

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Airadigm Communications, Inc. )
Motion to Clarify and Dismiss as Moot )
Contingent Emergency Petition for Reinstatement )
of C and F Block PCS Licenses or for Partial )
Waiver of Section 1.2110(f) of the Commission's )
Rules )

ORDER

Adopted: August 8, 2003

Released: August 8, 2003

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. The Wireless Telecommunications Bureau ("Bureau") has before it two pleadings filed by Airadigm Communications, Inc. ("Airadigm"): (1) Contingent Emergency Petition for Reinstatement or in the Alternative Waiver Nunc Pro Tunc seeking either reinstatement of fifteen (15) broadband Personal Communications Services (PCS) C and F block licenses that automatically cancelled under Section 1.2110 of the Commission's rules or alternatively a waiver of those same rules; and (2) Motion to Clarify and Dismiss as Moot seeking to clarify the status of fifteen PCS licenses and dismissal of the pending Petition. In this Order, we grant the Motion and, as requested, dismiss as moot Airadigm's pending Petition.

II. BACKGROUND

2. Airadigm participated in the C and F block PCS auctions and won fifteen (15) licenses,

1 Attached is a list of the call signs of the licenses for which Airadigm seeks reinstatement. See Attachment A.

2 Contingent Emergency Petition for Reinstatement or in the Alternative for Waiver filed by Airadigm Communications, Inc., on February 7, 2000 ("Petition"). See also Further Ex Parte Comments of Airadigm Communications, Inc. filed on October 27, 2000 ("October 27 Ex Parte Filing"); Supplement to Further Ex Parte Comments of Airadigm Communications, Inc. filed on November 6, 2000 attaching the declarations of Ralph Rich ("Rich Declaration") and Thomas Lehr ("Lehr Declaration") in support of the October 27 Ex Parte Filing (collectively referred to as the "Petition proceeding").

3 Motion to Clarify and Dismiss as Moot filed by Airadigm Communications, Inc. on February 4, 2002 ("Motion").

4 Airadigm's fifteen PCS licenses, won in Auction nos. 5 and 11, covered the Appleton - Oshkosh, Eau Claire, Fond du Lac, Green Bay, Janesville-Beloit, La Cross, Madison, Manitowoc, Sheboygan, Stevens Point-

which were all financed pursuant to the Commission's installment payment program.<sup>5</sup> Airadigm timely paid its down payments and first installment payment.<sup>6</sup>

3. On March 31, 1997, the Commission suspended all further C block installment payments in order to evaluate restructuring requests made by certain licensees.<sup>7</sup> On April 28, 1997, the installment payment suspension was extended to F block broadband PCS licenses.<sup>8</sup> Subsequently, in a series of orders,<sup>9</sup> the Commission offered various debt restructuring options for C block licensees, that included resumption of payments under existing notes and security agreements, disaggregation, amnesty or prepayment. The various relief options were not made available to F block licensees.<sup>10</sup> Under the *Restructuring Orders*, the C block broadband PCS licensees were required to make an election from the various choices available to them by June 8, 1998, and to resume their installment payments pursuant to their elections by October 29, 1998, at the latest.<sup>11</sup> Pursuant to the *Restructuring Orders*, Airadigm made a timely election to resume installment payments for the full amount owed on all thirteen of its C block licenses.<sup>12</sup> Under the Commission's rules, Airadigm was also required to continue paying for the two F block licenses.<sup>13</sup> Airadigm timely paid the resumption payment owed.<sup>14</sup>

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Marshshfield-Wisconsin Rapids, Wausau, Marinette, Wisconsin Basic Trading Areas, and the Cedar Rapids, Waterloo-Cedar Falls, Dubuque, Iowa Basic Trading Areas. *See also* Attachment A.

<sup>5</sup> 47 C.F.R. §§ 1.2110, 24.711 and 24.716 (1999).

<sup>6</sup> Petition at 4.

<sup>7</sup> *See* In the Matter of Installment Payments for PCS Licenses, *Order*, 12 FCC Rcd 17325 (WTB 1997).

<sup>8</sup> *See* "FCC Announces Grant of Broadband Personal Communications Services D, E & F Block licenses," *Public Notice*, 13 FCC Rcd 1286 (1997).

<sup>9</sup> *See* In the Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Second Report and Order*, 12 FCC Rcd 16436 (1997) ("*Second Report & Order*"); In the Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Order on Reconsideration of the Second Report and Order*, 13 FCC Rcd 8345 (1998) ("*First Reconsideration Order*"); In the Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Second Order on Reconsideration of the Second Report and Order*, 14 FCC Rcd 6571 (1999) ("*Second Reconsideration Order*"). These orders are collectively referred to as the "*Restructuring Orders*."

<sup>10</sup> *Second Report and Order*, 12 FCC Rcd at 16,447, ¶ 20.

<sup>11</sup> *Second Reconsideration Order*, 14 FCC Rcd at 6584-85, ¶¶ 25-26.

<sup>12</sup> Petition at 4. In conjunction with the relief options offered in the *Second Report & Order* and the rescission of the installment payment suspension for C and F block licensees, the Commission directed that previously suspended interest payments ("suspension interest") be repaid. For those electing resumption, suspension interest became due and payable over eight consecutive quarters. *See Second Report and Order*, 12 FCC Rcd at 16449-51, ¶¶ 25-27.

<sup>13</sup> *Id.* *See also* Wireless Telecommunications Bureau Announces Broadband Personal Communications Services (PCS) C Block Unconditional Elections, *Public Notice*, DA 98-1340 (rel. July 2, 1998).

<sup>14</sup> Petition at 4. *See First Reconsideration Order*, 13 FCC Rcd at 8355, ¶ 27. Prior to making payment, on October 16, 1998, Airadigm filed a request with the Commission seeking a partial waiver of the Commission's installment payment rules and a suspension for up to twelve months of its installment payments required to be paid

4. In accordance with the Commission's rules requiring quarterly payments for all C and F block installment payments, Airadigm's next installment payment was owed in the quarter following the payment resumption date.<sup>15</sup> On July 28, 1999, two days before the end of all applicable grace periods, Airadigm filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code.<sup>16</sup>

5. In reliance on its interpretation of the Bankruptcy Code, Airadigm filed its Petition with the Commission on February 7, 2000, arguing that it did not believe its licenses would automatically cancel for non-payment while it was in bankruptcy.<sup>17</sup> In the filing, Airadigm argued that, out of an abundance of caution, it sought, *inter alia*, reinstatement of its licenses or, alternatively, waiver of the Commission's automatic license cancellation rule.<sup>18</sup>

6. On February 4, 2002, Airadigm filed with the Commission its Motion, seeking clarification that, consistent with the D.C. Circuit's June 22, 2001 *NextWave Decision*,<sup>19</sup> Airadigm's licenses did not cancel for nonpayment while it was in bankruptcy.<sup>20</sup> In its Motion, Airadigm argues, under the *NextWave Decision*, the law has become clear that licenses cannot cancel for non-payment of installment debt while in Chapter 11 bankruptcy and, therefore, Airadigm's licenses did not cancel.<sup>21</sup>

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by October 29, 1998. See Airadigm Request for Rule Waiver filed on October 16, 1998. The Commission denied Airadigm's request for waiver of the October 29, 1998 payment deadline. See In the Matter of Request for Extension of the Commission's Initial Non-Delinquency Period for C and F Block Installment Payments, *Memorandum Opinion and Order*, 13 FCC Rcd 22071 (1998) (Commissioners Furchtgott-Roth and Tristani dissenting in part.)

<sup>15</sup> *Id.* Pursuant to the Commission's installment payment grace period rule, Section 1.2110(f), Airadigm had an automatic 90-day period after the installment payment due date in which to remit payment ("non-delinquency period"), with a five percent late fee. If remittance of the installment payment and the five percent late fee was not made before the expiration of the non-delinquency period, Airadigm had a second automatic 90-day period in which to remit payment ("grace period") with an additional late fee equal to ten percent of the missed payment. 47 C.F.R. § 1.2110(f)(4) (1999); see also 47 C.F.R. § 24.708(a) (1999).

<sup>16</sup> See *In re Airadigm Communications, Inc.*, Case No. 99-335000 (Bankr., W.D. Wis. 1999) ("*Airadigm Bankruptcy Proceeding*"). Ultimately, a consensual joint plan of reorganization was presented to, and approved by, the bankruptcy court on November 15, 2000, over the United States' objection ("Confirmed Plan"). See the Confirmed Plan in the *Airadigm Bankruptcy Proceeding*.

<sup>17</sup> Petition at 2.

<sup>18</sup> *Id.* The Bureau issued a Public Notice on February 24, 2000 seeking comment on Airadigm's Petition by March 17, 2000 and replies by March 31, 2000. Wireless Telecommunications Bureau Seeks Comment on Airadigm Communications Inc.'s Contingent Emergency Petition for Reinstatement or in the Alternative for Waiver, *Public Notice*, DA 00-368 (rel. Feb. 24, 2000) ("February 24 Public Notice"). Fifteen comments (fourteen in support and one in opposition) and two reply comments were received in response to the Public Notice.

<sup>19</sup> *NextWave v. FCC*, 254 F.3d 130 (D.C. Cir. 2001), *affirmed*, 537 U.S. 293, 123 S.Ct. 832, 154 L.Ed.2d 863 (2003) ("*NextWave Decision*").

<sup>20</sup> Motion at 2-3, *citing* the *NextWave Decision*. In its Motion, Airadigm also stated that, although it assumed for the sake of argument the merits of the Commission's legal theory that the PCS licenses automatically cancelled, it never waived its right to challenge that theory. Motion at n.2.

<sup>21</sup> Motion at 2.

Finally, once the Commission clarifies that its PCS licenses have not cancelled, Airadigm requests that the Commission dismiss its pending Petition as moot.<sup>22</sup>

### III. DISCUSSION

7. Since the filing of Airadigm's Motion, the U.S. Supreme Court issued its decision in the *NextWave* matter.<sup>23</sup> In light of the U.S. Supreme Court's decision in *NextWave*, we grant Airadigm's Motion and clarify that, because Airadigm was under the protection of Chapter 11 of the U.S. Bankruptcy Code, the Commission's automatic cancellation rule was ineffective.<sup>24</sup> Further, as requested in Airadigm's Motion, we dismiss the pending Petition as moot.

### IV. ORDERING CLAUSE

8. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, the Motion to Clarify and Dismiss as Moot is GRANTED and the Contingent Emergency Petition for Reinstatement or in the Alternative for Waiver *Nunc Pro Tunc* is DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

John B. Muleta  
Chief  
Wireless Telecommunications Bureau

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<sup>22</sup> Motion at 3.

<sup>23</sup> See *NextWave Decision*, *supra*, note 19.

<sup>24</sup> *Federal Communications Commission v. NextWave Personal Communications, et al.*, 537 U.S. 293, 123 S.Ct. 832, 840, 154 L.Ed.2d 863 (2003) (noting that the D.C. Circuit "prevented the FCC from violating §525 by canceling licenses because of failure to pay debts dischargeable by bankruptcy courts").

## APPENDIX A

CALL SIGN	MARKET	BTA
KNLF394	Appleton-Oshkosh, WI	018
KNLF395	Cedar Rapids, IA	070
KNLF396	Eau Claire, WI	123
KNLF397	Fond du Lac, WI	148
KNLF398	Green Bay, WI	173
KNLF399	Janesville-Beloit, WI	216
KNLF400	La Crosse, WI	234
KNLF401	Madison, WI	272
KNLF402	Manitowoc, WI	276
KNLF403	Sheboygan, WI	417
KNLF404	Stevens-Point-Marshfield-Wisconsin Rapids, WI	432
KNLF405	Waterloo-Cedar Falls, IA	462
KNLF406	Wausau-Rhineland, WI	466
KNLF881	Dubuque, IA	118
KNLG278	Marinette, WI	279