



Federal Communications Commission  
Washington, D.C. 20554

DA 06-2300

November 9, 2006

**Via Certified Mail, Return Receipt Requested**

Wilber Johnson  
4660 Natomas Boulevard  
Sacramento, CA 95835-2224

**Re: Notice of Interim Default Payment Obligation for Auction No. 62**

Dear Mr. Johnson:

This letter provides notice of the interim default payment obligation with respect to your default arising out of a Federal Communications Commission ("Commission") auction of FM broadcast construction permits in Auction No. 62. You were a participant and high bidder in Auction No. 62 on FM broadcast construction permit FM027-A. As described below, you failed to submit the required long-form application by the filing deadline<sup>1</sup> and, consequently, are deemed to have defaulted on your winning bid.<sup>2</sup> Accordingly, this letter sets forth your interim default payment obligation for FM broadcast construction permit FM027-A.

Section 73.5005 of the Commission's rules provides that an applicant that fails to submit the required long-form application under this section and fails to establish good cause for any late-filed submission shall be deemed to have defaulted and be subject to the default payment provisions as set forth in 47 CFR 1.2104(g). 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 construction 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 construction permit on which you defaulted is re-auctioned. The second component of the default payment is an additional payment equal to three percent (3%) of the 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 amount and basis (net or gross bid) as in the first

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<sup>1</sup> See "Auction of FM Broadcast Construction Permits Closes, Winning Bidders Announced for Auction No. 62," *Public Notice*, 21 FCC Rcd. 1071 (Feb 08, 2006) ("Auction No. 62 Closing Public Notice").

<sup>2</sup> See 47 C.F.R. §§ 1.2104(g), 1.2107(c), 73.5005(c).

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

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

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> Until the close of the subsequent auction, the Commission cannot determine the full amount of the default payment that is owed. Therefore, the Commission assesses an interim payment amounting to between three and 20 percent of the net winning bid.<sup>7</sup> The remainder, if any, is assessed once a subsequent winning bid for the defaulted permit is established.

On February 8, 2006, the Wireless Telecommunications Bureau and the Media Bureau (collectively “the Bureaus”) announced the winning bidders in Auction No. 62.<sup>8</sup> The Bureaus also announced that by no later than February 23, 2006, all Auction No. 62 winning bidders were required to have on deposit with Mellon Bank in Pittsburgh, Pennsylvania enough funds to cover each winning bidder’s down payment on its winning bids, and payments for withdrawn bids, if applicable.<sup>9</sup> In addition, the Bureaus announced that by March 10, 2006, the FCC Form 301 long-form applications were required to be submitted.<sup>10</sup> Your net winning bid totaled \$267,150.00.<sup>11</sup> The Bureaus applied your \$60,000.00 of upfront money toward the three percent (3%) interim payment for the withdrawn bid on FM broadcast construction permit FM366-A in Auction No. 62 and the down payment requirement of \$53,430.00. On March 10, 2006, the Commission refunded the remaining balance of your deposit in the amount of \$4,464.00. You failed to timely submit the long-form application by the March 10, 2006 deadline.

Therefore, you are considered to be in default on the FM broadcast construction permit for which you were the high bidder in Auction No. 62, and you are subject to the applicable default payment.<sup>12</sup> Accordingly, you owe an interim default payment of three-percent (3%) of the net winning bid of \$267,150.00, which is \$8,014.50.<sup>13</sup> Pursuant to Section 1.2106(e) of the

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

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

<sup>7</sup> *See Part 1 Third Report and Order*, 13 FCC Rcd 374, 434 ¶ 102; *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5563 n.51; *see also Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2382-83 ¶ 197.

<sup>8</sup> *See Auction No. 62 Closing Public Notice.*

<sup>9</sup> *See* 47 C.F.R. §1.2107(b). You withdrew on FM construction permit FM366-A in Auction No. 62. The construction permit did not sell in that auction and the Commission, therefore, assessed a three percent interim withdrawal payment in the amount of \$2,106.00. That amount was deducted from your upfront payment. *See Auction No. 62 Closing Public Notice, Attachments B and C.* The Commission will assess a final withdrawal payment when the permit is re-auctioned.

<sup>10</sup> *See Auction No. 62 Closing Public Notice.*

<sup>11</sup> *See Auction No. 62 Closing Public Notice, Attachment A.*

<sup>12</sup> *See* 47 C.F.R. §§ 1.2104(g)(2), 1.2109(c).

<sup>13</sup> *See Part 1 Third Report and Order*, 13 FCC Rcd 374, 434 ¶ 102; *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5563 n.51; *see also Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2382-83 ¶ 197.

Commission's rules, we will apply your payment on deposit to satisfy this interim default payment obligation.<sup>14</sup> Once a subsequent high bid is established for the relevant spectrum, we will determine your final default payment obligation. If an additional payment is required, a further order will assess such payment.<sup>15</sup>

### **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), you are ASSESSED an interim default payment of \$8,014.50 for your defaulted high bid for FM broadcast construction permit FM027-A in Auction No. 62.

IT IS FURTHER ORDERED that, pursuant to Sections 1.2104 and 1.2106 of the Commission's rules, 47 C.F.R. §§ 1.2104 and 1.2106, your funds on deposit will be applied to satisfy the interim default payment obligation.

IT IS FURTHER ORDERED that, pursuant to Section 1.2104(g) of the Commission's rules, 47 C.F.R. § 1.2104(g), that you will be subject to a final default payment for your defaulted high bid for FM broadcast construction permit FM027-A in Auction No. 62 once the spectrum associated with the FM broadcast construction permit is re-auctioned and the full default payment amount is determined.

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 Sections 0.283 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.283 and 0.331.

Sincerely,

Margaret Wiener  
Chief, Auctions and Spectrum Access Division  
Wireless Telecommunications Bureau

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<sup>14</sup> See 47 C.F.R. § 1.2106(e). The Commission will retain the full amount on deposit, including the amount in excess of the three percent interim default payment, until the final default payment can be assessed. See TPS Utilicom, *Order on Reconsideration*, 18 FCC Rcd. 2516 (2003).

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