



Federal Communications Commission
Washington, D.C. 20554

December 26, 2002

DA 02-3604

Michael K. Kurtis, Esq.
Jerome K. Blask, Esq.
Kurtis & Associates, P.C.
1000 Potomac Street, N.W., Suite 200
Washington, DC 20007

Dear Messrs. Kurtis and Blask:

This order dismisses the long-form applications filed by Mountain Solutions Ltd., Inc. ("Mountain Solutions") for grant of the two licenses for which Mountain Solutions was the high bidder in Auction No. 10.

Background. Mountain Solutions was the high bidder for two broadband C block Personal Communications Services (PCS) licenses in Auction No. 10, the second C block auction. Mountain Solutions' net high bids¹ for the two licenses were, respectively, \$17,169,777 for BTA 089 (Colorado Springs, CO) and \$6,450,001 for BTA 149 (Ft. Collins-Loveland, CO). Mountain Solutions timely submitted a combined down payment for the two licenses of \$672,989, which, together with Mountain Solutions' prior upfront payment of \$508,000, totaled \$1,180,989 or five percent of Mountain Solutions' combined net high bids for the two licenses.² The down payment leaves Mountain Solutions with a remaining amount owed for the two licenses of \$22,438,789.³ No further payment is due, however, until the Commission has determined that it is ready to grant Mountain Solution's long-form applications,⁴ which, to date, it has not done.

Mountain Solutions was also the high bidder for 10 C block licenses in the first C block auction, Auction No. 5. After requesting, and being denied, a waiver of the second down payment deadline for that auction, Mountain Solutions defaulted on its second down payment. Under delegated authority, we assessed Mountain Solutions' outstanding default payment obligation as \$16,888,367.53.⁵ The denial of Mountain Solutions' waiver request and subsequent objections by Mountain Solutions to making the default payment have been the subject of both Commission and judicial proceedings, which are, in part,

¹ The amount due from Mountain Solutions for each license was reduced 25 percent from the high bid by a small business bidding credit.

² See 47 C.F.R. § 24.711(a)(1) (1996).

³ Mountain Solutions has an outstanding balance of \$16,337,825.75 for the Colorado Springs license and \$6,100,963.25 for the Ft. Collins-Loveland license.

⁴ See 47 C.F.R. § 24.711 (1996).

⁵ Letter order from Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Michael K. Kurtis, Esq. and Jeanne W. Stockman, Esq., Kurtis & Associates, P.C., attorneys for Mountain Solutions, Ltd., Inc., 16 FCC Rcd 18,542 (2001) ("October 17 Order").

ongoing.⁶ During these proceedings, Mountain Solutions has informed the Commission that it lacks the finances needed to pay for and build out broadband PCS licenses. Specifically, in a January 2002 written response to a request for information by the Commission's Office of General Counsel, Mountain Solutions stated that it had "ceased business operations in August 1999" and that it had "already liquidated in the sense that its revenue generating assets [had] been assigned to an unrelated entity."⁷

Discussion. Mountain Solutions' admission of insolvency in the Auction No. 5 proceedings signifies that it lacks the financial qualifications to become a Commission licensee.⁸ The Communications Act of 1934, as amended, and the Commission's rules, prohibit our granting a license won in competitive bidding unless we have determined, *inter alia*, that the applicant is legally, technically, and financially qualified to be a licensee and that the public interest, convenience, and necessity would be served by such grant.⁹ To be financially qualified, an applicant must, at a minimum, have the intent and ready ability to pay for its licenses, build out its systems, and provide service in accordance with Commission rules.¹⁰ Limiting the award of licenses to applicants demonstrating such ability is fundamental to achieving the statutory objective of promoting the rapid deployment of new services for the benefit of the public.¹¹ The admissions by Mountain Solutions leave no question that

⁶ For a comprehensive account of these proceedings, see *October 17 Order*, 16 FCC Rcd at 18,542-44. See also Letter order from Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Michael K. Kurtis, Esq. and Jerome K. Blask, Esq., Kurtis & Associates, P.C., attorneys for Mountain Solutions, Ltd., Inc., 17 FCC Rcd 4668 (2002).

⁷ Response of Mountain Solutions Ltd., Inc. to FCC Letter Dated December 6, 2001 (filed Jan. 28, 2002) ("January 2002 Response").

⁸ Mountain Solutions' inability to meet its financial obligations with regard to Auction No. 5 and its admission of insolvency in the January 2002 Response have not been the only indicia of Mountain Solutions' lack of financial qualification. For example, two years prior to providing the January 2002 Response, Mountain Solutions acknowledged in a letter to then Chairman William E. Kennard that it was wholly without resources. Letter from D. Lynn Langford, President, Mountain Solutions, to Federal Communications Commission, Chairman William E. Kennard (dated Jan. 10, 2000).

⁹ 47 U.S.C. §§ 308(b), 309(a), (j)(5); 47 C.F.R. § 1.2105(a)(2)(v). See also *id.* § 1.2105(a)(2)(vii).

¹⁰ See, e.g., BDPCS, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 17,590, 17,598-601 ¶¶ 14-18 (2000) (explaining that "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."); 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, 433-34 ¶ 101 (1998); Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2381, 2382-83 ¶¶ 190, 197-98 (1994) (discussing the value of down payments and default payments in ensuring that all licensees have the financial capability to rapidly deploy their systems and operate them in an efficient manner).

¹¹ See 47 U.S.C. § 309(j)(3)(A); *supra* note 10. Ensuring that broadband PCS licenses are granted only to those with the resources necessary to speedily provide service to the public is particularly important now that the introduction of wireless Internet, advanced data, and 3G services, and global competition within these services, have created a shortage of suitable available spectrum. See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Sixth Report and Order and Order on Reconsideration*, 15 FCC Rcd 16,266, 16,278-79 ¶ 23 (2000).

Mountain Solutions lacks the ability to pay for and build out its Auction No. 10 licenses.¹² We, therefore, dismiss Mountain Solutions' long-form applications as defective based upon a lack of financial qualifications.¹³

Conclusion. For the above reasons, Mountain Solutions' long-form applications for grant of C block licenses for BTA 089, Colorado Springs, CO, and BTA 149, Ft. Collins-Loveland, CO, are dismissed with prejudice. 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 W. Wiener, Chief
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau

¹² Under section 1.17 of the Commission's rules, applicants are prohibited from making misrepresentations or willful material omissions in any application, pleading, report, or other written statement submitted to the Commission. 47 C.F.R. § 1.17. Thus, we take notice of these admissions in evaluating Mountain Solutions' long-form applications. However, we also note that Mountain Solutions failed to notify us directly of its changed financial circumstances, as it was required to do by Commission rules. 47 C.F.R. § 1.65 ("Whenever there has been a substantial change as to any . . . matter which may be of decisional significance in a Commission proceeding involving the pending applications, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, submit a statement furnishing such additional or corrected information as may be appropriate. . . .").

¹³ 47 C.F.R. §§ 1.934(c), 1.945, 2.108. We note that, where, as here, there is no substantial issue of fact as to an applicant's lack of qualifications, we need not hold an evidentiary hearing prior to making our determination. Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2383 ¶ 202 (1994) ("We affirm our tentative conclusion that the Commission need not conduct a hearing before denial [of a long-form application] if it determines that an applicant is not qualified and no substantial issue of fact exists concerning that determination."); *see* 47 U.S.C. § 309(e); *U.S. v. Storer Broadcasting Co.*, 76 S. Ct. 763, 770-72 (1956) ("We do not think Congress intended the Commission to waste time on applications that do not state a valid basis for a hearing."); *see also* 47 C.F.R. § 1.2108(d)(2). We note further that Mountain Solutions recently filed a petition for reconsideration of a Commission order in a separate proceeding, seeking, in part, relief for its Auction No. 10 license obligations. Petition for Reconsideration of Order and Order on Reconsideration, filed by Mountain Solutions Ltd., Inc. (Dec. 16, 2002) (seeking reconsideration of Disposition of Down Payment and Pending Applications By Certain Winning Bidders in Auction No. 35, WT Docket No. 02-276, *Order and Order on Reconsideration*, FCC 02-311 (rel. Nov. 14, 2002)). We, of course, leave formal resolution of that petition to the Commission.