

Opinion of STEVENS, J.

SUPREME COURT OF THE UNITED STATES

Nos. 01–653 and 01–657

FEDERAL COMMUNICATIONS COMMISSION,
PETITIONER

01–653

v.

NEXTWAVE PERSONAL COMMUNICATIONS INC.
ET AL.

ARCTIC SLOPE REGIONAL CORPORATION, ET AL.,
PETITIONERS

01–657

v.

NEXTWAVE PERSONAL COMMUNICATIONS INC.
ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[January 27, 2003]

JUSTICE STEVENS, concurring in part and concurring in the judgment.

Because these are such close cases, it seems appropriate to identify the considerations that have persuaded me to join the majority. When I first read 11 U. S. C. §525(a), I thought it was not intended to apply to cases in which the licensor was also a creditor, but rather, as JUSTICE BREYER persuasively argues, was merely intended to protect the debtor from discriminatory license terminations. I remain persuaded that that is the principal purpose of the provision. It is significant, however, that the first words in the section describe three exceptions for statutes, one of which contains language remarkably similar to the language in the security agreements ex-

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cuted by respondents in these cases.¹ Those exceptions introduce an ambiguity.

On the one hand, they indicate that Congress did not intend §525(a) to limit the Executive's right to condition the retaining of a federal license on considerations similar to those on which a creditor relies. The reasons for making an exception for licenses to deal in perishable commodities would seem equally applicable to licenses to exploit the public airwaves. Indeed, there is probably a greater public interest in allowing prompt cancellation of spectrum licenses than of commodities dealers' licenses because of the importance of facilitating development of the broadcast spectrum.

On the other hand, the exceptions demonstrate that Congress realized the breadth of the language in §525(a). Rather than make a categorical exception that would have accommodated not only the three cases expressly covered by the text, but also cases like the ones before the Court today, the drafters retained the broad language that the Court finds decisive. That language endorses a general rule that gives priority to the debtor's interest in preserving control of an important asset of the estate pending the

¹The Perishable Agricultural Commodities Act, 1930, provides, in part:

"Whenever an applicant has paid the prescribed fee the Secretary . . . shall issue to such applicant a license, which shall entitle the licensee to do business as a commission merchant . . . , but said license *shall automatically terminate . . . unless the licensee . . . pays the applicable renewal fee . . .* . . . [T]he license of any licensee *shall terminate upon said licensee . . . being discharged as a bankrupt*, unless the Secretary finds upon examination of the circumstances of such bankruptcy . . . that such circumstances do not warrant termination." 7 U. S. C. §499d(a) (emphases added).

The security agreements between NextWave and the Government provided that "the License shall be automatically canceled" upon NextWave's defaulting on an installment payment. App. to Pet. for Cert. 409a.

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completion of bankruptcy proceedings.

I do not believe that the application of that general rule to these cases will be unfair to the Federal Communications Commission either as a regulator or as a creditor. If the bankrupt licensee is unable to fulfill other conditions of its license, the regulator may cancel the licenses for reasons that are not covered by §525(a).² Moreover, given the fact that the Commission has a secured interest in the license, if the licensee can obtain the financing that will enable it to perform its obligations in full, the debt will ultimately be paid. In sum, even though I agree with JUSTICE BREYER's view that the literal text of a statute is not always a sufficient basis for determining the actual intent of Congress, in these cases I believe it does produce the correct answer.

²The Senate Report explained that §525(a) “does not prohibit consideration of other factors, such as future financial responsibility or ability, and does not prohibit imposition of requirements such as net capital rules, if applied nondiscriminatorily.” S. Rep. No. 95–989, p. 81 (1978).