



Federal Communications Commission  
Washington, D.C. 20554

August 3, 2007

DA 07-3517

**Via Certified Mail, Return Receipt Requested**

College Creek Broadcasting, Inc.  
Attn: Neil J. Robinson  
980 N. Michigan Avenue  
Chicago, IL 60611

**Re: Interim Default Payment Obligation for Auction No. 37**

Dear Mr. Robinson:

This letter provides notice of the interim default payment obligation for College Creek Broadcasting, Inc. ("College") with respect to its default arising out of a Federal Communications Commission ("Commission") auction of FM broadcast construction permits ("Auction No. 37"). College, a participant in Auction No. 37, was the winning bidder on thirty-eight FM broadcast construction permits.<sup>1</sup> As described below, College defaulted on its final payment obligation for its winning bid for FM269 (Murdo, SD). Accordingly, this letter sets forth the interim default payment obligation of College for its defaulted bid for FM269 and dismisses College's Form 301 long-form application.<sup>2</sup>

Under the Commission's Rules ("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 in default, its application is dismissed, and it is subject to a default payment.<sup>3</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>4</sup> This component of the default payment cannot be determined until after the permit on which College

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<sup>1</sup> See FM Broadcast Construction Permits Auction Closes; Auction No. 37 Winning Bidders Announced, Payment and Application Deadlines Established, *Public Notice*, DA 04-3694, 20 FCC Rcd 1021 (MB/WTB 2004) ("Auction No. 37 Closing Public Notice").

<sup>2</sup> See File No. BNPB-20041230ACQ.

<sup>3</sup> 47 C.F.R. § § 1.2104(g)(2), 1.2109(b).

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

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>5</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>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 (3%) of the defaulted bid.<sup>7</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 twenty percent of the net winning bid.<sup>8</sup> The remainder, if any, is assessed once a subsequent winning bid for the defaulted permit is established.

On June 7, 2006, the Media Bureau ("Bureau") announced that it was prepared to grant College's applications for permits FM269 and FM030 from Auction No. 37.<sup>9</sup> The Bureau also announced that by no later than June 21, 2006, College was required to submit its final payment for both permits in accordance with the procedures adopted in the *Broadcast First Report and Order*.<sup>10</sup> If the payment was not received by that date, College had until July 6, 2006, to submit the payment plus a late fee equal to five percent of the amount due.<sup>11</sup> College's net winning bids for those two permits totaled \$2,736,000.<sup>12</sup> Within ten business days of the release of the *Auction No. 37 Closing Public Notice*, winning bidders were required to have on deposit twenty (20) percent of their net winning bid(s) in order to meet the down payment requirement.<sup>13</sup> College submitted its down payments for the two licenses by the December 15, 2004 due date. The Bureau applied College's down payments on deposit for those two permits in the amount of \$547,200 towards the final payments due. College was required to pay the remaining balance of \$288,000 for FM269 and \$1,900,800 for FM030. College made a payment in the amount of

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

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

<sup>7</sup> *Id.*

<sup>8</sup> *See Part I 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>9</sup> *See Media Bureau is Prepared to Grant Certain Auction No. 37 Broadcast Construction Permit Applications*, DA 06-1167, *Public Notice*, 21 FCC Rcd. 6204 (MB 2006).

<sup>10</sup> *Implementation of 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services, First Report and Order* in MM Docket No. 97-234, GC Docket No. 92-52 and GEN Docket No. 90-264, 13 FCC Rcd 15920 (1998) ("*Broadcast First Report and Order*").

<sup>11</sup> 47 C.F.R. § 1.2109(a).

<sup>12</sup> *See Auction No. 37 Closing Public Notice* at Attachment A.

<sup>13</sup> 47 C.F.R. § 1.2107(b).

\$1,900,800 plus a late fee in the amount of \$95,040 on July 6, 2006, for FM broadcast construction permit FM030 and did not make a payment on the remaining balance for FM broadcast construction permit FM269.

Accordingly, College is considered to be in default on FM broadcast construction permit FM269 for which it was the high bidder in Auction No. 37, its long-form application is dismissed, and it is subject to the applicable default payment.<sup>14</sup> Pursuant to Section 1.2104(g)(2) of the Rules, College owes an interim default payment of \$10,800, which is three-percent (3%) of its net winning bid of \$360,000.<sup>15</sup> Pursuant to Section 1.2106(e) of the Rules, we will apply College's payment on deposit to satisfy this interim default payment obligation.<sup>16</sup> Once a subsequent high bid is established for the relevant spectrum, we will determine College's final default payment obligation.<sup>17</sup> If an additional payment is required, a further order will assess such payment.<sup>18</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), College Creek Broadcasting, Inc. is ASSESSED an interim default payment of \$10,800 for its defaulted high bid for FM broadcast construction permit FM269 (Murdo, SD) in Auction No. 37.

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, College Creek Broadcasting, Inc.'s funds on deposit will be applied to satisfy the interim default payment obligation.

IT IS FURTHER ORDERED that, pursuant to Section 1.2109 of the Commission's Rules, 47 C.F.R. 1.2109, the Form 301 long-form application of College Creek Broadcasting, Inc., File Number BNPH-20041230ACQ, is DISMISSED with prejudice.

IT IS FURTHER ORDERED that, pursuant to Section 1.2104(g) of the Commission's Rules, 47 C.F.R. § 1.2104(g), College Creek Broadcasting, Inc. will be subject to a final default payment for its defaulted high bid for FM broadcast construction permit FM269 (Murdo, SD) in

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<sup>14</sup> 47 C.F.R. §§ 1.2104(g)(2), 1.2109(c).

<sup>15</sup> 47 C.F.R. § 1.2104(g)(2).

<sup>16</sup> 47 C.F.R. § 1.2106(e).

<sup>17</sup> *Id.*

<sup>18</sup> See Mountain Solutions Ltd., Inc., FCC 98-220, *Memorandum Opinion and Order*, 13 FCC Rcd. 21,983, 21,997 ¶ 25 (1998).

Auction No. 37 once the spectrum associated with the 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,

Sincerely,

Gary D. Michaels  
Deputy Chief, Auctions and Spectrum Access Division  
Wireless Telecommunications Bureau

Tom Hutton  
Deputy Chief, Audio Division  
Media Bureau

cc: Shainis & Peltzman, Chartered