



Federal Communications Commission
Washington, D.C. 20554

October 1, 2008

DA 08 - 2206

Via Certified Mail, Return Receipt Requested

Spectrum Acquisitions, Inc.
Attn: Alejandro J. Calderon
P.O. Box Suite 114
9150 East Del Camino Drive
Scottsdale, AZ 85258

Re: Notice of Interim Default Payment Obligation for Auction 73

Dear Mr. Calderon:

This letter provides notice of the interim default payment obligation for Spectrum Acquisitions, Inc. ("SAI") with respect to its default arising out of a Federal Communications Commission ("Commission") auction of the 700 MHz Band licenses ("Auction 73"). SAI, a participant in Auction 73, was the winning bidder for license CMA663-B (Hudspeth, TX).¹ As described below, SAI defaulted on its final payment obligation for its winning bid. Accordingly, this letter sets forth the interim default payment obligation of SAI for its defaulted bid and dismisses SAI's long-form application.²

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 in default, its application is dismissed, and it is subject to a default payment.³ 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).⁴ This component of the default payment cannot be determined until after the licenses on which SAI defaulted are re-auctioned. The second component of the default payment is an additional payment, the amount of which was set in advance of the auction at fifteen percent (15%) of the defaulter's bid, or the subsequent winning bid, whichever is less.⁵ If either bid amount is subject to a bidding credit, this component of the default payment will be calculated using the same bid amounts and basis (net or gross bids) as in the first component of the default payment.⁶ In the event that the

¹ See Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73, *Public Notice*, DA 08-595, 23 FCC Rcd 4572 (2008) ("*Auction 73 Closing Public Notice*").

² See FCC File No. 0003383498 (filed April 4, 2008).

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

⁴ 47 C.F.R. § 1.2104(g)(2).

⁵ See 47 C.F.R. § 1.2104(g)(2)(ii); Auction of 700 MHz Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76, *Public Notice*, DA 07-4171, 22 FCC Rcd 18141, 18222 ¶ 305 (2007).

⁶ *Id.*

subsequent winning bid is greater than or equal to the defaulted bid, the total default payment is equal to fifteen percent (15%) of the defaulted bid.⁷ 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.⁸ The remainder, if any, is assessed once a subsequent winning bid for the defaulted licenses is established.

On March 20, 2008, the Wireless Telecommunications Bureau (“Bureau”) announced the winning bidders in Auction 73, including SAI.⁹ The Bureau also announced that by no later than April 3, 2008, all Auction 73 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 17, 2008, all winning bidders were required to submit a final payment for the balance of the net amount of each winning bid.¹⁰ 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. SAI’s net winning bid totaled \$202,300.00.¹¹ SAI submitted a timely upfront payment of \$10,000 and a subsequent payment of \$50,000 after the upfront payment deadline.¹² The Bureau applied the \$60,000.00 that SAI had on deposit toward the down payment requirement and notified SAI that its additional amount due to meet its final payment was \$142,300.00.¹³ SAI failed to submit the final payment due by April 17, 2008.

The *Auction 73 Closing Public Notice* also announced that, pursuant to Section 1.2107(c) of the rules, all winning bidders were required to submit their long-form applications (FCC Form 601 and 602) on or before April 3, 2008. SAI submitted its long-form application one day late but requested a waiver to permit acceptance of the application.¹⁴ SAI failed to remit the balance of its winning bid. Section 1.2109(c) of the rules provides that a winning bidder that “fails to remit the balance of its winning bid in a timely manner . . . will be deemed to have defaulted (and) its application will be dismissed”¹⁵

⁷ *Id.*

⁸ See Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 434 ¶ 102 (1997); Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd at 5563 n.51 (1994); see also Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd at 2382-83 ¶ 197 (1994).

⁹ See *Auction 73 Closing Public Notice*.

¹⁰ 47 C.F.R. §§ 1.2107(b), 1.2109(a).

¹¹ See *Auction 73 Closing Public Notice* at Attachment B.

¹² Request for Waiver of Submission of Upfront Payment submitted on behalf of Spectrum Acquisition’s, Inc. via the Auction 73 e-mail address on January 17, 2008.

¹³ Commission staff sent to SAI on March 20, 2008, a pre-filled Remittance Advice (Form 159) showing the amount of SAI’s final payment in an overnight mailing that also included a copy of the *Auction 73 Closing Public Notice*.

¹⁴ See FCC File No. 0003383498 (filed April 4, 2008). SAI states in its waiver request that the application was timely filed on April 3, 2008, but that the Commission’s database mistakenly lists the application as saved instead of submitted. See *id.*, Exhibit F: waiver request.

¹⁵ 47 C.F.R. § 1.2109(b).

Accordingly, SAI is considered to be in default on license CMA663-B for which it was the high bidder in Auction 73. Because SAI defaulted on its winning bid for CMA663-B, its application is dismissed and it is subject to the applicable default payment.¹⁶ Consistent with the percentage that will be used to calculate the additional payment component of the final default payment, SAI owes an interim default payment of \$30,345.00, which is fifteen-percent (15%) of its net winning bid of \$202,300.00.¹⁷ Pursuant to Section 1.2106(e) of the rules, we will apply SAI payments on deposit to satisfy this interim default payment obligation.¹⁸ Once a subsequent high bid is established for the relevant spectrum, we will determine SAI's final default payment obligation.¹⁹ If an additional payment is required, a further order will assess such payment.²⁰

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), Spectrum Acquisitions, Inc. is ASSESSED an interim default payment of \$30,345.00 for its defaulted high bid for 700 MHz Band licenses CMA663-B in Auction 73.

IT IS FURTHER ORDERED that, pursuant to 47 C.F.R. §§ 1.2104 and 1.2106, Spectrum Acquisitions, Inc. 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), Spectrum Acquisitions, Inc. will be subject to a final default payment for its defaulted high bid for 700 MHz Band licenses CMA663-B in Auction 73 once the spectrum associated with the license is re-auctioned and the full default payment amount is determined.

IT IS FURTHER ORDERED that, pursuant to 47 C.F.R. § 1.2109(c), application FCC File No. 0003383498, filed by Spectrum Acquisitions, Inc. on April 4, 2008, is DISMISSED.

¹⁶ 47 C.F.R. §§ 1.2104(g)(2), 1.2109(c). We need not address SAI's request for waiver of the application filing deadline because we dismiss the application based on SAI's failure to make its final payment.

¹⁷ Consistent with Commission precedent, the disposition of the remaining amount of monies on deposit with the Commission related to this matter will be addressed in a subsequent letter to the payor of record, once a permit covering the same spectrum is re-auctioned and the final default payment can be calculated. *See* AirCom Communication Consultants, Inc., *Order*, 16 FCC Rcd 17685, 17691 n.47 (Pub. Safety Div. 2001), recon. denied *sub nom.*, AirCom Consultants, Inc., *Order on Reconsideration*, 18 FCC Rcd 1806 (Pub. Safety Div. 2003). *See also* 47 C.F.R. § 1.2104(g)(2).

¹⁸ 47 C.F.R. § 1.2106(e).

¹⁹ 47 C.F.R. § 1.2104(g)(2)(i).

²⁰ *See* Mountain Solutions Ltd., Inc., *Memorandum Opinion and Order*, 13 FCC Rcd. 21,983, 21,997 ¶ 25 (1998).

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,

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

Roger S. Noel, Chief
Mobility Division
Wireless Telecommunications Bureau

cc: David G. O'Neil, Esquire