



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU PROVIDES GUIDANCE ON GRACE PERIOD AND INSTALLMENT PAYMENT RULES

In this Public Notice, the Wireless Telecommunications Bureau (Bureau) provides guidance to licensees participating in installment payment programs¹ regarding the revised Part 1 rules governing grace periods and installment payments.² This Public Notice is intended to assist licensees in the transition from the prior rules for late payments to the new rules and policies that are now effective.

A. PRIOR RULES FOR LATE PAYMENT

Installment payment rules, including late payment and grace period rules, are generally codified at 47 C.F.R. § 1.2110. Before this rule was amended, it permitted a licensee to make a payment up to 90 days late without being assessed a late payment charge and without being considered in default. If a licensee required additional time to pay beyond the 90 day period, it could submit a formal request for a "grace period" of up to 6 months.³ The licensee would not be considered in default during a grace period, nor would the licensee be declared in default during the pendency of such request.

¹ Installment payment programs exist in the following services: Interactive Video and Data Service (47 C.F.R. § 95.816); Regional Narrowband Personal Communications Services (PCS) (47 C.F.R. § 24.309); 900 MHz Specialized Mobile Radio Service (47 C.F.R. § 90.812); Multipoint Distribution Service (47 C.F.R. § 21.960); Broadband PCS frequency block C (47 C.F.R. § 24.711); Broadband PCS frequency block F (47 C.F.R. § 24.716); and Broadband PCS frequency block A (Pioneers' Preference Licensees only, *see* 11 FCC Rcd 12384 (1996)).

² *See* 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 (1997), *errata*, 13 FCC Rcd 4621 (WTB 1998) and 13 FCC Rcd 10274 (WTB 1998) (*Part 1 Third Report and Order*) (*reconsideration pending*).

³ *See* 47 C.F.R. § 1.2110 (e)(4)(ii) (1997), *superseded by* 47 C.F.R. § 1.2110 (f)(4), 63 Fed. Reg. 2315 (January 15, 1998). In evaluating grace period requests under the prior rules, the Commission (or Bureau upon delegated authority) would evaluate a number of factors, including a licensee's payment history and financial condition; how far into the term of the license the request was made; the reasons for the request; whether or not the licensee had met the construction build-out requirements; and whether the licensee simultaneously was seeking a buyer for the license.

B. NEW RULES NOW APPLY

The Commission recently amended 47 C.F.R. § 1.2110 to provide that licensees that do not make an installment payment on or before a due date are automatically granted a 90 day grace period ("non-delinquency period") and assessed a late fee equal to 5 percent of the missed installment payment ("late fee"). If remittance of the missed installment payment and the 5 percent late fee is not made on or before expiration of the non-delinquency period, a second 90 day period ("grace period") is automatically granted and an additional late fee equal to 10 percent of the missed installment payment is assessed. Licensees are not required to make an application to the Commission to receive the non-delinquency period or the grace period. Furthermore, licensees are not required to remit the 5 percent late fee prior to the expiration of the non-delinquency period to be eligible for the grace period. Late fees accrue on the first business day after a missed installment payment and upon the expiration of the non-delinquency period.

Specifically, under the revised rule, a licensee must pay the missed installment payment, the 5 percent late fee, the 10 percent late fee (if applicable) and any lender advances the licensee may be obligated to pay (including but not limited to Uniform Commercial Code filing fees and attorney fees for debt collection). This payment must be made in full, in one payment, before the expiration of the non-delinquency period or grace period. Payments made during a non-delinquency period or a grace period shall be applied in the following order of priorities: (i) lender advances (ii) late fees (iii) interest payable and (iv) principal owed.

Any licensee that becomes more than one-hundred eighty (180) days delinquent on an installment payment shall be in default, and the license shall automatically cancel without further action by the Commission. In that event, the debt shall be transferred to the Department of Treasury for collection subject to the Debt Collection Improvement Act of 1996.

Payment due dates for missed installment payments and accompanying late fee(s) are independent of the regular installment payment schedules. **Licensees should be aware that the late payment provisions are calculated on a 90 calendar day basis, while installment payments are based on a quarterly payment schedule. Quarterly payments may cover up to 92 calendar days, depending upon the month in which the payment is due. In many instances, missed installment payments and accompanying late fee(s) may be due before the next quarterly installment payment.** Payments of missed installment payments and accompanying late fee(s) must be made simultaneously and in a timely manner. Partial payments will not be sufficient to avoid default.

C. PENDING GRACE PERIOD REQUESTS

The amendments to 47 C.F.R. § 1.2110 became effective March 16, 1998, 60 days after publication of those amendments in the Federal Register.⁴ Installment payments which were due prior to March 16, 1998, will continue to be processed under the former Section 1.2110 of the Commission's rules. Any properly filed requests for a grace period pending under the former Section 1.2110 will be addressed. Furthermore, the late payment and automatic cancellation provisions of amended Section 1.2110 will not apply to licenses with properly filed grace period requests until such time as the Bureau addresses these grace period requests.⁵ After the resolution of grace period requests, licensees will be subject to the revised grace period rules for future installment payment obligations.

D. EXAMPLE

The following illustrates how the late payment procedures will now operate.

ABC Company has a \$100,000 installment payment due on March 31. If ABC Company is able to make its installment payment on March 31, then it must remit \$100,000 to the Commission. If ABC Company makes its installment payment anytime from April 1 until June 29 (the end of the 90 day non-delinquency period), then ABC Company must remit \$105,000 to the Commission to be considered current on its March 31 installment payment. If ABC Company does not make its March 31 installment payment by June 29, then it must remit \$115,000 on or before September 27, which is 180 calendar days after March 1. If ABC Company does not remit the required \$115,000 by September 27 (the end of the 90 day grace period), then it will be considered in default and its license will automatically cancel on September 28 without further action by the Commission.

ABC Company's June 30 installment payment of \$100,000 remains due on June 30 regardless of the payment status of the March 31 installment payment. The late payment terms apply to June 30 installment payment independently of the March installment payment. Thus, if ABC Company does not make its March 31 installment payment until June 30, the total amount due to the Commission on June 30 is \$215,000, which consists of the March installment payment, the March 5% non-delinquency late fee, the March 10% grace period late fee and the June 30 payment.

For further information contact: Rachel Kazan or Rita Cookmeyer, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418-0660.

⁴ Summary of the *Part 1 Third Report and Order* appeared in the Federal Register on January 15, 1998, *see* 63 Fed. Reg. 2315.

⁵ "We further clarify that such licensees are not deemed to be in default on these licenses until such time as the Bureau issues a decision on these grace period requests." *Part 1 Third Report and Order*, 13 FCC Rcd at 442.