



Federal Communications Commission
Washington, D.C. 20554

DA 08-322

February 12, 2008

Via Certified Mail, Return Receipt Requested

Mr. Cyril H. Miller
1904 Thousand Oaks Drive
Burleson, TX 76028

Re: Notice of Interim Default Payment Obligation for Auction 81

Dear Mr. Miller:

This letter provides notice of your interim default payment obligation with respect to a default arising out of a Federal Communications Commission ("Commission") auction of low power television ("LPTV") construction permits ("Auction 81"). You were the winning bidder on MX Group 141 (Amarillo, TX) in Auction 81.¹ As described below, you defaulted on your winning bid for MX Group 141 for failing to submit the final payment obligation. Accordingly, this letter sets forth your interim default obligation and dismisses your long-form application.²

On September 20, 2005, the Media Bureau and the Wireless Telecommunications Bureau ("Bureaus") announced the winning bidders in the Low Power Television Auction 81.³ The Bureaus also instructed winning bidders to submit their long-form applications (FCC Forms 346 or 301-CA) on or before October 31, 2005. This deadline subsequently was extended to November 30, 2005.⁴ You timely submitted your long-form application.

The application was processed by staff and on May 17, 2006, the Media Bureau issued a Public Notice stating that it was prepared to grant your long-form application following timely payment of the remaining balance of your winning bid for MX Group 141.⁵ You failed to remit the balance of your winning bid. Section 1.2109(c) of the Commission's Rules ("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" Because you defaulted on your winning bid for MX Group 141, your application is dismissed.

¹ See "Auction of Low Power Television Construction Permits Closes," *Public Notice*, DA 05-2543 (released Sep. 30, 2005) ("*Closing Public Notice*").

² See File No. BNPTTL-20000831CIP.

³ See *Closing Public Notice*.

⁴ See "Media Bureau and Wireless Telecommunications Bureau Announce Extension of Auction 81 Deadlines for Applications and Down Payments," *Public Notice*, DA 05-2847, released October 28, 2005.

⁵ See *Public Notice*, DA 06-602, released May 17, 2006.

In addition, under the Rules, a winning bidder that defaults on its final payment will be subject to a default payment.⁶ The default payment has two components.⁷ 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).⁸ This component of the default payment cannot be determined until after the permit for 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.⁹ 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.¹⁰ 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.¹¹ Since the Commission cannot determine the full amount of the default payment that is owed until there is a subsequent winning bid for the license, the Commission assesses an interim payment amounting to between three and twenty percent of the net winning bid.¹² The remainder, if any, is assessed once a subsequent winning bid for the defaulted permit is established.

Pursuant to Section 1.2104(g)(2) of the Rules, you owe an interim default payment of \$270.00, which is three-percent (3%) of your net winning bid of \$9,000.00.¹³ Pursuant to

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

⁷ 47 C.F.R. § 1.2109(c).

⁸ 47 C.F.R. § 1.2104(g)(2).

⁹ *Id.* Pursuant to recent modifications to the rule governing default payments, the percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Since those modifications were not in effect prior to the beginning of this auction, the previous rule will apply. Accordingly, the additional default payment is three percent of the applicable bid. *See Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, WT Docket No. 05-211, *Report and Order*, 21 FCC Rcd 891, 901-04 ¶¶ 24-32 (2006), petitions for recon. Pending.

¹⁰ *Id.*

¹¹ *Id.*

¹² *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.

¹³ 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).

Section 1.2106(e) of the Rules, we will apply your payment on deposit to satisfy this interim default payment obligation.¹⁴ Once a subsequent high bid is established for the relevant spectrum, we will determine your final default payment obligation.¹⁵ If an additional payment is required, a further order will assess such payment.¹⁶

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), Cyril H. Miller is ASSESSED an interim default payment of \$270.00 for the defaulted high bid for LPTV construction permit MX Group 141 in Auction 81.

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, Cyril H. Miller's 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), Cyril H. Miller will be subject to a final default payment for the defaulted high bid for LPTV construction permit MX Group 141 in Auction 81 once the spectrum associated with the LPTV construction permit is re-auctioned and the full default payment amount is determined.

IT IS FURTHER ORDERED that, pursuant to Section 73.3568(a)(3) of the Commission's Rules, 47 C.F.R. § 73.3568(a)(3), the application (File No. BNPTTL-20000831CIP) of Cyril H. Miller IS DISMISSED.

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,

Sincerely,

Rita Cookmeyer
Financial Policy Analyst
Auctions and Spectrum Access Division
Wireless Telecommunications Bureau

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Donald Martin, Esq.

¹⁴ See 47 C.F.R. § 1.2106(e).

¹⁵ *Id.*

¹⁶ See Mountain Solutions Ltd., Inc., *Memorandum Opinion and Order*, 13 FCC Rcd 21,983, 21,997 ¶ 25 (1998).