

Opinion of the Court

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**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 SCALIA delivered the opinion of the Court.

In these cases, we decide whether §525 of the Bankruptcy Code, 11 U. S. C. §525, prohibits the Federal Communications Commission (FCC or Commission) from revoking licenses held by a debtor in bankruptcy upon the debtor’s failure to make timely payments owed to the Commission for purchase of the licenses.

I

In 1993, Congress amended the Communications Act of 1934 to authorize the FCC to award spectrum licenses “through a system of competitive bidding.” 48 Stat. 1085,

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as amended, 107 Stat. 387, 47 U. S. C. §309(j)(1). It directed the Commission to “promot[e] economic opportunity and competition” and “avoi[d] excessive concentration of licenses” by “disseminating licenses among a wide variety of applications, including small businesses [and] rural telephone companies.” §309(j)(3)(B). In order to achieve this goal, Congress directed the FCC to “consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments . . . or other schedules or methods . . . .” §309(j)(4)(A).

The FCC decided to award licenses for broadband personal communications services through simultaneous, multiple-round auctions. *In re Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, 9 FCC Rcd. 2348, ¶¶54, 68 (1994). In accordance with §§309(j)(3)(B) and (4)(A), it restricted participation in two of the six auction blocks (Blocks “C” and “F”) to small businesses and other designated entities with total assets and revenues below certain levels, and it allowed the successful bidders in these two blocks to pay in installments over the term of the license. 47 CFR §24.709(a)(1) (1997).

Respondents NextWave Personal Communications, Inc., and NextWave Power Partners, Inc. (both wholly owned subsidiaries of NextWave Telecom, Inc., and hereinafter jointly referred to as respondent NextWave), participated, respectively, in the FCC’s “C-Block” and “F-Block” auctions. NextWave was awarded 63 C-Block licenses on winning bids totaling approximately \$4.74 billion, and 27 F-Block licenses on winning bids of approximately \$123 million. In accordance with FCC regulations, NextWave made a downpayment on the purchase price, signed promissory notes for the balance, and executed security agreements that the FCC perfected by filing under the Uniform Commercial Code. The security agreements gave the Commission a first “lien on and continuing security

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interest in all of the Debtor's rights and interest in [each] License." Security Agreement between NextWave and FCC ¶1 (Jan. 3, 1997), 2 App. to Pet. for Cert. 402a. In addition, the licenses recited that they were "conditioned upon the full and timely payment of all monies due pursuant to . . . the terms of the Commission's installment plan as set forth in the Note and Security Agreement executed by the licensee," and that "[f]ailure to comply with this condition will result in the automatic cancellation of this authorization." Radio Station Authorization for Broadband PCS (issued to NextWave Jan. 3, 1997), 2 App. to Pet. for Cert. 388a.

After the C-Block and F-Block licenses were awarded, several successful bidders, including NextWave, experienced difficulty obtaining financing for their operations and petitioned the Commission to restructure their installment-payment obligations. See 12 FCC Rcd. 16436, ¶11 (1997). The Commission suspended the installment payments, 12 FCC Rcd. 17325 (1997); 13 FCC Rcd. 1286 (1997), and adopted several options that allowed C-Block licensees to surrender some or all of their licenses for full or partial forgiveness of their outstanding debt. See 12 FCC Rcd. 16436, ¶6; 13 FCC Rcd. 8345 (1998). It set a deadline of June 8, 1998, for licensees to elect a restructuring option, and of October 29, 1998, as the last date to resume installment payments. 13 FCC Rcd. 7413 (1998).

On June 8, 1998, after failing to obtain stays of the election deadline from the Commission or the Court of Appeals for the District of Columbia Circuit, NextWave filed for Chapter 11 bankruptcy protection in New York. See *In re NextWave Personal Communications, Inc.*, 235 B. R. 263, 267 (Bkrcty. Ct. SDNY 1998). It suspended payments to all creditors, including the FCC, pending confirmation of a reorganization plan. NextWave initiated an adversary proceeding in the Bankruptcy Court, alleging that its \$4.74 billion indebtedness on the C-Block

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licenses was avoidable as a “fraudulent conveyance” under §544 of the Bankruptcy Code, 11 U. S. C. §544, because, by the time the Commission actually conveyed the licenses, their value had declined from approximately \$4.74 billion to less than \$1 billion. The Bankruptcy Court agreed<sup>1</sup>—ruling in effect that the company could keep its C-Block licenses for the reduced price of \$1.02 billion—and the District Court affirmed. *NextWave Personal Communications, Inc. v. FCC*, 241 B. R. 311, 318–319 (SDNY 1999). The Court of Appeals for the Second Circuit reversed, holding that, although the Bankruptcy Court might have jurisdiction over NextWave’s underlying debts to the FCC, it could not change the conditions attached to NextWave’s licenses. *FCC v. NextWave Personal Communications, Inc. (In re NextWave Personal Communications, Inc.)*, 200 F. 3d 43, 55–56 (1999). The Second Circuit also held that since, under FCC regulations, “NextWave’s obligation attached upon the close of the auction,” there had been no fraudulent conveyance by the FCC acting in its capacity as creditor. *Id.*, at 58.

Following the Second Circuit’s decision, NextWave prepared a plan of reorganization that envisioned payment of a single lump-sum to satisfy the entire remaining \$4.3 billion obligation for purchase of the C-Block licenses, including interest and late fees. The FCC objected to the plan, asserting that NextWave’s licenses had been canceled automatically when the company missed its first payment-deadline in October 1998. The Commission simultaneously announced that NextWave’s licenses were “available for auction under the automatic cancellation provisions” of the FCC’s regulations. *Public Notice, Auc-*

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<sup>1</sup>We do not reach the merits of the determination that the licenses should be valued as of the time they were conveyed, rather than as of the time NextWave won the auction entitling it to conveyance.

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*tion of C and F Block Broadband PCS Licenses*, 15 FCC Rcd. 693 (2000). NextWave sought emergency relief in the Bankruptcy Court, which declared the FCC's cancellation of respondent's licenses "null and void" as a violation of various provisions of the Bankruptcy Code. *In re NextWave Personal Communications, Inc.*, 244 B. R. 253, 257–258 (Bkrcty. Ct. SDNY 2000). Once again, the Court of Appeals for the Second Circuit reversed. *In re Federal Communications Commission*, 217 F.3d 125 (2000). Granting the FCC's petition for a writ of mandamus, the Second Circuit held that "[e]xclusive jurisdiction to review the FCC's regulatory action lies in the courts of appeals" under 47 U. S. C. §402, and that since the re-auction decision was regulatory, proclaiming it to be arbitrary was "outside the jurisdiction of the bankruptcy court." 217 F.3d, at 139, 136. The Second Circuit noted, however, that "NextWave remains free to pursue its challenge to the FCC's regulatory acts." *Id.*, at 140.

NextWave filed a petition with the FCC seeking reconsideration of the license cancellation, denial of which is the gravamen of the case at bar. *In the Matter of Public Notice DA 00–49 Auction of C and F Block Broadband PCS Licenses, Order on Reconsideration*, 15 FCC Rcd. 17500 (2000). NextWave appealed that denial to the Court of Appeals for the D. C. Circuit pursuant to 47 U. S. C. §402(b), asserting that the cancellation was arbitrary and capricious, and contrary to law, in violation of the Administrative Procedure Act, 5 U. S. C. §706, and the Bankruptcy Code. The Court of Appeals agreed, holding that the FCC's cancellation of NextWave's licenses violated 11 U. S. C. §525: "Applying the fundamental principle that federal agencies must obey all federal laws, not just those they administer, we conclude that the Commission violated the provision of the Bankruptcy Code that prohibits governmental entities from revoking debtors' licenses solely for failure to pay debts dischargeable in bank-

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ruptcy.” 254 F. 3d 130, 133 (2001). We granted certiorari. 535 U. S. 904 (2002).

## II

The Administrative Procedure Act requires federal courts to set aside federal agency action that is “not in accordance with law,” 5 U. S. C. §706(2)(A)—which means, of course, *any* law, and not merely those laws that the agency itself is charged with administering. See, *e.g.*, *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U. S. 402, 413–414 (1971) (“In all cases agency action must be set aside if the action was ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law’ or if the action failed to meet statutory, procedural, or constitutional requirements”). Respondent contends, and the Court of Appeals for the D. C. Circuit held, that the FCC’s revocation of its licenses was not in accordance with §525 of the Bankruptcy Code.

Section 525(a) provides, in relevant part:

“[A] governmental unit may not . . . revoke . . . a license . . . to . . . a person that is . . . a debtor under this title . . . solely because such . . . debtor . . . has not paid a debt that is dischargeable in the case under this title . . . .”<sup>2</sup>

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<sup>2</sup>The full text of 11 U. S. C. §525(a) reads as follows:

“Except as provided in the Perishable Agricultural Commodities Act, 1930, the Packers and Stockyards Act, 1921, and section 1 of the Act entitled ‘An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes,’ approved July 12, 1943, a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such

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No one disputes that the Commission is a “governmental unit” that has “revoke[d]” a “license,” nor that NextWave is a “debtor” under the Bankruptcy Act. Petitioners argue, however, that the FCC did not revoke respondent’s licenses “solely because” of nonpayment, and that, in any event, NextWave’s obligations are not “dischargeable” “debt[s]” within the meaning of the Bankruptcy Code. They also argue that a contrary interpretation would unnecessarily bring §525 into conflict with the Communications Act. We find none of these contentions persuasive, and discuss them in turn.

## A

The FCC has not denied that the proximate cause for its cancellation of the licenses was NextWave’s failure to make the payments that were due. It contends, however, that §525 does not apply because the FCC had a “valid regulatory motive” for the cancellation. Brief for Petitioners Arctic Slope Regional Corp et al. 19; see Brief for Petitioner FCC 17. In our view, that factor is irrelevant. When the statute refers to failure to pay a debt as the sole cause of cancellation (“solely because”), it cannot reasonably be understood to include, among the other causes whose presence can preclude application of the prohibition, the governmental unit’s *motive* in effecting the cancellation. Such a reading would deprive §525 of all force. It is hard to imagine a situation in which a governmental unit would not have some further motive behind the can-

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bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.”

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cellation—assuring the financial solvency of the licensed entity, *e.g.*, *Perez v. Campbell*, 402 U. S. 637 (1971); *In re The Bible Speaks*, 69 B. R. 368, 374 (Bkrtcy. Ct. Mass. 1987), or punishing lawlessness, *e.g.*, *In re Adams*, 106 B. R. 811, 827 (Bkrtcy. Ct. NJ 1989); *In re Colon*, 102 B. R. 421, 428 (Bkrtcy. Ct. ED Pa. 1989), or even (quite simply) making itself financially whole. Section 525 means nothing more or less than that the failure to pay a dischargeable debt must alone be the proximate cause of the cancellation—the act or event that triggers the agency’s decision to cancel, whatever the agency’s ultimate motive in pulling the trigger may be.

Some may think (and the opponents of §525 undoubtedly thought) that there *ought* to be an exception for cancellations that have a valid regulatory purpose. Besides the fact that such an exception would consume the rule, it flies in the face of the fact that, where Congress has intended to provide regulatory exceptions to provisions of the Bankruptcy Code, it has done so clearly and expressly, rather than by a device so subtle as denominating a motive a cause. There are, for example, regulatory exemptions from the Bankruptcy Code’s automatic stay provisions. 11 U. S. C. §362(b)(4). And even §525(a) itself contains explicit exemptions for certain Agriculture Department programs, see n. 2, *supra*. These latter exceptions would be entirely superfluous if we were to read §525 as the Commission proposes—which means, of course, that such a reading must be rejected. See *United States v. Nordic Village, Inc.*, 503 U. S. 30, 35–36 (1992).

## B

Petitioners contend that NextWave’s license obligations to the Commission are not “debt[s] that [are] dischargeable” in bankruptcy. 11 U. S. C. §525(a). First, the FCC argues that “regulatory conditions like the full and timely payment condition are not properly classified as ‘debts’”

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under the Bankruptcy Code. Brief for Petitioner FCC 33. In its view, the “financial nature of a condition” on a license “does not convert that condition into a debt.” *Ibid.* This is nothing more than a retooling of petitioners’ recurrent theme that “regulatory conditions” should be exempt from §525. No matter how the Commission casts it, the argument loses. Under the Bankruptcy Code, “debt” means “liability on a claim,” 11 U. S. C. §101(12), and “claim,” in turn, includes any “right to payment,” §101(5)(A). We have said that “[c]laim” has “the broadest available definition,” *Johnson v. Home State Bank*, 501 U. S. 78, 83 (1991), and have held that the “plain meaning of a ‘right to payment’ is nothing more nor less than an enforceable obligation, regardless of the objectives the State seeks to serve in imposing the obligation,” *Pennsylvania Dept. of Public Welfare v. Davenport*, 495 U. S. 522, 559 (1990). See also *Ohio v. Kovacs*, 469 U. S. 274 (1985). In short, a debt is a debt, even when the obligation to pay it is also a regulatory condition.

Petitioners argue that respondent’s obligations are not “dischargeable” in bankruptcy because it is beyond the jurisdictional authority of bankruptcy courts to alter or modify regulatory obligations. Brief for Petitioners Arctic Slope et al. 28–29 (citing *In re NextWave Personal Communications, Inc.*, 200 F. 3d, at 55–56); Brief for Petitioner FCC 30–31. Dischargeability, however, is not tied to the existence of such authority. A preconfirmation debt is dischargeable unless it falls within an express exception to discharge. Subsection 1141(d) of the Bankruptcy Code states that, except as otherwise provided therein, the “confirmation of a plan [of reorganization] . . . discharges the debtor from *any debt* that arose before the date of such confirmation,” 11 U. S. C. §1141(d)(1)(A) (emphasis added), and the only debts it excepts from that prescription are those described in §523, see §1141(d)(2). Thus, “[e]xcept for the nine kinds of debts saved from discharge

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by 11 U. S. C. §523(a), a discharge in bankruptcy discharges the debtor *from all debts that arose before bankruptcy*. §727(b).” *Kovacs, supra*, at 278 (emphasis added).

Artistically symmetrical with petitioners’ contention that the Bankruptcy Court has no power to alter regulatory obligations is their contention that the D. C. Circuit has no power to modify or discharge a debt. See Brief for Petitioner FCC 31–32; Brief for Petitioner Arctic Slope et al. 32, n. 9. Just as the former is irrelevant to whether the Bankruptcy Court can discharge a debt, so also the latter is irrelevant to whether the D. C. Circuit can set aside agency action that violates §525. That court did not seek to modify or discharge the debt, but merely prevented the FCC from violating §525 by canceling licenses because of failure to pay debts dischargeable by bankruptcy courts.

## C

Finally, our interpretation of §525 does not create any conflict with the Communications Act. It does not, as petitioners contend, obstruct the functioning of the auction provisions of 47 U. S. C. §309(j), since nothing in those provisions demands that cancellation be the sanction for failure to make agreed-upon periodic payments. Indeed, nothing in those provisions even requires the Commission to permit payment to be made over time, rather than leaving it to impecunious bidders to finance the full purchase price with private lenders. What petitioners describe as a conflict boils down to nothing more than a policy preference on the FCC’s part for (1) selling licenses on credit and (2) canceling licenses rather than asserting security interests in licenses when there is a default. Such administrative preferences cannot be the basis for denying respondent rights provided by the plain terms of a law. “[W]hen two statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effec-

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tive.’” *J. E. M. Ag Supply, Inc. v. Pioneer Hi-Bred International, Inc.*, 534 U. S. 124, 143–144 (2001) (quoting *Morton v. Mancari*, 417 U. S. 535, 551 (1974)). There being no inherent conflict between §525 and the Communications Act, “we can plainly regard each statute as effective.” *J. E. M.*, *supra*, at 144. And since §525 circumscribes the Commission’s permissible action, the revocation of NextWave’s licenses is not in accordance with law. See 5 U. S. C. §706.

## III\*

The dissent finds it “dangerous . . . to rely exclusively upon the literal meaning of a statute’s words,” *post*, at 2 (opinion of BREYER, J.). Instead, it determines, in splendid isolation from that language,<sup>3</sup> the *purpose* of the statute, which it takes to be “to forbid discrimination against those who are, or were, in bankruptcy and, more generally, to prohibit governmental action that would undercut the ‘fresh start’ that is bankruptcy’s promise,” *post*, at 4. It deduces these language-trumping “purposes” from the most inconclusive of indications. First, the ambiguous title of §525(a), “Protection against discriminatory treatment,” *post*, at 5. This, of course, could as well refer to discrimination against *impending* bankruptcy, aka insolvency. Second, its perception that the other prohibitions of §525(a) apply only to acts “done solely for bankruptcy-related reasons.” *Ibid.* We do not share that perception. For example, the prohibition immediately preceding the one at issue here forbids adverse government action taken because the debtor “has been insolvent before the commencement of the case under this title, or during the case

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\* JUSTICE STEVENS does not join this Part.

<sup>3</sup> The portion of the dissenting opinion that deduces the statute’s purposes, Part II, *post*, at 4–7, contains no discussion of the portion of §525(a) at issue here.

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but before the debtor is granted or denied a discharge.” That seems to us clearly tied to insolvency alone (plus the mere fact of subsequent or contemporaneous bankruptcy), and does not require some additional motivation based on bankruptcy. The dissent’s third indication of “purpose” consists of the ever-available snippets of legislative history, *post*, at 5–6.

The dissent does eventually get to the statutory text at issue here: Step two of its analysis is to ask what interpretation of that text could possibly fulfill its posited “purposes.”<sup>4</sup> “One obvious way,” the dissent concludes, “is to interpret the phrase ‘solely because’ of nonpayment of ‘a debt that is dischargeable,’ as requiring something more than a purely factual connection . . . . The statute’s words are open to the interpretation that they require a certain relationship between (1) the *dischargeability* of the debt and (2) the decision to revoke the license.” *Post*, at 7. To demonstrate that “openness,” the dissent gives the example of a “rule telling apartment owners that they cannot refuse to rent ‘solely because a family has children who are adopted.’” *Post*, at 10. Such a rule, it says quite correctly, is most reasonably read as making the adoptive nature of the children part of the prohibited motivation. But the example differs radically from the case before us in two respects: (1) because an adopted child is the exception rather than the rule, and (2) because the class of

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<sup>4</sup>The second of the purposes, by the way—prohibiting government action that “would undercut the ‘fresh start’ that is bankruptcy’s promise,” *post*, at 4—plays no real role in the dissent’s analysis, if indeed such a circular criterion could ever play a role in any analysis. The whole issue before us can be described as asking what the Bankruptcy Code’s promise of a “fresh start” consists of. Rather than reframing the question, our interpretation concretely accords a “fresh start” where the dissent would not—where there is revocation of a license solely because of a bankrupt’s failure to pay dischargeable debts.

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children other than adopted children is surely not a disfavored one. In the case before us, by contrast, the descriptive clause describes the rule rather than the exception. (As the dissent acknowledges, “virtually all debts” are dischargeable, *post*, at 2.) And the debts that do not fall within the rule (nondischargeable debts) are clearly disfavored by the Bankruptcy Code. To posit a text similar to the one before us, the dissent should have envisioned a rule that prohibited refusal to rent “solely because a family has children who are no more than normally destructive.” Would the “no-more-than-normal-destructiveness” of the children be a necessary part of the apartment owner’s motivation before he is in violation of the rule? That is to say, must he refuse to rent specifically *because* the children are no more than normally destructive? Of course not. The provision is most reasonably read as establishing an *exception* to the prohibition, rather than adding a motivation requirement: The owner *may* refuse to rent to families with destructive children. And the same is obviously true here: The government *may* take action that is otherwise forbidden when the debt in question is one of the disfavored class that is nondischargeable.

In addition to distorting the text of the provision, the dissent’s interpretation renders the provision superfluous. The purpose of “forbid[ding] discrimination against those who are, or were, in bankruptcy,” *post*, at 4, is already explicitly achieved by *another* portion of §525(a), which prohibits termination of a license “solely because [the] bankrupt or debtor *is or has been . . . a bankrupt or debtor under the Bankruptcy Act.*” 11 U. S. C. §525(a) (emphasis added). The dissent would have us believe that the language “solely because [the] bankrupt or debtor . . . has not paid a debt that is dischargeable” merely achieves the very same objective through inappropriate language. We think Congress meant what it said: The government is not to revoke a bankruptcy debtor’s license solely because of a

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failure to pay his debts.

The dissent makes much of the “serious anomaly” that would arise from permitting “every car salesman, every residential home developer, every appliance company [to] threaten repossession of its product if a buyer does not pay,” but denying that power to the government alone, *post*, at 3. It is by no means clear that any anomaly exists. The car salesman, residential home developer, etc., can obtain repossession of his product only (as the dissent acknowledges) “if [he] has taken a security interest in the product,” *ibid*. It is neither clear that a private party *can* take and enforce a security interest in an FCC license, see, e.g., *In re Cheskey*, 9 FCC Rcd. 986, ¶8 (1994), nor that the FCC *cannot*. (As we described in our statement of facts, the FCC purported to take such a security interest in the present case. What is at issue, however, is not the enforcement of that interest in the bankruptcy process,<sup>5</sup> but rather elimination of the licenses through the regulatory step of “revoking” them—action that the statute specifically forbids.) In any event, if there is an anomaly it is one that has been created by Congress—a state of affairs the dissent does not think intolerable, since its own disposition creates the anomaly of allowing the government to reclaim its property by means other than the enforcement of a security interest, but not permitting private individuals to do so.

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<sup>5</sup>The FCC initially participated in the bankruptcy proceedings as a creditor. See, e.g., *In re NextWave Personal Communications, Inc.*, 235 B. R. 314 (Bkrcty. Ct. SDNY 1999). However, after NextWave prepared a plan of reorganization the FCC asserted that the licenses had been automatically cancelled and gave notice of its intent to reacquire them. The Second Circuit treated this decision as “regulatory,” and thus outside the scope of the Bankruptcy Court’s jurisdiction. See *In re Federal Communications Commission*, 217 F. 3d 125, 139, 136 (2000). The decision by the D. C. Circuit recognized and seemingly approved that distinction. See 254 F. 3d 130, 143 (2001).

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For the reasons stated, the judgment of the Court of Appeals for the District of Columbia Circuit is

*Affirmed.*