

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

In the Matter of)
)
)
C.H. PCS, Inc., BTA Nos.)
B124, B144, B222, B322, B347,)
B362, B420, and B486)
Frequency Block C)

ORDER

Adopted: May 31, 2001

Released: May 31, 2001

By the Deputy Chief, Wireless Telecommunications Bureau:

1. This order sets forth the final default payment obligations of C.H. PCS, Inc (“CHPCS”), resulting from its failure to remit the required down payment on the licenses for which it was the successful high bidder in two Broadband Personal Communications Services (“PCS”) C block auctions (“Auction No. 5 and Auction No. 10”). The specific default payment obligation with respect to each license is set forth in Attachment A to this order.

2. Background. CHPCS was the high bidder on seven broadband PCS C block markets¹ in Auction No. 5, which closed on May 6, 1996.² CHPCS paid an initial down payment of \$1,505,812.50³ for the licenses but made no further payments. Subsequently, CHPCS was the high bidder for one broadband PCS C block license⁴ (Phoenix BTA) in Auction No. 10, which closed on July 16, 1996.⁵ Instead of making its initial down payment for the Phoenix BTA, on July 24, 1996, CHPCS filed an emergency petition for waiver of the down payment deadline.⁶

¹ PBB124C (El Centro, CA), PBB144C (Flagstaff, AZ), PBB222C (Kahului, HI), PBB322C (Nogales, AZ), PBB362 (Prescott, AZ), PBB420C (Sierra Vista, AZ), and PBB486C (Yuma, AZ).

² Entrepreneurs’ C Block Auction Closes, *Public Notice*, DA No. 96-716 (rel. May 8, 1996) (WTB).

³ This amount includes an upfront payment in the amount of \$299,000.00 received on December 1, 1995, and the balance of the first down payment in the amount of \$1,206,812.50 received on May 15, 1996.

⁴ PBB347C (Phoenix, AZ).

⁵ Entrepreneurs’ C Block Reauction Closes, *Public Notice*, DA No. 96-1153 (rel. July 17, 1996) (WTB).

⁶ C.H. PCS, Inc., Emergency Petition for Waiver of Section 24.711(a)(2) of the Commission’s Rules, filed on July 24, 1996.

3. On August 9, 1996, the Wireless Telecommunications Bureau (“WTB”) denied CHPCS's waiver request and dismissed its long-form application for the one C block license CHPCS won in Auction No. 10.⁷ On November 4, 1996, the Bureau assessed a \$6,414,232.50 initial default payment with respect to CHPCS's default on that license.⁸ CHPCS's upfront payment of \$1,383,000.00 was applied to this initial default payment, leaving an amount of \$5,031,232.50 still owed as part of the initial default payment.

4. The Bureau subsequently notified CHPCS in a letter dated February 4, 1997, that it had applied CHPCS's initial down payment of \$1,505,812.50 for the seven licenses won in Auction No. 5 to the \$5,031,232.50 still owed on the initial default payment for the Phoenix BTA license won in Auction No. 10.⁹ This left a remaining default payment obligation for the Phoenix BTA of \$3,525,420.00, in addition to an outstanding down payment obligation of \$1,505,812.50 for the seven licenses from Auction No. 5.¹⁰ The Bureau informed CHPCS that it was required to pay the amount of \$5,031,232.50, which represented both outstanding obligations, within five business days.¹¹

5. CHPCS failed to pay its outstanding down payment obligation for the seven licenses won in Auction No. 5. On November 6, 1998, the Bureau dismissed CHPCS's applications for the seven licenses by Public Notice.¹² On January 21, 1999, the Bureau assessed an initial default payment of \$903,487.00 with respect to those licenses.¹³ On December 7, 1998, CHPCS filed a Petition For Reconsideration of the Bureau's *Dismissal Notice*. On June 16, 1999, the Bureau denied CHPCS's Petition For Reconsideration.¹⁴

⁷ C.H. PCS, Inc., Request for Waiver of Section 24.711(a)(2) of the Commission's Rules, *Order*, 11 FCC Rcd 9343 (1996) (WTB).

⁸ C.H. PCS, Inc., BTA No. 347, Frequency Block C, *Order*, 11 FCC Rcd. 22430 (1996) (WTB) (“*1996 Payment Order*”).

⁹ Letter from Michele C. Farquhar, Chief, Wireless Telecommunications Bureau, to Kenneth Hobbs, C.H. PCS, DA 97-260 (rel. February 4, 1997) (“*February 4, 1997 Letter*”).

¹⁰ *Id.*

¹¹ *Id.*

¹² Wireless Telecommunications Bureau Dismisses C.H. PCS, Inc. Applications for Auction No. 5, *Public Notice*, 13 FCC Rcd 22255 (1998) (WTB) (“*Dismissal Notice*”).

¹³ C.H. PCS, Inc. BTA Nos. B124, B144, B222, B322, B362, B420, and B486, Frequency Block C, *Order*, 14 FCC Rcd 4131 (1999) (WTB) (“*1999 Payment Order*”).

¹⁴ C.H. PCS, Inc. Dismissal of Seven Broadband PCS C-Block Long-Form Applications for Auction Event No. 5, *Memorandum Opinion and Order*, DA 99-1166 (June 16, 1999) (WTB) (“*CHPCS MO&O*”). In its Petition for Reconsideration, CHPCS argued that the Bureau erroneously stated that (1) the long-form applications of CHPCS had not been accepted for filing, and (2) CHPCS failed to submit timely down payments for the seven C block licenses it won in Auction No. 5. In denying the Petition, the Bureau stated that its error in characterizing the status of applications did not invalidate its dismissal. *CHPCS MO&O* at ¶ 5. CHPCS’

6. On March 17, 2000, CHPCS submitted a letter to the Bureau seeking a refund of the initial down payment of \$1,505,812.50, plus interest for the seven broadband PCS licenses it won in Auction No. 5.¹⁵ CHPCS also requested a refund of \$1,383,000.00 plus interest it had on deposit for Auction No. 10 and a waiver of all default payments associated with the licenses it won in both auctions. On May 9, 2000, the Bureau responded to CHPCS's letter and informed CHPCS that the Commission cannot review CHPCS's debt obligations because it had failed to file timely petitions for reconsideration or applications for review in response to any of the Commission's actions.¹⁶ The Bureau demanded immediate payment of the initial default payment for all eight licenses in the amount of \$5,934,720.00, plus interest, penalties, and administrative costs within 30 days of the date of the letter.¹⁷ Following this notification, CHPCS failed to remit the assessed payment.

7. Discussion. Under the Commission's rules, a bidder who fails to remit the required down payment for the licenses for which it was the high bidder within five (5) business days after the Commission declares the auction closed shall be deemed to be in default on those licenses.¹⁸ The Commission's rules also provide that under such circumstances, the Commission will dismiss the bidder's long-form application.¹⁹ Pursuant to the Commission's rules, a winning bidder that defaults on a payment obligation is subject to a default payment.²⁰ Specifically, such bidder is

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applications were dismissed because CHPCS failed to replenish the down payment funds that had been applied toward CHPCS' default payment obligation for the license it won in Auction No. 10. *Id.*

¹⁵ Letter to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, from Mr. Charles R. Jones, Counsel for C.H. PCS, Inc., filed on March 17, 2000.

¹⁶ Letter to Mr. Charles R. Jones, Esq., Jenkins & Jones, C.H. PCS Inc., from Gerald P. Vaughan, Deputy Chief, Wireless Telecommunications Bureau (rel. May 9, 2000) (WTB) ("*May 9, 2000 Letter*").

¹⁷ *Id.* In the *May 9, 2000 Letter*, the WTB should have requested a payment in the amount of \$4,428,907.00 which represents the initial default payment due for Auction No. 10 (\$3,525,420.00) and Auction No. 5 (\$903,487.00). Instead, the WTB incorrectly requested \$5,934,720.00 which includes the initial default payment due for Auction No. 5 and Auction No. 10 plus the initial down payment for Auction No. 5 (\$1,505,812.50). Nevertheless, CHPCS failed to remit the initial default payment and the Commission is now assessing the final default payment.

¹⁸ Section 24.708(b) states that a bidder who defaults on a required payment will be subject to the consequences set forth in Section 1.2109. 47 C.F.R. § 24.708(b) (1996). Section 1.2109(b) provided that "[i]f a license winner withdraws its bid after the Commission has declared competitive bidding closed or fails to remit the required down payment within five (5) business days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default payment specified in § 1.2104(g)(2)." 47 C.F.R. § 1.2109(b) (1996); *see also* 47 C.F.R. § 1.2104(g)(2) (1996). In February 1997, the Commission changed the number of days prescribed by Section 1.2109(b) from five (5) to ten (10) business days. Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 12 FCC Rcd 5686 (1997).

¹⁹ 47 C.F.R. § 1.2109(b) (1996).

²⁰ 47 C.F.R. § 1.2109(b), § 24.704, and § 1.2104(g)(2) (1996).

required to pay the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission (so long as the subsequent winning bid is less than the amount bid), plus an additional payment equal to three percent of the defaulter's bid, or the subsequent winning bid, whichever is less.²¹ In the event that the subsequent winning bid is greater than or equal to the defaulted bid, the total default payment is equal to three percent of the defaulted bid.²² In the event that the default payment cannot be determined (*i.e.*, because a license has not yet been reaucted), the Commission indicated that a deposit may be assessed of up to 20 percent of the defaulted bid price.²³ Finally, the Commission's payment rules provide that if a defaulting bidder does not submit the default payment assessed by the Commission in the time required, any amounts overdue "will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission."²⁴

8. CHPCS failed to pay the initial default payment for the Phoenix BTA license²⁵ won in Auction No. 10 and the initial default payment obligation for the seven licenses²⁶ won in Auction No. 5. Because all eight licenses were auctioned in Auction No. 22, the Commission is able to assess the full amount of the default payment for each license. Under this formula, which is set forth in Attachment A to this order, the sum of CHPCS's default payments on all eight licenses is \$231,915,820.01. Each default payment contains two separate payment obligations:

- For each license, the first portion of the default payment represents the total difference between CHPCS's winning bid and the amount of the winning bid in Auction No. 22. The cumulative sum of those differences is \$231,544,433.²⁷

²¹ 47 C.F.R. § 24.704 (1996).

²² *Id.*

²³ *Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Report and Order*, 9 FCC Rcd 5532, 5563, n. 51 (1994) ("*Fifth Report and Order*"); see also *Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Second Report and Order*, 9 FCC Rcd 2348, 2382-2383, ¶¶ 195-197 (1994); *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, WT Docket No. 97-82, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, ET Docket No. 94-32, Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 434, ¶ 102 (1997). "Wireless Telecommunications Bureau Will Strictly Enforce Default Payment Rules," *Public Notice*, 11 FCC Rcd 10853 (1996). In July 2000, the Commission modified Section 1.2104 (g) of the rules regarding assessments of interim payments. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293 (2000). These amendments in no way alter our decision here.

²⁴ 47 C.F.R. §§ 24.704(a)(2), 1.2104(g)(2) (1996).

²⁵ *1996 Payment Order*.

²⁶ *1999 Payment Order*.

²⁷ The high bids received for all eight licenses in Auction No. 22 were less than the high bids placed by CHPCS on those licenses in C block Auctions No. 5 and No. 10.

Phoenix, AZ	B347	\$202,619,250.00
El Centro, CA	B124	\$5,161,500.00
Flagstaff, AZ	B144	\$3,374,765.00
Kahului, HI	B222	\$7,399,500.00
Nogales, AZ	B322	\$1,193,981.00
Prescott, AZ	B362	\$4,403,437.00
Sierra Vista, AZ	B420	\$2,158,406.00
Yuma, AZ	B486	\$5,233,594.00
Total		\$231,544,433.00

- For each license, the second portion of the default payment is an additional three percent of the lower of CHPCS's winning bid and the subsequent winning bid for each of the eight defaulted licenses. The cumulatively sum of three percent (3%) is \$371,387.01.

Phoenix, AZ	B347	\$335,655.00
El Centro, CA	B124	\$6,030.00
Flagstaff, AZ	B144	\$3,944.55
Kahului, HI	B222	\$10,575.00
Nogales, AZ	B322	\$1,395.57
Prescott, AZ	B362	\$5,146.89
Sierra Vista, AZ	B420	\$2,522.82
Yuma, AZ	B486	\$6,117.18
Total		\$371,387.01

- Thus, the sum of the eight separate default payment obligations is \$231,915,820.01.

Sum of Differences	\$231,544,433.00
Sum of 3%	\$371,387.01
Total	\$231,915,820.01

9. CHPCS deposited with the Commission \$2,888,812.50 which represented the initial down payment in the amount of \$1,505,812.50 for CHPCS's seven PCS C block markets from Auction No. 5 and CHPCS's upfront payment in the amount of \$1,383,000.00 from Auction No. 10. The total amount of \$2,888,812.50, was previously applied towards CHPCS's initial default payment on the Phoenix BTA license,²⁸ and has now been applied to the sum of the final default payment for each license.

Total Default Payments	\$231,915,820.01
Less Down Payment Auction No. 5	-\$1,505,812.50
Less Upfront Payment Auction No. 10	-\$1,383,000.00
Total Default Payment Balance	\$229,027,007.51

²⁸ 1996 Payment Order and February 4, 1997 Letter.

10. As a result, CHPCS is in debt to the United States in the amount of \$229,027,007.51, payable in full, immediately, and without further demand. As permitted under 31 U.S.C. § 3717, the debt is subject to interest, penalties, and administrative costs, and interest accrues from the date of this ORDER, which is also its mailing date. CHPCS, the debtor, may avoid payment of the interest if it tenders to the Commission full payment within 30 days of the date of the ORDER. Moreover, the debt is subject to an additional charge to cover the cost of processing and handling of delinquent debts, and a penalty charge in the amount permitted by law. The penalty charge for delinquent debt payments permitted by 31 U.S.C. § 3717 currently is 6 percent a year for the failure to pay any part of the debt more than 90 days past due.

ORDERING CLAUSES

11. It is ORDERED that pursuant to Section 24.704, 24.708, 1.2104, 1.2109 of the Commission's rules, CHPCS is assessed a final default payment in the amount of \$202,954,905.00 for license B347, \$5,167,530.00 for license B124, \$3,378,709.55 for license B144, \$7,410,075.00 for license B222, \$1,195,376.57 for license B322, \$4,408,583.89 for license B362, \$2,160,928.82 for license B420, and \$5,239,711.18 for license B486 as computed in Attachment A.

12. It is FURTHER ORDERED that CHPCS's initial down payment for CHPCS's seven PCS C block markets from Auction No. 5 in the amount of \$1,505,812.50 and the upfront payment from Auction No. 10 in the amount of \$1,383,000.00 will be applied towards the sum of the final default payments for the eight licenses in the amount of \$231,915,820.01.

13. It is FURTHER ORDERED that CHPCS's debt of **\$229,027,007.51** be paid immediately, and that if it is unpaid 30 days after the date of this ORDER, interest will accrue from the date of this ORDER along with penalties and administrative costs permitted by 31 U.S.C. § 3717. CHPCS must make payment in accordance with the instructions set forth in Attachment B to this ORDER.

14. It is FURTHER ORDERED that this Order shall be sent to the applicant by certified mail, return receipt requested. This action is taken pursuant to authority delegated by Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen O'Brien Ham
Deputy Chief
Wireless Telecommunications Bureau