

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

In the Matter of)
Southern Communications Systems, Inc.)
Request for Limited Rule Waiver to)
Comply with PCS Installment Payment)
for C Block License in the Cleveland, TN)
BTA)

ORDER

Adopted: October 29, 1999

Released: October 29, 1999

By the Chief, Auctions and Industry Analysis Division:

1. On July 31, 1998, the Commission required broadband Personal Communications Services ("PCS") C and F block licensees to resume making installment payments for their licenses after having a 16-month respite from payment obligations. However, in accordance with the Order on Reconsideration of the Second Report and Order ("Reconsideration Order"), licensees that failed to meet the July 31, 1998, deadline were permitted to submit their payments on or before October 29, 1998, without being considered delinquent, if they paid a five percent late fee. The next installment payment was due on October 31, 1998, although licensees had an automatic 90-day non-delinquency period (with a five percent late fee), followed by a subsequent 90-day automatic grace period (with an additional ten percent late fee). Thus, the October 31, 1998 payment was due, at the latest, by April 29, 1999 (including the 15 percent late fee).

2. On April 29, 1999, Southern Communications Systems, Inc. ("Southern") filed a request for waiver of Section 24.711(b) of the Commission's Rules, the PCS installment payment rule. Southern contends that it was aware of the April 29 payment deadline but was unable to transfer the funds in a timely manner due to the illness of its financial officer. Southern requested an additional two days to make

1 "Wireless Telecommunications Bureau Announces 1998 Election Date for Broadband PCS C Block Licensees; Payments for C and F Block Licensees Resume July 31, 1998," Public Notice, 13 FCC Rcd 7413 (1998).

2 Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, Order on Reconsideration of the Second Report and Order, 13 FCC Rcd 8345 (1998). ("Reconsideration Order").

3 See 47 C.F.R. § 1.2110(f)(3).

4 See Southern Communications Systems, Inc., Request for Limited Rule Waiver to Comply with PCS Installment Payment for C Block License in the Cleveland, TN BTA, filed April 29, 1999. ("Waiver Request").

5 Waiver Request at 2.

its payment, and did transfer funds to the Commission two days after the deadline. However, Southern submitted only the amount owed for the installment payment, and not the additional 15 percent late fee.

3. We decline to grant Southern's request for waiver of the April 29, 1999, late payment deadline. In order for a waiver of the PCS rules to be granted, one of two tests must be met. The entity requesting a waiver must demonstrate either that: (1) "[t]he 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 (2) "[i]n 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."⁶ Southern's waiver request meets neither of these tests.

4. Southern was aware of the deadline for submission of the installment payment⁷ and should have planned accordingly. The inability to transfer funds prior to the expiration of a deadline does not constitute "unique facts and circumstances." A prudent licensee would have prepared for the unexpected by having a back-up person ready to make the payment. In addition, we do not believe that the underlying purpose of our rules would be frustrated by their application here or that it would serve the public interest to delay their enforcement. By its own admission, Southern has not begun construction of a PCS system.⁸ Southern's failure to initiate build out on the licensed spectrum is an additional contributing factor and further mitigates any resulting harm or burden imposed upon Southern by the Commission's decision to fully enforce its rules. Further extension of the non-delinquency period would only serve to undermine the Commission's enforcement of its payment deadlines. As the Commission stated in the *Reconsideration Order*, "[n]o matter what deadline we establish, it is inevitable that some licensees will seek more time to pay."⁹

5. Moreover, Southern should be aware of the importance that the Commission places on timely submission of such payments. Recently, the Bureau emphasized its payment policy in a Public Notice, dated September 18, 1998, in which it stated that licensees that miss the payment deadline by more than 180 days shall be in default and their licenses shall automatically cancel.¹⁰ The Payment Notice¹¹ received by Southern on April 21, 1999, clearly states that "any entity that is more than 180 days delinquent in making an installment payment . . . or fails to pay any associated late fees 'will be declared in default, its license will automatically cancel and will be subject to debt collection procedures.'" Prior to receiving Southern's waiver request, the Commission denied several requests for waiver of the payment resumption date.¹² In short, Southern should have been well aware that its license would cancel

⁶ See 47 C.F.R. § 1.925.

⁷ Waiver Request at 2.

⁸ Waiver Request at 4.

⁹ *Reconsideration Order*, 13 FCC Rcd at 8354, ¶ 24.

¹⁰ See Wireless Telecommunications Bureau Provides Guidance on Grace Period and Installment Payment Rules, *Public Notice*, 13 FCC Rcd 18213 (1998). See also 47 C.F.R. § 1.2110(f)(4).

¹¹ The "Payment Notice" is a statement that the Commission mails to licensees to indicate upcoming payment obligations. The Commission sent Southern a Payment Notice by Federal Express on April 20, 1999. Commission records indicate that Southern received the Payment Notice on April 21, 1999.

¹² Requests for Extension of the Commission's Initial Non-delinquency Period for C and F Block Installment Payments, WT Docket No. 97-82, *Order*, 13 FCC Rcd 22071 (1998); *aff'd on reconsideration*, *Memorandum*

automatically if it failed to make full payment of amounts due on April 29, 1999. As a result of Southern's default, its license has cancelled and we will offer its previously licensed spectrum in a future auction. Once the spectrum previously licensed to Southern is auctioned, we will assess any deficit or default payments due under our rules and commence debt collection procedures.

6. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 309(j), the request filed by Southern Communications Systems, Inc., for a waiver of 47 C.F.R. § 24.711(b) IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Amy J. Zoslov
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Wireless Telecommunications Bureau