



Federal Communications Commission
Washington, D.C. 20554

June 24, 2009

DA 09 - 1398

Via Certified Mail, Return Receipt Requested

Robert L. Olender, Esq.
Counsel for Word of God Fellowship, Inc.
Koerner & Olender, P.C.
11913 Grey Hollow Court
North Bethesda, MD 20852-5706

Re: Notice of Interim Default Payment Obligation for Auction 64

Dear Mr. Olender:

This letter provides notice of the interim default payment obligation for Word of God Fellowship, Inc. ("WOGF") with respect to its default arising out of the Federal Communications Commission's ("Commission") auction of full power television construction permits held in 2006 ("Auction 64"). At the conclusion of that auction, WOGF was the winning bidder for construction permits in Apalachicola, Florida and Medical Lake, Washington.¹ As described below, WOGF defaulted on its final payment obligations for both winning bids. Accordingly, this letter sets forth the interim default payment obligation of WOGF for its defaulted bids and dismisses WOGF's long-form applications (FCC Form 301).²

On March 23, 2006, the Commission announced the winning bidders in Auction 64, including WOGF, and established the deadline for winning bidders to make down payments and file long-form applications.³ The *Auction 64 Closing Public Notice* also indicated that, upon resolution of any matters raised in petitions to deny or any other technical or legal issues raised by the long-form applications, the Commission would issue another public notice announcing it is prepared to award the construction permits so long as the winning bidders made full payment of the balance of their winning bids.⁴

On July 15, 2008, the Media Bureau announced that it was prepared to grant WOGF's applications for the full power television construction permits TV-DTV003-3 in Apalachicola, Florida and TV-DTV010-51 in Medical Lake, Washington (collectively, "Auction 64 Permits").⁵ The Media Bureau stipulated that, in accordance with the procedures adopted in the *Broadcast First Report and*

¹ See Auction of Full Power Television Construction Permits Closes; Winning Bidders Announced for Auction No. 64, *Public Notice*, DA 06-648, 21 FCC Rcd 3010 (2006) ("*Auction 64 Closing Public Notice*").

² See FCC Form 301 File Nos. BNPCDT-20060424ABV and BNPCDT-20060424ADL (filed April 24, 2006).

³ See *Auction 64 Closing Public Notice*.

⁴ *Id.*

⁵ See FCC Announces It is Prepared to Grant Television Construction Permits After Final Payment is Made, *Public Notice*, DA 08-1590, 23 FCC Rcd 10,884 (2008).

Order,⁶ the grant of the construction permits would only occur after final payment was made, which was required to occur no later than July 29, 2008 (or by August 12, 2008, provided that the winning bidder also pays a late fee equal to five percent (5%) of the amount due).⁷

Prior to the start of Auction 64, WOGF submitted \$1,795,000 as an upfront payment to participate in the auction. At the conclusion of the auction, WOGF's net winning bids for the two Auction 64 Permits totaled \$2,979,000.⁸ The Commission applied part of WOGF's upfront payment to satisfy WOGF's down payment of \$595,800.⁹ WOGF was required to pay the final 80% of its net winning bids (minus the left-over funds on deposit with the Commission) by July 29, 2008 (or by August 12, 2008, with the five percent late fee).

In a letter filed July 30, 2008, WOGF informed the Commission that it did not intend to pay the balance of its winning bids for Auction 64, and therefore, "intends to default on the remaining payments that would be due as a condition of a grant" of the Auction 64 Permits.¹⁰ To date, WOGF has made no post-auction payments.

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.¹¹ 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).¹²

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.¹³ If either bid amount is

⁶ Implementation of 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services, MM Docket No. 97-234, GC Docket No. 91-52, and GEN Docket No. 90-264, *First Report and Order*, FCC 98-194, 13 FCC Rcd 15,920 (1998) ("*Broadcast First Report and Order*").

⁷ 47 C.F.R. § 1.2109(a).

⁸ See *Auction 64 Closing Public Notice* at Attachment B.

⁹ See *Auction 64 Closing Public Notice*, 21 FCC Rcd at 3010. See also 47 C.F.R. § 1.2107(b). Winning bidders were required to have on deposit enough funds to cover the 20 percent down payment requirement within ten business days of the release of the *Auction 64 Closing Public Notice*. Following application of the funds to the down payment, WOGF had \$1,199,200 on deposit with the Commission. Pursuant to the Commission's policy at the time, the Commission's Office of Managing Director refunded WOGF's funds above the 20 percent down payment (\$1,199,200) on May 18, 2006.

¹⁰ Letter from Robert L. Olender, Counsel for Word of God Fellowship, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, filed July 30, 2008 ("*July 30th Letter*").

¹¹ See 47 C.F.R. §§ 1.2104(g)(2), 1.2109(b).

¹² See 47 C.F.R. § 1.2104(g)(2).

¹³ See *id.* (2005). 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 Auction 64, the previous rule will apply. Accordingly, the additional default payment is three percent of the applicable bid. See Implementation of the

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.¹⁴ In the event that the subsequent winning bid is greater than or equal to the defaulted bid, the total default payment will consist only of the additional payment equal to three percent (3%) of the defaulted bid.¹⁵

Until the final default payment can be determined, the Commission assesses an initial (or interim) default payment of between three and 20 percent of the defaulter's bid to ensure that the final default penalty is paid.¹⁶ Once a subsequent winning bid for the defaulted permit is established, the remaining amount owed by the defaulting party, if any, will then be assessed.

Because WOGF failed to timely remit the balance of its winning bids in Auction 64, it is considered to be in default on the two Auction 64 Permits, its long form applications are dismissed, and it is subject to the applicable default payment.¹⁷ Pursuant to our authority under the *Part 1 Competitive Bidding Third Report and Order*, we will assess an interim default deposit of 20 percent (20%) of WOGF's net winning bids – amounting to \$595,800 – until a final default payment amount can be determined.¹⁸ Pursuant to Section 1.2106(e) of the Commission's rules, we will hold WOGF's payments on deposit to satisfy this obligation.¹⁹

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).

¹⁴ See 47 C.F.R. § 1.2104(g)(2).

¹⁵ See *id.*

¹⁶ See Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 434 ¶ 102 (1997) ("*Part 1 Competitive Bidding Third Report and Order*") (stating that the Commission will assess an initial default deposit of between three percent (3%) and twenty percent (20%) of the defaulted bid amount where a winning bidder or licensee defaults and the defaulted license has yet to be reauctioned); Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2382-83 ¶ 197 (1994) (stating that the Commission "will hold deposits made by defaulting or disqualified auction winners to help ensure that the penalty is paid"). See, e.g., Letter to Raymond Quianzon, counsel for TPS Utilicom, Inc., from Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 03-3263, 18 FCC Rcd 21,332 (2003) ("*TPS Utilicom*").

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

¹⁸ *Part 1 Competitive Bidding Third Report and Order*, 13 FCC at 434 ¶ 102 (1997). In the *July 30th Letter*, WOGF cites section 1.2107(b) of the Commission's rules as support for its assertion that "the Commission is required to return the amount paid by [WOGF], less 3%, as the interim refund." *July 30th Letter* at 1, citing 47 C.F.R. § 1.2107(b). In relevant part, section 1.2107(b) states that when a winning bidder defaults its down payment "will be returned, less any applicable payments." 47 C.F.R. § 1.2107(b)(emphasis supplied). Here the interim default payment amount applies and must be subtracted from the amount to be refunded. See note 16 above. Pursuant to established policy the Commission may retain funds up to 20% of the defaulted bids as an interim default payment pending determination of the final default payment. See *Part 1 Competitive Bidding Third Report and Order*, 13 FCC Rcd at 434 ¶ 102. Moreover, since 2002 when the Commission proposed procedures to enhance debt collection, our practice has been to hold the maximum amount in order "to actively ensur[e] that the final default payment is paid." See *TPS Utilicom*, 18 FCC Rcd at 21,336 (finding that the public interest would best be served by retaining the defaulter's deposit pending determination of the final default payment); see also Longstreet Communications International, Inc., *Order*, DA 00-467, 15 FCC Rcd 8562, 8563-64 (2000) (keeping on deposit the funds remaining after the initial three percent default payment was assessed until final default payment determined).

¹⁹ 47 C.F.R. § 1.2106(e).

Once a subsequent high bid is established for the relevant spectrum, we will determine WOGF's final default payment obligation.²⁰ If an additional payment is required, a further order will assess such payment.²¹ If the funds on deposit with the Commission more than cover the final default payment, any monies on deposit will then be refunded, less applicable payments.

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), Word of God Fellowship, Inc. is ASSESSED an interim default payment of \$595,800 for its defaulted high bids during Auction 64 for the full power television construction permits in Apalachicola, Florida and Medical Lake, Washington.

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, Word of God Fellowship, Inc. funds on deposit with the Commission will be applied to satisfy the interim default payment obligation.

IT IS FURTHER ORDERED that, pursuant to Section 1.2104(g)(2) of the Commission's rules, 47 C.F.R. § 1.2104(g)(2), Word of God Fellowship, Inc. will be subject to a final default payment for its defaulted high bids during Auction 64 for the full power television construction permits in Apalachicola, Florida and Medical Lake, Washington, once the spectrum associated with those construction permits is re-auctioned and the full default payment amounts is determined.

IT IS FURTHER ORDERED that, pursuant to Section 1.2109(c) of the Commission's rules, 47 C.F.R. § 1.2109(c), applications FCC File Nos. BNPCDT-20060424ABV and BNPCDT-20060424ADL, filed by Word of God Fellowship, Inc. on April 24, 2006, are DISMISSED.

²⁰ 47 C.F.R. § 1.2104(g)(2)(i).

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

Robert L. Olender
June 24, 2009

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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,

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

Barbara Kreisman, Chief
Video Division
Media Bureau