

**FEDERAL COMMUNICATIONS COMMISSION**  
**445 12<sup>th</sup> Street, S.W.**  
**Washington, D.C. 20554**

***In Reply Refer to:***  
1800B3-TSN

**DA 02-2432**  
**October 2, 2002**

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Mr. Larry G. Fuss, President  
Delta Radio, Inc.  
P.O. Box 1438  
Cleveland, MS 38732

Barry D. Wood, Esq.  
Wood, Maines & Brown, Chartered  
1827 Jefferson Place, N.W.  
Washington, DC 20036

Re: New(FM), Greenville, Mississippi  
Delta Radio, Inc.  
Facility ID No.: 16553  
File No. BPH-19950417ME  
Petition for Reconsideration and  
Waiver  
Motion for Declaratory Ruling

Dear Applicant and Counsel:

On August 27, 2002, the Chief, Audio Division, Office of Broadcast License Policy, Media Bureau, released a staff decision (“Staff Decision”)<sup>1</sup> dismissing the above-captioned application of Delta Radio, Inc. (“Delta”) for a new AM broadcast station at Greenville, Mississippi.<sup>2</sup> Delta had been the winning bidder for the Greenville construction permit in Closed Broadcast Auction No. 25, but defaulted by failing to make its final auction payment within the time period announced in the applicable Public Notice.<sup>3</sup> Accordingly, Delta’s application was

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<sup>1</sup> *Letter to Mr. Larry G. Fuss, Barry D. Wood, Esq., and Mondy-Burke Broadcasting Network from Peter H. Doyle, Chief, Audio Division, Office of Broadcast License Policy, Media Bureau, DA 02-2097, Ref. No. 1800B3-TSN (August 27, 2002).*

<sup>2</sup> File No. BPH-19950417ME.

<sup>3</sup> *Public Notice: “FCC Announces It Is Prepared to Grant Broadcast Construction Permits After Final Payment Is Made,”* 17 FCC Rcd 4278 (2002).

dismissed and, pursuant to Commission rules, the Greenville construction permit was offered to the second-highest bidder, Mondy-Burke Broadcasting Network. (“MBN”),<sup>4</sup> at its final net bid amount.<sup>5</sup>

In the Staff Decision, we instructed MBN as follows:

The Greenville construction permit is offered to MBN at its net final bid of \$270,750. Pursuant to the provisions of 47 C.F.R. § 1.2107, Mondy-Burke Broadcasting Network shall have ten (10) business days from the date of this letter to make its down payment by depositing with Mellon Bank in Pittsburgh, Pennsylvania, such funds as are necessary to bring its total deposits up to \$54,150, twenty percent (20%) of its final net bid. If, after submitting its down payment, MBN defaults on its final payment or is disqualified, it shall be subject to the provisions of 47 C.F.R. § 1.2104(g).<sup>6</sup>

MBN timely deposited its 20% down payment on September 11, 2002.

Under the Commission's rules, a bidder who fails to remit the required down or final payment for a license for which it was the high bidder is subject to a default payment.<sup>7</sup> Each default payment is comprised of two parts. Under these circumstances, the first component is the difference between the original high bidder's net defaulted bid and the final net bid of the second-highest bidder, or the difference between the original high bidder's gross defaulted bid and the final gross bid of the second-highest bidder, whichever is less.<sup>8</sup> For Auction No. 25 participants, the second component is equal to three percent (3%) of the defaulter's bid, or the second-highest bidder's bid, whichever is less.<sup>9</sup> If either bid amount is subject to a bidding credit, the three percent (3%) will be calculated using the same bid amounts and basis (net or gross bids) as in the first component of the default payment.<sup>10</sup>

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<sup>4</sup> MBN's application was assigned File No. BPH-19950413MC.

<sup>5</sup> See, e.g., 47 C.F.R. §§ 1.2104(g)(2), 1.2109, 1.2107(b). See also *In the Matter of Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, First Report and Order*, (“Broadcast First Report and Order”), 13 FCC Rcd 15920, 15952 (1998) (while Section 1.2109 generally gives the Commission discretion to either re-auction licenses to existing or new applicants, or to offer licenses to other high bidders in the event of default by, or disqualification of, the winning bidder, offering the construction permit to the next highest bidder best comports with the statutory participation restrictions in Auction No. 25).

<sup>6</sup> Staff Decision at 6-7.

<sup>7</sup> 47 C.F.R. §§ 1.2104(g)(2), 1.2109(c).

<sup>8</sup> 47 C.F.R. § 1.2104(g)(2).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

It is therefore ORDERED that Delta Radio, Inc. is assessed a default payment pursuant to 47 C.F.R. § 1.2104(g), which payment is calculated and set forth in Attachment A hereto. The default payment will be deducted from Delta's funds on deposit with the Commission, and we are prepared to refund the remaining funds on deposit with the Commission to the payor(s) of record.<sup>11</sup> To obtain a refund, the payor(s) of record must submit a request(s) in accordance with the instructions set forth in Attachment B.

This letter shall be sent to the applicant and its representatives by certified mail, return receipt requested. If you have any additional questions or require further information, please contact Thomas Nessinger in the Audio Division at (202) 418-2700, or Gail Glasser in the Auctions Accounting Group, Financial Operations Center, at (202) 418-0578.

Sincerely,

Peter H. Doyle, Chief  
Audio Division  
Office of Broadcast License Policy  
Media Bureau

cc: Mondy-Burke Broadcasting Network  
c/o Lauren A. Colby, Esq.

Ms. Margaret Adele Karr

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<sup>11</sup> See *Entertainment Unlimited, Inc., Request for Refund of Late Payment Fees for PCS Licenses Purchased in Auction No. 22*, 16 FCC Rcd 10030 (2001) (Commission does not accept instructions regarding the refund of excess upfront payments from entities or individuals other than the payor of record).

**ATTACHMENT A**

**Default Calculation**

**Delta Radio, Inc., Auction No. 25**

**MX Group FM 73, Greenville, Mississippi, File No. BPH-19950417ME**

<b>Outstanding Balance</b>		<b>Payments Received</b>	
Gross Winning Bid –	\$ 397,000	Down Payment	
Gross High Bid of Mondy-		Applied from	
Burke Broadcasting	<u>\$ 361,000</u>	Upfront Payment	\$ 62,727.65
<i>Difference</i>	\$ 36,000	Additional	
		Down Payment	\$ 16,672.35
		<i>Total</i>	\$ 79,400.00
Gross High Bid of Mondy-			
Burke Broadcasting	\$ 361,000		
Times 3%	\$ 10,830		
Plus bid difference	<u>\$ 36,000</u>		
<i>Total Default Payment</i>	\$ 46,830		
Less Payments Rec'd	\$ 79,400		
<b>Total due (refund)</b>	<b>(\$ 32,570)</b>		

## **ATTACHMENT B**

### **Requesting Refund Instructions**

In order to process refund requests, the FCC must receive wire transfer instructions from the payor(s) of record that include the following information:

Name and Address of Bank  
ABA Number  
Contact and Telephone Number  
Account Number to Credit  
Name of Account Holder  
Correspondent Bank (if applicable)  
ABA Number  
Account Number  
FCC Registration Number (FRN)

Please include the payor of record's Taxpayer Identification Number (TIN) and a copy of this letter. This information should be sent to the Auctions Accounting Group:

Federal Communications Commission  
Auctions Accounting Group  
Attention: Gail Glasser or Tim Dates  
445 12<sup>th</sup> Street, S.W.  
Room 1-C863  
Washington, DC 20554

Requests can also be faxed to the Auctions Accounting Group at (202) 418-2843.