



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET, S.W.
WASHINGTON, D.C. 20554

News Media Information: (202) 418-0500
Fax-On-Demand: (202) 418-2830
Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

DA 00-899
April 20, 2000

FREQUENTLY ASKED QUESTIONS REGARDING THE RESTRUCTURING RULES FOR THE 218-219 MHZ SERVICE

In this Public Notice, the staff of the Wireless Telecommunication Bureau provides guidance on issues that have been brought to our attention concerning the restructuring of installment payment financing and remedial bidding credits for the 218-219 MHz service. The advice and rule interpretations provided in this Public Notice constitute informal staff opinion and are not binding on the Commission as official decisions or rulings.

I. BACKGROUND

What changes did the Commission make to the 218-219 MHz Service in a recent Order?

The *218-219 MHz Order*¹ that the Federal Communications Commission (“Commission”) adopted on September 10, 1999, essentially does three things. First, it offers financial restructuring to current licensees (“Eligible Licensees”) and debt forgiveness to previous licensees who made their first and second down payments, but were not current in their payments as of March 16, 1998, and/or did not have a timely filed grace period request on file (“Ineligible Entities”). Second, it provides a remedial bidding credit to all small businesses, eliminating the women- and minority-owned business bidding credits. Third, it changes the service rules, increasing the flexibility of licenses in the 218-219 MHz service and changing the license term from five (5) to ten (10) years.

¹ See In the Matter of Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Report and Order and Memorandum Opinion and Order*, FCC 99-239, WT Docket No. 98-169, RM-8951, (rel. Sept. 10, 1999) at 3, ¶2. (*218-219 MHz Order*).

The following Frequently Asked Questions (FAQ) address the financial restructuring offered and the application of remedial bidding credits.

II. SCOPE OF THE ORDER

Who is subject to the Order?

The *218-219 MHz Order* applies generally to all current and prior 218-219 MHz licensees that were not in default on their first or second down payments. This also includes all licensees who acquired previously auctioned licenses as a result of a valid assignment or transfer. However, the election options portion of the *218-219 MHz Order* **does not** apply to licensees who obtained their licenses through the lottery process, licensees that have paid for their licenses in full, or to entities that are deemed to be “ineligible.” In addition, only those licensees that met the small business qualifications at the time of the July 1994 auction are subject to the remedial bidding credit provision.

Current and previous licensees who participated in the installment payment program are divided into two categories: Eligible Licensees and Ineligible Entities. “Eligible Licensees” are existing licensees that: (i) were current in installment payments as of March 16, 1998; (ii) were less than ninety days delinquent on the last payment due before March 16, 1998; or (iii) had properly filed grace period requests under the former installment payment rules.² “Ineligible Entities” are those entities that made second down payments and (i) made some installment payments, but were not current in their installment payments as of March 16, 1998, and did not have a grace period request on file in conformance with the former rules; and/or (ii) entities that never made any installment payments and did not have a timely filed grace period request on file.³ The licenses of Ineligible Entities automatically cancelled so the entities are no longer “licensees.”⁴

In addition, any 218-219 MHz licensee that paid its first and second down payment, met the small business qualifications at the time of auction, and did not already receive a bidding credit as a women- or minority- owned business, will have a refund processed based on the 25% remedial bidding credit.⁵

² See *id.* at ¶ 37.

³ See *id.* at ¶ 38. 47 C.F.R. § 95.816(d)(3) (1994) (incorporating by reference 47 C.F.R. § 1.2110 (1994)). See also *Mountain Solutions v. FCC*, No. 98-1503 (D.C. Cir. Dec. 3, 1999), upholding the Commission’s decision, in a PCS licensing matter, to deny a waiver of its rule requiring a winning bidder to timely submit both its first and second down payment in order to retain its license.

⁴ See 47 C.F.R. §§ 1.2110(f)(4)(i-iv).

⁵ See 218-219 MHz Order at ¶¶ 60-62.

What does being an Ineligible Entity mean?

The licenses of Ineligible Entities have already automatically cancelled.⁶ Nevertheless, under the *218-219 MHz Order* Ineligible Entities are entitled to debt forgiveness of the original principal balance and all interest payments due thereon.⁷ In addition, Ineligible Entities are entitled to a refund of any previously paid installment payments.⁸ The Commission will release a separate Public Notice detailing the procedures by which entities may obtain a refund.

What does being an Eligible Licensee Mean?

Being an Eligible Licensee means that you may participate in the restructuring options offered in the *218-219 MHz Order*.

Can I be both an Eligible Licensee and an Ineligible Entity?

Yes, you may meet the criteria to be an Eligible Licensee for one license, but not for another. For example, if you had two licenses and made all of your payments on one license, but failed to make any payments (or file a timely grace period request) on the other license, you would be an Eligible Licensee with respect to the first license and an Ineligible Entity with respect to the second license.

What are the restructuring options offered to Eligible Licensees?

Eligible Licensees may choose between three options: (i) Reamortization and Resumption of Payments; (ii) Amnesty; or (iii) Prepayment (Prepayment-Return and Prepayment-Retain).⁹

⁶ Automatic cancellation means that the license cancels without any action on the part of the Commission. See “Wireless Telecommunications Bureau Provides Guidance on Grace Period and Installment Payment Rules,” *Public Notice*, DA 98-1897 (rel. September 18, 1998).

⁷ *218-219 MHz Order* at ¶38. This debt treatment is subject to the following provisions: 31 U.S.C. §3711 and 31 U.S.C. §3720B. Only the United States Department of Justice may compromise a claim in excess of \$100,000. See 4 C.F.R. §103.1. See also 31 U.S.C. §3711. Under the Debt Collection Improvement Act no person may obtain any federal financial assistance if the person had an outstanding debt with any federal agency that is in a delinquent status, as determined under standards prescribed by the Secretary of Treasury. Pub. L. No. 104-134, §3100(j)(1), 110 Stat. 1321 (1996), codified at 31 U.S.C. §3720B.

⁸ *Id.*

⁹ *218-219 MHz Order* at ¶ 34.

If I did not receive a letter announcing my eligibility, do I still have to file an Election Notice?

Yes. It is the sole responsibility and obligation of all previous and current licensees to keep the Commission apprised of any change of address.¹⁰ If you are subject to the *218-219 MHz Order* and have not received a letter of eligibility, you should contact the Commission immediately. However, in an effort to keep all entities informed, the Commission has made a significant effort to notify all previous and current licensees to advise them of their eligibility status for participation in this restructuring. If an Eligible Licensee fails to make an election because the Licensee did not receive a letter regarding its status, the sole responsibility for this falls on the Licensee and its licenses will be automatically placed in the Amnesty category.

III. ELECTION OPTIONS

What does “Reamortization and Resumption of Payments” mean to me?

“Reamortization and Resumption of payments” means that the Eligible Licensee has chosen to retain one or more of its licenses and remain in the installment payment plan. The loan will be “reamortized” over the remaining term of the license. The interest rate will be the same interest rate as on the original installment payment plan. All unpaid and accrued interest from grant date through the Election Date, the last business day of the first full month after the Order on Reconsideration is released by the Commission, will be capitalized (*i.e.* added to) the outstanding principal balance to create a new principal amount. The new principal amount will be fully amortized over the remaining term of the license.¹¹ For examples of how the reamortized payments are calculated, see Appendix A. In order to participate in Reamortization/Resumption, the licensee will be required to: (1) sign the Installment Payment Acknowledgement (2) begin making principal and interest payments at the end of the third month after the Election Date; and (3) continue to make principal and interest payments on the last day of every third month thereafter, through and including the maturity date of the loan. In addition, the licensee may be required to execute a Uniform Commercial Code financing statement (UCC-1).

How are the Reamortized payments calculated?

For examples of how reamortized payments are calculated, see Appendix A.

¹⁰ 47 C.F.R. § 1.5.

¹¹ 218-219 MHz Order at ¶¶ 43-44.

If I choose Reamortization/Resumption, when will my first payment be due?

Your first payment, which will include both principal and interest, must be paid on or before the end of the third month after the Election Date.¹² Furthermore, under Part 1 late payment rules for installment payments, licensees will have the option of utilizing two ninety-day non-payment periods, subject to late payment fees, if licensees require additional time to avoid default.¹³

What does Amnesty mean for me?

Electing Amnesty means the licensee is returning the license to the Commission in exchange for debt forgiveness of the outstanding principal balance and all interest payments due thereon. The Commission retains the down payment.¹⁴

What happens to my installment payments if I elect Amnesty?

A licensee that elects Amnesty for all of its licenses and made any installment payment(s), will have its installment payment(s) refunded. For licensees that made any installment payment(s) and elect Amnesty for some licenses and Reamortization/Resumption for others, their installment payment(s) will be credited towards the retained licenses; first toward the accrued interest and then toward any principal owed.¹⁵

The Commission issued an Order on Reconsideration that changed the terms of the Amnesty option, what did they change?

On November 30, 1999, the Commission issued the *218-219 MHz Order on Reconsideration* altering the terms of the Amnesty election option.¹⁶ Essentially, the Commission eliminated the licensee's option to obtain a credit for seventy (70%) percent of its down payment and the two year bar against reacquiring the surrendered licenses through either auction or a secondary market transaction.¹⁷

¹² *Id.* at ¶ 44. Resumption of payments begins at the end of the third month after the Election Date.

¹³ *See 218-219 MHz Order* at ¶ 44; 47 C.F.R. §§ 1.2110(f)(4)(i-iii). *See also* Amendment of Part 1 of the Commission's Rules, Competitive Bidding Procedures, Allocation of Spectrum Below 5GHz Transferred From Federal Government Use, 4660-4685 MHz, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd. 374 ¶¶ 106-107 (1997).

¹⁴ 218-219 MHz Order at ¶ 49-50.

¹⁵ *Id.* at ¶ 50.

¹⁶ Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Order on Reconsideration*, WT Docket No. 98-169, FCC 99-372 (released Nov. 30, 1999) ("*218-219 MHz Order on Reconsideration*").

¹⁷ *See generally* *Id.*

What does Prepayment mean to me?

Eligible Licensees electing Prepayment may return or retain as many licenses as they wish.¹⁸ This option applies to all of the licenses held by a licensee and cannot be combined with Amnesty or Reamortization/Resumption.¹⁹ Eligible Licensees electing Prepayment must pay off the original principal balances of all the licenses they retain; all interest due on the licenses from grant date until the Election Date is forgiven.²⁰

Eligible Licensees are given a prepayment credit toward their retained licenses equal to 85% of the down payment(s) made on the license(s) they returned to the Commission and 100% of the installment payment(s).²¹ If the original principal balance(s) of the license(s) the Eligible Licensee wishes to retain is greater than the prepayment credit, the additional amount due is called “new money” and is due at the end of the third month after the Election Date.²² If the prepayment credit is greater than the original principal balance(s), then the excess prepayment credits will be refunded to the licensee to the extent that the funds were generated from installment payments. No excess prepayment credits generated from down payments will be refunded.

Is there a difference between Amnesty and Prepayment-Return?

Yes. A Licensee electing Amnesty **does not** get credit for its down payment. A Licensee electing Prepayment-Return gets an 85% credit for its down payment, towards the amount owed on the licenses for which Prepayment-Retain is elected.

However, under both election options Eligible Licensees return licenses to the Commission and receive a 100% credit/refund for any installment payments.

If I elect Prepayment, when will my payment be due?

The licensee is required to pay the balance of any money owed on the retained license(s), the “new money” balance, by the end of the third month after the Election Date.²³

¹⁸ 218-219 MHz Order at ¶ 53.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at ¶ 44.

²³ 218-219 MHz Order at ¶ 53.

How do I calculate the amount of “New Money” I owe?

For an example of how to calculate the amount of “new money” owed on licenses for which Prepayment-Retain has been elected, see Appendix A.

If I elect Prepayment, am I eligible for a grace period?

No. “New money” for the prepayment of licenses is due at the end of the third month after the Election Date, and there are no grace periods permitted for this payment. However, the licensee may pay the “new money” balance within ten (10) days of the due date, subject to a 5% late fee.²⁴ Failure to pay the “new money” balance(s) within ten (10) days of the end of the third month after the Election Date, with applicable late fees, will result in the automatic and immediate cancellation of the 218-219 MHz licenses held by the licensee.

What does “automatic cancellation” mean?

Automatic cancellation means that the license cancels without any action on the part of the Commission. The license cancels by operation of the Commission’s rules, which require full and timely payment. The Commission **does not** send out, or publish, a notice when a license cancels automatically.²⁵

If I elect Prepayment, how do I submit my “new money” payment to the Commission?

Appendix A of the *Implementation Procedures Public Notice* contains precise payment instructions.²⁶

IV. ASSIGNMENT OF LICENSES

What is an “assignment” of a license or a “transfer of control”?

Both assignments and transfers of control relate to those instances where ownership and/or control of a license passes from one entity to another. Both require **prior** FCC approval, and are subject to limitations (for example, because of federal laws relating to foreign ownership of communication licenses, transfers or assignments to foreign corporations are restricted).

²⁴ 47 C.F.R. § 1.2109 (“new money” payments are subject to the same late payment rules as balance payments for new licenses).

²⁵ See *Supra* note 6.

²⁶ Implementation Procedures for the Report and Order and Memorandum Opinion and Order Addressing the 218-219 MHz Services (Formerly Known as Interactive Video and Data Services (IVDS)), DA 00-900, (rel. April 20, 2000) (“Implementation Procedures Public Notice”).

Generally, an assignment occurs when the license moves from one entity to another (*e.g.*, corporation A sells its license to corporation B); a transfer of control involves a change of ownership of the licensee (*e.g.*, corporation A is acquired by corporation B). You must file an application for assignment or transfer of control of a 218-219 MHz Service license and receive FCC approval before assigning or transferring your license.

If I have been assigned a license from another party, am I eligible to file an election?

Yes. If the assignment was properly filed, consented to by the Commission (granted), consummated by the parties and the license is determined to be “eligible” according to the criteria set forth in the *218-219 MHz Order*, then you are eligible to file an election.

If I have acquired licenses through assignment or transfer, do I receive credit for the down payments and installment payments made by the prior license holder(s)?

Yes. The licensee of record as of the Election Date will receive credit and/or refund in the amounts discussed above for the down payments and installment payments made on the licenses it owns on the Election Date. However, please note that only the original payer of the down payment will receive any refund of the down payment amount resulting from the remedial bidding credit. For purposes of making an election, it does not matter who was the payer of the down payment(s) and/or installment payment(s).²⁷

Can I assign my license(s) prior to the Election Date?

Yes. The Commission will accept assignment applications prior to the Election Date. However, there are no assurances that the assignment process will be completed prior to the Election Date. Again, licensees should note only the valid license-holder of record is eligible to make an election.

How do I go about assigning my license during the election process?

Assignment applications must be filed on FCC Forms 600 and 1046. For a transfer of control application, use FCC Form 703. Note: Applicants may also use new Form 603 for these purposes. Applications will be evaluated under the rules adopted in the September 10, 1999, *218-219 MHz Order*.

²⁷ Note: unless an assignment has been both (1) granted by the Commission, and (2) consummated by the parties, the assignee is not the licensee of record; the assignor remains the licensee of record and the entity entitled to make an election.

If an assignment is pending before the Commission, who must file the Election Notice?

The licensee of record, on the day that the Election Notice is filed, must file the Election Notice. Therefore, if you filed an application with the Commission to assign your license to another party, and the application is still pending on the Election Date, then you as the current licensee must file the Election Notice.²⁸

If the assignment of licenses is not consented to or consummated by the Election Date, may I change my election after the Election Date?

No. Elections may not be changed after the Election Date. If the assignment of license is not granted or consummated, the licensee of record is responsible for the election made. For example, if the licensee of record elects to prepay licenses because it believes that it would assign its licenses to another party who would make the new money payment and the assignment was not consummated, the licensee of record is still responsible to pay any new money due the Commission. Failure to pay the new money due will trigger default and result in the automatic cancellation of the license(s).

V. ELECTION PROCEDURES

Detailed instructions regarding the election procedures may be obtained from the *Implementation Procedures Public Notice*.²⁹

When do I have to choose an option?

The deadline for submitting an election to the Commission is 7:00 p.m. on the Election Date, the last business day of the first full month after the Order on Reconsideration is released by the Commission.³⁰

How do I submit my Election Notice to the Commission?

Election Notices may be filed with the Commission from 8:00 a.m. to 7:00 p.m. starting on the date of this Public Notice and ending at 7:00 p.m. on the Election Date, the last business day of the first full month after the Order on Reconsideration is released by the Commission. **NO ELECTIONS OR CHANGES TO ELECTIONS WILL BE ACCEPTED AFTER 7:00 P.M.**

²⁸ 47 C.F.R. § 1.948(a) (prior Commission application and approval of assignment or transfer of control is necessary).

²⁹ See *Supra* note 26.

³⁰ All references to time in this Public Notice are to Eastern Daylight Saving time.

ON THE ELECTION DATE, THE LAST BUSINESS DAY OF THE FIRST FULL MONTH AFTER THE ORDER ON RECONSIDERATION IS RELEASED BY THE COMMISSION. Notices should be sent to the Office of the Secretary, Room TW-B204, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. In addition, a copy of each Election Notice should be sent to Ms. Rachel Kazan, Room 4-A460, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

Eligible Licensees are solely responsible for ensuring the accurate and timely delivery of their Election Notices. Submissions of Election Notices by FAX or electronic mail will NOT be accepted.

What kind of information/format is suggested for my Election Notice submission?

See Appendix A in the *Implementation Procedures Public Notice* for a sample format, and information that should be contained in the Election Notice.³¹

Can I change my election choice after I have submitted the Election Notice? How?

Yes. A licensee may change its election until 7:00 p.m. on the Election Date, the last business day of the first full month after the Order on Reconsideration is released by the Commission. No changes will be accepted after 7:00 p.m. on the Election Date, last business day of the first full month after the Order on Reconsideration is released by the Commission. See the *Implementation Procedures Public Notice* for specific instructions.

Can I choose more than one of the election options for my licenses?

Yes. However, there is only one election option combination available. If you have more than one eligible license, you may elect either Amnesty, Reamortization/Resumption, or both.³² There are no other election combinations available to licensees. The Prepayment option cannot be combined with Amnesty and/or Reamortization/Resumption.³³ In addition, only one election option per license may be selected.

³¹ See *Supra* note 26.

³² 218-219 MHz Order at ¶ 50.

³³ 218-219 MHz Order at ¶ 53.

What happens if I don't file an Election Notice?

An Eligible Licensee failing to make a specific, valid election for each of its licenses by the Election Date (the last business day of the first full month after the Order on Reconsideration is released by the Commission) will automatically be placed in the Amnesty category.³⁴

VI. FINANCIAL TRANSACTIONS

If I am an Eligible Licensee, how do I calculate my refund?

Refunds and/or credits for installment payments depend upon the election(s) made by the licensee:

Amnesty

For an Eligible Licensee that elects Amnesty for all of its licenses, the Commission will retain the down payment (less any remedial bidding credit refund) and forgive the original principal balance and all interest payments due thereon.³⁵ In addition, for Eligible Licensees in this category that have previously made installment payments, the Commission will refund installment payments in their entirety.³⁶

Amnesty and Reamortization/Resumption

For an Eligible Licensee that holds more than one license and elects Amnesty for one or more of its licenses, and Reamortization/Resumption for its other license(s), all installment payments made on the Amnesty license(s) will be credited towards the outstanding balance due on the license(s) for which Reamortization/Resumption was elected. The installment payment credits will be applied against the accrued and unpaid interest on the retained license(s), with any excess funds being applied to the principal balance on each retained license.³⁷ The installment payment credits will be prorated based on the net high bids of the retained licenses.

³⁴ 218-219 MHz Order at ¶ 54.

³⁵ See 218-219 MHz Order at ¶¶ 49-50. This debt treatment is subject to the following provisions: 31 U.S.C. §3711 and 31 U.S.C. §3720B. Only the United States Department of Justice may compromise a claim in excess of \$100,000. See 4 C.F.R. §103.1. See also 31 U.S.C. §3711. Under the Debt Collection Improvement Act no person may obtain any federal financial assistance if the person had an outstanding debt with any federal agency that is in a delinquent status, as determined under standards prescribed by the Secretary of Treasury. Pub. L. No. 104-134, §3100(j)(1), 110 Stat. 1321 (1996), codified at 31 U.S.C. §3720B.

³⁶ See 218-219 MHz Order at ¶ 50.

³⁷ *Id.*

Prepayment (Prepayment-Retain/Prepayment-Return)

Eligible Licensees electing Prepayment may retain or return as many licenses as they wish. The Commission will forgive all of the interest due on the retained licenses from grant date until the Election Date, however Eligible Licensees must pay off the original principal balance of the license(s) they retain. Eligible Licensees will be given a prepayment credit equal to 85% of the down payment and 100% of the installment payment(s) made on the license(s) they return to the Commission. If the original principal balance of the license(s) the Eligible Licensee wishes to retain is greater than the prepayment credit, the additional amount due is called “new money,” and must be remitted to the Commission on or before the end of the third month after the Election Date.³⁸ If the prepayment credit is greater than the original principal balances, the excess prepayment credits will be refunded to the licensee to the extent that the funds were generated from installment payments. No excess prepayment credits generated from down payments will be refunded.

Who may receive a refund based on the application of the remedial bidding credit for small businesses?

Where an Eligible Licensee or Ineligible Entity paid its first and second down payment and met the small business qualifications at the time of the July 1994 auction, but did not receive a woman- or minority-owned small business bidding credit at the time of auction, the Commission will process a refund based on the 25% remedial bidding credit. Because entities that registered as a woman- or minority-owned small business received a bidding credit at the time of auction, no refund is generated by the small business bidding credit. Where licensees paid for their licenses in full and met the qualifications for a small business at the time of auction, and did not receive the credit as a women- or minority- owned business, the Commission will process a refund based on the remedial bidding credit. The Commission will issue a separate Public Notice detailing the procedures by which entities may obtain a refund. Additional information on remedial bidding credits for small businesses may be found in the *Implementation Procedures Public Notice*.³⁹

If I am due a refund based on the application of the remedial bidding credit for small businesses, how do I go about getting it?

Entities that are due a refund as a result of the remedial bidding credit for small businesses will have them processed via Automated Clearing House (ACH) Credits (*i.e.* electronic fund transfer). In order for the Commission to issue payment, all entities due a refund must submit the information necessary for an automatic deposit. The Commission will issue a separate Public Notice detailing the necessary information and procedure for submission. A refund of excess down payment to Ineligible Entities, as a result of the remedial bidding credit for small businesses, does not change their “ineligible” status.

³⁸ See *Supra* note 13.

³⁹ See *Supra* note 26.

If I am due a refund, when will I receive it?

The Commission will endeavor to issue appropriate refund payments (assuming the necessary information has been provided) within approximately 60 days of the Election Date. The Commission will issue a separate Public Notice with instructions detailing the procedures by which entities may obtain a refund.

What are the tax implications of debt forgiveness?

The Federal Communications Commission is required by federal law and regulation to report certain discharges of indebtedness to the Internal Revenue Service. The Commission does not make a determination, or offer comment on the tax consequences, of the information reported. Each license holder should fully consider the financial consequences of the election options. Questions involving matters in this area should be addressed to the license holder's individual advisors with appropriate expertise in these fields. The Commission neither endorses nor recommends a particular election, and it does not comment on, or advise in, matters involving the fiscal consequences of any particular election or course of action.

When will I receive my loan documents?

Eligible Licensees electing Reamortization/Resumption are required to execute loan documents in the form of an Installment Payment Acknowledgement.⁴⁰ The Installment Payment Acknowledgement must be executed and returned to the Commission (or its agent) within ten business days of receipt.

The Commission will notify and deliver the Installment Payment Acknowledgement to these licensees at some time following the Election Date. However, Eligible Licensees electing Reamortization/Resumption are required to resume payments at the end of the third month after the Election Date, subject to applicable late payment rules,⁴¹ in accordance with the *218-219 MHz Order* without regard to whether the Installment Payment Acknowledgement has been issued, executed, or returned.⁴² Licensees may also be required to execute a Uniform Commercial Code financing statement (UCC-1).

⁴⁰ 218-219 MHz Order at ¶ 44.

⁴¹ 47 C.F.R. §§ 1.2110(f)(4)(i-iii).

⁴² 218-219 MHz Order at ¶ 44.

What happens if I don't execute the loan document(s)?

The Installment Payment Acknowledgement and, if required, a Uniform Commercial Code financing statement (UCC-1) must be executed and returned to the Commission (or its agent) within ten business days of receipt. Failure to fully and timely execute and deliver any required loan document(s) will result in the automatic and immediate cancellation of your license(s).⁴³

VII. FUTURE ELIGIBILITY

Does being an "Ineligible Entity" affect my ability to participate in future auctions?

No. For purposes of future auctions that do not involve the extension of credit by the government, entities determined to be ineligible (former licensees) will be deemed "former defaulters"⁴⁴ and eligible to participate in future elections provided they can make the certification required under Section 1.2105(a)(2)(x) of the Commission's general competitive bidding rules.⁴⁵

Do any of the election options available to "Eligible Licensees" affect my ability to participate in future auctions?

No, they do not.

⁴³ *Id.*

⁴⁴ See 47 C.F.R. § 1.2105 (a)(2)(xi). See also Amendment of Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, *Fourth Report and Order*, 13 FCC Rcd 15743, 15753, ¶18 (1998).

⁴⁵ Whether these former licensees will be eligible for federal loan programs will be determined based upon U.S. Treasury regulations. Under the Debt Collection Improvement Act of 1996 ("DCIA"), no person may obtain any federal financial assistance if the person has an outstanding debt with any federal agency which is in a delinquent status, as determined under standards prescribed by the Secretary of Treasury. Pub. L. No. 104-134, §3100 (j)(1), 110 Stat. 1321 (1996), codified at 31 U.S.C. §3720B. See also 31 C.F.R. § 285.13 (setting forth Department of Treasury regulations regarding delinquent debtors). In addition, in the *Part I Proceeding*, the Commission adopted a certification procedure as part of changes to the application procedures whereby applicants must certify that the applicant is not in default on any payment for Commission licenses (including down payments) and that it is not delinquent on any non-tax debt owed to any federal agency. Bidders that cannot make this certification may be ineligible for installment payment plans. *Part I Third Report and Order*, 13 FCC Rcd at 436, ¶ 8.

VIII. MISCELLANEOUS

Is there a difference between “accrued and unpaid” and “unpaid” interest under the Reamortization option?

No. “Accrued and unpaid” interest and “unpaid” interest are the same. Both terms refer to the unpaid interest on the license from grant date through the Election Date, the last business day of the first full month after the Order on Reconsideration is released by the Commission. This amount also includes the two uncollected installment (interest only) payments for September 30, 1995 and December 31, 1995.⁴⁶

Will I receive a revised radio station authorization (license)? When?

Yes. The Commission will update its records and automatically issue revised radio station authorizations (licenses) to reflect the modified terms and conditions. Because Eligible Licensees may choose to relinquish their licenses under the Amnesty option, the Commission does not anticipate issuing updated licenses until after the Election Date. Eligible Licensees who elect Reamortization will receive license documents conditioned on their meeting the terms of their loans, and may not receive licenses until after the due date for the first installment payment. Licensees who choose Prepayment, or do not have payment obligations associated with their licenses, will receive license documents free of these conditions.

Can I find out which option(s) each Eligible Licensee selected?

Yes. The Commission will release a Public Notice listing Eligible Licensees and the restructuring option(s) they elected for their license(s).

IX. ADDITIONAL INFORMATION

Where can I get additional information on this implementation and underlying rule making?

To obtain additional information on implementation procedures and the underlying rule making you may go to the Federal Communications Commission web site located at [http://www.fcc.gov/wtb/auctions/218 rest/218 rest.html](http://www.fcc.gov/wtb/auctions/218%20rest/218%20rest.html). Additionally, related documents may be

⁴⁶ 218-219 MHz Order at ¶ 44.

obtained from the FCC Reference Center⁴⁷ or purchased from the Commission's copy contractor, ITS, Inc.⁴⁸

Who do I call if I have a specific question?

If you have a specific question or believe that an error has occurred with regard to your eligibility or payment history, please contact Ben Freeman or Nicole Oden of the Auctions and Industry Analysis Division at (202) 418-0660, or Jamison Prime of the Public Safety and Private Wireless Division at (202) 418-0680.

⁴⁷ During normal business hours, 445 12th Street, S.W., Room CY-A257, Washington, DC 20554, telephone (202) 418-0270.

⁴⁸ ITS, Inc. located at 1231 20th Street, N.W., Washington, DC 20036, telephone (202) 857-3800.

APPENDIX A

SAMPLE ELECTION CALCULATIONS

The following examples illustrate various election options an Eligible Licensee might select.

The examples, which use a fictitious company called "Byron Enterprises," include the following elections:

- I. Reamortization/Resumption - All Licenses
- II. Amnesty – All Licenses
- III. Resume Payments On Three Licenses
And Amnesty Two Licenses
- IV. Prepayment (Retain 2 Licenses)
- V. Prepayment (Retain 1 License)
- VI. Invalid Election Filing

Byron Enterprises was the high bidder for five IVDS licenses. It was granted the licenses on January 18, 1995. Byron Enterprises was a small business and was eligible to participate in the installment payment plan for IVDS licensees. Its loan terms are as follows:

Five-year loan term: Two years interest-only; three years principal and interest
Payments: Quarterly payments
Interest Rate: 6.25%
Grant Date: January 18, 1995
Down Payment: 20% of the Net High Bid
Original Principal: 80% of the Net High Bid

License	Net High Bid	Down Payment	Original Principal	Quarterly Installment Pmt (Interest-Only)
License 1	\$30,000	\$6,000	\$24,000	\$375
License 2	\$100,000	\$20,000	\$80,000	\$1,250
License 3	\$100,000	\$20,000	\$80,000	\$1,250
License 4	\$250,000	\$50,000	\$200,000	\$3,125
License 5	\$250,000	\$50,000	\$200,000	\$3,125
Total	\$730,000	\$146,000	\$584,000	\$9,125

Byron Enterprises made four installment payments and then filed a grace period request within 90 days of the next installment payment due date, which effectively stayed Byron Enterprises' future installment payments. Therefore, Byron Enterprises is an "Eligible Licensee" under the terms of the 218-219 Order.

Prior to assessing Byron’s election options, we need to calculate the accrued and unpaid interest for all five licenses by taking the total interest due from grant date through election date (the “accrued and unpaid interest”) and subtracting the installment payments actually made. This calculation automatically includes the suspended “uncollected payments” i.e. the payments for September 30, 1995 and December 31, 1995, which the Commission suspended and did not require to be repaid until the issuance of the *219-219 Order*.

License	Original Principal	Total Interest Due (grant date through 2/29/00)	Installment Payments Made (4 pmts)	Accrued and Unpaid Interest
License 1	\$24,000	\$6,202	\$1,500	\$4,702
License 2	\$80,000	\$20,672	\$5,000	\$15,672
License 3	\$80,000	\$20,672	\$5,000	\$15,672
License 4	\$200,000	\$51,680	\$12,500	\$39,180
License 5	\$200,000	\$51,680	\$12,500	\$39,180
Total	\$584,000	\$150,906	\$36,500	\$114,406

I. Reamortization/Resumption of All Licenses

Byron Enterprises elected to retain all of its licenses and continue in the installment payment plan. Its first payment due is the end of the third month after Election Date. The Election Date is on the last business day of the first full month after the Order on Reconsideration is released by the Commission.

The modified loan will be reamortized over the remaining term of the license, which expires on January 17, 2005. To reamortize the loan, all accrued and unpaid interest from grant date through the Election Date (the last business day of the first full month after the Order on Reconsideration is released by the Commission.) must be added to Byron Enterprises’ outstanding principal balance to create a “new” principal balance as of Election Day. (The outstanding principal balance is the same as the original principal balance because Byron Enterprises did not make any principal and interest payment prior to Election Day.)

The new principal balance will be fully amortized over the remaining term of the loan. The interest rate is the same as the interest rate on the original installment payment plan. Assuming that the installment payments resume on May 31, 2000, and that the last payment is on January 17, 2005, there will be 20 quarterly installment payments, including the last payment due on January 18, 2005, which will be a partial payment.

The actual calculation of an amortized installment payment is not a simple calculation that can be shown. To calculate the payment, you must use either an amortization table, a financial calculator or the financial function on a computer spreadsheet (such as the PMT function in Excel.)

License	Outstanding (Original) Principal	Accrued and Unpaid Interest	New Principal	Principal and Interest Installment Payment
License 1	\$24,000	\$4,702	\$28,702	\$1,682
License 2	\$80,000	\$15,672	\$95,672	\$5,607
License 3	\$80,000	\$15,672	\$95,672	\$5,607
License 4	\$200,000	\$39,180	\$239,180	\$14,017
License 5	\$200,000	\$39,180	\$239,180	\$14,017
Total	\$584,000	\$114,406	\$698,406	\$40,930

II. Amnesty All Licenses

Byron Enterprises elected amnesty for all of its licenses. Therefore, all of Byron's licenses will automatically cancel on Election Day. Byron Enterprises will be refunded all of its installment payments and the Commission will retain all of Byron Enterprises' down payments.

As previously described, Byron Enterprises made four installment payments on each of its five licenses. The total amount of the installment payments will be refunded to Byron Enterprises.

License	Quarterly Installment Pmt (Interest-Only)	Installment Payments Made (4 pmts)
License 1	\$375	\$1,500
License 2	\$1,250	\$5,000
License 3	\$1,250	\$5,000
License 4	\$3,125	\$12,500
License 5	\$3,125	\$12,500
Total to be Refunded	\$9,125	\$36,500

III. Resume Payments on Three Licenses And Amnesty Two Licenses

Byron Enterprises elected reamortization/resumption for three licenses and amnesty for two licenses. This is a valid election because the combination of reamortization/resumption and amnesty is permitted in the *218-219 MHz Order*.

The difference between electing reamortization/resumption for all of its license and reamortization/resumption for only three of its licenses, is that the installment payments on the licenses for which Byron Enterprises elected amnesty are applied to the accrued and unpaid interest on the licenses which Byron Enterprises is keeping.

The installment payments on the licenses for which Byron Enterprises elected amnesty are added together and the amount is "pro rated" across the licenses which Byron Enterprises is retaining.

“Pro rated” means that the installment payments will be applied proportionally across the licenses which Byron Enterprises is retaining, based on the net high bid amounts.

License	Election
License 1	Resume
License 2	Resume
License 3	Resume
License 4	Amnesty
License 5	Amnesty

Installment Payments to be applied to Reamortized/Resumed Licenses

	Installment Payments Made (4 pmts)
License	
License 4	\$5,000
License 5	\$12,500
Total	\$17,500

Pro Ration Calculation

License	Net High Bid	Pro Rated Amount	Total Installment Payments to be Pro Rated	Pro Rated Installment Payment
License 1	\$30,000	8%	\$17,500	\$1,381
License 2	\$100,000	26%	\$17,500	\$4,605
License 3	\$250,000	66%	\$17,500	\$11,513
Total	\$380,000	100%		\$17,500

Calculation of New Principal Amounts

As previously described, in order to calculate its new principal amount Byron Enterprises must add the accrued and unpaid interest to its outstanding principal. However, in this instance Byron Enterprises also subtracts the pro rated amount of the installment payments from the licenses for which it elected amnesty.

License	Outstanding (Original) Principal	Accrued and Unpaid Interest	Pro Rated Installment Payment	New Principal
License 1	\$30,000	\$4,702	\$1,381	\$27,302
License 2	\$100,000	\$15,675	\$4,605	\$91,067
License 3	\$250,000	\$15,675	\$11,513	\$227,667
Total	\$380,000		\$17,500	

IV. Prepayment (Retain 2 Licenses)

Byron Enterprises elected prepayment. Under this election, Byron Enterprises decided to prepay the original principal balances for two of its licenses and return three licenses to the FCC in exchange for “Prepayment Credits”. In this example the original principal balances for the two licenses Byron Enterprises is greater than the prepayment credits. Therefore, Byron Enterprises will owe additional money to pay off the principal balances. The additional money is called “new money” and is due on the payment resumption day, the end of the third month after the Election Date.

The following shows the calculations to determine the total original principal balances, prepayment credits, and new money.

Elections

License	Election
License 1	Prepay-Return
License 2	Prepay-Return
License 3	Prepay
License 4	Prepay-Return
License 5	Prepay

Licenses to be Prepaid/Retained

License	Original Principal Balance
License 3	\$80,000
License 5	\$200,000
Total	\$280,000

Prepayment Credits

Prepayment credits are generated from two places: installment payments and down payments. More specifically, they include 100% of the installment payments made on all of the licenses and 85% of the down payments made on the licenses that are being returned to the FCC.

License	Installment Payments Made (4 pmts)	Down Payment	85% of Down Payment	Total Prepayment Credit
License 1	\$1,500	\$6,000	\$5,100	\$11,100
License 2	\$5,000	\$20,000	\$17,000	\$37,000
License 3	\$5,000	\$20,000	N/A	\$5,000
License 4	\$12,500	\$50,000	\$42,500	\$92,500
License 5	\$12,500	\$50,000	N/A	\$12,500
Total	\$36,500	\$146,000	\$64,600	\$101,100

Original Principal Balance to be Prepaid	\$280,000
Total Prepayment Credit	\$101,100
Amount Due (New Money)	\$178,900

V. Prepayment (Retain 1 License)

In this example, Byron Enterprises elected prepayment again, but decided to prepay the principal balance for only one license and to return its other four licenses to the FCC. Under this scenario, Byron Enterprises generated more prepayment credit than the principal balance it was required to prepay. Therefore, Byron Enterprises was entitled to a refund. Eligible Licensees are entitled to the refund of excess prepayment credit to the extent that the excess prepayment credit is generated from installment payments rather than down payments. This example illustrates a refund of prepayment credit generated from installment payments.

The following shows the calculations to determine the total original principal balances, prepayment credits, and new money.

License	Election
License 1	Prepay
License 2	Prepay-Return
License 3	Prepay-Return
License 4	Prepay-Return
License 5	Prepay-Return

Licenses to be Prepaid/Retained

License	Original Principal Balance
License 1	\$24,000

Prepayment Credits

As discussed, prepayment credits are generated from two places: installment payments and down payments. They include 100% of the installment payments made on all of the licenses and 85% of the down payments made on the licenses that are being returned to the FCC.

License	Installment Payments Made (4 pmts)	Down Payment	85% of Down Payment	Total Prepayment Credit
License 1	\$1,500	\$6,000	N/A	\$1,500.00
License 2	\$5,000	\$20,000	\$17,000	\$22,000.00
License 3	\$5,000	\$20,000	\$17,000	\$22,000.00
License 4	\$12,500	\$50,000	\$42,500	\$55,000.00
License 5	\$12,500	\$50,000	\$42,500	\$55,000.00
Total	\$36,500	\$146,000	\$119,000.00	\$155,500.00

Original Principal Balance to be Prepaid	\$ 24,000
Total Prepayment Credit	\$155,500
Excess Prepayment Credit	\$131,500

Amount of Excess Prepayment Credit
To be refunded to Byron Enterprises \$ 36,500

(The refund of prepayment credits can not exceed the total amount of installment payments made by Byron Enterprises.)

VI. Invalid Election Filing

In this example Byron Enterprises thought it could elect to reamortize and resume making payments on one license and return four licenses to the FCC and use the prepayment credits to pay down the principal on the license it is retaining. As discussed in the 218-219 MHz Order, a licensee electing prepayment must prepay the entire principal balance of the licenses it is retaining. Therefore, this is an INVALID election. Therefore, Byron Enterprises' election will be changed to amnesty for all of its licenses.

	Byron Enterprises	Invalid Election
License	Election	(Amnesty)
License 1	Prepay	Amnesty
License 2	Prepay-Return	Amnesty
License 3	Prepay-Return	Amnesty
License 4	Prepay-Return	Amnesty
License 5	Prepay-Return	Amnesty

As described above in the Example 2, where Byron Enterprises elected amnesty for all of its licenses, the FCC will refund the installment payments Byron Enterprises previously made.