

Federal Communications Commission
Washington, D.C. 20554

DA 00-1791
August 7, 2000

James A. LaBelle
Chairman and Chief Executive Officer
21st Century Telesis, Inc.
11415 Sturgen Bay Lane
Indianapolis, Indiana 46236

Re: Request for Extension of Installment Payment
Due Date

Dear Mr. LaBelle:

This letter responds to your letters on behalf of 21st Century Telesis Joint Venture and 21st Century Bidding Corporation (collectively, “21st Century”) requesting an extension of time for installment payments or, alternatively, a waiver of the Commission’s installment payment rules, and providing documentation of the availability of funds to cover an installment payment for which the final late payment deadline was January 27, 2000.¹ For the reasons set forth below, we deny 21st Century’s requests.

21st Century seeks an extension of time or a waiver of the Commission’s rules regarding late installment payments for the 19 broadband PCS licenses set forth in Attachment A. Rule 1.2110(f) provides an automatic 90-day grace period after the installment payment due date (“non-delinquency period”) and requires a five percent late fee.² 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”) and requires an additional late fee equal to ten percent of the missed payment.³ 21st Century requested extension or a waiver of the January 27, 2000, deadline after the expiration of this second 90-day period, which would be the last day to pay to avoid default and automatic license cancellation.⁴ 21st Century did not make its installment payment on January 27, 2000 and as a result its licenses automatically cancelled, without further action by the Commission.⁵ On February 2, 2000, well after the expiration of the

¹ See 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”).

² See 47 C.F.R. § 1.2110(f)(4)(i).

³ See 47 C.F.R. § 1.2110(f)(4)(ii).

⁴ See 47 C.F.R. § 1.2110(f)(4)(iii) and (iv).

⁵ *Id.* In its February 2nd Letter, 21st Century stated: “we were unable to ensure that wire transfers would be

grace period and after its licenses had already cancelled, 21st Century filed a request for an extension of time or waiver of the installment payment rule.

In support of its waiver request, 21st Century asserts that it did not receive some of its payment notifications until late in the afternoon on January 27, 2000, the date on which payment was due.⁶ It further asserts that at the time of its waiver request, it had not yet received several payment notifications.⁷ Additionally, 21st Century supports its waiver request by attempting to show that as of February 2, 2000, six days after the due date, it had sufficient funds available to cover its January 27, 2000, installment payment obligation.⁸ However, in its February 2nd Letter and its April 25th Letter, 21st Century also stated that it did not intend to transmit the amounts it owed until it received assurance from the Commission that its licenses are “current and valid.”⁹ In its July 25th Letter, 21st Century offers to pay what would have been its installment payment obligations, including interest and late fees, due on January 27, 2000, April 26, 2000, and July 25, 2000, if it had not defaulted and its licenses had not cancelled.¹⁰

We decline to grant 21st Century’s request for waiver of the January 27, 2000 late payment deadline. In order for a waiver of the Commission’s 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.” 21st Century’s waiver request does not meet either of these tests.

We reject 21st Century’s argument that its payment deadline should be waived because it received some payment notifications on the payment deadline date or may not have received some notifications until after the payment deadline. First, we note that in neither its February 2nd Letter, nor its April 25th Letter, did 21st Century state with any specificity the license or installment

received at Mellon Bank by Thursday afternoon, January 27, 2000.” It stated further that funds were available but not within its control (*i.e.*, not held in 21st Century bank accounts). *See* February 2nd Letter at 2.

⁶ *Id.* at 2.

⁷ *Id.* at 1.

⁸ *See* February 2nd Letter at 2; *See also* Letter from James A. LaBelle, Chairman and Chief Executive Officer, 21st Century Telesis, Inc. to Magalie Roman Salas (April 25, 2000) (“April 25th Letter”).

⁹ *See* February 2nd Letter at 2. *See also* April 25th Letter at 2.

¹⁰ *See* July 25th Letter at 1. 21st Century states once again that it will transmit the amounts it would have owed after it receives assurance from the Commission that its licenses are current and valid. *Id.* at 2.

payment obligation for which it had not received notification by January 27, 2000.¹¹ However, even if 21st Century had provided such specific information, we would nevertheless find that such facts do not justify a waiver of our installment payment rules, because 21st Century was aware of the deadline for submission of the installment payment and had ample time to secure financing.¹² First, each of the installment payment plan notes, signed by the President or the Secretary of the corporation, set forth the specific due date for each installment payment. Second, on the face of each license issued to 21st Century, reference is made to the pertinent rules that set forth the time frames for submitting installment payments. Third, the Wireless Telecommunications Bureau emphasized its payment policy in a *Public Notice*¹³, 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. Fourth, the Commission emphasized the importance of full and timely payments in its PCS restructuring orders issued in October of 1997 and March of 1998.¹⁴

The inability to secure financing prior to the expiration of the deadline does not constitute “unique facts and circumstances,” nor is it a basis upon which a waiver may be granted.¹⁵ Given the settled state of the Commission’s policy, a prudent licensee would have secured financing or taken alternative steps before the late payment deadline, instead of filing a request for a waiver, as did 21st Century, after the cancellation date. In addition, we do not believe the underlying purpose of our rules would be frustrated by their application here or that it would serve the public interest to waive their enforcement. On the contrary, the Commission’s requirement of full and timely payment has an essential regulatory purpose -- as an indication that the winning bidder is and continues to be financially able to meet its obligations on the license and intends to use the license for providing services to the public.¹⁶ An extension of the second automatic 90-day payment period

¹¹ The Bureau has no obligation to provide 21st Century with notification that an installment payment is due. Any notices that were sent were nothing more than mere courtesies. As a Commission licensee, 21st Century was responsible for making timely payments on the dates set by the Commission’s rules regardless of whether or not it received a separate notice of payment due.

¹² See February 2nd Letter at 1.

¹³ See Wireless Telecommunications Bureau Provides Guidance on Grace Period and Installment Payment Rules, *Public Notice*, 13 FCC Rcd 18213 (1998).

¹⁴ See In the Matter of 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); In the Matter of Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, *Order on Reconsideration of the Second Report and Order*, FCC 98-46, 13 FCC Rcd 8345 (1998).

¹⁵ See *Requests for Extension of the Commission’s Initial Non-Delinquency Period for C and F Block Installment Payments*, FCC 98-290, 13 FCC Rcd. 22071 (1998)

¹⁶ See also *Mountain Solutions, Ltd. Inc. v. FCC*, 197 F.3d 512, 517 (D.C. Cir. 1999) (in the context of a request for extension of down payment deadlines, the Court observed that the Commission has given fair notice of

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would only serve to undermine the Commission's enforcement of its payment deadlines. As the Commission observed in its *Order on Reconsideration of the C Block Second Report and Order*, "[n]o matter what deadline we establish, it is inevitable that some licensees will seek more time to pay."¹⁷ Thus, the Commission has strictly enforced these payment deadlines.

We believe our reasons for denying 21st Century a waiver of the installment payment rules or an extension of time are substantial, clearly stated, and an appropriate exercise of our discretion.¹⁸ Accordingly, as a result of 21st Century's default, its licenses set forth in Attachment A cancelled on January 28, 2000, and the spectrum formerly licensed to 21st Century will be subject to auction at a future date.

Sincerely,

Louis Sigalos
Deputy Chief, Auctions and Industry Analysis Division
Wireless Telecommunications Bureau

the importance attached to meeting payment dates).

¹⁷ See Amendment of the Commission's Rules Regarding Installment Financing for Personal Communications Services ("PCS") Licensees, WT Docket No. 97-82, *Order on Reconsideration of the Second Report and Order*, FCC 98-46, 13 FCC Rcd 8345 at ¶ 24 (1997).

¹⁸ See *Mountain Solutions, Ltd. Inc. v. FCC, supra*, at 517, wherein the court stated that " 'an agency's refusal to grant a waiver will not be overturned unless the agency's reasons are so insubstantial as to render that denial an abuse of discretion.' " See also *Omnipoint Corporation v. FCC*, 213 F.3d 720, 723 (D.C. Cir. 2000).

ATTACHMENT A

Licensee Name	License Number	Call Sign
21 st Century Telesis Joint Venture	CWB325C1	KNLF303
21 st Century Telesis Joint Venture	CWB256C1	KNLF304
21 st Century Telesis Joint Venture	CWB270C1	KNLF306
21 st Century Telesis Joint Venture	CWB424C1	KNLF309
21 st Century Telesis Joint Venture	CWB043C1	KNLF310
21 st Century Telesis Joint Venture	CWB333C1	KNLF311
21 st Century Telesis Joint Venture	CWB210C1	KNLF312
21 st Century Telesis Joint Venture	CWB103C1	KNLF313
21 st Century Telesis Joint Venture	CWB167C1	KNLF315
21 st Century Telesis Joint Venture	CWB463C1	KNLF316
21 st Century Telesis Joint Venture	CWB453C1	KNLF317
21 st Century Telesis Joint Venture	CWB208C1	KNLF318
21 st Century Telesis Joint Venture	CWB438C1	KNLF319
21 st Century Bidding Corporation	CWB164F	KNLF888
21 st Century Bidding Corporation	CWB352F	KNLG257
21 st Century Bidding Corporation	CWB294F	KNLG258
21 st Century Bidding Corporation	CWB185F	KNLG260
21 st Century Bidding Corporation	CWB126F	KNLG262
21 st Century Bidding Corporation	CWB412F	KNLG263