



Federal Communications Commission  
Washington, D.C. 20554

June 23, 2005

DA 05-1741

**Via Certified Mail, Return Receipt Requested**

Michael A. Jimerson, President  
TPS Utilicom, Inc.  
1820 Rt. 20  
Silver Creek, NY 14136

**Re: Final Default Payment for Auction No. 35**

Dear Mr. Jimerson:

TPS Utilicom, Inc. ("TPS"), a participant in Auction No. 35, defaulted on its final payment obligation with respect to four licenses after the close of the auction.<sup>1</sup> Auction No. 58, the subsequent auction for the licenses on which TPS defaulted on its final payment obligation, has closed.<sup>2</sup> As shown on Attachment A, in accordance with the Federal Communications Commission's ("Commission's") rules, we are now able to calculate TPS's default payment obligation with respect to two of the four licenses.<sup>3</sup>

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>4</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 is offered by the Commission (so long as the subsequent winning bid is less than the defaulted bid).<sup>5</sup> The second component of the default payment is an additional payment

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<sup>1</sup> Those licenses are: CWBTA043-C1 (Binghamton, NY); CWBTA215-C3 (Jamestown, NY-Warren, PA); CWBTA127-C1 (Elmira-Corning-Hornell, NY); and CWBTA330-C3 (Olean, NY-Bradford, PA). *See* Broadband PCS Spectrum Auction Closes, Winning Bidders Announced for Auction No. 58, *Public Notice*, 2005 WL 418198 Attachment D (rel. Feb. 18, 2005).

<sup>2</sup> *See id.*

<sup>3</sup> CWBTA127-C1 (Elmira-Corning-Hornell, NY) and CWBTA330-C3 (Olean, NY-Bradford, PA) did not receive bids in Auction No. 58. *See id.* at Attachment D. The Commission will release an order addressing those licenses once the spectrum associated with the licenses is re-auctioned.

<sup>4</sup> 47 C.F.R. § 1.2104(g)(2), 1.2109(b).

<sup>5</sup> 47 C.F.R. § 1.2104(g)(2).

equal to three percent (3%) of the defaulter's bid, or the subsequent winning bid, whichever is less.<sup>6</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 of the defaulted bid.<sup>7</sup>

As shown in Attachment A, in accordance with Section 1.2104(g)(2), after applying any interim payments or amounts on deposit with the Commission, TPS has an outstanding balance of \$4,741,906.32.

TPS is in debt to the United States in the amount of \$4,741,906.32,<sup>8</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. TPS, 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 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(g)(2) the Commission's Rules, 47 C.F.R. § 1.2104(g)(2), TPS Utilicom, Inc. is ASSESSED final default payment obligations as computed in Attachment A.<sup>9</sup>

IT IS FURTHER ORDERED, that, pursuant to 47 C.F.R. §§ 1.2104 and 1.2106, TPS Utilicom, Inc.'s initial payments or funds on deposit will be applied towards the sum of the default payments.

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<sup>6</sup> 47 C.F.R § 1.2104(g)(2).

<sup>7</sup> 47 C.F.R § 1.2104(g)(2).

<sup>8</sup> See Attachment A.

<sup>9</sup> 47 C.F.R. § 1.2104(g)(2).

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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: Raymond J. Quianson,  
c/o Fletcher, Heald & Hildreth, PLC

**ATTACHMENT A**

**Multi-Auction Default Payment Report**

License Number Frequency blocks	Defaulted Gross Bids Auction No. 35	Defaulted Net Bids Auction No. 35	Re-auction Gross Bids Auction No. 58	Re-auction Net Bids Auction No. 58	3% Payment	Lower Difference Payment	Final Payment
CWBTA043 – C1 (Binghamton, NY)	\$5,356,000.00	\$5,356,000.00	\$778,000.00	\$778,000.00	\$23,340.00	\$4,578,000.00	\$4,601,340.00
CWBTA215 – C3 Jamestown, NY- Warren, PA	\$1,907,000.00	\$1,430,250.00	\$805,000.00	\$805,000.00	\$24,150.00	\$625,250.00	\$649,400.00

Sum of Final Default Payments	\$5,250,740.00
Less Amounts on Deposit	\$508,833.68*
<b>Outstanding Balance Due on Final Default Payments</b>	<b>\$4,741,906.32</b>

\*This amount reflects the amount that TPS Utilicom, Inc. has on deposit with respect to the re-auctioned licenses. TPS Utilicom, Inc. has an additional \$527,166.32 on deposit for licenses CWBTA127-C1 and CWBTA330-C3, which did not receive bids in Auction No. 58. The Commission will apply that amount on deposit when determining final default payment obligations once the spectrum associated with those licenses has been re-auctioned. See Letter from Margaret Wiener to Raymond J. Quianzon, 18 FCC Rcd. 21,332, 21,334-21,335 (Oct. 16, 2003).

## **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: ("35"))

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.