

FCC MAIL SECTION

JUN 8 8 34 AM '98 Federal Communications Commission

FCC 98-104

DISPATCHED BY Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Petition of NextWave Telecom, Inc. ) WT Docket No. 97-82  
for a Stay of the June 8, 1998, Personal )  
Communications Services C Block Election )  
Date )

ORDER

Adopted: June 1, 1998

Released: June 1, 1998

By the Commission:

1. We have before us a Petition for Stay filed by NextWave Telecom, Inc. (NextWave) on May 22, 1998 ("Stay Request"), which seeks to stay the C Block Election Date of June 8, 1998. The Election Date is the date by which broadband Personal Communications Services (PCS) C block licensees must elect what option they will pursue for license payment.

2. On September 25, 1997, the Commission adopted a *Second Report and Order and Further Notice of Proposed Rule Making* ("*Second Report and Order*") which established January 15, 1998, as the deadline for broadband PCS C block licensees to elect to continue under the existing installment payment plan or to elect one of the three alternative payment options.<sup>1</sup> On January 7, 1998, we changed that election date to February 26, 1998 in order to allow time to respond to petitions seeking reconsideration of the *Second Report and Order*.<sup>2</sup>

3. Although we initially believed a February 26 election date would provide sufficient time to respond to the arguments raised by petitioners, we subsequently determined that additional time would be needed to consider the numerous and wide-ranging issues involved. Therefore, we moved the election date for C block licensees to 60 days after publication of the *Order on Reconsideration of the Second Report and Order* (*Reconsideration Order*) in the

<sup>1</sup> Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Second Report and Order and Further Notice of Proposed Rule Making*, 12 FCC Rcd 16,436 (1997).

<sup>2</sup> Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Order*, FCC 98-2 (released January 7, 1998).

*Federal Register*.<sup>3</sup> Subsequently, the Wireless Telecommunications Bureau announced an Election Date of June 8, 1998, and a payment resumption date of July 31, 1998.<sup>4</sup>

4. NextWave relies on the four prong test for issuance of a stay set forth in *Virginia Petroleum Jobbers Ass'n v. FPC*,<sup>5</sup> as modified in *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*<sup>6</sup> Under this test, a stay is warranted if the movant can demonstrate that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm absent a stay; (3) interested parties will not be harmed if the stay is granted; and (4) the public interest would favor a grant of the stay. Upon examination of the Stay Request, we find that NextWave's arguments fail to meet the standards set forth in *Virginia Petroleum* and *Washington Metropolitan*.

5. Accordingly, NextWave's Petition for Stay IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas  
Secretary

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<sup>3</sup> Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Order*, FCC 98-28 (released February 24, 1998). See 47 C.F.R. § 1.4 regarding computation of time.

<sup>4</sup> "Wireless Telecommunications Bureau Announces June 8, 1998 Election Date for Broadband PCS C Block Licensees," *Public Notice*, DA 98-741 (rel. April 17, 1998).

<sup>5</sup> 259 F.2d 921 (D.C. Cir. 1958). (*Virginia Petroleum*).

<sup>6</sup> 559 F.2d 841 (D.C. Cir. 1977).