



Federal Communications Commission
Washington, D.C. 20554

DA 08-324

February 11, 2008

Via Certified Mail, Return Receipt Requested

Mary Vargas
270 Abbey Drive
Austin, TX 78737

Re: Interim Default Payment Obligations for Auction 62

Dear Ms. Vargas:

This letter provides notice of your interim default payment obligations with respect to the defaults arising out of a Federal Communications Commission ("Commission") auction of FM broadcast construction permits ("Auction 62"). You were the winning bidder on FM broadcast construction permits FM396-C3 (Cheboygan, MI) and FM407-C2 (Browning, MT) in Auction 62.¹ As described below, you defaulted on your final payment obligations for the winning bids for both permits.² Accordingly, this letter sets forth your interim default payment obligations for the defaulted bids for both permits and dismisses your Form 301 long-form applications.³

On February 8, 2006, the Media Bureau and the Wireless Telecommunications Bureau ("Bureaus") announced the winning bidders in Auction 62.⁴ In the *Closing Public Notice*, the Bureaus instructed winning bidders to submit their long-form applications on or before March 10, 2006. Pursuant to the Commission's Rules ("Rules"), winning bidders were also required to have on deposit enough funds to cover the twenty percent (20%) down payment requirement within ten days after the release of the *Closing Public Notice*.⁵ You timely submitted your long-form applications and you had sufficient funds on deposit to cover the down payment requirement for both permits.⁶

¹ See Auction of FM Broadcast Construction Permits Auction Closes; Winning Bidders Announced for Auction 62, *Public Notice*, DA 06-252, 21 FCC Rcd 1071 (MB/WTB 2006) ("*Closing Public Notice*").

² The net winning bid for permit FM396-C3 was \$287,300.00 and the net winning bid for permit FM407-C2 was \$29,250.00.

³ See Application File Nos. BNPH-20060310ADR and BNPH-20060310ADS.

⁴ See *Closing Public Notice*.

⁵ See *Closing Public Notice*. See also 47 C.F.R. § 1.2107(b).

⁶ Your total upfront payment on deposit was \$99,000.00 and the total required down payment for both permits was \$63,310.00. See *Closing Public Notice*, Attachment B. The Bureaus applied \$63,310.00 (\$57,460.00 for FM396-C3 and \$5,850.00 to FM407-C2) of the upfront payment to cover the required

On June 12, 2006, the Media Bureau (“Bureau”) announced that it was prepared to grant your application for permit FM396-C3 (Cheboygan, MI) from Auction 62.⁷ In accordance with the procedures adopted in the *Broadcast First Report and Order*,⁸ the Bureau also announced that you were required to submit your final payment for that permit by no later than June 26, 2006.⁹ If the payment was not received by that date, you had until July 11, 2006 to submit the payment plus a late fee equal to five percent of the amount due.¹⁰ You failed to remit the balance of your winning bid for FM broadcast construction permit FM396-C3.

On October 12, 2006, the Bureau announced that it was prepared to grant your application for permit FM407-C2 (Browning, MT) from Auction 62.¹¹ In accordance with the procedures adopted in the *Broadcast First Report and Order*, the Bureau also announced that you were required to submit your final payment for that permit by no later than October 26, 2006.¹² If the payment was not received by that date, you had until November 9, 2006, to submit the payment plus a late fee equal to five percent of the amount due.¹³ You failed to remit the balance of your winning bid for FM broadcast construction permit FM407-C2.

Accordingly, you are considered to be in default on FM broadcast construction permits FM396-C3 and FM407-C2 for which you were the high bidder in Auction 62, your long-form applications are dismissed, and you are subject to the applicable default payments.¹⁴ Under the 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

down payment for both permits and then, consistent with its general practice, apportioned the remaining amount on deposit of \$35,690.00 to the final payments owed.

⁷ See Media Bureau is Prepared to Grant Certain Auction 62 Broadcast Construction Permit Applications, DA 06-1234, *Public Notice*, 21 FCC Rcd. 6447 (MB 2006) (“*Cheboygan Prepared to Grant Public Notice*”).

⁸ *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. 91-52 and GEN Docket No. 90-264, 13 FCC Rcd 15920 (1998) (“*Broadcast First Report and Order*”).

⁹ See *Cheboygan Prepared to Grant Public Notice* (the Commission sends a partially completed FCC Remittance Advice Form (Form 159) to each applicant by a commercial next-day delivery service).

¹⁰ 47 C.F.R. § 1.2109(a).

¹¹ See Media Bureau is Prepared to Grant Certain Auction 62 Broadcast Construction Permit Applications, DA 06-2002, *Public Notice*, 21 FCC Rcd 11320 (MB 2006) (“*Browning Prepared to Grant Public Notice*”).

¹² See *Browning Prepared to Grant Public Notice* (the Commission sends a partially completed FCC Remittance Advice Form (Form 159) to each applicant by a commercial next-day delivery service).

¹³ 47 C.F.R. § 1.2109(a).

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

to a default payment.¹⁵ 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).¹⁶ 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.¹⁷ 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.¹⁸ 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.¹⁹ 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.²⁰ 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 interim default payments totaling \$9,496.50, which is three-percent (3%) of your total net winning bids of \$316,550.00.²¹ Pursuant to Section 1.2106(e) of the Rules, we will apply your payments on deposit to satisfy the interim default payment obligations.²² Once subsequent high

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

¹⁶ 47 C.F.R. § 1.2104(g)(2).

¹⁷ *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.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *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.

²¹ 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).

²² 47 C.F.R. § 1.2106(e). In the event a default payment is assessed pursuant to Section 1.2104 of the Rules, upfront payments or down payments on deposit with the Commission will be used to satisfy the default payment.

bids are established for the relevant spectrum, we will determine your final default payment obligations.²³ If additional payments are required, a further order will assess such payment.²⁴

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), Mary Vargas is ASSESSED interim default payments in the amounts of \$8,619.00 for the defaulted high bid for FM broadcast construction permit FM396-C3 and \$877.50 for the defaulted high bid for FM broadcast construction permit FM407-C2 in Auction 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, Mary Vargas' funds on deposit will be applied to satisfy the interim default payment obligations.

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 applications of Mary Vargas, File Numbers BNPH-20060310ADR and BNPH-2006310ADS, are 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), Mary Vargas will be subject to final default payments for the defaulted high bids for FM broadcast construction permits FM396-C3 and FM407-C2 in Auction 62 once the spectrum associated with the permits is re-auctioned and the full default payment amounts are 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

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Fred Hannel

²³ *Id.*

²⁴ See Mountain Solutions Ltd., Inc., FCC 98-220, *Memorandum Opinion and Order*, 13 FCC Rcd. 21,983, 21,997 ¶ 25 (1998).