in a subsequent auction, which “are, and shall remain, the full property of the federal Treasury, pursuant to Section 309(j)” and Commission rules, and

²⁴ Petition at 1.

²⁵ See *Bell South Corporation*, Memorandum Opinion and Order, 5 FCC Rcd 2827, 2827, para. 3 (1990); *Shaw Communications, Inc.*, Order on Reconsideration, 27 FCC Rcd 6995, 6996, para. 4 (MB 2012); *M&M Communications, Inc.*, Memorandum Opinion and Order, 2 FCC Rcd 5100, 5100, para 6 (CCB 1987).

²⁶ Petition at 1 (“GLH disagrees with virtually every conclusion of the [*Installment Payment Order*] . . .”).

²⁷ See, e.g., *Petition of US Telecom for Forbearance*, Order Denying Petition for Reconsideration, 32 FCC Rcd 3885, 3887 para. 8 & n.19 (2017), quoting *Colorado Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941): “We cannot allow [a party] to sit back and hope that a decision will be in its favor and then, when it isn't, to parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed.”

²⁸ *S&L Teen Hospital Shuttle*, Order on Reconsideration, 17 FCC Rcd 7899, 7900 para. 3 (2002).

²⁹ *Installment Payment Order*, 25 FCC Rcd at 502-03, paras. 64-66.

³⁰ *Id.* at 502, paras. 64-65 (footnotes omitted).

³¹ As the Commission noted, Section 1.2110 applies in express terms to the specific circumstances of a post-licensing default resulting from failure to make installment payments when due, and provides for automatic cancellation in such a situation, with the licensee “subject to debt collection procedures.” 47 C.F.R. § 1.2110(g)(4)(iv). In contrast, the Commission pointed out, Section 1.2104(g)(2) applies to default or disqualification *prior* to the grant of a license – *i.e.*, not to a licensee that has been permitted to pay its winning bid in installments, but to a “bidder” that has assumed a binding obligation to pay “its full amount.” 47 C.F.R. § 1.2104(g)(2). *Installment Payment Order*, 25 FCC Rcd at 500-02, paras. 60-63.

(5) the agreement with the Commission as a federal agency is governed, not by state law, but by the Communications Act.³²

10. In support of the proposition that the UCC does not apply in this circumstance, the *Installment Payment Order* also cited an opinion letter issued in 1996 (long before the filing of GLH's application for review) by the Commission's General Counsel and its Wireless Telecommunications Bureau Chief that had provided guidance to parties seeking to participate in the Commission's installment payment program.³³ On reconsideration, GLH now wrongly asserts that the *C-Block Note and Security Agreement Opinion Letter* does not identify any federal law or principle that conflicts with its argument favoring application of UCC principles to reduce its payment obligation.³⁴ In fact, GLH's Petition specifically cites two passages of the *C-Block Note and Security Agreement Opinion Letter*, which identify such conflicts.³⁵ Further, GLH makes no attempt to address or reconcile the inconsistencies with its claim presented by the Communications Act and related regulatory statutory directives.

11. Despite GLH's contrary interpretation, the *C-Block Note and Security Agreement Opinion Letter* (like the terms of the Security Agreement that were the subject of that decision and are at issue here) clearly describes how the Commission's rules operate when, as was the case with GLH, an installment payment licensee fails to make its required payments and defaults on its license(s):

the Commission's rules state that upon default, the Commission will cancel the license and initiate debt collection procedures. . . . it is our understanding that, where there is collateral in goods or other tangible property, the proceeds from the liquidation of collateral would be applied to debts (and other costs) due. In the case of FCC licenses that are cancelled and reaucted, however, there is no liquidation of the collateral by the FCC and no proceeds from the resale of the defaulted license because the license is canceled and, in effect, disappears. The Commission would be simply auctioning another initial license to use the same spectrum to another entity, not transferring the original license.³⁶

The U.S. Court of Appeals for the Ninth Circuit in *Magnacom Wireless* cited this passage when it held that the Commission has a regulatory right to cancel licenses on which the installment payor has defaulted.³⁷ Moreover, the passage makes clear that it is federal law – including the provisions of the

³² See GLH Application for Review, Attachment A (Security Agreement dated September 17, 1996, paras. 2, 3, 8, 12). See also *id.* (Assignment and Assumption of Installment Payment Plan Note and Security Agreement for Broadband PCS C Block, April 9, 2002).

³³ *Installment Payment Order*, 25 FCC Rcd at 502-03, paras. 65-66, (citing Letter from William E. Kennard, General Counsel, and Michele C. Farquhar, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Leonard J. Kennedy, Esq., and Richard C. Denning, Esq., 11 FCC Rcd 21,572, 21,577 (OGC/WTB 1996) (*C-Block Note and Security Agreement Opinion Letter*)).

³⁴ See *i* Petition at 4, 6-7. Notably, these conflicts were expressly discussed in the *Installment Payment Order*. See *Installment Payment Order*, 25 FCC Rcd at 502-03, para. 65.

³⁵ The first passage explains that the terms of the Communications Act of 1934, as amended, constrain the Commission from distributing proceeds from a subsequent auction of licenses covering the subject spectrum to a debtor or other creditors. Petition at 5 (citing *C-Block Note and Security Agreement Opinion Letter*, 11 FCC Rcd at 21576-77). That passage is quoted in greater length in the *Installment Payment Order*. See *Installment Payment Order*, 25 FCC Rcd at 502-03, para. 65. The second passage notes that when construing the terms of security agreements, "courts will follow the principles of the UCC (or other bodies of law) that are not in conflict with the implementation of specific federal policies." Petition at 6 (quoting *C-Block Note and Security Agreement Opinion Letter*, 11 FCC Rcd at 21578) (emphasis added).

³⁶ *C-Block Note and Security Agreement Opinion Letter*, 11 FCC Rcd at 21576 (citation omitted).

³⁷ *Magnacom Wireless, LLC v. FCC*, 503 F.3d 984, 991 & n.7 (9th Cir. 2007). "[O]nce the licenses are cancelled for nonpayment, the licenses cease to exist along with any interest in the spectrum for which the license was issued. Thus, under the plain language of the statute and applicable regulations, once an FCC license is cancelled, a licensee

Communications Act and the Commission's rules specifically incorporated into the terms of the Security Agreement as described above – that constrains the Commission from distributing “excess reaction proceeds” to GLH.³⁸

12. In concluding that a payment default leads to cancellation of the license and thus no rights in any “collateral,” the staff decision in the *C-Block Note and Security Agreement Opinion Letter* appropriately reflected the consequences of automatic cancellation and the application of Commission debt collection procedures embodied in Section 1.2110 of the Commission's rules. This “‘license-cancellation-plus-debt-collection’ rule for installment payment defaults has remained unchanged since it was first adopted in 1994,”³⁹ long before GLH's acquisition of these licenses. Nor is there any “double recovery” from GLH here: the rules simply require GLH to pay the amount of the outstanding balance of its debt. The Commission has concluded that this rule, and the installment payment terms described above, are adequate to discourage defaults,⁴⁰ which would result in substantial disruption upon nonpayment and cancellation many years after the auction.

13. The extent to which “equity principles” underlying the Debt Collection Act, as amended, and Federal Claims Collection Standards may “allow” the federal government “to forgive” GLH's outstanding debt⁴¹ is a separate question from the application of the Commission's rules at issue here. Such equity principles would be governed by the debt collection procedures referred to in Section 1.2110. As the Commission has concluded, the *C-Block Note and Security Agreement Opinion Letter* “makes clear that any forgiveness of a debt arising from an installment payment default would occur only in the course of federal debt collection proceedings and not pursuant to the Commission's competitive bidding rules.”⁴² Such debt collection proceedings have not yet been initiated here.⁴³

14. As GLH itself acknowledges, the court in *Magnacom Wireless* reached a result contrary

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no longer has any right derived from that license and therefore has no entitlement to the proceeds from the auction of a new license.” *Id.* at 991 (citation omitted).

³⁸ *C-Block Note and Security Agreement Opinion Letter*, 11 FCC Rcd at 21576-77.

³⁹ *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, 2553, para. 6 (2004). See also *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, Third Report and Order and Second Further Notice of Proposed Rule Making, 13 FCC Rcd 374, 443, para. 116, 522 (rule) (1997) (*1997 Order*); *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 15293, 15315, para. 39 (2000).

⁴⁰ *1997 Order*, 13 FCC Rcd at 443, para. 116.

⁴¹ *C-Block Note and Security Agreement Opinion Letter*, 11 FCC Rcd at 28576.

⁴² *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, 2558, para. 19 (2004). We note that the Federal Claims Collection Standards and the Debt Collection Act, as amended, referred to in the *C-Block Note and Security Agreement Opinion Letter* and Section 1.2110, are incorporated by reference in the Commission's rules. 47 CFR § 1.1901 *et seq.* Those legal requirements generally permit – but do not require – compromise of the debt based on ability to pay, and subject to approval by the Attorney General for any claims of more than \$100,000. They also permit consideration of the cost of collection, or significant doubt concerning the agency's ability to prove its case. See 31 U.S.C. § 3711(a); 31 CFR § 902.2 (compromise), § 903.3 (termination of collection activity). Such standards also permit (but do not require) waiver of interest, costs, and penalties on the debt, including in situations where collection of such charges is “against equity and good conscience.” 31 U.S.C. § 3717(h); 31 CFR § 901.9(g).

⁴³ See generally 47 CFR Part 1 Subpart O (Collection of Claims Owed to the United States). The rules governing debt collection “in no way affect the Commission's rules, as may be amended, regarding payment for licenses (including installment . . . payments) or automatic cancellation of Commission licenses (see 47 CFR 1.1902(f)).” 47 CFR § 1.1901(i).

to GLH's desired outcome;⁴⁴ *Magnacom Wireless* affirms that cancellation of a Commission license extinguishes the defaulting licensee's rights to the underlying spectrum, and that the defaulting licensee has no claim to the proceeds of the subsequent auction of new licenses covering the same spectrum.⁴⁵ GLH's efforts to distinguish *Magnacom Wireless* are unavailing. As the provisions of the Security Agreement described above make clear, the Commission has never taken the position that its remedies in this situation amount to "lien-enforcement" measures governed by the UCC. As the Ninth Circuit recognized, even in the quite different context of addressing the application of the Bankruptcy Code, there is no "binding precedent" to this effect.⁴⁶ GLH's remaining arguments ignore that federal law supersedes any inconsistent obligations under the UCC that might otherwise apply, and disregard the court's determination that under federal law subsequently auctioned licenses do not constitute "the same licenses which had been taken away from GLH" after cancellation for nonpayment.⁴⁷

15. *Consideration of GLH's Supplement.* In its supplement to its Application for Review, GLH argued that the Bureau's 2007 decision in *Advance Acquisition* should apply to reduce its outstanding installment payment obligation.⁴⁸ In the Petition, GLH's arguments in this regard simply reargue a claim that the Commission previously rejected as irrelevant.⁴⁹ As was explained in the *Installment Payment Order*, the *Advance Acquisition* decision was "wholly inapplicable" here because it addressed a bidder's liability for withdrawing a bid during an auction under section 1.2104(g), not the provisions for the automatic cancellation of a license and the acceleration of the full outstanding debt obligation, which are governed exclusively by section 1.2110.⁵⁰ In any event, the Commission has since expressly overruled the Bureau's analysis in *Advance Acquisition*.⁵¹ Consequently, that decision is clearly irrelevant to GLH's circumstances.

16. *The Bankruptcy-Nonbankruptcy Distinction.* Finally, the Commission and the Bureau have each previously considered and rejected GLH's claim that the Commission should treat GLH as if

⁴⁴ See Petition at 5, 8.

⁴⁵ *Magnacom Wireless*, 503 F.3d at 990; see also Petition at 5, 8. Contrary to GLH's assertion, the Ninth Circuit did not uphold or even address a right of setoff. Its quotation of the bankruptcy court's discussion of the *C-Block Note and Security Agreement Opinion Letter* addressed only the question whether the Commission was barred by issue preclusion from challenging the trustee's claim for the proceeds of a reauction. See *Magnacom Wireless*, 503 F.3d at 995-96 (describing procedural history of bankruptcy court decisions).

⁴⁶ *Magnacom Wireless*, 503 F.3d at 993-94.

⁴⁷ Petition at 8-9.

⁴⁸ See GLH Supplement at 1-3 (citing *Advance Acquisition, Inc.*, Order, 22 FCC Rcd 18846 (WTB 2007)).

⁴⁹ See *Havens*, 26 FCC Rcd at 10891, para. 9.

⁵⁰ See *Installment Payment Order*, 25 FCC Rcd at 480, para. 16 n.90. Indeed, Section 1.2104(g)'s approach toward a bidder that defaults prior to licensing is markedly different from Section 1.2110's approach toward a licensee who defaults on its installment payment obligations. In the former case, the Commission provided for a specific type of offset—a "deficiency payment" and an "additional payment" above and beyond any deficiency between the winning bid of the defaulter and the winning bid in the subsequent auction. In the case of the defaulting licensee covered by the installment payment provisions of Section 1.2110, the Commission made no provision for any offset or mitigation, and instead for the reasons stated above provided in the rules that this type of defaulter would be subject to collection of the full amount of the remaining debt, plus and late fees and interest that have accrued.

⁵¹ See *Barry P. Lunderville et al.*, Memorandum Opinion and Order, 28 FCC Rcd 665, 670-73, paras. 10-18 (2013), overruling *Advance Acquisition, Inc.* ("[W]e decline to follow the factors applied by the Bureau in *Advance Acquisition, Inc.* and expressly overrule the Bureau's analysis in that decision."), *recon. denied sub nom. Barry P. Lunderville, Request for Relief from Bid Withdrawal Payment Obligations Incurred in Auction 37*, Order on Reconsideration, 30 FCC Rcd 4146, 4149-50, paras. 9-11 (2015), *petition for review denied, Lunderville v. FCC*, No. 15-1584 (1st Cir. Mar. 16, 2017), *panel reh'g and reh'g en banc denied, Lunderville v. FCC*, No. 15-1584 (1st Cir. June 19, 2017), *cert. denied*, 2018 WL 1786001 (U.S. Apr. 16, 2018) (No. 17-1219).

had filed for protection under the Bankruptcy Code.⁵² This argument also fails to rely on new facts or changed circumstances. For the reasons stated in the *Installment Payment Order*, this claim is also wholly without merit.

IV. ORDERING CLAUSE

17. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i), 5(c)(5) and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c)(5) and 405(a), and section 1.106(b)(2) of the Commission's rules, 47 CFR § 1.106(b)(2), the Petition for Reconsideration filed by GLH Communications, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch
Secretary

⁵² See *Installment Payment Order*, 25 FCC Rcd at 496-98 paras. 47-50; *GLH Order on Reconsideration*, 22 FCC Rcd at 2418, 2419, paras. 18, 22; see also *Petition* at 10-11.