



Federal Communications Commission
Washington, D.C. 20554

November 15, 2002
DA 02-3178

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jack Bond
Mountain SMR Group, L.L.C.
920 S.W. Stephenson Court
Portland, Oregon 97219-7642

Re: Final Withdrawal and Default Payments for Auction No. 16

Dear Mr. Bond:

Mountain SMR Group L.L.C. ("Mountain SMR"), a participant and high bidder in Auction No. 16, withdrew a high bid on license E-172 A, Honolulu, Hawaii during the course of that auction and later defaulted on the down payment for its winning bid on the same license.¹ Auction No. 34, the subsequent auction for the license on which Mountain SMR withdrew and later defaulted on its high bid in Auction No. 16, has closed.² Therefore, in accordance with the Commission's rules, we are now able to calculate Mountain SMR's final bid withdrawal and default payment obligations.

Under the Commission's rules, a bidder that withdraws a high bid during the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the subsequent winning bid.³ If a high bid is withdrawn on a license that remains unsold at the close of the auction, the withdrawing bidder will be required to make an interim payment equal to three percent (3%) of the net amount of the withdrawn bid.⁴ This payment amount is deducted from any upfront payments or down payments the bidder has deposited with the Commission.⁵ If, in a subsequent auction, that license receives a winning bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed, and, if appropriate, the interim three percent (3%) payment will be refunded.⁶ If, in a subsequent auction, the winning bid for that license is less than the bidder's withdrawn amount, then the bidder will be required to make a final bid withdrawal payment equal to either the difference between the bidder's net withdrawn bid and subsequent net winning bid, or the difference between the bidder's gross withdrawn bid and the

¹ "800 MHz SMR Auction Closes Winning Bidders in the Auction of 525 Specialized Mobile Radio Licenses," Report No. AUC-97-16-G (Auction No. 16), *Public Notice*, 12 FCC Rcd. 20,417 (1997) ("*Auction 16 Closing PN*").

² "800 MHz Specialized Mobile Radio (SMR) Service General Service Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes," *Public Notice*, DA 00-2037 (rel. Sept. 6, 2000) ("*Auction No. 34 Closing PN*").

³ 47 C.F.R. § 1.2104(g)(1) (1996).

⁴ *Id.*

⁵ 47 C.F.R. § 1.2106(e) (1996).

⁶ 47 C.F.R. § 1.2104(g)(1) (1996).

subsequent gross winning bid, whichever is less.⁷

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.⁸ Each default payment is comprised of two parts. The first component is the difference between the bidder's net defaulted bid and the net winning bid or the difference between the bidder's gross defaulted bid and the subsequent gross winning bid, whichever is less, the next time the license is offered by the Commission (so long as the subsequent winning bid is less than the defaulted bid).⁹ The second component is equal to three percent (3%) of the defaulter's bid, or the subsequent winning bid, whichever is less.¹⁰ 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.¹¹ 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.¹²

With respect to Mountain SMR's bid withdrawal on License E-172 A in Auction No. 16, in 1998, the Commission assessed a final bid withdrawal payment against Mountain SMR in the amount of \$30,550.¹³ At that time, Mountain SMR had an upfront payment of \$5,542.00 for License E-172 A on deposit with the Commission, which was applied towards its withdrawal payment resulting in an outstanding balance due of \$25,008.00.¹⁴

With respect to Mountain SMR's default on License E-172 A in Auction No. 16, as shown in Attachment A, in Auction No. 34, the subsequent auction of the license, the winning bid in the amount of \$108,000 for E-172 A in Auction No. 34 was less than Mountain SMR's defaulted winning bid of \$308,100.00. Therefore, in accordance with Section 1.2104 of the Commission's rules, Mountain SMR is assessed a final default payment of \$203,340.00 in connection with its default on license E-172 A.¹⁵

As a result, Mountain SMR is in debt to the United States in the amount of \$228,348.00 (\$25,008.00 plus \$203,340.00), 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 letter, which is also its mailing date. Mountain SMR, the debtor, may avoid

⁷ *Id.*

⁸ 47 C.F.R. §§ 1.2109(b), 1.2104(g)(2) (1996).

⁹ 47 C.F.R. § 1.2104(g)(2).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Letter from Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Mr. Jack Bond, Mountain SMR Group, L.L.C., 13 FCC Rcd 4504 (1998); Erratum to Letter from Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Mr. Jack Bond, Mountain SMR Group, L.L.C., 13 FCC Rcd 13,263 (1998); *aff'd on recon.*, In the Matter of Mountain SMR Group, L.L.C. for Authorization to Construct and Operate New Specialized Mobile Radio Service on the 800 MHz Band for License E-172 A, the Honolulu Hawaii A Block Market, *Order*, 14 FCC Rcd 3823 (1999).

¹⁴ *Id.*

¹⁵ Attachment A to this Order, Auction Report; *see also Auction No. 34 Closing PN.*

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payment of the interest if it tenders to the Commission full payment within 30 days of the date of the letter. 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

Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.2104 of the Commission's Rules, 47 C.F.R. § 1.2104(g), Mountain SMR IS ASSESSED a final default payment of \$203,340.00 as a result of Mountain SMR's failure to meet its payment obligations on license E-172 A, as computed in Attachment A. Accordingly, taking into consideration the outstanding balance owed on the previously assessed final withdrawal payment, Mountain SMR owes a debt to the Commission in the amount of \$228,348.00.

It is FURTHER ORDERED that Mountain SMR's debt of \$228,348.00 be paid immediately, in accordance with the payment instructions in Attachment B within 30 days of the date of this letter, and if it is unpaid 30 days of the date of this letter, interest will accrue from the date of this letter along with penalties and administrative costs permitted by 31 U.S.C. § 3717.

It is FURTHER ORDERED that this letter shall be sent to the applicant and its representatives 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.

Sincerely,

Margaret Wiener, Chief
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau

ATTACHMENT B

The following information is being provided to assist you in making your payment.

PAYMENT INSTRUCTIONS

All payments must be made in U.S. currency in the form of a wire transfer. No personal checks, cashier's checks or other forms of payment will be accepted. Wire transfer payments must be received by Mellon Bank by 6:00 PM Eastern Time, no later than thirty days from the date of the ORDER; however, if the 30th day falls on a non-business day, e.g., Saturday, Sunday or holiday, it is due the next business day. Applicants must allow sufficient time for the wire transfer to be initiated and for the transmission to be completed prior to the deadline. To submit funds by wire, applicants will need the following information to properly effect the transmittal:

ABA Routing Number: 043000261

Receiving Bank: Mellon Pittsburgh

BNF: FCC/Account #911-6106

OBI Field: (Skip one space between each information item)

“AUCTIONPAY”

FCC REGISTRATION NO. (same as FCC Form 159, Block 11 and/or 21)

PAYMENT TYPE CODE (enter “ADFT”) same as FCC Form 159, Block 24A

FCC CODE 1 (same as FCC Form 159, Block 28A: (“16”)

PAYOR NAME (same as FCC Form 159, Block 2)

LOCKBOX No.: 358850

A completed FCC Remittance Advice Form (FCC Form 159, Version 2/00) must accompany payments. On the same business day that the applicant submits payment to Mellon Bank, the applicant must submit a completed FCC Form 159 via facsimile at (412) 209-6045, at least one-hour prior to placing the order for the wire transfer. The specified debt is due and payable to the United States immediately and without demand, and it is subject to interest, penalties, and additional administrative costs. Interest accrues from the date of the ORDER; however, to avoid the payment of charges (i.e., interest, penalties, and administrative costs) and enforced collection, full payment must be made and received within 30 days from the date of the ORDER. Debtor's failure to make complete timely payment will result in assessment of such charges permitted by 31 U.S.C. § 3717.

For questions regarding the submission of payment, and the FCC Form 159, contact Gail Glasser or Tim Dates, Office of the Managing Director, Financial Operations Center, Auctions Accounting Group, at (202) 418-0578 or (202) 418-0496.