



Federal Communications Commission
Washington, D.C. 20554

June 24, 2009

DA 09-1399

Via Certified Mail, Return Receipt Requested

Ozark Paging, LLC
Attn: William G. Bowles, Jr.
109 ½ Highway 63 South
Rolla, MO 65401-4214

Re: Final Withdrawal and Interim and Final Default Obligations for Auction 40

Dear Mr. Bowles:

This letter provides notice of final withdrawal and interim and final default obligations for Ozark Paging LLC (“Ozark”), arising out of its participation in a Federal Communications Commission (“Commission”) auction of the Lower and Upper Paging Band licenses (“Auction 40”). Ozark, a participant and high bidder in Auction 40, withdrew its high bid on the Frequency Block EC license for market BEA095 during the course of that auction.¹ At the close of Auction 40, Ozark was the winning bidder on Frequency Block FI licenses for markets BEA093, BEA094, BEA096, BEA098, and BEA099.² As described below, Ozark defaulted on the final payment for its winning bids for those five licenses. In Auction 48, there were winning bids for the Frequency Block EC license for market BEA095 and the Frequency Block FI licenses for markets BEA096 and BEA099. Accordingly, this notice sets forth the final withdrawal obligations of Ozark for its withdrawn high bid; the final default obligations of Ozark for two of its five defaulted bids; and the interim default obligations of Ozark for its remaining three defaulted bids. This letter also dismisses Ozark’s long-form applications for the five licenses for which it was the winning bidder in Auction 40.³

Under the Commission’s rules, a bidder that withdraws a high bid during the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the subsequent winning bid.⁴ If a high bid is withdrawn on a license that remains unsold at the close of the auction, the rules applicable to Auction 40 require the withdrawing bidder to make an interim payment equal to three percent (3%) of the net amount

¹ Lower and Upper Paging Bands Auction Closes, DA 01-2858, *Public Notice*, 16 FCC Rcd 21,821, 21,850 (2001) (“*Auction No. 40 Closing Public Notice*”). Particular information regarding the high bids relevant to this notice appears in Attachment A.

² *Id.* and Supplemental File at <http://wireless.fcc.gov/auctions/40/releases/da012858sup.pdf> (Dec. 7, 2001) (“*Auction No. 40 Closing Public Notice Supplemental File*”). See Attachment A.

³ See Ozark Paging LLC, Form 601, File No. 0000711219 (filed Dec. 26, 2001) (pertaining to Frequency Block FI in markets BEA094, BEA096, and BEA098); Ozark Paging LLC, Form 601, File No. 0000711254 (filed Dec. 26, 2001) (pertaining to Frequency Block FI in markets BEA093 and BEA099).

⁴ 47 C.F.R. § 1.2104(g)(1)(2001).

of the withdrawn bid.⁵ This payment amount is deducted from any upfront payments or down payments the bidder has deposited for this bidder's account with the Commission.⁶ If, in a subsequent auction, that license receives a winning bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed, and, if appropriate, the interim withdrawal payment will be refunded.⁷ If, in a subsequent auction, the winning bid for that license is less than the bidder's withdrawn amount, then the bidder will be required to make a final bid withdrawal payment equal to either the difference between the bidder's net withdrawn bid and subsequent net winning bid, or the difference between the bidder's gross withdrawn bid and the subsequent gross winning bid, whichever is less.⁸

The Commission's rules further provide that a bidder who fails to remit the required final payment for a license for which it was the high bidder is subject to a default payment.⁹ The default payment is comprised of two parts. 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 is offered by the Commission (so long as the subsequent winning bid is less than the defaulted bid).¹⁰ The second component is an additional payment, which at the time of Ozark's default was equal to three percent (3%) of the defaulter's bid, or the subsequent winning bid, whichever is less.¹¹ 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.¹² 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.¹³

⁵ *Id.* This rule was modified in 2006 and now provides for an interim withdrawal payment of between three and 20 percent, with the specific percentage to be set by the Commission prior to the auction. See Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, *Report and Order*, FCC 06-4, 21 FCC Rcd 891, 903-04 ¶ 31 (2006).

⁶ 47 C.F.R. § 1.2106(d) and (e).

⁷ 47 C.F.R. § 1.2104(g)(1).

⁸ *Id.*

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

¹⁰ 47 C.F.R. § 1.2104(g)(2).

¹¹ *Id.* This rule was modified in 2006 and now provides for an additional default payment of between three and 20 percent, with the specific percentage to be set by the Commission prior to the auction. See Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, *Report and Order*, FCC 06-4, 21 FCC Rcd 891, 903-04 ¶ 31 (2006).

¹² *Id.*

¹³ *Id.* See Mountain Solutions Ltd., Inc., FCC 98-220, *Memorandum Opinion and Order*, 13 FCC Rcd. 21,983, 21,997 ¶ 25 (1998). In the event that the amount of the final default payment is determined to be less than the amount of the remaining monies on deposit, such excess will be refunded to the payor of record.

With respect to Ozark's withdrawal of its \$325.00 net high bid on the Frequency Block EC license for market BEA095 in Auction 40, the Commission assessed an interim bid withdrawal payment against Ozark in the amount of \$10.¹⁴ At that time, Ozark's upfront payment of \$3,000 on deposit with the Commission was applied towards its interim withdrawal payment.¹⁵ Auction 48 established a subsequent high bid for the license for Frequency Block EC in market BEA095. The subsequent net high bid for this spectrum exceeded the relevant net high bid withdrawn by Ozark in Auction 40.¹⁶ Accordingly, Ozark does not owe any withdrawal payment with respect to this bid. Its assessed interim withdrawal payment of \$10 will remain on deposit to satisfy Ozark's other auction obligations as discussed below.

After Ozark's upfront payment was applied to its interim withdrawal payment for the Frequency Block EC license in market BEA095, as described above, the remaining amount of the upfront payment, \$2990, was applied toward Ozark's down payment obligations on Frequency Block FI licenses for BEA093, BEA094, BEA096, BEA098, and BEA099, which totaled \$1716.¹⁷ The balance of Ozark's pre-auction upfront payment, \$1284, remained on deposit.

Subsequently, the Commission issued a May 31, 2002 public notice announcing that it was prepared to grant Ozark's five licenses upon receipt of the outstanding balance of Ozark's winning bids pursuant to the Commission's rules.¹⁸ The Commission's rules require that, unless otherwise specified by public notice, winning bidders make full payment of the outstanding balance of their winning bids within ten business days after the date of the public notice announcing that the Commission is prepared to grant the licenses.¹⁹ Accordingly, Ozark had to pay \$5,590 (the outstanding balance of Ozark's net total high bids less its available pre-auction deposit of \$1274) by June 14, 2002. Ozark did not make any payments on or before June 14, 2002. Ozark made payments on June 17 and June 24, 2002, totaling only \$4,200, \$1,380 less than the final payment amount due for the five licenses. Accordingly, Ozark is considered to be

¹⁴ *Auction No. 40 Closing Public Notice*, 16 FCC Rcd at 21,8450.

¹⁵ *Id.*, 16 FCC Rcd at 21,842

¹⁶ *See Lower and Upper Paging Bands Auction Closes; Winning Bidders Announced, Down Payments Due June 13, 2003, FCC Forms 601 and 602 Due June 13, 2003, Ten-Day Petition to Deny Period, DA 03-1836, Public Notice*, 18 FCC Rcd 11,154, 11,183 (2001) (*Auction 48 Closing Public Notice*).

¹⁷ *See 47 C.F.R. § 1.2107(b); Auction 40 Closing Public Notice*, 16 FCC Rcd 21,842.

¹⁸ *Wireless Telecommunications Bureau Announces It Is Prepared To Grant Upper And Lower Paging Bands Licenses Upon Full And Timely Payment, DA 02-1217, Public Notice*, 17 FCC Rcd 10,123 (2002).

¹⁹ 47 C.F.R. § 1.2109(a). Pursuant to Commission rules, Ozark was allowed ten additional business days, or until June 28, 2002, to make a late payment of the amount due, \$5,590, together with a 5% late fee, \$279.50. *Id.*

in default on the five licenses for which it was the high bidder in Auction 40.²⁰ Because Ozark defaulted on its winning bids for the five licenses, its long-form applications²¹ are dismissed and it is subject to the applicable default payment.²²

As noted at the outset, Auction 48 established subsequent winning bids for the licenses for Frequency Block FI in markets BEA096 and BEA099.²³ Applying the Commission's default payment rules, Ozark owes a final default payment amount of \$5,205 with respect to those two licenses.²⁴ After giving credit for the \$10 interim withdrawal payment discussed above, Ozark has on deposit its upfront payment of \$3000, which together with the payments made on June 17 and June 24, 2002, totaling \$4200, equals \$7200 on deposit to be applied to the final default payments owed for Frequency Block FI markets BEA096 and BEA099. After applying this amount to these final default payments, the balance on deposit for Ozark's account is \$1995.

The licenses for Frequency Block FI in markets BEA093, BEA094, and BEA098 received no bids in Auction 48. 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.²⁵ The remainder of the final default payment, if any, is assessed once subsequent winning bids for the defaulted licenses are established. 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 Ozark's net winning bids on licenses for Frequency Block FI in markets BEA093, BEA094, and BEA098 totaling \$481.00, until a final default payment amount can be determined for these licenses.²⁶ Pursuant to Section 1.2106(e) of the Rules, we will hold

²⁰ *Id.*

²¹ Ozark Paging LLC, Form 601, File No. 0000711219 (filed Dec. 26, 2001) (pertaining to Frequency Block FI in markets BEA094, BEA096, and BEA098); Ozark Paging LLC, Form 601, File No. 0000711254 (filed Dec. 26, 2001) (pertaining to Frequency Block FI in markets BEA093 and BEA099).

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

²³ See Attachment A. See also *Auction 48 Closing Public Notice*, 18 FCC Rcd at 11,181.

²⁴ See Attachment A. See also *Auction 48 Closing Public Notice*, 18 FCC Rcd 11,181.

²⁵ 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) (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 reaucted); 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) (stating that the Commission “will hold deposits made by defaulting or disqualified auction winners to help ensure that the penalty is paid”); see also 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).

²⁶ See 47 C.F.R. § 1.2104(g)(2) (2002). See also Attachment B. 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 license covering the same spectrum is re-auctioned and the final default payment can be calculated. See AirCom Communication

Ozark's remaining amount on deposit to satisfy its default payment obligation.²⁷ Once subsequent high bids are established for the relevant spectrum, we will determine Ozark's final default payment obligation.²⁸ If an additional payment is required, a further order will assess such payment.²⁹

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) of the Commission's rules, 47 C.F.R. § 1.2104(g), Ozark Paging, LLC is ASSESSED final a bid withdrawal payment as computed in Attachment A for BEA095EC in Auction 40.

IT IS FURTHER ORDERED that, pursuant to 47 C.F.R. § 1.2104(g)(2), Ozark Paging, LLC is ASSESSED final default payment obligations as computed in Attachment A for BEA096FI and BEA099FI in Auction 40.³⁰

IT IS FURTHER ORDERED, pursuant to Sections 0.331, 1.2104(g)(2), and 1.2106(e) of the Commission's rules, 47 C.F.R. §§ 0.331, 1.2104(g)(2), 1.2106(e), Ozark Paging, LLC is assessed interim default payment obligations as computed in Attachment B for its defaulted high bids for licenses BEA093FI, BEA094FI, BEA098FI in Auction 40.

IT IS FURTHER ORDERED that, pursuant to 47 C.F.R. §§ 1.2104 and 1.2106, Ozark Paging, LLC's interim payments or funds on deposit will be applied towards the interim and final default payments.

IT IS FURTHER ORDERED that, pursuant to 47 C.F.R. § 1.2109(c), the long-form applications of Ozark Paging, LLC, File Numbers 0000711219 and 0000711254, are DISMISSED.

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).

²⁷ 47 C.F.R. § 1.2106(e). Subtracting the \$481.00 interim default amount from the \$1995 on deposit from Ozark's upfront payment and payments made after the final payment deadline leaves \$1514.00 on deposit.

²⁸ *Id.*

²⁹ See Mountain Solutions Ltd., Inc., *Order on Reconsideration of Memorandum Opinion and Order*, 13 FCC Rcd 21,983, 21,997 ¶ 25 (1998).

³⁰ 47 C.F.R. § 1.2104(g)(2).

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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

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

ATTACHMENT A

Multi-Auction Bid Withdrawal Payment

License Number Frequency block	Withdrawn Gross Bid Auction 40	Withdrawn Net Bid Auction 40	Re-auction Gross Bid Auction 48	Re-auction Net Bid Auction 48	Final Bid Withdrawal Payment
BEA095EC	\$500.00	\$325.00	\$500.00	\$500.00	\$0.00

Multi-Auction Default Payment

License Number Frequency Block	Defaulted Gross Bid(s) Auction 40	Defaulted Net Bid(s) Auction 40	Reauction Gross Bid(s) Auction 48	Reauction Net Bid(s) Auction 48	Final Default Payment (Difference between Auction 40 Net Bid and Auction 48 Net Bid)	3% Payment	Total Final Default Payment
BEA096FI	\$2,300.00	\$1,495.00	\$500.00	\$500.00	\$995.00	\$15.00	\$1,010.00
BEA099FI	\$7,200.00	\$4,680.00	\$500.00	\$500.00	\$4,180.00	\$15.00	\$4,195.00
						Total	\$5,205.00

ATTACHMENT B

Interim Default Payment

License Number Frequency Block	Defaulted Gross Bid(s) Auction 40	Defaulted Net Bid(s) Auction 40	Interim Default Payment Assessed 20 %
BEA093FI	\$1,000.00	\$650.00	\$130.00
BEA094FI	\$1,700.00	\$1,105.00	\$221.00
BEA098FI	\$1,000.00	\$650.00	\$130.00
		Total	\$481.00