In the Matter of)

Licenses of)
21st Century Telesis Joint Venture and)
21st Century Bidding Corporation)
For Facilities in the)
Broadband Personal Communications Services)

Petition for Reconsideration)

ORDER ON RECONSIDERATION

Adopted: September 10, 2001
Released: September 21, 2001

By the Commission:

I. INTRODUCTION

1. We have before us a petition for further reconsideration1 filed by 21st Century Telesis Joint Venture and 21st Century Bidding Corporation (collectively “21st Century”). 21st Century seeks reconsideration of a Memorandum Opinion and Order, in which the Commission affirmed the denial of 21st Century’s requests for extension of an installment payment deadline or for a waiver of the installment payment rules and denied 21st Century’s motion to file an untimely supplement to its initial petition for reconsideration.2 For the reasons set forth below, we affirm the Memorandum Opinion and Order and deny 21st Century’s Further Reconsideration Petition.

II. BACKGROUND

2. 21st Century participated in the initial broadband PCS C block auction (“Auction No. 5”) and the broadband PCS D, E, and F block auction (“Auction No. 11”). At the close of Auctions No. 5 and No. 11, 21st Century was the high bidder for thirteen C block licenses and for six F block Licenses.3


3. 21st Century participated in the Commission’s installment payment program as a small business. Each of 21st Century’s C and F block licenses was conditioned explicitly on full and timely payment of all installments. Each license stated that “failure to comply with this condition will result in the automatic cancellation of this authorization.” Under its installment payment plan, beginning in 1999, 21st Century’s installment payments on each license came due “on each January 31, April 30, July 31 and October 31” until paid in full.

4. Pursuant to the applicable installment payment grace period rule, Section 1.2110(f), 21st Century had an automatic 90-day period (“non-delinquency period”) after the installment payment due date, during which payment could have been submitted with a five percent late fee. If 21st Century failed to remit the missed installment payment and the five percent late fee before the end of the non-delinquency period, the rule provided for a second automatic 90-day period (“grace period”) in which to remit payment and required an additional late fee equal to ten percent of the missed payment. Pursuant to these rules, and in order to avoid the automatic cancellation of its licenses, 21st Century’s July 31, 1999 installment payment had to have been received, at the latest, by January 27, 2000, accompanied by a 15 percent late fee.

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6  E.g., License PBB103C at 2 (“This authorization is conditioned upon the full and timely payment of all monies due pursuant to Sections 1.2110 and 24.711 [for C block licenses, 24.716 for F block licenses] 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.”)

7  Id. 21st Century executed a promissory note and security agreement for each license that it received. See, e.g., Installment Payment Plan Note, License PBB103C at 3 (executed by 21st Century Telesis Joint Venture, November 26, 1996) (“Note”) (“[21st Century] hereby acknowledges that the Commission has issued [21st Century] 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 . . . .”); Security Agreement, License No. PBB103 at ¶8 (executed by 21st Century Telesis Joint Venture, December 9, 1996) (“Security Agreement”) (“If an Event of Default shall occur . . . the License shall be automatically canceled pursuant to 47 C.F.R. §1.2110.”).

8  See, e.g., First Modification of Installment Payment Plan Note and Security Agreement For Broadband PCS C Block, Original License No.: PBB103C, Modified License No. PBB103C1 at 4 (by 21st Century Telesis Joint Venture, July 21, 1998) (“First Modification”).

5. 21st Century admits that it did not submit its July 1999 installment payments by January 27, 2000, the last day of the second 90-day grace period. As a result of 21st Century’s failure to make its July 31, 1999 installment payments by January 27, 2000, its licenses automatically cancelled without further action by the Commission.10 21st Century did not seek an extension of the installment payment deadlines and waiver of the automatic cancellation rule until after the final late payment deadline had passed and its licenses had automatically cancelled.

6. After the final late payment deadline had passed and beginning on February 2, 2000, 21st Century filed three letters with the Commission (the “Letter Requests”), requesting an extension of time to make installment payments or, alternatively, requesting waiver of the Commission’s installment payment rules.11

7. On August 7, 2000, the Auctions and Industry Analysis Division (“Division”) denied 21st Century’s requests.12 Addressing 21st Century’s claims that it had not received timely notification from the Commission regarding its July 31, 1999 payment, the Division observed that 21st Century had sufficient notice of the applicable deadlines from the Commission’s rules, the licenses, and installment payment plan notes that 21st Century had executed.13 The Division concluded that 21st Century had not demonstrated circumstances justifying a waiver of the Commission’s rules.14

8. On September 6, 2000, 21st Century filed a petition for reconsideration of the Division Order.15 Over two months later, on November 9, 2000, 21st Century filed a motion for leave to file a

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11 Letter from James A. LaBelle to Magalie Roman Salas, February 2, 2000 (“February 2nd Letter”); Letter from James A. LaBelle to Magalie Roman Salas, April 25, 2000 (“April 25th Letter”); Letter from James A. LaBelle to Magalie Roman Salas, July 25, 2000 (“July 25th Letter”). Though the letters do not cite the rule 21st Century requests be waived, it appears from the content of the letters that 21st Century seeks waiver of 47 C.F.R. § 1.2110(f), which governs the timing of installment payments, the definition of default, and the consequences of default.


13 Division Order at 3.

14 Division Order at 3-4.

15 In Re Licenses of 21st Century Telesis, Inc. For Facilities in the Broadband Personal Communications Systems in the C and F Blocks, Petition for Reconsideration (filed September 6, 2000) (“Reconsideration Petition”). 21st Century Joint Venture and 21st Century Bidding Corporation, the relevant licensees, filed the waiver request and clearly would have been appropriate parties to file the Reconsideration Petition. February 2 Letter (waiver request), 47 C.F.R. sec. 1.106(b) (parties that may seek reconsideration). However, counsel filed the Reconsideration Petition in the name of 21st Century Telesis, Inc. A review of the licensees' long form applications, coupled with oral representations from counsel, indicates that 21st Century Telesis, Inc. not only had an ownership interest in the licensees (it is a partner in the parent licensee) but also exclusively managed 21st Century Joint Venture and its wholly owned subsidiary 21st Century Bidding Corporation. Form 601, filed May 22, 1996, by 21st Century Joint Venture, File No. 00443CWL96 & Form 601, filed January 30, 1997, by 21st Century Bidding Corp., File No. 00171CWL97. Given these representations, it appears clear that 21st Century Telesis, Inc. actually filed the Reconsideration Petition on behalf of the licensees, and thus the filing of the Further Reconsideration Petition in the name of the licensees presents no standing issue. See 47 C.F.R. sec. 1.106(b).

(continued....)
supplement to the petition for reconsideration\textsuperscript{16} and a supplement to the petition.\textsuperscript{17}

9. The Commission denied the Reconsideration Petition and affirmed the Division Order in the Memorandum Opinion and Order, which was released on December 21, 2000.\textsuperscript{18} In the Memorandum Opinion and Order, the Commission denied 21st Century’s Motion on the ground that the Supplement was untimely, and declined to address the arguments in the Supplement.\textsuperscript{19} On January 22, 2001, 21st Century filed the instant Further Reconsideration Petition.

III. Discussion

10. 21st Century offers several bases for its Further Reconsideration Petition: first, that the Commission erred in stating that 21st Century’s Letter Requests were untimely; second, that the Commission erred in declining to address the Supplement; third, that the automatic cancellation rule deprives 21st Century of property without due process of law in violation of the Fifth Amendment of the United States Constitution;\textsuperscript{20} fourth, that the automatic cancellation rule conflicts with Section 312(c) of the Communications Act of 1934;\textsuperscript{21} fifth, that the automatic cancellation rule is arbitrarily enforced; sixth, that 21st Century did not receive full and explicit notice of its payment obligations; and, seventh, that reinstating 21st Century’s cancelled licenses would serve the public interest.

A. Timing Of 21st Century’s Letter Requests And Reconsideration Petition

11. In arguing for further reconsideration, 21st Century makes several erroneous arguments relating to the proper procedure for seeking a waiver of the Commission’s automatic cancellation rules. Although the Commission decided 21st Century’s Letter Requests and Reconsideration Petition on the merits, rather than on the procedural issue of their timing, we will take this opportunity to reiterate the proper procedure by addressing 21st Century’s arguments regarding the timing of its filings.


\textsuperscript{16} In Re Licenses of 21st Century Telesis, Inc. For Facilities in the Broadband Personal Communications Service in the C and F Blocks, Motion for Leave to File Supplement to Petition for Reconsideration (filed November 9, 2000) (“Motion”).

\textsuperscript{17} In Re Licenses of 21st Century Telesis, Inc. For Facilities in the Broadband Personal Communications Service in the C and F Blocks, Supplement to Petition for Reconsideration (filed November 9, 2000) (“Supplement”).

\textsuperscript{18} See, generally, Memorandum Opinion and Order.

\textsuperscript{19} Id. at n.4.

\textsuperscript{20} U.S. Const. amend. V.

\textsuperscript{21} 47 U.S.C. § 312(c).
12. 21st Century asserts that the Commission erred in stating that 21st Century’s Letter Requests were untimely. In the Memorandum Opinion and Order, the Commission stated that post-cancellation requests for waiver may be appropriate only in extraordinary circumstances. The limited circumstances under which errors by the Commission may warrant such relief does not change the fact that 21st Century’s post-cancellation waiver requests were untimely. In stark contrast to all of the cases cited by 21st Century, the Commission did not accept payment from 21st Century after the expiration of the 180-day late payment deadline. 21st Century also asserts that waiver requests should be allowed post-cancellation because the Commission and the licensee may be unaware of when a license automatically cancels. In the instant case, however, there is no doubt that 21st Century knew the relevant payment deadline and that failing to meet it would trigger the automatic cancellation rule.

13. 21st Century also takes issue with the Commission’s observation that 21st Century filed its Reconsideration Petition seven months after the date of cancellation. 21st Century misreads the Memorandum Opinion and Order. In the Memorandum Opinion and Order, the Commission found that the Reconsideration Petition, like the Letter Requests, was untimely with respect to the cancellation of the licenses. The Commission did not, however, find or even suggest that the Reconsideration Petition was untimely for purposes of seeking reconsideration of the Division Order.

14. 21st Century further errs in its insistence that the Division Order cancelled its licenses. As noted in the Memorandum Opinion and Order, the licenses previously had cancelled automatically and the Division Order denied 21st Century’s post-cancellation request for waiver of the automatic cancellation rule. 21st Century contends that the Division Order determined that 21st Century was in default and that such a determination was prerequisite before the licenses could cancel. However, the


As further noted in Lakeland PCS, even when a license automatically cancels, the former licensee remains obligated to pay its debt. Accordingly, mere acceptance of a payment after cancellation would not constitute a constructive waiver of the automatic cancellation rule. See Lakeland PCS at n.11.

Further Reconsideration Petition at 3.

See Memorandum Opinion and Order at ¶16.

Further Reconsideration Petition at 2, (quoting Memorandum Opinion and Order at ¶8).

See Memorandum Opinion and Order at ¶8, n.17.

See Memorandum Opinion and Order at ¶5 and 8.

Commission’s rules plainly provide that 21st Century was in default when it failed to make its payment within 180 days, well before the Division released the Division Order.31

15. Ultimately, 21st Century’s arguments that its Letter Requests were timely or that the Commission considered its Reconsideration Petition to be untimely are irrelevant to any reconsideration of the Memorandum Opinion and Order. In the Memorandum Opinion and Order, the Commission elected to address the merits of 21st Century’s Letter Requests because the Division Order then under review had done so.32 The Commission did not rely upon the timing of either the Letter Requests or the Reconsideration Petition in reaching its decision to affirm the Division Order and deny the requests for waiver. Accordingly, even if 21st Century could show any error in the analysis of the timing of its Letter Requests or its Reconsideration Petition, that would not provide any grounds for reconsidering the Memorandum Opinion and Order.

B. 21st Century’s Untimely Arguments

16. 21st Century next argues that the Commission erred in not considering 21st Century’s untimely Supplement to its Reconsideration Petition.33 21st Century further reiterates the substance of its untimely arguments in its Further Reconsideration Petition. In its Motion, 21st Century asserted that the Supplement demonstrates that the Commission’s automatic cancellation rule violates the Fifth Amendment to the United States Constitution by taking property without due process of law. The Supplement claimed that the Constitution requires the Commission to provide 21st Century with a notice and hearing, similar to the notice and hearing provided to licensees whose licenses are revoked.34 21st Century contends that the Commission must consider the constitutional arguments raised in the Supplement, regardless of the fact that it was untimely filed.35

17. 21st Century misreads the relevant precedent regarding the Commission’s duty to hear

31 47 C.F.R. § 1.2110(f)(4)(iii) (1999) (“If an eligible entity is more than one hundred and eighty days (180) days delinquent in any payment, it shall be in default[,]”); see 47 C.F.R. § 1.2110(f)(4)(iv) (1999)(if a licensee fails to make payment by the close of the automatic grace period, “it shall be declared in default, its license will automatically cancel, and will be subject to debt collection procedures.”); Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, WT Docket No. 97-82, Third Report and Order and Second Further Notice of Proposed Rule Making, 13 FCC Rcd 374, 437 ¶107 (1997)(“Part 1 Third Report and Order”) (“If ABC Corp. does not remit the required $115,000 by August 29 (the end of the 90-day grace period [following the 90-day non-delinquency period]), then it will be considered in default and its license will automatically cancel on August 30 without further action by the Commission.” (emphasis added)) (adopting relevant rules); “Wireless Telecommunications Bureau Provides Guidance on Grace Period and Installment Payment Rules,” Public Notice, DA 98-1897 (rel. Sept. 18, 1998) (“Any licensee that becomes more than one-hundred and eighty (180) days delinquent on an installment payment shall be in default, and the license shall cancel automatically without further action by the Commission.” (emphasis added))(using ABC Corp. example similar to that in Part 1 Third Report and Order).

32 Memorandum Opinion and Order at ¶8.

33 Further Reconsideration Petition at 5-7.

34 See 47 U.S.C. § 312(c).

35 See Motion at 1-2 (citing Graceba Total Communications, Inc. v. Federal Communications Commission, 115 F.3d 1038 (D.C. Cir. 1997) and Meredith Corporation v. Federal Communications Commission, 809 F.2d 863 (D.C. Cir. 1987)); Further Reconsideration Petition at 7 (citing JEM Broadcasting Co., Inc. v. FCC, 22 F.3d 320 (D.C. Cir. 1994), as well as Graceba and Meredith).
constitutional claims. The cases 21st Century cites in fact have held that the Commission has an obligation to consider only properly presented constitutional claims. Other precedent underscores 21st Century’s error. 21st Century did not present its constitutional claims properly, i.e., within the time allowed for its initial waiver requests or its Reconsideration Petition, when such claims could and should have been raised. Accordingly, we have no obligation to consider those claims at this stage of the proceeding and decline to do so.

18. By statute, Congress has limited our power to consider petitions for reconsideration to those filed within a specific time period. By rule, we have discretion to hear late-filed supplements to timely filed petitions if a petitioner presents adequate grounds for us to do so. Given the statutory restrictions on our jurisdiction to hear petitions for reconsideration, we are not inclined to exercise our discretion to hear late-filed supplements when a petitioner offers no plausible explanation as to why supplemental arguments were not made in an initial petition. 21st Century has never explained why it failed to argue in its Letter Requests or its Reconsideration Petition that the automatic cancellation rule violates the Fifth Amendment to the United States Constitution, as it argues in the Motion and Supplement, or Section 312(c) of the Communications Act of 1934, as it argues in the Further Reconsideration Petition. Instead, it simply presented these arguments as new matters in its Motion, Supplement and the Further Reconsideration Petition. Considering these arguments, which plainly were available when 21st Century made its Letter Requests and filed its Reconsideration Petition, thwarts procedures designed to bring a prompt and final resolution to matters before us. Under these circumstances, we reaffirm the denial of the Motion and decline to consider the Supplement, as well as

36 See Graceba Total Communications, Inc. v. Federal Communications Commission, 115 F.3d 1038, 1041-42 (D.C. Cir. 1997) (Commission is obligated to consider “properly presented constitutional claims”) (emphasis added); Meredith Corporation v. Federal Communications Commission, 809 F.2d 863, 869 n. 6 (D.C. Cir. 1987) (“It is also clear, we believe, that the Commission within its discretion could have denied Meredith leave to file [its constitutional argument] because of procedural defects.”)

37 See Northwestern Indiana Telephone Company, Inc. v. Federal Communications Commission, 872 F.2d 465, 471 (D.C. Cir. 1989) (“In [Meredith’s] context, this court held that an agency could not ignore a properly presented constitutional claim advanced in an enforcement proceeding. [Meredith] at 869-70. Here, in contrast, the FCC reasonably declined to address new arguments on remand.” (emphasis in original)).

38 The Further Reconsideration Petition cites an additional case for the proposition that a party may challenge the constitutionality of a rule being enforced against it even though the party did not challenge the rule’s constitutionality when the rule was adopted. See Further Reconsideration Petition at 7 (citing JEM Broadcasting Co., Inc.). This unremarkable proposition has no bearing on 21st Century’s failure to timely raise its constitutional arguments when it originally sought waiver or when it subsequently filed its Reconsideration Petition.


40 47 C.F.R. § 1.106(f) (“No supplement or addition to a petition for reconsideration . . . filed after expiration of the 30 day period [for filing the petition] will be considered except upon leave granted upon a separate pleading for leave to file, which shall state the grounds therefor.”)

41 This is in keeping with the general requirement parties present all available facts and arguments in order to avoid wasteful or duplicative proceedings. See, e.g., 47 C.F.R. § 1.106(b).

42 See, generally, Motion and Further Reconsideration Petition.
the untimely arguments reiterated in the Further Reconsideration Petition.43

C. 21st Century’s Repetitious Arguments

19. Finally, 21st Century repeats arguments previously considered and rejected in the Memorandum Order and Opinion, specifically that the automatic cancellation rule is arbitrarily enforced, that 21st Century was not afforded full and explicit notice of its payment obligations, and that the public interest compels reinstatement of 21st Century’s cancelled licenses.44 21st Century has not presented any new facts that warrant reconsidering the Commission’s prior decision. The Commission’s rules permit petitions for reconsideration to rely on facts not previously presented in only three circumstances.45 21st Century presents various facts in the Further Reconsideration Petition, which, though previously available to 21st Century, did not appear in its Letter Requests or its Reconsideration Petition.46 However, 21st Century has made no effort to show that any of these facts meet the requirements of the rules governing petitions for reconsideration. Furthermore, given the various notices that 21st Century had of its payment obligations, 21st Century’s restatement of its initial legal arguments47 in the Further Reconsideration Petition does not persuade us that the Commission erred by enforcing the automatic cancellation rule and denying reinstatement of the licenses.48

43 In light of the discussion above, 21st Century’s argument that the Memorandum Opinion and Order did not adequately address the Motion is moot. See Further Reconsideration Petition at 5-7. Accordingly, we need not address that argument.

44 Further Reconsideration Petition at 13-25. See Memorandum Opinion and Order at ¶¶15-16 (notice argument); ¶¶17-20, 26 (consistent enforcement argument), and ¶¶28-29 (public interest argument). In its Reconsideration Petition, 21st Century argued that the Commission’s payment notices were not sufficient to constitute adequate notice under the Administrative Procedures Act and the Fifth Amendment of the United States Constitution. See Reconsideration Petition at 8-12. 21st Century’s Reconsideration Petition did not assert that the Commission’s automatic cancellation rules violated 21st Century’s Fifth Amendment rights.

45 47 C.F.R. § 1.106(c). First, new facts may be relied on if they relate to events that occurred or circumstances that changed since the last opportunity to present such matters. 47 C.F.R. § 1.106(c)(1) (incorporating 47 C.F.R. § 1.106(b)(2)(i)). Second, new facts may be relied on if they were unknown to the petitioner until after the last opportunity to present such matters and the petitioner could not have learned of them, through the exercise of ordinary diligence, prior to such opportunity. 47 C.F.R. § 1.106(c)(1) (incorporating 47 C.F.R. § 1.106(b)(2)(ii)). Third, and finally, new facts may be relied upon if we determine that consideration of the new facts is required in the public interest. 47 C.F.R. § 1.106(c)(2).

46 For example, 21st Century submits data regarding 1998 and 1999 payment notices in its Further Reconsideration Petition. See Further Reconsideration Petition, Exhibit 1. This information obviously was available to 21st Century prior to the time of its Letters Requests and its Reconsideration Petition.

47 As in its Reconsideration Petition, 21st Century discusses a pending proceeding involving Airadigm Communications, Inc. (“Airadigm”) in the Further Reconsideration Petition. See, e.g., Further Reconsideration Petition at 13-15. That proceeding remains pending, as it was at the time of the Memorandum Order and Opinion. We see no reason to depart from the prior conclusion that it is premature to compare that proceeding and our handling of this case. See Memorandum Opinion and Order, ¶26.

48 In the Memorandum Opinion and Order, the Commission concluded that the public interest would be best served in this case by auctioning new licenses for the spectrum at issue and not permitting licensees to re-negotiate payment terms. Memorandum Opinion and Order, ¶ 29. The Commission has proceeded accordingly. See supra at n.15, regarding the auction that concluded following release of the Memorandum Opinion and Order.
20. In place of new facts warranting reconsideration, 21st Century attempts to rely on a new decision, *Lakeland PCS*, that was released by the Policy and Rules Branch (“Branch”) of the Wireless Telecommunications Bureau’s Commercial Wireless Division shortly before the Commission released the *Memorandum Opinion and Order*.49 However, the *Lakeland PCS* decision did not create new authority as it did not depart from prior rules or precedent. In *Lakeland PCS*, an F block PCS licensee failed to make its April 30, 1999 installment payment within 180 days of the payment due date.50 An October 19, 1999 payment notice indicated that the final day of the 180-day period was October 28, 1999, when actually it was October 27, 1999. Lakeland made its payment, including late fees, on October 29, 1999, two days after the end of the grace period. Subsequently, Lakeland made all of its installment payments on time.51 In light of Lakeland’s failure to meet the deadline, the Branch initially rescinded an order granting consent to an assignment of Lakeland’s license. Lakeland then sought reconsideration. On further reconsideration, the Branch found that Lakeland’s circumstances were consistent with previous instances where, as a result of administrative oversight, a constructive waiver of installment payment deadlines had occurred.52 Consequently, notwithstanding Lakeland’s failure to meet its installment payment deadline, the Branch, in a second order on reconsideration, vacated the earlier rescission of, and reinstated, the grant of Lakeland’s application to assign its F block license to another party.53

21. In this case, in contrast to the circumstances in *Lakeland PCS*, the Commission did not act in a way that could have been construed as waiving the January 27, 2000, late payment deadline. Accordingly, *Lakeland PCS* does not provide a basis for reconsidering the *Memorandum Order and Opinion*.

22. Contrary to 21st Century’s arguments, the history of 21st Century’s prior payments on its licenses is irrelevant to the treatment of 21st Century’s unquestionable failure to make any payment within 180 days of the due date for its July 31, 1999 payment.54 21st Century contends that it received constructive waivers when it previously paid the amounts on past payment notices because those payments in fact underpaid the actual amount due. 21st Century argues that the automatic cancellation rule should have been, but was not, triggered by these purported underpayments. This argument is flawed. Even assuming, for the sake of argument, that 21st Century previously received constructive waivers55 and that the facts surrounding the July 31st payment were similar to those previous

49 Further Reconsideration Petition at 11-12.
50 See *Lakeland PCS*, ¶2.
51 See *Lakeland PCS*, ¶4
52 See *Lakeland PCS*, n.12 and accompanying text.
53 See *Lakeland PCS*, ¶¶1, 4, 7.
54 Furthermore, 21st Century executed notes expressly providing that any waiver by the Commission on one occasion shall not be deemed a waiver of the obligation to make full and timely payment on any future occasion. Note at 4.
55 Pursuant to the Commission’s rules, 21st Century’s payments were applied to its oldest obligations before current obligations. Consequently, its payments, even if less than the full amount actually due, could have averted cancellation by averting an outstanding debt that was more than 180 days old. Thus, it is unclear that 21st Century ever received the purported constructive waivers that it claims.
circumstances, the Commission is not required to repeat past errors underlying any such constructive waivers. Here, the Commission promptly and properly advised 21st Century how the rules applied and that 21st Century’s licenses were cancelled. 21st Century’s payment history provides no basis for altering that correct conclusion.

23. 21st Century knew the deadline for its July 31, 1999 installment payments. Pursuant to the Commission’s published rules and 21st Century’s Notes and Security Agreements, failure to pay within the 180-day period that ran on January 27, 2000 resulted in default. The Commission’s rules, 21st Century’s licenses, and the express terms of the Notes and Security Agreements each gave clear notice that upon default the licenses would cancel automatically. 21st Century’s belated, conditional proffer of third-party funds does not change the underlying fact that 21st Century did not (and apparently could not) make installment payments in accordance with the Commission’s rules and the undisputed payment schedule. The Commission consistently has denied requests for relief in such circumstances, and we reaffirm the decision to deny 21st Century’s request for a waiver of the payment deadline or reinstatement of its licenses.

56 The factual circumstances surrounding the payment due July 31, 1999 are completely different. With respect to that payment, 21st Century unquestionably made no payment before the 180-day period expired. Moreover, unlike circumstances in which 21st Century paid amounts on payment notices, 21st Century unquestionably knew that its failure to make any payment with 180 days would result in automatic cancellation of its licenses.


58 First Modification at 4.

59 See February 2nd Letter, Attachment at 1. In the Attachment, Merrill Lynch stated that it held a third-party’s funds for 21st Century’s benefit but that it had been directed “not to wire the funds until the FCC provides assurance that the funds will be accepted and that the associated licenses of 21st Century Telesis, Inc. are not cancelled.”

60 February 2nd Letter at 2 (“While the Board and Officers of 21st Century have worked diligently to finalize [third-party financing] commitments, we were unable to ensure that wire transfers would be received at Mellon Bank [the FCC’s bank] by Thursday afternoon, January 27, 2000.”). A licensee’s inability to satisfy its payment obligations bears directly on its qualifications to hold a license. See Memorandum Opinion and Order, ¶¶17-20. For example, the Commission has not granted requests for an extension of a down payment deadline for a license won through competitive bidding in any case where it appeared that the party requesting the extension did not have the funds on hand on the date of the payment deadline. See Mountain Solutions, Ltd. Inc. v. Federal Communications Commission, 197 F.3d 512, 516 (D.C. Cir. 1999) (quoting Mountain Solutions Ltd., Inc., Request for Waiver of Section 24.711(a) (2) of the Commission’s Rules, 12 FCC Rcd 5904, ¶¶ 6-7 (1997)).

V. Ordering Clauses

24. Accordingly, for the foregoing reasons, IT IS ORDERED that, pursuant to Sections 4(i), 303(r), 309(j), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 309(j), and 405, the petition for further reconsideration filed by 21st Century IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary