



Federal Communications Commission
Washington, D.C. 20554

August 30, 2007

DA 07-3804

Via Certified Mail, Return Receipt Requested

Wendolynn Tellez
3107 Lane Street
Laredo, TX 78043

Re: Notice of Interim Default Payment Obligation for Auction No. 70

Dear Ms. Tellez:

This letter provides notice of the interim default payment obligation with respect your default arising out of a Federal Communications Commission ("Commission") auction of FM broadcast construction permits ("Auction No. 70"). You participated in Auction No. 70 and were the winning bidder on FM broadcast construction permit FM598-A.¹ As described below, you defaulted on your payment obligation for your winning bid. Accordingly, this letter sets forth the interim default obligation for your defaulted bid.

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 subject to a default payment.² 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).³ This component of the default payment cannot be determined until after the permit on which you defaulted is re-auctioned. The second component of the default payment is an additional payment equal to twenty percent (20%) of the defaulter's bid, or the subsequent winning bid, whichever is less.⁴ If either bid

¹ See Auction of FM Broadcast Construction Permits Closes, *Public Notice*, DA 07-1437, 22 FCC Rcd. 6323 (2007), ("Closing Public Notice").

² 47 C.F.R. § 1.2104(g)(2), 1.2109(b).

³ 47 C.F.R. § 1.2104(g)(2).

⁴ See Auction of FM Broadcast Construction Permits Scheduled for March 7, 2007, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 70, AU Docket No. 06-170, *Public Notice*, 21 FCC Rcd 12957, 12997 ¶ 171 (MB/WTB 2006).

amount is subject to a bidding credit, the twenty percent (20%) will be calculated using the same bid amounts and basis (net or gross bids) as in the first component of the default payment.⁵ In the event that the subsequent winning bid is greater than or equal to the defaulted bid, the total default payment is equal to twenty percent (20%) of the defaulted bid.⁶ 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.⁷ The remainder, if any, is assessed once a subsequent winning bid for the defaulted permit is established.

On April 2, 2007, the Wireless Telecommunications Bureau and the Media Bureau (collectively “the Bureaus”) announced the winning bidders in Auction No. 70.⁸ The Bureaus also announced that by no later than April 16, 2007, all Auction No. 70 winning bidders were required to have on deposit enough funds to bring each winning bidders’ deposits to twenty-percent (20%) of its winning bids and, by April 30, 2007, all winning bidders were required to submit a final payment for the balance of the net amount of each winning bid.⁹ If a winning bidder’s upfront payment was not sufficient to meet the down payment requirement, the winning bidder was required to deposit sufficient funds to meet its down payment. Your net winning bid totaled \$31,200.00.¹⁰ The Bureaus applied your \$2,500 of upfront money toward the down payment requirement and notified you of the additional amount due of \$3,740.¹¹ On April 16, 2007, you submitted the balance owed on the down payment. You failed to submit the final payment due on April 30, 2007.

The *Closing Public Notice* also announced that, pursuant to Section 73.5005(a) of the Rules, all winning bidders were required to submit a completed long-form application for each construction permit for which they were a winning bidder by May 2, 2007.¹² In accordance with

⁵ 47 C.F.R. § 1.2104(g)(2).

⁶ 47 C.F.R. § 1.2104(g)(2).

⁷ *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.

⁸ *See Closing Public Notice*.

⁹ 47 C.F.R. § 1.2107(b); 47 C.F.R. § 1.2109(a).

¹⁰ *See Closing Public Notice* at Attachment A.

¹¹ *Id.* at Attachment B.

¹² *Id.*; 47 C.F.R. § 73.5005(a).

the Rules, FCC Form 301 must be accompanied by the appropriate application filing fee.¹³ You created your long-form application for filing, but failed to submit the application filing fee.

Accordingly, you are considered to be in default on the FM broadcast construction permit FM598-A for which you were the high bidder in Auction No. 70 and are subject to the applicable default payment.¹⁴ Pursuant to Section 1.2104(g)(2) of the Rules, you owe an interim default payment of \$6,240.00, which is twenty percent (20%) of your net winning bid of \$31,200.00.¹⁵ Pursuant to Section 1.2106(e) of the Rules, we will apply your payments on deposit to satisfy this interim default payment obligation.¹⁶ Once a subsequent high bid is established for the relevant spectrum, we will determine your final default payment obligation.¹⁷ If an additional payment is required, a further order will assess such payment.¹⁸

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), Wendolynn Tellez is ASSESSED an interim default payment of \$6,240.00 for the defaulted high bid for FM broadcast construction permit FM598-A in Auction No. 70.

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

IT IS FURTHER ORDERED that, pursuant to 47 C.F.R. § 1.2104(g)(2), Wendolynn Tellez will be subject to a final default payment for the defaulted high bid for FM broadcast construction permit FM598-A in Auction No. 70 once the spectrum associated with the permit is re-auctioned and the full default payment amount is determined.

¹³ See Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, *First Report and Order*, 13 FCC Rcd 15920, 15984 ¶ 164 (1998).

¹⁴ 47 C.F.R. §§ 1.2104(g)(2), 1.2109(c).

¹⁵ 47 C.F.R. § 1.2104(g)(2).

¹⁶ 47 C.F.R. § 1.2106(e).

¹⁷ 47 C.F.R. § 1.2104(g)(2).

¹⁸ See Mountain Solutions Ltd., Inc., *Memorandum Opinion and Order*, 13 FCC Rcd 21,983, 21,997 ¶ 25 (1998).

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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: Frank Hannel