January 14, 2002
DA 02-41

J. Curtis Henderson
Senior Vice President & General Counsel
Nucentrix Broadband Networks, Inc.
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Plano, Texas 75075

Peter D. Shields, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Re: Petition of Nucentrix Spectrum Resources, Inc., for Deferral of Installment Payments

Dear Messrs. Henderson and Shields:

This letter responds to the Petition filed by Nucentrix Spectrum Resources, Inc. (“Nucentrix”) seeking deferral of its installment payment obligations for a Multipoint Distribution Service (“MDS”) license in Basic Trading Area 261 (“BTA 261”). For the reasons set forth below, we deny Nucentrix’s Petition.

On March 28, 1996, the Commission completed its auction of MDS licenses in 493 Basic Trading Areas and BTA-like areas (Auction No. 6). Nucentrix was the high bidder on several licenses, including the license for BTA 261, an area covering Longview, Washington. As a small business, Nucentrix was eligible to participate in the Commission’s installment payment program. After grant of the license for BTA 261, the Commission’s rules required that Nucentrix make quarterly installment payments. Nucentrix asserts that with the exception of the license for BTA 261, it made timely installment payments. Nucentrix also concedes that its request for deferral of payments was not timely.

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1 Petition of Nucentrix Spectrum Resources, Inc. for Deferral of Installment Payments, filed October 12, 2000 (“Petition”).


3 Winning Bidders’ Public Notice at Attachment A, p. 22. At the time of the Auction, Nucentrix was known as Heartland Wireless Commercial Channels, Inc. To avoid confusion, all references will be to Nucentrix and not Heartland.


5 Id.

6 Petition at 2.

7 Id. at 3.
Pursuant to the installment payment grace period rules then in effect, a licensee had an automatic 90-day period after the installment payment due date during which payment might be submitted ("non-delinquency period"), with a five percent late fee. If remittance of the missed installment payment and the five percent late fee was not made before the expiration of the non-delinquency period, the rule provided for a second automatic 90-day period in which to remit payment ("grace period") and required an additional late fee equal to ten percent of the missed payment. Failure to make a payment, including the total 15 percent late fee by the end of the second 90 day period results in automatic cancellation of the license. Nucentrix concedes that it failed to make its request for deferral of payments prior to automatic cancellation of its license.

In its Petition, Nucentrix seeks deferral of its installment payments, which we treat as a request for waiver of the Commission’s Rules regarding late installment payments for MDS licenses. In support of its Petition, Nucentrix claims that the Longview BTA is the only license, out of the 91 licenses it holds, for which timely payments have not been submitted. Further, Nucentrix alleges that its failure to submit a timely payment was due to the administrative complexity of managing the payments on a large number of licenses. Nucentrix further alleges that the oversight occurred while it was in negotiations to assign its license for the Longview BTA to a third party.

In order to grant Nucentrix the relief that it requests, the Commission must consider whether the underlying purpose of the installment payment rule would not be served or would be frustrated by application to the instant case, and whether a grant of the requested waiver would be in the public interest; or whether unique or unusual factual circumstances make application of the rule inequitable, unduly burdensome or contrary to the public interest; or whether Nucentrix has no reasonable alternative. Applying these factors, as we explain below, Nucentrix has failed to provide a basis for waiver of the installment payment rule.

Neither the number of licenses upon which Nucentrix had to submit installment payments

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9 47 CFR § 1.2110(f)(4) (1999). When the Commission abandoned its burdensome policy of reviewing grace period requests on a case-by-case approach and adopted its current rules allowing for two automatic 90 day grace periods, it did not extend the date upon which the payment was due and payable to the Commission. In other words, the last day of the 180 day grace period did not become the due date of the payment.

10 Petition at 3.

11 Id. at 2-3.

12 Petition at 2.

13 47 CFR § 1.925.
nor the negotiations concerning a possible assignment of the license present unique or unusual factual circumstances. Many licensees are obligated to keep track of the installment payment status of multiple licenses. Similarly, many licensees enter into negotiations to assign a license.\textsuperscript{14} The Commission has recently held that the failure of a licensee to properly organize and manage its business dealings is not a unique circumstance that warrants the granting of a waiver.\textsuperscript{15} Thus, Nucentrix’s failure to adequately track its payment obligations does not present unique or unusual circumstances warranting a waiver of the Commission’s rules.

Although Nucentrix failed to address the issue, as we explain below, the underlying purpose of the Commission’s rules would not be served by waiver in this instance. The licenses were conditioned upon the full and timely performance of the payment obligations,\textsuperscript{16} which the licensee failed to fulfill. The Commission has repeatedly emphasized the importance of full and timely payment.\textsuperscript{17} Strict enforcement of payment rules enhances the integrity of the auction and licensing process by ensuring that applicants have the necessary financial capacity and that spectrum is awarded to those qualified bidders who value the spectrum most. Moreover, requiring licensees to comply with the full and timely payment rule is essential to a fair and efficient licensing process.\textsuperscript{18} It is fair to all participants in our auctions, including those who won licenses in the auction and those who did not, and it fosters the promotion of economic


\textsuperscript{15} See Southern MO&O, at ¶ 10.

\textsuperscript{16} 47 C.F.R. § 21.960(b)(4) (1996) (“A BTA authorization issued to an eligible winning bidder that elects installment payments shall be conditioned upon the full and timely performance of the BTA authorization holder’s payment obligations under the installment plan.”); see also Nucentrix Security Agreement at ¶ 11 (“The debtor recognizes that its continued retention of the License, and rights to operate as a Commission licensee thereunder, are conditioned upon compliance with all Commission orders and regulations applicable to the License and the Communications Act of 1934, as amended.”).


opportunity and competition in the marketplace.19

For the reasons detailed above, Nucentrix’s Petition requesting deferral of its installment payment obligations and waiver of the Commission’s installment payment rules IS DENIED. This action is taken pursuant to sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C.§ 154(i), 303(r), and 309(j), and the authority delegated pursuant to section 0.331 of the Commission’s Rules, 47 C.F.R. § 0.331.

Sincerely,

Margaret W. Wiener, Chief
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau

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19 See NextWave Order on Reconsideration, 15 FCC Red at 17514, ¶ 25.