

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

In the Matter of
Licenses of
21st Century Telesis, Inc.
For Facilities in the
Broadband Personal Communications Services
Petition for Reconsideration

MEMORANDUM OPINION AND ORDER

Adopted: December 8, 2000

Released: December 21, 2000

By the Commission:

I. Introduction

1. We have before us a petition for reconsideration ("Petition") filed by 21st Century Telesis, Inc. ("21st Century" or "Petitioner"). 21st Century requests that the Commission reconsider the Auction and Industry Analysis Division's ("Division") decision denying its request for extension of time to submit installment payments or, in the alternative, waiver of Section 1.2110 (f) of the Commission's rules. For the reasons set forth below, we deny 21st Century's Petition.

II. Background

2. Section 309(j)(4)(D) requires the Commission, when promulgating auctions regulations,

1 In the Matter of Licenses of 21st Century Telesis for Facilities in the Broadband Personal Communications Services, Petition for Reconsideration (filed Sept. 6, 2000).

2 See Letter from Louis Sigalos, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to James M. LaBelle, Chairman and Chief Executive Order, 21st Century Telesis, Inc., DA 00-1791 (rel. Aug. 7, 2000) ("Division Order"); Letter from James A. LaBelle, Chairman and Chief Executive Officer, 21st Century Telesis, Inc. to Magalie Roman Salas, February 2, 2000 ("February 2nd Letter"); Letter from James A. LaBelle, Chairman and Chief Executive Officer, 21st Century Telesis, Inc. to Magalie Roman Salas, April 25, 2000 ("April 25th Letter"); Letter from James A. LaBelle, Chairman and Chief Executive Officer, 21st Century Telesis, Inc. to Magalie Roman Salas, July 25, 2000 ("July 25th Letter").

3 47 C.F.R. § 1.2110(f)(4)(1997).

4 On November 9, 2000, 21st Century filed a Motion for Leave to File Supplement to Petition for Reconsideration and a Supplement to Petition for Reconsideration. We find that the Supplement to the Petition is untimely, and therefore, we deny the Motion and decline to address the arguments presented by 21st Century in the Supplement. See 47 C.F.R. § 1.106(f)(1999).

5 47 U.S.C. § 309(j)(4)(D).

to ensure that small businesses and other designated entities are given the opportunity to participate in the provision of spectrum-based services. In accordance with this mandate, the Commission created provisions in the auctions program to promote participation by small businesses in broadband Personal Communications Services (PCS), such as limiting eligibility for the C and F block auctions to those with total assets and revenues below a certain threshold, and offering bidding credits and installment payment plans.<sup>6</sup>

3. 21<sup>st</sup> Century won the 19 licenses that are the subject of its Petition in the broadband PCS C and F block Auctions No. 5 and No. 11.<sup>7</sup> The licenses were conditionally granted in 1996 and 1997.<sup>8</sup> Each of 21<sup>st</sup> Century's C and F block licenses was explicitly conditioned on full and timely payment of all installments under the Commission's installment payment plan. Each license stated that "[f]ailure to comply with this condition will result in the automatic cancellation of this authorization."<sup>9</sup>

4. The Commission's rules provide for an automatic 90-day grace period after the installment payment due date ("non-delinquency period") with a five percent late fee.<sup>10</sup> If remittance of the missed installment payment and the five percent late fee is not made before expiration of the non-delinquency period, the rule provides for a second automatic 90-day period ("grace period") with an

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<sup>6</sup> The installment payment plan for C block permitted licensees that qualified as small businesses to pay 90% of the bid price over a period of ten years, with interest paid for the first six years and interest and principal for the remaining four. *See* 47 C.F.R. § 24.711(b)(3)(1996). The installment payment plan for F block permitted licensees that qualified as small businesses to pay 80% of the bid price over a period of ten years, with interest paid for the first eight years and interest and principal for the remaining two. *See* 47 C.F.R. § 24.716(b)(3)(1997).

<sup>7</sup> *See* "Entrepreneur's C Block Auction Closes: FCC Announces Winning Bidders in the Auction of 493 Licenses to Provide Broadband PCS in Basic Trading Areas," *Public Notice*, DA 96-716 (rel. May 8, 1996); "D, E, and F Block Auction Closes -- Winning Bidders in the Auction of 1,479 Licenses To Provide Broadband PCS in Basic Trading Areas," *Public Notice*, DA 97-81 (rel. Jan. 15, 1997).

<sup>8</sup> *See* "FCC Announces Grant Of Broadband Personal Communications Services Entrepreneurs' C Block BTA Licenses," *Public Notice*, DA 96-1553 (rel. Sept. 17, 1996); "FCC Announces Grant Of Broadband Personal Communications Services D, E, and F Block BTA Licenses," *Public Notice*, DA 97-883 (rel. April 28, 1997).

<sup>9</sup> For example, the Note signed by Petitioner for each C and F block license it received stated at p. 3:

The Maker hereby acknowledges that the Commission has issued Maker the above referenced License pursuant to the Communications Act of 1934, as amended, that is conditioned upon full and timely payment of financial obligations under the Commission's installment payment plan, as set forth in the then-applicable orders and regulations of the Commission, as amended, and that the sanctions and enforcement authority of the Commission shall remain applicable in the event of a failure to comply with the terms and conditions of the License, regardless of the enforceability of this Note or the Security Agreement.

*See also* In the Matter of Requests for Extension of the Commission's Initial Non-Delinquency Period for C and F Block Installment Payments, *Order*, 13 FCC Rcd 22071 (1998) ("*Extension Request Order*"), *aff'd on recon*, 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) ("*SouthEast MO&O*"), *aff'd*, *SouthEast Telephone v. FCC*, No. 99-1164, 1999 WL 1215855 (D.C. Cir. Nov. 24, 1999) ("*SouthEast Telephone*").

<sup>10</sup> 47 C.F.R. § 1.2110(f)(4)(i)(1999).

additional late fee equal to ten percent of the missed payment.<sup>11</sup> Pursuant to Section 1.2110, failure to submit an installment by the last day of the second 90-day grace period, results in automatic cancellation of the license without further action by the Commission.<sup>12</sup> Prior to the establishment of automatic grace periods followed by automatic cancellation for non-payment of installment obligations, a licensee could request a three- to six-month grace period, during which no installment payments need be made.<sup>13</sup>

5. 21<sup>st</sup> Century claims to have made timely installment payments through April 1999. 21<sup>st</sup> Century admits that it did not submit its July 1999 installment payment by January 27, 2000, the last day of the second 90-day grace period. As a result of its failure to make its July 1999 payment by the January 27, 2000 deadline, 21<sup>st</sup> Century's licenses automatically cancelled without further action by the Commission. After the late payment deadline had passed, 21<sup>st</sup> Century filed three letters claiming it had the funds available to make its payment, seeking waiver of the default it admits had occurred, and requesting assurance by the Commission that a waiver would be granted.<sup>14</sup> These letters state that 21<sup>st</sup> Century would not make any further payments until it had received assurance by the Commission on the issue of cancellation.<sup>15</sup> In each of the letters, 21<sup>st</sup> Century seeks a waiver of the default, which it readily admits had occurred.<sup>16</sup> While 21<sup>st</sup> Century admits it did not timely submit its July 31, 1999 payment by the January 27, 2000 deadline, 21<sup>st</sup> Century claimed that its failure was due in part to not having received notice of the amount owed by the January 27, 2000 deadline until that date.

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<sup>11</sup> 47 C.F.R. § 1.2110(f)(4)(ii)(1999).

<sup>12</sup> 47 C.F.R. § 1.2110(f)(4)(iii)(1999).

<sup>13</sup> See 47 C.F.R. § 1.2110(e)(4) (1996). The rule stated that in considering whether to grant a request for a grace period, the Commission would consider, among other things, the licensee's payment history, including whether the licensee has defaulted before, how far into the license term the default occurs, the reasons for default, whether the licensee has met construction build-out requirements, the licensee's financial condition, and whether the licensee is seeking a buyer under an authorized distress sale policy. 47 C.F.R. § 1.2110(e)(4)(ii)(1996). When the Commission abandoned its burdensome policy of reviewing grace period requests on a case-by-case approach and adopted its current rules allowing for two automatic 90 day grace periods, it did not extend the date upon which the payment was due and payable to the Commission. In other words, the last day of the 180 day grace period did not become the due date of the payment. See Amendment of Part 1 of the Commission's Rules-Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket 97-82, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd 374 (1997) ("*Part 1 Third Report and Order*").

<sup>14</sup> See February 2<sup>nd</sup> Letter; April 25<sup>th</sup> Letter; July 25<sup>th</sup> Letter.

<sup>15</sup> *Id.*

<sup>16</sup> See February 2<sup>nd</sup> Letter at 2; April 25<sup>th</sup> Letter at 2; July 25<sup>th</sup> Letter at 2. In its July 25<sup>th</sup> Letter, 21<sup>st</sup> Century offered to make its installment payments that were in arrears, payments that otherwise would have been owed if license cancellation had not occurred. See July 25<sup>th</sup> Letter at 1. Also, 21<sup>st</sup> Century alleges that it had funds available to make the overdue installment payments, but, on the advice of counsel, chose not to make those payments while awaiting a decision of the Commission regarding enforcement of its license payment rules. See February 2<sup>nd</sup> Letter at 2.

6. On August 7, 2000, the Division released a letter denying Petitioner's request for extension of the January 27, 2000 late payment deadline and request for waiver of the Commission's installment payment rules.<sup>17</sup> On September 6, 2000, Petitioner filed a petition for reconsideration of the Division's dismissal of its request.<sup>18</sup>

### III. Discussion

7. In its Petition, 21<sup>st</sup> Century contends that the Commission should reconsider the *Division Order* on the grounds that it was in error to find that 21<sup>st</sup> Century's licenses automatically cancelled and that 21<sup>st</sup> Century's request for waiver of 1.2110(f) of the Commission's rules had not been given the "hard look" required by law.<sup>19</sup> 21<sup>st</sup> Century argues that the refusal to grant waiver of the automatic cancellation rule is arbitrary and capricious and discriminatory in practice.<sup>20</sup> Finally, 21<sup>st</sup> Century believes that its licenses should be reinstated because it has a "substantial equity interest" in its cancelled licenses<sup>21</sup> and reinstatement would serve the public interest, convenience and necessity.

#### A. Procedural Issues

8. In challenging the cancellation of its licenses, 21<sup>st</sup> Century's request for waiver was not timely filed, because it sought waiver of the license cancellation rule after operation of the rule. By operation of Section 1.2110 of the Commission's rules, 21<sup>st</sup> Century's licenses cancelled on January 28, 2000. In addition, 21<sup>st</sup> Century did not file a petition for reconsideration of the license cancellation until seven months had passed following the automatic cancellation of its licenses. Because the Division decided the merits of 21<sup>st</sup> Century's request for extension of time and waiver, we will address the Petition on the merits. We take this opportunity, however, to notify licensees that, except in extraordinary circumstances, we will not entertain waiver requests and requests for extensions of payment deadlines filed after default and the operation of our automatic license cancellation rules.

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<sup>17</sup> In its Petition for Reconsideration, Petitioner attempts to challenge the issue of cancellation by inappropriately characterizing the *Division Order* as a "Staff Cancellation Declaration." The *Division Order* was not an order or action of the Commission or Wireless Bureau canceling Petitioner's licenses, but rather a letter denying Petitioner's request for waiver of the Commission's automatic cancellation rule. Furthermore, 21<sup>st</sup> Century sets forth in Exhibit A to its petition an incorrect list of the licenses that were cancelled. The licenses formerly held by 21<sup>st</sup> Century that are the subject of its Petition are correctly listed in Attachment A of the *Division Order*.

<sup>18</sup> The Wireless Telecommunications Bureau ("Wireless Bureau") has before it a Request for Stay filed by 21<sup>st</sup> Century on October 16, 2000. In its Request for Stay, 21<sup>st</sup> Century seeks to stay the effectiveness of the *Division Order* and to stay the auction of the spectrum underlying 21<sup>st</sup> Century's 19 cancelled licenses in Auction No. 35. The Bureau will respond to this Request for Stay in a separate order.

<sup>19</sup> See Petition at 16-19.

<sup>20</sup> *Id.* at 14-15, 19-21.

<sup>21</sup> *Id.* at 21-25.

## B. Automatic License Cancellation

9. Reliance on Bankruptcy Court Decisions. In its Petition, 21<sup>st</sup> Century alleges for the first time that its licenses did not automatically cancel upon its failure to make the July 1999 installment payment by January 27, 2000. 21<sup>st</sup> Century argues that automatic cancellation has been rejected in decisions by two federal bankruptcy courts in *NextWave Personal Communications*<sup>22</sup> and *Kansas PCS*<sup>23</sup> and thus enforcement of our automatic cancellation rules are invalidated. We do not agree with the interpretation of our rules by those courts.<sup>24</sup> Nor do we believe that any such findings by those courts act to override our license cancellation rules, especially in light of the decisions by the U.S. Court of Appeals and District Court overruling those bankruptcy court decisions.<sup>25</sup>

10. Application of the Commission's payment rules, including automatic cancellation for failure to meet payment obligations, is fully consistent with congressional mandates, our regulations and precedent. Our automatic license cancellation rule, as with all of our payment rules, is designed to meet the congressional mandates set forth in Section 309(j) of the Communications Act of 1934, as amended ("Communications Act").<sup>26</sup> The requirement that licensees and bidders pay on time and in full is a

<sup>22</sup> See *In re NextWave Personal Communications, Inc.*, 235 B.R. 263, 271 (Bankr. S.D.N.Y. 1998) ("*NextWave Personal Communications*"), *rev'd In re NextWave Personal Communications, Inc.*, 200 F.3d 43 (2d Cir. 1999), *cert. denied*, 2000 WL 795201, 68 USLW 3774 (U.S. Oct. 10, 2000) *reh'g denied*, 2000 WL 1737481 (U.S. Nov. 27, 2000); *In re Federal Communications Commission*, 217 F.3d 125, 132 (2d Cir. May 25, 2000), *petit. for panel rehearing and rehearing en banc denied* (August 23, 2000), *cert. denied*, 2000 WL 1377133 (U.S. Nov. 27, 2000).

<sup>23</sup> See *In re: Kansas Personal Communications Service Ltd.*, Case No. 99-21747-11-JAR, Judgment on Decision (Bankr.D.Kan. Aug. 16, 2000) ("*Kansas PCS*"), *rev'd, United States v. Kansas Personal Communications Service Ltd.*, Case No. 00-2892-JWL (D.Kan. Dec. 18, 2000).

<sup>24</sup> We note that the Commission has consistently taken the position that the Bankruptcy Code does not circumvent the application of our automatic license cancellation rules for nonpayment. See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, *Second Order on Reconsideration of the Second Report and Order*, FCC 99-66, 14 FCC Rcd 6571, 6580 (1999) (*Second Reconsideration Order*) (the requirement that licensees comply with the full and timely payment condition in order to retain their licenses is regulatory in nature); see also In the Matter of Public Notice DA 00-49 Auction of C and F Block Broadband PCS Licenses, *Order on Reconsideration*, 15 FCC Rcd 17500 (2000) ("*NextWave Order*").

<sup>25</sup> In two decisions released on December 22, 1999 and May 25, 2000, the United States Court of Appeals for the Second Circuit ("Second Circuit") upheld the Commission's position in *NextWave Personal Communications*. In these opinions, the Second Circuit held that the requirement that licensees comply with the full and timely payment condition in order to retain their licenses is regulatory in nature, because the auction is the mechanism used by the Commission to assign licenses under its statutory mandate in Section 309(j) of the Communications Act and, therefore, bankruptcy provisions may not be used to collaterally attack the Commission's regulatory licensing scheme. *In re NextWave Personal Communications, Inc.*, 200 F.3d 43 (2d Cir. 1999), *cert. denied*, 2000 WL 795201, 68 USLW 3774 (U.S. Oct. 10, 2000) *reh'g denied*, 2000 WL 1737481 (U.S. Nov. 27, 2000); *In re Federal Communications Commission*, 217 F.3d 125, 132 (2d Cir. May 25, 2000), *petit. for panel rehearing and rehearing en banc denied* (August 23, 2000), ), *cert. denied*, 2000 WL 1377133 (U.S. Nov. 27, 2000). On December 18, 2000, the U.S. District Court for the Eastern District Kansas reversed the bankruptcy court's decision in *Kansas PCS*. See *United States of America v. Kansas Personal Communication Services, Ltd.*, Case No. 00-2892-JWL (D. Kans. Dec. 18, 2000).

<sup>26</sup> See *infra* ¶ 22.

means by which we can preserve the reliability and integrity of our auction licensing program. Our goal in designing a competitive bidding system as directed by Congress is to award licenses expeditiously to bring competitive wireless services to the public without undue delay. Providing for the automatic cancellation of licenses for nonpayment is intended to further those goals by permitting expeditious auction of spectrum licenses. Thus, because 21<sup>st</sup> Century has not met its license obligations by failing to timely pay its July 1999 installment, we see no reason to alter or forbear from applying our default and automatic cancellation rules.<sup>27</sup>

11. 21<sup>st</sup> Century additionally alleges that “numerous FCC statements” with regard to license cancellation in federal court and other contexts were inconsistent and that such statements support its view that its licenses did not automatically cancel.<sup>28</sup>

12. At the outset, we note that over the years, the Commission repeatedly provided notice that licenses would cancel automatically if the applicable installment payments were not timely received by the end of the second 90-day grace period.<sup>29</sup> At the time that 21<sup>st</sup> Century was conditionally granted its licenses, the payment rules provided that a license would cancel automatically following the expiration of any grace period without the successful resumption of payment or upon default with no grace period.<sup>30</sup> Those rules also required licensees to make a specific request for grant of a grace period. The Commission subsequently modified its rules to establish automatic grace periods so that licensees would not need to submit grace period requests in order to extend the time to raise the capital to fulfill their payment obligations.<sup>31</sup> As noted above, the full and timely payment condition was explicitly stated on the face of each license<sup>32</sup> and referenced in the Notes and Security Agreements that memorialized the payment terms and obligations applicable to each license. In addition to the rules and orders issued by the Commission, the Wireless Bureau issued a public notice that gave Commission licensees specific

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<sup>27</sup> See also *NextWave Order*, 15 FCC Rcd at 17509-17510, ¶ 17.

<sup>28</sup> Petition at 13.

<sup>29</sup> Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, *Second Report and Order*, FCC 97-342, 12 FCC Rcd 16436 (1997) (*Second Report and Order*); Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, *Order on Reconsideration of the Second Report and Order*, FCC 98-46, 13 FCC Rcd 8345 (1998) (*First Reconsideration Order*); *Second Reconsideration Order*. We refer to these orders collectively as the *Restructuring Orders*. See also *Part 1 Third Report and Order*.

<sup>30</sup> 47 C.F.R. § 1.2110(e)(4)(iii) (1997).

<sup>31</sup> In adopting two consecutive 90-day grace periods (180 days) and requiring late payment fees from installment payment licensees that pay after the original due date, we intended to provide licensees with adequate financial incentives to make installment payments on time, and allow licensees experiencing financial difficulties a specific amount of time within which to pursue private market solutions to their financing difficulties. *Part 1 Third Report and Order* 13 FCC Rcd at 439-440, ¶ 110.

<sup>32</sup> Each C and F block license issued to 21<sup>st</sup> Century expressly stated that “[t]his authorization is conditioned upon the full and timely payment of all monies due pursuant to Sections 1.2110 and 24.711 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, e.g., C block License at 2.

instructions regarding the dates that payments were due and the consequences of non-compliance.<sup>33</sup>

13. Moreover, 21<sup>st</sup> Century fails to provide either the content or the context of the alleged statements. Nor does 21<sup>st</sup> Century either demonstrate or allege that it relied on such statements in failing to make its July 1999 installment payment.<sup>34</sup> Even if 21<sup>st</sup> Century had relied in anyway on statements made by representatives of the Commission in federal litigation, 21<sup>st</sup> Century could not have ignored the public notices and other pronouncements—in particular, the January 12, 2000 Public Notice in which the Commission scheduled an auction of C and F block licenses previously held by NextWave among others, following the automatic cancellation of licenses for nonpayment.<sup>35</sup> Thus, at the very least, weeks before its payment was due, 21<sup>st</sup> Century was on notice that its licenses would cancel for nonpayment.

14. Petitioner also cites *Mercury PCS*<sup>36</sup> for the proposition that our automatic license cancellation rule is not enforceable because it has not been clearly promulgated or clearly applied.<sup>37</sup> In *Mercury PCS*, the Commission held that the Bureau's neutral pronouncement regarding reflexive bid signaling during the course of the D, E, F auction was indicative of an undefined position on the matter; therefore, there was not adequate notice that reflexive bid-signaling would violate the anti-collusion rule. *Mercury PCS* is inapposite because, as discussed above, the Commission has been consistent about the application of its automatic license cancellation rule.

15. Notice of Payment Obligation. Petitioner claims that it could not meet the January 27, 2000 late payment deadline because it did not receive notice of the amount due and due date of its payment obligation until January 27, 2000, when it received a payment notice in the mail.<sup>38</sup> In addition, 21<sup>st</sup> Century contends that the failure of the Commission to meet its obligation to provide Petitioner with clear, timely, and precise statements of the amount due<sup>39</sup> violated Petitioner's due process right to notice

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<sup>33</sup> See "Wireless Telecommunications Bureau Provides Guidance on Grace Period and Installment Payment Rules," *Public Notice*, DA 98-1897, 13 FCC Rcd 18213 (1998). In this Public Notice, dated September 18, 1998, the Wireless Bureau emphasized that licensees that miss the late payment deadline would be in default and their licenses would automatically cancel.

<sup>34</sup> See *NextWave Order*, citing *In re Ludlow Hosp. Soc.*, 124 F.3d 22, 26 (1<sup>st</sup> Cir. 1997) (where Assistant United States Attorney gave oral assurances regarding deadline materially distinct from one-year deadline prescribed by regulation, bankruptcy trustee could not reasonably rely on those assurances as a basis for inferring blanket Government concession that bankruptcy court had equitable power to override regulatory deadlines).

<sup>35</sup> See "Auction of C and F Block Broadband PCS Licenses," *Public Notice*, DA 00-49, 15 FCC Rcd 693 (2000) ("*January 12<sup>th</sup> Public Notice*").

<sup>36</sup> In re Application of Mercury PCS II, For Facilities in the Broadband Personal Communications Systems in the D, E, and F Blocks, *Memorandum Opinion and Order*, 13 FCC Rcd 23755 (1998) ("*Mercury PCS*").

<sup>37</sup> Petition at 13.

<sup>38</sup> See Petition at 7-12.

<sup>39</sup> Petitioner's claim that statements made in a letter in which the Division addressed matters relating to the installment payment obligations of CONXUS, a narrowband PCS licensee, obligate the Commission to utilize payment notices to notify all licensees of their payment obligations. See Petition at 12. The Division letter the Petitioner cites is inapplicable. In that case, CONXUS had applied for several grace periods under the rules governing the narrowband PCS service. In a letter, dated May 17, 1999, the Division set forth a specific date for CONXUS to resume making its installment payments. In the letter the Division stated that it would send under (continued....)

prior to deprivation of property.<sup>40</sup> Petitioner also cites to *Trinity Broadcasting of Florida, Inc. v. FCC*, where the U.S. Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) held that “in the absence of notice -- for example, where the regulation is not sufficiently clear to warn a party about what is expected of it – an agency may not deprive a party of property by imposing civil or criminal liability.”<sup>41</sup> As discussed further below, we disagree with all of Petitioner’s contentions.

16. As a Commission licensee, 21<sup>st</sup> Century was responsible for making timely payment on the dates set by the Commission, without individual notice of payment due.<sup>42</sup> Thus it was Petitioner’s obligation to ascertain the correct amount and due date of the installment payment.<sup>43</sup> The practice of sending out individual notices is not mandated by any Commission rule, but has been performed as a courtesy to licensees. Prior to the January 27, 2000 late payment deadline, there was no indication that 21<sup>st</sup> Century was confused about the amount due or the due date of its payment obligation. In fact, Petitioner’s claim that it timely submitted payments due prior to July 1999 undermines its claim that it did not know the amount or due date of its July 1999 payment obligation.<sup>44</sup> In its February 2<sup>nd</sup> Letter, Petitioner admits that it understood that timely payment was required to continue to hold its licenses, thereby contradicting its argument that it was deprived of notice of the payment due date prior to the

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separate cover a statement of the amount due and calculations for the resumption of payments. See Letter from E. Rachel Kazan, Chief, Auctions Finance and Market Analysis Branch, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Elizabeth R. Sachs, Lukas, Nace, Gutierrez & Sachs, May 17, 1999, attached to Petition as Exhibit C. The letter to CONXUS was not intended to and does not purport to establish a policy of sending payment notices. On the contrary, the CONXUS letter reinforces the Commission’s requirement of full and timely payment.

<sup>40</sup> See Petition at 8 (*citing Salzer v. FCC*, 778 F.2d 869, 877 (D.C. Cir. 1985) (“[t]he more exacting the standard, however, the greater the Commission’s obligation to be explicit about any prerequisites for consideration”)).

<sup>41</sup> 211 F.3d 618, 628 (D.C. Cir. 2000).

<sup>42</sup> See *Division Order*; see also *Lakeshore Broadcasting, Inc. v. FCC*, 199 F.3d 468 (D.C. Cir. 1999) (“*Lakeshore Broadcasting*”) (upholding the Commission’s denial of a waiver request submitted by a broadcast licensee that had missed an application payment deadline). In affirming the Commission’s decision, the court in *Lakeshore Broadcasting* stated that “as an applicant before the Commission, [Lakeshore] had initiated the application and knew or should have known that its application was subject to dismissal if it failed to abide by the Commission’s various regulations for the submission and prosecution of an application. By filing its application, Lakeshore did not become entitled to personal notice of all existing regulatory requirements that might affect its application; rather, the burden was upon Lakeshore to read and comply with the agency’s published regulations.” *Lakeshore Broadcasting*, 199 F.3d at 475. See also *National Telecom PCS, Inc. v. FCC*, No. 99-1506 (D.C. Cir. Oct. 4, 2000) (unpublished), in which the court held the Commission’s rules governing the C Block Auction provided “sufficient notice that the Commission would deduct bid withdrawal penalties from bidder’s upfront and down payments and that failure to timely remit the required down payment would result in default and dismissal of the license applications.”

<sup>43</sup> See *Lakeshore Broadcasting*, 199 F.3d at 475.

<sup>44</sup> We note that 21<sup>st</sup> Century does not contend that it did not receive a notice setting forth the July quarterly installment payment amount. Our records indicate that notices dated July 20, 1999 and October 22, 1999, provided the amount of the July payment and any late fees related to that payment.

cancellation of its licenses.<sup>45</sup> Rather, it appears that 21<sup>st</sup> Century failed to make its July 31, 1999 payment, not because it never received notice, but because it did not have the funds available to make its installment payment by the January 27, 2000 late installment payment deadline.<sup>46</sup>

17. Waivers of Other Payment Rules. 21<sup>st</sup> Century contends that the Commission's enforcement of its installment late payment deadline and automatic cancellation rule was arbitrary and capricious because the Commission has previously waived bid withdrawal payments<sup>47</sup> and deadlines for upfront and down payments. We reject this argument. The Commission's grant of waivers of its withdrawal payment, upfront payment or down payment rules does not necessarily provide a basis for waiver of its installment payment rule.<sup>48</sup> Under the Commission's standards for granting a waiver of its rules, the Commission may grant a waiver if it determines that the underlying purpose of a rule would not be served by its application in a given case.<sup>49</sup> Thus, the Commission must evaluate waiver requests in light of the specific provisions and underlying purposes of the rule for which a waiver is sought. The cases 21<sup>st</sup> Century cites to support its position are inapposite to the facts presented by 21<sup>st</sup> Century because the bid withdrawal payment, upfront payment, and down payment rules are intrinsically different in scope and purpose from the installment payment rule.

18. The purpose of the Commission's bid withdrawal payment rule is to deter bidders from submitting insincere bids.<sup>50</sup> In the cases cited by Petitioner, the Commission granted in part requests for waiver of the bid withdrawal rule because difficulties with the auctions software caused bidders to submit bids that were exponentially greater than the bids they had intended to submit. Thus, waiver was appropriate because application of the rule would not have served its purpose.<sup>51</sup> Similarly, the Commission promulgated its upfront payment rules to ensure that only serious, qualified bidders participate in its auctions.<sup>52</sup> An applicant that fails to make its upfront payment deadlines is

<sup>45</sup> In its February 2<sup>nd</sup> Letter, 21<sup>st</sup> Century stated: "we were unable to ensure that wire transfers would be received at Mellon Bank by Thursday afternoon, January 27, 2000." See February 2<sup>nd</sup> Letter at 2.

<sup>46</sup> In its February 2<sup>nd</sup> Letter, 21<sup>st</sup> Century stated that "funds were available but not within [its] control (*i.e.*, not held in 21<sup>st</sup> Century bank accounts)." See February 2<sup>nd</sup> Letter at 2.

<sup>47</sup> In the Matter of Clearcomm L.P., *Order*, 13 FCC Rcd 16559 (1998); In the Matter of Wilderness Communications, L.L.C., *Order*, 13 FCC Rcd 21614 (1998); In the Matter of Rapid Wireless Ltd., *Order*, 12 FCC Rcd 6679 (1997); In the Matter of Atlanta Trunking Associates, Inc. and Map Wireless, L.L.C., *Order*, 11 FCC Rcd 17189 (1996), *vacated in part*, 12 FCC Rcd 6382; In the Matter of Georgia Independent PCS Corp., *Order*, 11 FCC Rcd 13728 (1996).

<sup>48</sup> See In the Matter of 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*, FCC 00-433 (rel. Dec. 21, 2000).

<sup>49</sup> 47 C.F.R. § 1.925.

<sup>50</sup> See In the Matter of Implementation of the Communications Act, Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2373 (1994) ("*Competitive Bidding Second Report and Order*").

<sup>51</sup> See, *e.g.*, Letter from Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Div., Wireless Telecommunications Bureau, to Jack Bond, Mountain SMR Group, L.L.C., DA 98-378, 13 FCC Rcd 4504 (1998) ("*Mountain SMR*") (denying request for waiver of the Commission's bid withdrawal payments).

<sup>52</sup> See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377, ¶ 169.

automatically excluded from participating in the auction unless it can demonstrate that the failure to make the payment by the established deadline was due to circumstances outside its control.<sup>53</sup> The Division has granted waivers of the upfront payment deadline in cases where the applicant's actions demonstrated that, but for reasons outside the control of the applicant, it would have been able to meet the upfront payment deadline and there was no question regarding applicant's ability to meet its financial obligations.<sup>54</sup>

19. With regard to down payments, the Commission has uniformly declined to waive its first down payment deadline, but in certain cases, has waived the second down payment deadline. The Commission does not waive the first down payment deadline because its strict enforcement is essential to protect the integrity of the auctions process by preventing insincere bidding and to determine the financial qualification of a new licensee to provide communications services.<sup>55</sup> While the Commission has consistently denied requests to waive first down payment deadlines, it has occasionally determined that some flexibility may be appropriate to address a minor delinquency with respect to second down payments.<sup>56</sup> The Commission has recognized that, unlike upfront and first down payments, the second down payment does not affect the timing of the auction or the Commission's review of the applicant's qualifications.<sup>57</sup> Accordingly, the Commission has found that the public interest would not be served by rigid application of the second down payment deadline, for which a winning bidder had only 5 days to remit payment, and has granted a partial waiver where a winning bidder demonstrated inadvertence and an ability to pay at the time of the payment deadline.

20. In contrast to the waiver situations discussed above, 21<sup>st</sup> Century requested a waiver of an installment late payment deadline, which provided an additional 180 days after the original payment due date during which to remit payment. In adopting two consecutive 90-day grace periods (180 days) and requiring late payment fees from installment payment licensees that pay after the original due date, the Commission intended to provide licensees with adequate financial incentives to make installment payments on time, and allow licensees experiencing financial difficulties a specific amount of time within which to pursue private market solutions to their financing difficulties.<sup>58</sup> The two 90-day grace

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<sup>53</sup> See Letter from Mark Bollinger, Acting Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Messrs. Thomas Gutierrez and Todd Slamowitz, 15 FCC Rcd 6217 (2000) ("*Bell Mountain*") (Division denied request for waiver of the upfront payment rule), *recon. pending*, Petition for Reconsideration of Bell Mountain Communications, Inc., filed May 11, 2000.

<sup>54</sup> See Letter from Amy J. Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Cary S. Tepper and Larry D. Jones, DA 99-1903 (rel. Sept. 17, 1999)(mechanical difficulties with a facsimile machine at the Commission's bank).

<sup>55</sup> See In the Matter of National Telecom PCS, Inc. Petition for Reconsideration Request for Waiver of Bid Withdrawal Payment and Application for Authority to Construct a Personal Communications System on Frequency Block C in American Samoa, Market No. B492, *Order On Reconsideration of Memorandum Opinion and Order*, FCC 99-319, 1999 WL 993506 (FCC) (rel. Nov. 2, 1999).

<sup>56</sup> See In the Matter Of Longstreet Communications International, Inc. Request for Waiver of Section 24.711(A)(2) of The Commission's Rules Regarding Market No. B012, *Order*, 12 FCC Rcd. 1549, 1551-1552, ¶¶ 8-9 (1997).

<sup>57</sup> *Id.*

<sup>58</sup> *Part I Third Report and Order* at 439-440.

periods were not intended to be used as a matter of course.<sup>59</sup> In light of the ample 180 day period that 21<sup>st</sup> Century had to submit payment and other factors, waiver of the installment late payment rule here would only serve to undermine the policies that support enforcement of the Commission's payment deadlines.<sup>60</sup> Thus, we disagree with 21<sup>st</sup> Century's argument that the Commission's previous waiver of its bid withdrawal payment rule and upfront or second down payment deadlines is, by itself, a basis upon which to waive its installment late payment deadline.

### C. Consideration of Petitioner's Waiver Request

21. 21<sup>st</sup> Century's contention that the Division failed to give its waiver request the "hard look" as set forth in *WAIT Radio v. FCC*<sup>61</sup> is equally flawed. Under the "hard look" standard, an agency is required to articulate with clarity and precision its findings and the reasons for its decisions. We believe that in its order the Division properly applied the waiver standard set forth in Section 1.925 of the Commission's rules to the facts set forth in 21<sup>st</sup> Century's request and provided reasoned explanation for its denial of the request. Ultimately, Petitioner's request for waiver of the automatic license cancellation rule was denied not because the Division failed to consider the request as required under the "hard look" standard, but because it found, as we do here, that Petitioner has not met the Commission's standards for granting a waiver request.

22. An 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."<sup>62</sup> We agree with the Division that 21<sup>st</sup> Century's waiver request does not meet either element of the two-pronged waiver standard. First, we agree with the Division's holding that granting Petitioner's waiver request would frustrate the Commission's implementation of its Congressional mandate and would not be in the public interest.<sup>63</sup> Congress gave the Commission the authority to auction radio spectrum licenses in order to effect particular policies and goals, among which is to promote the rapid deployment of new technologies, products, and services to the American public while recovering for the public the value of that spectrum.<sup>64</sup> Section 309(j) specifically includes a presumption that licenses should be assigned by

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<sup>59</sup> *Part 1 Third Report and Order* at 438, ¶ 107 ("We also believe that licensees should be working to obtain the funds necessary to meet their payment obligations before they are due and, accordingly, that the non-delinquency and grace periods we adopt should be used only in extraordinary circumstances.")

<sup>60</sup> *See NextWave Order*, 15 FCC Rcd at 17508, ¶ 15; *Division Order* at 4.

<sup>61</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) ("*WAIT Radio*") (holding that presumptions of regularity apply with special vigor when a Commission acts in reliance on an established and tested agency rule, the court stated that the "very essence of waiver is the assumed validity of the rule; . . . an applicant for waiver faces a high hurdle even at the starting gate.") *See, e.g., SouthEast MO&O and SouthEast Telephone; BellSouth Corporation and BellSouth Wireless, Inc. v. FCC*, 162 F.3d 1215 (D.C. Cir. 1999) (upholding Commission denial of a waiver request).

<sup>62</sup> *See* 47 C.F.R. § 1.925.

<sup>63</sup> *See Division Order* at 3-4.

<sup>64</sup> 47 U.S.C. § 309(j)(3).

auction to those who place the highest value on the use of the spectrum.<sup>65</sup> Such entities are presumed to be those best able to put the licenses to their most efficient use.<sup>66</sup> The ability to make installment payments on a timely basis as a condition of retaining a license is intrinsic to the notion that licensees who cannot make timely payment should lose the presumption.<sup>67</sup> Insisting that licensees demonstrate their ability to pay as a condition to continuing to hold licenses is essential to a fair and efficient licensing process, is fair to all participants in our auctions, including those who won licenses in the auctions and those who did not, and fosters the promotion of economic opportunity and competition in the marketplace.<sup>68</sup> In view of the policies that underlie our payment rules, granting 21<sup>st</sup> Century's waiver would be contrary to our rules.

23. With regard to the second prong of the waiver standard, we find no unique facts and circumstances upon which a waiver may be granted. 21<sup>st</sup> Century's failure to make the necessary arrangements to ensure that funds would be available to make its payment obligation prior to or by the expiration of the 180-day grace period does not constitute unique facts or circumstances.<sup>69</sup>

24. 21<sup>st</sup> Century claims that a snowstorm in the greater Washington D.C. area caused its January 2000 payment notices to be late, rendering it unable to make its July 1999 installment payment by the January 27, 2000 deadline. 21<sup>st</sup> Century claims that without the January 2000 payment notices, it was unable to ascertain the amount owed until the afternoon of the late installment payment deadline date. As discussed above, Petitioner should have known the date upon which its 180-day grace period ended and, therefore, should have made an effort to determine the amount owed prior to that deadline. Notwithstanding the fact that 21<sup>st</sup> Century was not entitled to the January 2000 payment notices, 21<sup>st</sup> Century has not alleged that the snowstorm actually impeded its ability to make timely payment to the Commission.<sup>70</sup> Petitioner's failure to make its installment payment by the deadline was not a result of a snowstorm, but the result of its failure to take steps to ascertain the amount it knew was owed and its lack of funds available for making payment.

25. In this regard, we also reject 21<sup>st</sup> Century's contention that it should be granted a waiver based on its allegation that it did not receive some payment notifications until after the payment deadline.<sup>71</sup> As discussed above, the Commission was not required to provide 21<sup>st</sup> Century with payment notices. Thus, the fact that 21<sup>st</sup> Century did not receive a particular payment notice is not a unique or

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<sup>65</sup> *Id.*

<sup>66</sup> *See NextWave Order*, 15 FCC Rcd at 17514, ¶ 25.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *See, e.g., SouthEast MO&O.*

<sup>70</sup> *See In re Applications of Mary Ann Salvatoriello File No. BPH-880126OM, Memorandum Opinion and Order*, 6 FCC Rcd 4705 (1991), where the Commission stated that it does not usually grant waivers based on inclement weather or failures of third-party couriers because, although these circumstances may be unexpected, they are reasonably foreseeable and therefore applicants should allow enough time to meet cutoff deadlines to account for such unanticipated delays. *See also* "FCC Overrules Caldwell Television Associates, Ltd.," *Public Notice*, 58 RR2d 1706, 1707 (1985).

<sup>71</sup> *See* Petition at 11-12.

unusual factual circumstance justifying a waiver. Moreover, there are no indications that 21<sup>st</sup> Century contacted the Commission prior to the January 27, 2000 payment deadline to seek clarification of the amount that it owed. In any case, 21<sup>st</sup> Century had more than adequate notice of its obligation to make full and timely payment and should have made sufficient preparations to meet its deadline.<sup>72</sup> Even if 21<sup>st</sup> Century did not receive a courtesy payment notice, it knew, or should have known, that it assumed the risk of cancellation should it fail to timely submit its payment obligations.<sup>73</sup>

26. Discriminatory Treatment. 21<sup>st</sup> Century argues that the Commission's release of a public notice in which it requested comment on a petition for reconsideration submitted by Airadigm Communications, Inc. ("Airadigm")<sup>74</sup> evidences discriminatory treatment because the Commission did not seek comment on 21<sup>st</sup> Century's waiver request.<sup>75</sup> The Commission's decision not to request public comment on 21<sup>st</sup> Century's waiver request does not constitute discrimination on the Commission's part because seeking comment on waiver requests is a discretionary procedure under Section 1.925 of the Commission's rules.<sup>76</sup> 21<sup>st</sup> Century's reliance on the D.C. Circuit's decisions in *Green Country Mobilephone* and *Melody Music* to support its argument is misplaced.<sup>77</sup> In *Green Country and Melody Music*, the court held that the Commission could not arrive at different outcomes in the cases of similarly-situated licensees.<sup>78</sup> In both *Green Country* and *Melody Music*, the court was concerned with the Commission's ultimate decision rather than the procedures used to reach that decision. Furthermore, insofar as the Commission has not addressed Airadigm's pending petition, it would be premature at this time to reach factual determinations as to whether 21<sup>st</sup> Century and Airadigm are in fact similarly-

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<sup>72</sup> See ¶ 12 *supra*.

<sup>73</sup> For example, the Commission provided additional guidance on the grace period and installment payment rules in a Public Notice, dated September 18, 1998, in which it stated that "[a]ny licensee that becomes more than one-hundred eighty (180) days delinquent on an installment payment shall be in default, and the license shall automatically cancel without further action by the Commission." See "Wireless Telecommunications Bureau Provides Guidance on Grace Period and Installment Payment Rules," *Public Notice*, DA 98-1897 (rel. Sept. 18, 1998).

<sup>74</sup> See *In the Matter of Airadigm Communications, Inc., Contingent Emergency Petition for Reinstatement of C and F Block Licenses or for Partial Waiver of Section 1.2110(f) of the Commission's Rules*, submitted Feb. 7, 2000.

<sup>75</sup> Petition at 14. See "Commission Seeks Comment on Airadigm Communications Inc.'s Contingent Emergency Petition for Reinstatement or in the Alternative for Waiver," *Public Notice*, DA 00-368 (rel. Feb. 24, 1999).

<sup>76</sup> See 47 C.F.R. § 1.925(C)(i) (1999). See *In The Matter of Tektron Micro Electronics, Inc., Request for Waiver of Sections 90.20(f)(5) and 90.259 of the Commission's Rules to Permit Wireless Microphone Operation in the 1427-1436 MHz Band, Order on Reconsideration*, 15 FCC Rcd 4438 (2000), stating that "[i]t is a matter of Commission discretion whether to give public notice of the filing of a waiver request and seek comment from the public."

<sup>77</sup> See *Green Country Mobilephone, Inc. v. FCC*, 765 F.2d 235 (D.C.Cir. 1985) ("*Green Country Mobilephone*"); *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C.Cir. 1965) ("*Melody Music*"). In *Melody Music*, the D.C. Circuit similarly reversed and remanded the Commission's decision because it reached different outcomes in the cases of similarly-situated parties without adequate explanation for its actions.

<sup>78</sup> On remand, the Commission reversed its previous decision, renewing station license for a period of one year. See *In re Application of Melody Music, Decision*, 2 FCC 2d 958 (1966).

situated.

27. The Division's denial of Petitioner's request for waiver is consistent with our congressional mandate, the Commission's regulations, and precedent. As the D.C. Circuit has recognized in a related context, the Commission has given "fair notice of the importance it attached to meeting payment dates . . ." <sup>79</sup> Recognizing that the cancellation of Petitioner's licenses occurred automatically under our rules is fully consistent with our treatment of similarly situated C block licensees. For example, in October 1998, immediately prior to the payment resumption deadline, a number of licensees claimed to be facing serious financial difficulties, notwithstanding the relief we had provided in our *Restructuring Orders*. Those licensees filed requests for waiver of the October 29, 1998 payment deadline. <sup>80</sup> In our *Extension Request Order*, we declined to further extend the deadline, noting that we had already provided a lengthy suspension period and explaining that to extend the deadline still further would "only serve to undermine the enforcement of [our] payment deadlines." <sup>81</sup> Subsequent to that order, two of the five licensees that had requested waivers, SouthEast Telephone, Inc. and Wireless Ventures, Inc., lost their licenses by operation of the automatic cancellation rule. <sup>82</sup> More recently, the Commission denied NextWave's petition for reconsideration of our automatic license cancellation rule on the grounds that NextWave failed to make timely installment payments. <sup>83</sup>

#### IV. Reinstatement

28. In its Petition, 21<sup>st</sup> Century seeks, as an alternative form of relief, to have its 19 licenses reinstated because of its "substantial equity interest" in those licenses. According to Petitioner, its "equity" in the licenses is approximately \$21 million. <sup>84</sup> The company also seeks reinstatement on the grounds that the public interest, convenience, and necessity would be served because Petitioner would be

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<sup>79</sup> *Mountain Solutions*, 197 F.3d at 522 (relating to default rules for down payments applied to C block bidders).

<sup>80</sup> Airadigm Communications, Inc., Urban Comm-North Carolina, Inc., SouthEast Telephone, Inc., Wireless Ventures, Inc., and Personal Communications Network, Inc. all filed requests for waiver of the October 29, 1998 deadline.

<sup>81</sup> *Extension Request Order*, 13 FCC Rcd at 22073, ¶ 5.

<sup>82</sup> See "C Block PCS Spectrum Auction Scheduled for March 23, 1999; Comment Sought on Procedural Issues," *Public Notice*, DA 98-2318, 13 FCC Rcd 24947 (1998). SouthEast's challenge to our denial of its waiver request was ultimately rejected by the D.C. Circuit on November 24, 1999. See *SouthEast Telephone*, *supra* at note 9.

<sup>83</sup> See *NextWave Order*. See also Southern Communications Systems, Inc., Request for Limited Rule Waiver to Comply with PCS Installment Payment for C Block License in the Cleveland, TN BTA, DA 99-2375, *Order* (rel. October 29, 1999) ("Waiver Order").

<sup>84</sup> See Petition at 22. 21<sup>st</sup> Century's Petition does not indicate the basis for its contention that it has \$ 21 million in "equity" in the cancelled licenses; however, our review of the payment history of the cancelled licenses does not show \$21 million in payments by 21<sup>st</sup> Century.

able to provide service more quickly than any future licensee. We do not find that Petitioner's arguments compel reinstatement. The fact that Petitioner had previously been complying with the rules and paying towards its debt does not excuse it from making all of its installment payments on a timely basis. As discussed above, the goals set forth in Section 309(j) of the Communications Act of 1934, as amended, would be frustrated if we were to reinstate 21<sup>st</sup> Century's licenses following default and cancellation.<sup>85</sup>

29. With regard to the effect on service to the public, 21<sup>st</sup> Century is not now providing service, nor has it stated that it intends to meet the five- or ten-year build-out requirements. It simply states that should the licenses be reaucted, by the time the next licensees received their licenses, Petitioner "could possibly be providing 'actual' commercial service."<sup>86</sup> Consequently, we are not convinced that Petitioner is any better situated than a new licensee to bring service to the BTA's currently left unserved by Petitioner. The Commission has already placed 21<sup>st</sup> Century's formerly-held spectrum licenses in the inventory for Auction No. 35, which is scheduled to begin December 12, 2000 ("Auction No. 35").<sup>87</sup> Weighing the public protections and goals embodied in Section 309(j), we find that reinstatement of Petitioner's defaulted licenses is not warranted and, therefore, we affirm the Division's decision and deny 21<sup>st</sup> Century's Petition.

### V. Ordering Clauses

30. Accordingly, for the foregoing reasons, 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 petition for reconsideration filed by 21<sup>st</sup> Century IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

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<sup>85</sup> See ¶ 22 *supra*.

<sup>86</sup> Petition at 23.

<sup>87</sup> "C and F Block Broadband PCS Spectrum Auction Scheduled for November 29, 2000, Rescheduled for December 12, 2000," *Public Notice*, DA 00-2259 (rel. Oct. 5, 2000).