

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

In the Matter of	)	
	)	
CITIFONE PCS, LLC	)	File No. 0000364953
for Personal Communications Service	)	
Auction License – Basic Trading Area 470	)	
West Plains, Missouri	)	
	)	

**ORDER**

**Adopted: July 13, 2001**

**Released: July 16, 2001**

By the Deputy Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

**I. Introduction**

1. This order sets forth the default payment obligations for Citifone PCS, LLC (Citifone) resulting from its failure to timely remit the total required payment on a license for which it was the winning bidder in the C and F Block Broadband Personal Communications Service (PCS) auction, Auction No. 35. For the reasons set forth herein, we find that Citifone is in default on its full payment obligations with respect to the Broadband PCS C Block license for Channel Block C4 (C4 license) in Basic Trading Area (BTA) 470, West Plains, Missouri.<sup>1</sup>

**II. Background**

2. On April 6, 2001, the Wireless Telecommunications Bureau (Bureau) released a Public Notice announcing that the Bureau was prepared to grant eleven C and F Block licenses, including the C4 license for BTA470, and the final payment instructions for the licenses.<sup>2</sup> Specifically, the *Prepared to Grant Public Notice* stated that payment of the remaining balance of each applicant's winning bid had to have been received by April 20, 2001.<sup>3</sup> The *Prepared to Grant Public Notice* also stated that if a winning bidder failed to submit the balance of its winning bid in a lump sum by April 20, 2001, it would be allowed to make payment within ten business days after the payment deadline (*i.e.* May 4, 2001), provided that it also paid a late fee equal to five percent of the amount due.<sup>4</sup> The *Prepared to Grant*

<sup>1</sup> CWB470C4 (West Plains, MO).

<sup>2</sup> See Wireless Telecommunications Bureau Announces It Is Prepared To Grant Eleven C and F Block Broadband Personal Communications Services (PCS) Licenses Upon Full and Timely Payment, *Public Notice*, DA 01-878 (rel. April 6, 2001) (*Prepared to Grant Public Notice*).

<sup>3</sup> *Id.* at 1.

<sup>4</sup> *Id.* (citing 47 C.F.R. §§ 1.2109(a), 24.711(a)(2), 24.716(a)(2)).

*Public Notice* indicated that, pursuant to section 1.2109(a) of the Commission's rules,<sup>5</sup> if an applicant failed to pay the balance of its winning bid by the late payment deadline of May 4, 2001, it would be considered in default on its licenses and subject to the applicable default payments.<sup>6</sup>

3. Citifone, an applicant claiming status as a "very small business,"<sup>7</sup> was the winning bidder for one C Block license. Citifone's net high bid for the C4 license for BTA 470 amounted to \$118,500.00. Prior to the start of the auction, Citifone submitted to the Commission an upfront payment in the amount of \$6,400.00.<sup>8</sup> In accordance with the Commission's rules, Citifone made an additional deposit of \$17,300.00, to bring its total deposit up to \$23,700.00 by February 12, 2001.<sup>9</sup> However, Citifone did not submit full and timely payment of the remaining balance of its winning bid by May 4, 2001 and, thereby, defaulted on its obligation under the Commission's rules.<sup>10</sup>

### III. Discussion

4. Under the Commission's rules, a winning bidder that fails to timely remit a required payment is deemed to have defaulted on its auction payment obligations.<sup>11</sup> The Commission's rules also provide that under such circumstances, the Commission will dismiss the bidder's application.<sup>12</sup> The announcement of the winning bidder in an auction conducted by the Commission, like the acceptance of high bids in auctions in other settings, terminates the bidding and establishes, as of the moment of the acceptance of the high bid, the binding obligation to pay the winning bid price for the licenses.<sup>13</sup> Whether

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<sup>5</sup> 47 C.F.R. § 1.2109(a).

<sup>6</sup> *Prepared to Grant Public Notice*, at 1.

<sup>7</sup> For purposes of bidding credits in Auction No. 35, a very small business is an entity that, together with its affiliates and controlling interests, has average gross revenues that are not more than \$15 million for the preceding three years. See 47 C.F.R. §§ 24.712(b), 24.717(b), 24.720(b). A winning bidder in Auction No. 35 that qualifies as a very small business may use a bidding credit of 25 percent to lower the cost of its winning bid for a license offered in "open" bidding. See 47 C.F.R. §§ 24.712(b), 24.717(b); see also *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, *Sixth Report and Order and Order on Reconsideration*, 15 FCC Rcd. 16266, 16287-88, ¶¶ 44-45 (2000) (bidding credits available for "open" but not "closed" bidding).

<sup>8</sup> Citifone submitted two separate payments: \$3,000 (November 22, 2000) and \$3,400 (November 24, 2000).

<sup>9</sup> See C and F Block Broadband PCS Auction Closes, *Public Notice*, DA 01-211, at Attachment B (rel. Jan. 29, 2001).

<sup>10</sup> See 47 C.F.R. § 1.2109.

<sup>11</sup> See 47 C.F.R. § 1.2109(c); see also National Telecom PCS, Inc., *Memorandum Opinion and Order*, 12 FCC Rcd. 10163, 10171-72, ¶ 15 (1997); Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd. 374, 434, ¶ 107 (1997) (*Part 1 Third Report and Order*).

<sup>12</sup> See 47 C.F.R. § 1.2109(b).

<sup>13</sup> See 47 C.F.R. § 1.2104(g)(2); see also *In re BDPCS, Inc., Memorandum Opinion and Order*, 15 FCC Rcd. 17590, 17599-600, ¶ 16 (2000) (*BDPCS*).

a payment default or disqualification thereafter breaches the obligation, the winning bidder's liability remains a function of the high bid and is based on the obligation that was incurred at auction.<sup>14</sup> Without the default payment rules, a winning bidder might consider adopting a strategy of waiting until the actual license grant before deciding whether or not to accept the license, to the detriment of other bidders and the efficient and fair functioning of the auction process.<sup>15</sup> Thus, the default payment provisions are critical for maintaining the integrity of the auction process by discouraging insincere bidding and ensuring that licenses end up in the hands of those parties that value them the most and have the financial qualifications necessary to construct operational systems and provide service.<sup>16</sup>

5. Citifone's failure to remit the required final payment within ten business days after the release of the *Prepared to Grant Public Notice* directing it to do so renders it in default. As a result, Citifone now is subject to the default payment provisions specified in section 1.2104(g) of the Commission's rules.<sup>17</sup> Specifically, Citifone is liable for a default payment equal to the difference between the amount that it bid and the amount of the winning bid the next time the spectrum associated with the defaulted license is auctioned by the Commission.<sup>18</sup> Citifone is also liable for an additional payment equal to three percent of its defaulted bid or the subsequent winning bid, whichever is less.<sup>19</sup> In the event that the subsequent winning bid is greater than or equal to Citifone's defaulted bid, the default payment is equal to three percent of Citifone's defaulted bid.<sup>20</sup>

6. Because we cannot fully determine the amount of Citifone's default payment until we re-auction the spectrum associated with the license upon which Citifone defaulted, we assess a deposit toward the default payment in the amount of three percent of the total amount of its defaulted bid. Accordingly, by this Order, we assess an initial default payment of \$3,555.00, three percent of Citifone's \$118,500.00 winning bid in the auction.<sup>21</sup> Pursuant to section 1.2107(b) of the Commission's rules, we

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<sup>14</sup> See *BDPCS*, 15 FCC Rcd. at 17599-600, ¶ 16 n.66; see also Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd. 15293, 15328, ¶ 69 (2000).

<sup>15</sup> See *BDPCS*, 15 FCC Rcd. at 17600, ¶ 16.

<sup>16</sup> See *Part 1 Third Report and Order*, 13 FCC Rcd. at 433-34, ¶ 101; see also *In the Matter of Requests for Waivers in the First Auction of Interactive Video and Data Service (IVDS) Licenses, Memorandum Opinion and Order*, 10 FCC Rcd. 12153, 12155 (1995), *recon. denied*, 11 FCC Rcd. 8211, 8216-17 (1996).

<sup>17</sup> 47 C.F.R. §§ 1.2104(g)(1)-(2); see also 47 C.F.R. § 1.2109(c).

<sup>18</sup> See *id.* The default payment amount, in the event that a bidding credit applies, is calculated on the difference between the net bid amounts or the gross bid amounts, whichever is less. 47 C.F.R. §§ 1.2104(g)(1)-(2).

<sup>19</sup> See 47 C.F.R. § 1.2104(g)(2).

<sup>20</sup> See *id.*

<sup>21</sup> The Commission has the discretion to assess an initial default deposit of between three (3) and twenty (20) percent of the defaulting bidder's winning bid until the full amount of the default payment can be determined. See *Part 1 Third Report and Order*, 13 FCC Rcd. at 434, ¶ 102; see also *In the Matter of Request for Waiver of Section 1.2104(g) of the Commission's Rules Filed by Grand Connectivity, L.L.C., Order*, 14 FCC Rcd. 13943, 13946, ¶ 6 (WTB 1999).

will apply Citifone's upfront payment to satisfy this initial default payment obligation.<sup>22</sup> The remaining default payment will be assessed once a new bid price for the spectrum associated with the defaulted license is established in a subsequent auction. If an additional payment is required, a further order will assess such payment.<sup>23</sup>

#### IV. Ordering Clauses

7. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 0.331, 1.2104(g), 1.2106(e) and 1.2109(c) of the Commission's rules, 47 C.F.R. §§ 0.331, 1.2104(g), 1.2106(e), 1.2109(c), Citifone PCS, LLC, is assessed an initial default payment in the amount of \$3,555.00, and we will apply Citifone PCS, LLC's upfront payment to satisfy this initial default payment obligation.

8. IT IS FURTHER ORDERED that, pursuant to sections 0.331, 1.2104(g), 1.2107(b) and 1.2109(c) of the Commission's rules, 47 C.F.R. §§ 0.331, 1.2104(g), 1.2107(b), 1.2109(c), Citifone PCS, LLC, will be subject to the balance of the default payment once the spectrum associated with the defaulted C Block license for Channel Block C4 in BTA470 is re-auctioned and the full default payment is determined.

9. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 309 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 309, and sections 0.331 and 1.2109(c) of the Commission's rules, 47 C.F.R. §§ 0.331, 1.2109(c), the above-captioned application of Citifone PCS, LLC, is DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Linda C. Ray  
Deputy Chief, Policy and Rules Branch  
Commercial Wireless Division  
Wireless Telecommunications Bureau

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<sup>22</sup> 47 C.F.R. § 1.2107(b); *see also* 47 C.F.R. § 1.2104(g).

<sup>23</sup> *See* In the Matter of Mountain Solutions Ltd., Inc., Emergency Petition for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding Various BTA Markets in the Broadband Personal Communications Services (PCS) C Block Auction, *Memorandum Opinion and Order*, 13 FCC Rcd. 21983, 21997, ¶ 25 (1998).