



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET, N.W.
WASHINGTON, D.C. 20554

DA 98-947

News media information 202/418-0500 Fax-On-Demand 202/418-2830 Internet: <http://www.fcc.gov> <ftp.fcc.gov>

Released: May 18, 1998

FREQUENTLY ASKED QUESTIONS REGARDING THE ORDER ON RECONSIDERATION OF THE SECOND REPORT AND ORDER CONCERNING THE BROADBAND PERSONAL COMMUNICATIONS SERVICES (PCS) C AND F BLOCK INSTALLMENT PAYMENT PLANS

In this Public Notice, the staff of the Wireless Telecommunications Bureau (Bureau) provides guidance on several issues that have been brought to our attention concerning the modification of installment payment financing for Broadband PCS C and F block licensees pursuant to the *Order on Reconsideration*¹ that the Commission adopted on March 23, 1998, which generally affirmed the *Second Report and Order*² that the Commission adopted on September 25, 1997.³ The advice and rule interpretations provided in this Public Notice constitute informal staff opinion and are not official Commission decisions or rulings.⁴

WHO IS SUBJECT TO THE *ORDER ON RECONSIDERATION*?

The *Order on Reconsideration* applies to all C and F block licensees.⁵ It does not apply to licensees in the A, B, D and E blocks, nor does it apply to any other Commission licensees.

¹ See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket 97-82, *Order on Reconsideration of the Second Report and Order*, FCC 98-46 (*Order on Reconsideration*) (released March 24, 1998).

² See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket 97-82, *Second Report and Order and Further Notice of Proposed Rule Making (Second Report and Order)*, 12 FCC Rcd. 16,436 (released Oct. 16, 1997).

³ Copies of the *Order on Reconsideration* and the *Second Report and Order* are available from the Commission's Internet site (www.fcc.gov), the Wireless Telecommunication Bureau's Public Reference Room, 2025 M Street, N.W., Room 5608, Washington, D.C. 20554, (202)418-1350, or International Transcription Services, 1231 20th Street, N.W., Washington, D.C. 20037, (202)857-3800.

⁴ See *220 Television Inc.*, 81 FCC 2d 575, 577 (1980); see also *AMOR Family Broadcasting Group v. FCC*, 918 F.2d 960, 962 (D.C. Cir. 1990); *AAT Electronics Corp. v. FCC*, 743 F.2d 918, 931 (D.C. Cir. 1984).

⁵ See *Order on Reconsideration*, ¶¶ 74-76.

WHAT DOES THE *ORDER ON RECONSIDERATION* REQUIRE ME TO DO?

A. C Block Licensees

All C block licensees must elect either to resume making payments under their existing Note(s)⁶ *or* one of the following three options: (1) amnesty;⁷ (2) disaggregation;⁸ or (3) prepayment.⁹ Each of these alternatives is fully described in the *Order on Reconsideration*.

B. F Block Licensees

The *Order on Reconsideration* requires that all F block licensees resume making installment payments under their existing Note(s).¹⁰ See below "When Is My First Payment Due?" The amnesty, disaggregation and prepayment options are **not** available to F Block licensees.¹¹

HOW DOES A C BLOCK LICENSEE MAKE AN ELECTION?

All C block licensees must make an election by filing an Election Notice with the Commission, either electronically through the Universal Licensing System (ULS) or in writing (manual filing). The specific procedures for filing an Election Notice with the Commission are described in the Implementation Procedures for the Order on Reconsideration of the Second Report and Order Concerning the Broadband Personal Communications Services (PCS) C and F Block Installment Payment Plans, *Public Notice*, DA 98-946 (released May 18, 1998) (Implementation Procedures). A copy of the Implementation Procedures is available from the Commission's Internet site (www.fcc.gov/wtb), the Wireless Telecommunication Bureau's Public Reference Room, 2025 M Street, N.W., Room 5608, Washington, D.C. 20554, (202)418-1350, or International Transcription Services, 1231 20th Street, N.W., Washington, D.C. 20037, (202)857-3800.

WHERE CAN I GET A LIST OF C BLOCK LICENSEES?

A list of C block licensees and the licenses that they hold is attached to the Implementation Procedures, which is available from the sources described above. A list of C block licensees will also be available from the Commission's Internet site (www.fcc.gov/wtb/uls) beginning on May 20, 1998.

⁶ *Id.*, ¶¶ 21-30.

⁷ *Id.*, ¶¶ 31-37.

⁸ *Id.*, ¶¶ 49-60.

⁹ *Id.*, ¶¶ 38-48.

¹⁰ *Id.*, ¶¶ 74-76.

¹¹ *Id.*

WHEN MUST A C BLOCK LICENSEE FILE ITS ELECTION NOTICE?

All C block licensees must make an election **no later than June 8, 1998.**¹² Licensees may file manually with the Commission between 8:00 a.m. and 5:30 p.m. from now until June 8, 1998.¹³ Licensees may also file electronically 24 hours per day using ULS from 8:00 a.m. on June 2, 1998 to 5:30 p.m. on June 8, 1998. The ULS Technical Support Hotline, (202)414-1250, is available from 8:00 a.m. to 6:00 p.m., Monday through Friday, beginning on May 20, 1998 to answer questions regarding the electronic filing of Election Notices. All calls to the Technical Support Hotline are recorded.

WHAT HAPPENS IF A C BLOCK LICENSEE FAILS TO FILE AN ELECTION NOTICE BY JUNE 8, 1998?

Any C block licensee that fails to file a timely Election Notice will be treated as having elected to resume making payments under its existing Note(s) and will be required, by July 31, 1998, to pay all unpaid interest accruing from the date of the license grant through July 31, 1998.¹⁴ C block licensees failing to file an Election Notice will **not** be eligible to repay Suspension Interest in a series of eight equal payments.

CAN A C BLOCK LICENSEE CHANGE ITS ELECTION AFTER IT HAS FILED ITS ELECTION NOTICE?

Yes. After a licensee files its Election Notice, either electronically or manually, the licensee may change its election until 5:30 p.m. on June 8, 1998. The procedures for changing an election are described in the Implementation Procedures.¹⁵

IF A C BLOCK LICENSEE HOLDS LICENSES IN MORE THAN ONE MTA, CAN THAT LICENSEE MAKE MORE THAN ONE ELECTION?

Yes. A C block licensee must make an election for every license that it holds. The licensee must make the same election for all Basic Trading Area (BTA) licenses that it holds in a given Major Trading Area (MTA), but the licensee may make different elections for different MTAs.¹⁶

IF A LICENSE ASSIGNMENT IS PENDING BEFORE THE COMMISSION, WHO MUST FILE THE ELECTION NOTICE?

¹² *Id.*, ¶ 23; Implementation Procedures at 1-2.

¹³ All references to time in this Public Notice are to eastern daylight saving time.

¹⁴ *See Order on Reconsideration*, ¶ 65.

¹⁵ *See* Implementation Procedures at 3, 6.

¹⁶ *See Order on Reconsideration*, ¶ 17.

The current licensee 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 (including *pro forma* assignment/transfer of control applications), and your application is still pending on the date that the election notice is filed, then you (the current licensee) must file the Election Notice.¹⁷

WHEN IS MY FIRST PAYMENT DUE?

A. Suspension Interest

C block licensees (i) electing to resume making payments, or (ii) electing the disaggregation option and choosing to resume making payments on the retained spectrum, and all F block licensees, must pay one-eighth of their total Suspension Interest on or before July 31, 1998.¹⁸ Those licensees will then pay one-eighth of their Suspension Interest with each regular installment payment they make thereafter until their Suspension Interest is paid in full.¹⁹

B. Deferred Interest from April 1, 1998 to July 31, 1998

C block licensees (i) electing to resume making payments, or (ii) electing the disaggregation option and choosing to resume making payments on the retained spectrum, and all F block licensees must pay, on or before July 31, 1998, all interest deferred from and including April 1, 1998 through July 31, 1998.²⁰

C. Regular Installment Payment

For all C block licensees (i) electing to resume making payments, or (ii) electing the disaggregation option and choosing to resume making payments on the retained spectrum, and all F block licensees, regular installment payments resume three months *after* July 31, 1998, and are due on October 29, 1998.²¹

WHEN WILL I RECEIVE MY LOAN DOCUMENTS?

The Commission will be sending generic (*i.e.* master blank versions, not for execution) modified loan documents to C Block licensees during May for their review. The Commission has already sent generic modified loan documents to F block licensees reflecting the payment of Suspension Interest over eight equal payments.

¹⁷ See 47 U.S.C. § 310(d) (prior Commission application and approval of assignment or transfer of control is necessary).

¹⁸ See *Order on Reconsideration*, ¶ 27.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

The Commission will use its best efforts to issue modified loan documents to licensees within three weeks of the date they file their Election Notices with the Commission. Depending on which elections are chosen, licensees will be required to execute and return their new/modified loan documents, together with any required UCC filing fees, to the Commission within the time period specified by the Bureau, which will be no less than seven calendar days. Specific procedures for the issuance, execution and return of modified loan documents, and the payment of UCC filing fees, are set forth in the Implementation Procedures under the caption "Issuance of New Licenses, Notes and Filing of UCC Financing Statements."²²

WHEN WILL I RECEIVE MY MODIFIED LICENSE(S)?

The Commission will endeavor to issue modified licenses as quickly as possible. However, as discussed below, the date you receive your modified license(s) depends on which election you have made.

A. Resumption of Payments

C block licensees that elect to continue making payments, and all F block licensees, will not receive modified licenses because they are continuing to operate under their existing licenses.

B. Amnesty

C block licensees electing amnesty will not receive modified licenses because they have agreed to surrender their existing licenses.

C. Disaggregation

The Commission will issue modified licenses as expeditiously as possible. Licensees electing to disaggregate and continue making payments on their retained spectrum will receive a license conditioned on the timely payment of their installment obligations. Licenses for these licensees will not be issued until after the Commission has filed the UCC-1 financing statements. Licensees electing to disaggregate and prepay their retained spectrum will receive a modified license without an installment payment condition. Although a licensee electing disaggregation will hold a 30 MHz license until it receives its modified license, the licensee may *not* use the 15 MHz of spectrum surrendered to the Commission.²³

D. Prepayment

The Commission will issue modified licenses as expeditiously as possible. These modified licenses are necessary to reflect that the licensee's operating authority is no longer conditioned on making regular installment payments.

²² Implementation Procedures at 7.

²³ See *Order on Reconsideration*, ¶ 60.

WHEN WILL I RECEIVE A REFUND OF MY INSTALLMENT PAYMENTS IF I AM DUE A FULL OR PARTIAL REFUND OF INSTALLMENT PAYMENTS?

The Commission will endeavor to issue full or partial refunds of installment payments that are due to C block licensees within approximately 30 days of the date they file their Election Notices with the Commission.²⁴ Any lender advances for financing fees (UCC filings) will be netted out of the refund.²⁵ C block licensees seeking refunds should comply with the refund instructions described in the Implementation Procedures.²⁶

HOW IS SUSPENSION INTEREST CALCULATED UNDER THE DISAGGREGATION OPTION?

Under the disaggregation option, a C block licensee is required to return half of its spectrum to the Commission.²⁷ In exchange, the Commission will reduce the licensee's outstanding principal balance by 50 percent.²⁸ Thereafter, Suspension Interest is calculated using the C block licensee's new (reduced) principal balance after the disaggregation. Any installment payments the licensee previously made will be credited against the amount of Suspension Interest due.²⁹

HOW DO I CALCULATE MY PREPAYMENT CREDIT?

A licensee's Prepayment Credit consists of two parts: (1) a percentage of the licensee's down payments on licenses returned to the Commission, plus (2) installment payments previously paid on licenses returned to the Commission.³⁰ A licensee can determine the amount of its down payments and the amount of installment payments it has previously paid to the Commission by looking at the most recent account statement it received from the Commission.³¹ Using these amounts, a licensee can then calculate the specific amount of its credit from each license as described below. The total of a licensee's credits from each of its licenses equals its Prepayment Credit.

A. Resumption of Payments

²⁴ Implementation Procedures at 8.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *See Order on Reconsideration*, ¶ 49.

²⁸ *Id.*, ¶ 51.

²⁹ *Id.*

³⁰ *Id.*, ¶ 41.

³¹ If a licensee has lost its most recent account statement, a duplicate of the account statement can be obtained by contacting Larry White, United States Department of the Treasury, (205)912-6341.

A C block licensee electing to resume payments on a license under its existing Note(s) does not receive any credit toward its Prepayment Credit.

B. Amnesty

A C block licensee electing amnesty for *all* of its licenses does not receive any credit toward its Prepayment Credit.

A C block licensee electing amnesty for *fewer than all* of its licenses and choosing *not to bid* on those surrendered licenses at the reauction receives a credit of 70 percent of the down payment on any surrendered license and will have any previously paid installment payments on the surrendered license added to its Prepayment Credit.³²

A C block licensee electing amnesty for *fewer than all* of its licenses and choosing *to bid* on those surrendered licenses at the reauction receives no credit for its down payments on those licenses.³³

If the licensee is prepaying any other licenses, then any installment payments previously paid on the surrendered license will be added to the licensee's Prepayment Credit.³⁴

Any installment payments (but not down payments) that remain unspent after all licenses selected for prepayment have been prepaid will be credited toward Suspension Interest or refunded. If a licensee elects resumption of payments or disaggregation with resumption of payments, the unspent installment payments will be applied first to reduce the Suspension Interest on any licenses for which the licensee is resuming installment payments, and the balance, if any, will be applied to the regular installment payments next due on those licenses. The licensee must specify the amount of its installment payments to be allocated to each such license. If a licensee is not continuing in the installment payment program, the unspent installment payments will be refunded.³⁵

C. Disaggregation

A C block licensee electing to disaggregate a license and resume making installment payments on the retained portion of that license receives a credit of 70 percent of its down payment on the license.³⁶ Any previously paid installment payments on the license are applied to Suspension Interest, not the Prepayment Credit.³⁷

A C block licensee electing to disaggregate a license and prepay the retained portion of that license receives a credit of 85 percent of its down payment on the license plus any installment

³² See *Order on Reconsideration*, ¶¶ 37, 41.

³³ *Id.*, ¶ 37.

³⁴ *Id.*, ¶ 41.

³⁵ See *Implementation Procedures* at 4, 8.

³⁶ See *Order on Reconsideration*, ¶¶ 51-52.

³⁷ *Id.*, ¶ 51.

payments previously paid on the license.³⁸

IF I DO NOT USE ALL OF MY PREPAYMENT CREDIT TO PREPAY LICENSES, THEN WHAT HAPPENS TO THE EXCESS CREDIT?

When applying a Prepayment Credit, a licensee is deemed to use, first, the down payment credit portion of its Prepayment Credit, and second, the installment payment portion of its Prepayment Credit. If a licensee does not use all of its Prepayment Credit, then the down payment portion of the remainder, if any, will be forfeited. The unspent installment payment portion will be credited to Suspension Interest and regular installment payments or refunded. If a licensee elects resumption of payments or disaggregation with resumption of payments, the unspent installment payments will be applied first to reduce the Suspension Interest on any licenses for which the licensee is resuming installment payments, and the balance, if any, will be applied to the regular installment payments next due on those licenses. The licensee must specify the amount of its installment payments to be allocated to each such license. If a licensee is not continuing in the installment payment program, the unspent installment payments will be refunded.³⁹

WHAT IS THE AFFORDABILITY EXCEPTION?

If a C block licensee elects the prepayment option, or elects the disaggregation option and chooses to prepay the retained spectrum, then the licensee must prepay all of its BTA licenses in the chosen MTA.⁴⁰ Under the affordability exception, however, a C block licensee that cannot afford to prepay all of its BTA licenses in an MTA may purchase all of its BTA licenses in the MTA that it can afford to prepay and surrender the remaining licenses in the MTA that it cannot afford to prepay.⁴¹ A licensee can "afford" as many BTA licenses within an MTA that it can prepay using only its Prepayment Credit.⁴²

IF I ADD "NEW MONEY" TO AN MTA, CAN I STILL USE THE AFFORDABILITY EXCEPTION?

No. Once a licensee adds any "new money" to make prepayment on any BTA licenses within an MTA, the affordability exception does not apply.⁴³ Therefore, if a licensee adds "new money" to

³⁸ *Id.*, ¶ 54.

³⁹ *See* Implementation Procedures at 3-5.

⁴⁰ *See Order on Reconsideration*, ¶¶ 43, 55.

⁴¹ *Id.*

⁴² *Id.*, ¶ 43.

⁴³ *Id.*

an MTA, the "new money" must be sufficient to prepay all of its BTA licenses within the MTA.⁴⁴

IF I USE THE AFFORDABILITY EXCEPTION, MAY I CONTINUE MAKING PAYMENTS ON THE LICENSES I CANNOT AFFORD?

No. If you use the affordability exception, you must surrender the BTA licenses that you cannot afford to prepay.⁴⁵

DO I GET ANY CREDIT FOR THE DOWN PAYMENT ON A LICENSE THAT I SURRENDER UNDER THE AFFORDABILITY EXCEPTION?

No. If you surrender a license under the affordability exception, you do not receive any credit for your down payment on that license.⁴⁶

IF I HAVE ACQUIRED LICENSES THROUGH AN ASSIGNMENT OR TRANSFER, DO DOWN PAYMENTS AND INSTALLMENT PAYMENTS MADE BY THE PRIOR LICENSE HOLDER(S) COUNT TOWARD MY PREPAYMENT CREDIT?

Yes. It does not matter who was the payor of the down payments and/or installment payments. The current licensee at the time of the election will receive credit in the amounts discussed above for the down payments and installment payments made on the licenses it owns on the date of its election. See above "How Do I Calculate My Prepayment Credit?"

WHAT IS AN AFFILIATE?

The term "affiliate" is defined in section 1.2110(b)(4) of the Commission's rules.⁴⁷ Affiliates that want to be considered as a single entity for the purpose of making an election must follow the instructions described in the Implementation Procedures.⁴⁸

HOW WILL THE COMMISSION'S REVISION OF ITS COMPETITIVE BIDDING PROCEDURES AFFECT GRACE PERIODS FOR C BLOCK LICENSEES?

The Commission recently amended its rules and changed the procedures for all auctionable

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *See Order on Reconsideration*, ¶ 38; *Second Report and Order*, 16,467, ¶ 64.

⁴⁷ 47 C.F.R. § 1.2110(b)(4).

⁴⁸ *See Implementation Procedures* at 6; *see also Order on Reconsideration*, ¶ 42.

services including those applying to late payment and grace period requests.⁴⁹ The *Third Report and Order*, which implemented these changes, took effect on March 16, 1998. Under the previous rules, licensees were not considered to be in default until they were more than 90 days late in making an installment payment.⁵⁰ In addition, licensees were permitted to file a request with the Commission to obtain a three to six month grace period, during which time no installment payments need to be made.⁵¹

Pursuant to the new rules, licensees are entitled to two 90-day extensions of their payment dates rather than the one 90-day non-delinquency period under the previous rules. In addition, licensees do not need to file grace period requests under the new rules, because licensees may elect to take the second 90-day extension without any prior approval from the Commission. HOWEVER, licensees will be charged a late fee equal to 5% of the unpaid installment payment for the first 90-day extension and an additional late fee equal to 10% of the unpaid installment payment for the second 90-day extension.⁵² These rules apply to all installment payments and Suspension Interest payments due after March 16, 1998 *other than* the payments due by July 31, 1998.⁵³

The payments due by July 31, 1998 are one-eighth of Suspension Interest plus all of the interest from April 1, 1998 through and including July 31, 1998. Licensees are entitled to *only one* 90-day non-delinquency for payments due on July 31, 1998. If a licensee fails to remit by July 31, 1998 one-eighth of its Suspension Interest plus the interest from April 1, 1998 to July 31, 1998, and remains delinquent for more than 90 days (*i.e.*, fails to make the July 31, 1998 payment on or before October 29, 1998), then that licensee's license will automatically cancel without further Commission action.

ARE C BLOCK LICENSEES THAT ELECT TO PREPAY THEIR LICENSES ELIGIBLE FOR A GRACE PERIOD?

No. "New money" for the prepayment of licenses is due by June 8, 1998 and there are no grace periods allowed for this payment. Failure to make full payment for prepayment by June 8, 1998 will cause the election to be deemed defective. Only those C block licensees that resume making payments on a license, or disaggregate a license and resume making payments on the retained spectrum, are eligible for a grace period.

DO THE COMMISSION'S UNJUST ENRICHMENT RULES STILL APPLY TO A C

⁴⁹ See Amendment of Part I of the Commission's Rules - Competitive Bidding Procedures, WT Docket 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making (Third Report and Order)*, FCC 97-413 (released Dec. 31, 1997).

⁵⁰ See 47 C.F.R. § 1.2110(e)(4)(i).

⁵¹ See 47 C.F.R. § 1.2110(e)(4)(ii).

⁵² See *Third Report and Order*, ¶¶ 103-07.

⁵³ See *Order on Reconsideration*, ¶ 26.

BLOCK LICENSEE WHO PREPAYS A LICENSE?

Yes. A C Block licensee who prepays a license is still subject to the Commission's unjust enrichment rules if it seeks to assign or transfer control of the license during the term of the initial license grant.⁵⁴

IF I HAVE ADDITIONAL QUESTIONS, WHOM DO I CONTACT?

If you have additional questions, please contact: Rachel Kazan or Rita Cookmeyer, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, (202)418-0660, or Jack Zinman, Commercial Wireless Division, Wireless Telecommunications Bureau, (202)418-7240.

⁵⁴ See 47 C.F.R. § 24.712(b).