



Federal Communications Commission  
Washington, D.C. 20554

April 22, 2005

DA 05-1118

**Via Certified Mail, Return Receipt Requested**

Mr. Monte L. Spearman  
Spearman Properties, LLC  
181 Elkhorn Avenue J  
Estes Park, CO 80517

**Re: Notice of Initial Default Payment Obligations for Auction No. 37**

Dear Mr. Spearman:

This letter provides notice of initial default payment obligations for Spearman Properties, LLC (“Spearman”) with respect to its defaults arising out of a Federal Communications Commission (“Commission”) auction of FM broadcast construction permits (“Auction No. 37”). Spearman, a participant and high bidder in Auction No. 37, was the winning bidder on two FM broadcast construction permits.<sup>1</sup> As described below, Spearman defaulted on its payment obligations for its winning bids. Accordingly, this letter sets forth the initial default obligations of Spearman for its two defaulted bids.

Under the Commission’s rules, a bidder who fails to timely remit the required down or final payment for a license or permit for which it was the high bidder is subject to a default payment.<sup>2</sup> The default payment has two components. The first component is the difference between the bidder’s net defaulted bid and the subsequent 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 or permit is offered by the Commission (so long as the subsequent winning bid is less than the defaulted bid).<sup>3</sup> This component of the default payment cannot be determined until after the permits on which Spearman defaulted are re-auctioned. The second component of the default payment is an additional payment equal to three percent (3%) of the

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<sup>1</sup> FM broadcast construction permit nos. FM296-A (Mason, TX) and FM302-C2 (Rocksprings, TX). See “FM Broadcast Construction Permits Auction Closes,” *Public Notice*, DA 04-3694, at Attachment A, (rel. Dec. 1, 2004) (“*Auction No. 37 Closing Public Notice*”).

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

<sup>3</sup> 47 C.F.R. § 1.2104(g)(2).

defaulter's bid, or the subsequent winning bid, whichever is less.<sup>4</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>5</sup> 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 (3%) of the defaulted bid.<sup>6</sup>

On December 1, 2004, the Wireless Telecommunications Bureau and the Media Bureau (collectively "the Bureaus") announced the winning bidders in Auction No. 37.<sup>7</sup> The Bureaus also announced that by no later than December 15, 2004, all Auction No. 37 winning bidders were required to submit down payments that would bring each winning bidders' deposits to twenty-percent (20%) of its winning bids.<sup>8</sup> Spearman's net winning bids totaled \$334,500.00.<sup>9</sup> The Bureaus applied Spearman's \$10,000.00 of upfront money toward the down payment requirement and notified Spearman of the remaining \$56,900.00 balance due. Spearman failed to timely submit payment for the remaining balance by December 15, 2004.<sup>10</sup>

Accordingly, Spearman is considered to be in default on the two FM broadcast construction permits for which it was the high bidder in Auction No. 37 and it is subject to the applicable default payments.<sup>11</sup> Pursuant to Section 1.2104(g)(2) of the Commission's rules, Spearman owes an initial default payment of \$10,035.00, which is three-percent (3%) of its net winning bids of \$334,500.00.<sup>12</sup> Pursuant to Section 1.2106(e) of the Commission's rules, we will apply Spearman's payments on deposit to satisfy this initial default payment obligation.<sup>13</sup> Once subsequent high bids are established for the relevant spectrum, we will determine

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *See Auction No. 37 Closing Public Notice, supra* note 1.

<sup>8</sup> *See id.* at 1-2.

<sup>9</sup> *See id.* at Attachment A. The amounts of Spearman's net winning bids and initial default payment debt are presented in Attachment A of this letter.

<sup>10</sup> *See* Letter from Lee J. Peltzman, Counsel for Spearman Properties, LLC to Ms. Marlene H. Dortch, Esq., Secretary, Federal Communications Commission (dated December 29, 2004).

<sup>11</sup> 47 C.F.R. §§ 1.2104(g)(2), 1.2109(c).

<sup>12</sup> 47 C.F.R. § 1.2104(g)(2).

<sup>13</sup> *See* 47 C.F.R. § 1.2106(e).

Spearman's final default payment obligation.<sup>14</sup> If an additional payment is required, a further order will assess such payment.<sup>15</sup>

Spearman Properties, LLC is in debt to the United States in the amount of \$35.00,<sup>16</sup> 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. Spearman Properties, LLC, the debtor, may avoid 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 per 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(g)(2) of the Commission's rules, 47 C.F.R. § 1.2104(g)(2), Spearman Properties, LLC is ASSESSED an initial default payment of \$10,035.00 for its defaulted high bids for FM broadcast construction permits FM296-A (Mason, TX) and FM302-CA (Rocksprings, TX) in Auction No. 37.

IT IS FURTHER ORDERED, that, pursuant to 47 C.F.R. §§ 1.2104 and 1.2106, Spearman's funds on deposit will be applied towards the sum of the initial default payment obligations.

IT IS FURTHER ORDERED that Spearman's debt of \$35.00 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 after 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.

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<sup>14</sup> *Id.*

<sup>15</sup> *See* Mountain Solutions Ltd., Inc., *Memorandum Opinion and Order*, 13 FCC Rcd 21,983, 21,997 ¶ 25 (1998).

<sup>16</sup> *See* Attachment A.

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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,

Rita Cookmeyer  
Financial Policy Analyst  
Auctions and Spectrum Access Division  
Wireless Telecommunications Bureau

cc:  
Lee J. Peltzman

**ATTACHMENT A**

**Initial Default Payment**

<b>Permit Number Frequency block</b>	<b>Gross Winning Bids Auction # 37</b>	<b>Net Winning Bids Auction #37</b>	<b>Initial Default Payment (3% of net winning bid)</b>
FM296-A (Mason, TX)	\$230,000.00	\$172,500.00	\$5,175.00
FM302-C2 (Rocksprings, TX)	\$216,000.00	\$162,000.00	\$4,860.00

Sum of Initial Default Payments	\$10,035.00
Less Sum of Amounts on Deposit	\$10,000.00
<b>Outstanding Balance</b>	<b>\$35.00</b>

## **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  
500 Ross Street  
Pittsburgh, PA 15262

BNF: FCC/Account #911-6106

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

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

PAYMENT TYPE CODE (enter "APEN") same as FCC Form 159, Block 24A FCC CODE 1 (same as FCC Form 159, Block 28A: ("37"))

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

LOCKBOX No.: 358850

A completed FCC Remittance Advice Form (FCC Form 159, Version 2/03) 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, Office of the Managing Director, Financial Operations Center, Auctions Accounting Group, at (202) 418-0578.