



Federal Communications Commission  
Washington, D.C. 20554

December 1, 2010

DA 10-2271

**Via Certified Mail, Return Receipt Requested**

Michael A. Jimerson, President  
TPS Utilicom, Inc.  
1820 W. Route 20  
Silver Creek, NY 14136

**Re: Final Default Payment for Auction 35 License CW-BTA127-C1 (Elmira-Corning-Hornell, NY)**

**DO NOT DISCARD THIS IMPORTANT NOTICE**  
**OF A DEMAND FOR PAYMENT**  
**OF A DEBT OWED THE UNITED STATES AND ORDER OF PAYMENT**

Dear Mr. Jimerson:

This Order provides notice and demands payment of a debt owed to the United States based on TPS Utilicom, Inc. ("TPS") default on its final payment for a license it won in Auction 35.

TPS had the winning bid in Auction 35 for the C1 Block broadband Personal Communications Services ("PCS") license in the Elmira-Corning-Hornell, NY Basic Trading Area ("BTA"). After the close of Auction 35, TPS defaulted on its final payment obligation for this license.<sup>1</sup> Thus, pursuant to the Commission's rules,<sup>2</sup> TPS owes a default payment, which is a debt owed to the United States.<sup>3</sup> In 2001 the Commission assessed TPS a total initial default payment of \$414,510, from the monies it had on deposit.<sup>4</sup> A new license for the same spectrum was offered in a subsequent auction of broadband PCS

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<sup>1</sup> See TPS Utilicom, Inc. Request for Waiver of Sections 1.2109 and 1.207 of the Commission's Rules Regarding BTA043, BTA127, BTA215, and BTA330, *Order*, 16 FCC Rcd 14835 (2001) (*Order*); TPS Utilicom, Inc. Request for Waiver of Sections 1.2109 and 1.2107 of the Commission's Rules Regarding BTA043, BTA127, BTA215, and BTA330, *Order on Reconsideration*, 18 FCC Rcd 2516 (2003) (*Order on Reconsideration*). TPS also defaulted on three other licenses in Auction 35: CW-BTA043-C1 (Binghamton, NY); CW-BTA215-C3 (Jamestown, NY-Warren, PA); and CW-BTA330-C3 (Olean, NY-Bradford, PA). Two of the licenses – CWBTA043-C1 and CWBTA215-C3 – were sold in Auction 58, and the Commission assessed the final default payments for both licenses. See Letter from Rita Cookmeyer, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, to Michael A. Jimerson, President, TPS Utilicom, Inc., 20 FCC Rcd 10,975 (WTB/ASAD 2005). The third license CW-BTA330-C3 was sold in Auction 71, and the Commission assessed a final default payment for that license. See Letter from Rita Cookmeyer, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, to Michael A. Jimerson, President, TPS Utilicom, Inc., 22 FCC Rcd 16,251 (WTB/ASAD 2007).

<sup>2</sup> See 47 C.F.R. §§ 1.2104(g)(2), 1.2109(b).

<sup>3</sup> See 31 U.S.C. § 3701(b)(1).

<sup>4</sup> See also *Order*, 16 FCC Rcd at 14,836; see 47 C.F.R. § 1.2104(g)(2).

licenses (Auction 78), and because it received a winning bid,<sup>5</sup> the Commission is now able to calculate TPS' final default payment obligation with respect to the license.<sup>6</sup>

Under the Commission's rules, at the close of the auction, a winning bidder assumes a binding obligation to pay the full amount of its accepted winning bid. A bidder who defaults on that obligation or is disqualified is subject to a default payment.<sup>7</sup> 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 a license for the spectrum is won should the subsequent winning bid be less than the defaulted bid.<sup>8</sup> The second component of the default payment is an additional payment, which, pursuant to the rule in effect at the time of Auction 35, is equal to three percent (3%) of the defaulter's bid, or the subsequent winning bid, whichever is less.<sup>9</sup> 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.<sup>10</sup>

As shown in Attachment A, in accordance with section 1.2104(g)(2) of the Commission's rules, we have completed the final default payment calculation and, after applying the monies TPS has on deposit, TPS owes an outstanding balance of \$4,841,534.48. This debt to the United States is payable in full and without further demand within 30 days of the date of this Order in accordance with the Notice Information provided below and Payment Instructions at Attachment B.

### **Important Notice Information**

The following provides notification of procedures and information required by the Debt Collection Improvement Act of 1996 ("DCIA").<sup>11</sup> The outstanding balance shown in Attachment A is a debt TPS owes to the United States. It is payable in full and without further demand, and payment must be received no later than the payment due date, which is 30 days from the date of this Order ("Due Date").<sup>12</sup> Any portion of the debt unpaid at the end of the Due Date will be considered delinquent and administrative charges (incurred for processing and handling delinquent debts),<sup>13</sup> interest,<sup>14</sup> and

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<sup>5</sup> See Auction of AWS-1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78, Report No. AUC-08-780E, *Public Notice*, 22 FCC Rcd 9247 (WTB 2007).

<sup>6</sup> 47 C.F.R. § 1.2104(g)(2).

<sup>7</sup> 47 C.F.R. §§ 1.2104(g)(2), 1.2109(b).

<sup>8</sup> 47 C.F.R. § 1.2104(g)(2)(i).

<sup>9</sup> 47 C.F.R. § 1.2104(g)(2) (2000).

<sup>10</sup> *Id.*

<sup>11</sup> Public Law 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996) *codified in relevant part at* 31 U.S.C. §§ 3716 (administrative offset) and 3717 (interest and penalty on claims); *see also* 47 C.F.R. §§ 1.1911, 1.1912, and 1.1940.

<sup>12</sup> As noted at Attachment B, if the 30th day falls on a non-business day, payment must be received on the next business day.

<sup>13</sup> 31 U.S.C. § 3717(e)(1); 47 C.F.R. § 1.1940(c).

penalties<sup>15</sup> will accrue beginning from that date. Interest accrues at a minimum annual rate established annually by the Treasury in accordance with 31 U.S.C. § 3717.<sup>16</sup> A penalty of six percent (6%) accrues on any portion of the debt that remains unpaid for more than 90 days from the Due Date.<sup>17</sup> However, the Commission will waive payment of the accrued interest, if the full amount of the debt is paid within 30 days of the Due Date.<sup>18</sup> In addition to these charges, the Commission may initiate administrative offset,<sup>19</sup> and it may refer the delinquent debt to the United States Treasury or the Department of Justice (“DOJ”) for further collection action.<sup>20</sup> The United States Treasury will impose an additional administrative collection charge,<sup>21</sup> and it may also commence administrative offset.<sup>22</sup> An additional surcharge may be imposed, if DOJ initiates judicial action to recover judgment.<sup>23</sup> Furthermore, any portion of the debt that is unpaid after the Due Date is a delinquent debt, which will trigger application of the Commission’s red light procedures at 47 C.F.R. § 1.1910.

The *Order* establishing TPS’ default payment obligation is final,<sup>24</sup> so this Demand for Payment does not establish additional grounds to request review or reconsideration of TPS’ default payment obligation.

### 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), TPS Utilicom, Inc. is ASSESSED a final default payment obligation as computed in Attachment A.

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<sup>14</sup> 31 U.S.C. § 3717(b); 47 C.F.R. § 1.1940(b).

<sup>15</sup> 31 U.S.C. § 3717(e); 47 C.F.R. § 1.1940(d).

<sup>16</sup> 47 C.F.R. § 1.1940(b).

<sup>17</sup> 31 U.S.C. § 3717(e)(2); 47 C.F.R. § 1.1940(d).

<sup>18</sup> 31 U.S.C. § 3717(d) and 47 C.F.R. § 1.1940(g).

<sup>19</sup> 47 C.F.R. § 1.1912. Under this provision the Commission may refer the debt to the Treasury for centralized administrative offset whereby, subject to certain exceptions, money otherwise payable to the debtor by the United States government may be used to satisfy the debt. In addition, “unless otherwise prohibited by law,” the Commission may conduct “non-centralized, ad hoc case-by-case offsets when centralized offset is unavailable or inappropriate.” 47 C.F.R. § 1.1912(c).

<sup>20</sup> 31 U.S.C. §§ 3711(g), 3716; 28 U.S.C. § 3001, *et seq.*; 47 C.F.R. § 1.1912. Transfer may be made without further notice at any time after the Due Date.

<sup>21</sup> 31 U.S.C. § 3717(e); 31 C.F.R. § 285.12 (j).

<sup>22</sup> 31 U.S.C. § 3716; 47 C.F.R. § 1.1912(b) (mandatory centralized administrative offset).

<sup>23</sup> 28 U.S.C. § 3011.

<sup>24</sup> *Order on Reconsideration, supra*; see 47 C.F.R. §§ 1.104 and 1.106.

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, TPS Utilicom Inc.'s interim payment or funds on deposit will be applied towards the final default payment.

IT IS FURTHER ORDERED that TPS Utilicom Inc.'s debt of \$4,841,534.48 is payable in full and without further demand, and it must be paid within 30 days of the date of this Order (the Due Date), in accordance with the payment instructions in Attachment B, and any portion of the debt unpaid after the Due Date is delinquent, and under 31 U.S.C. § 3717, administrative charges, interest, and penalties will accrue.

IT IS FURTHER ORDERED that this Order and a FCC Remittance Advice Form (FCC Form 159, Version 2/03) shall be sent to TPS Utilicom Inc. 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

**ATTACHMENT A**

**Multi-Auction Default Payment Report**

License Number Frequency Block	Defaulted Gross Bid Auction 35	Defaulted Net Bid Auction 35	Re-auction Gross Bid Auction 78	Re-auction Net Bid Auction 78	3% Payment	Lower Difference Payment	Final Payment
CW-BTA127 – C1 (Elmira-Corning- Hornell, NY)	\$5,752,000.00	\$5,752,000.00	\$494,000.00	\$370,500.00	\$14,820.00	\$5,258,000.00	\$5,272,820.00

Total Final Default Payment Due	\$5,272,820.00
Less Amount on Deposit	\$431,285.52
<b>Outstanding Balance Due on Final Default Payment</b>	<b>\$4,841,534.48</b>

**ATTACHMENT B**

**Payment Instructions**

The following information is being provided to assist you in making your payment.

All payments must be made in U.S. currency in the form of a wire transfer. No personal checks, cashier's checks or other forms of payment will be accepted. Wire transfer payments must be received by 6:00 PM Eastern Time, no later than thirty days from the date of this ORDER; however, if the 30th day falls on a non-business day, e.g., Saturday, Sunday or holiday, it is due the next business day. Applicants must allow sufficient time for the wire transfer to be initiated and for the transmission to be completed prior to the deadline. To submit funds by wire, applicants will need the following information to properly effect the transmittal:

ABA Routing Number: **021030004**

Receiving Bank: **TREAS NYC**

33 Liberty Street  
New York, NY 10045

ACCOUNT NAME: **FCC**

ACCOUNT NUMBER: **27000001**

OBI Field: (Skip one space between each information item) "AUCTIONPAY"

APPLICANT FRN: (same as FCC Form 159, block 21)

PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: "**APEN**")

FCC CODE 1: (same as FCC Form 159, Block 28A: ("Auction No."))

PAYOR NAME: (same as FCC Form 159, Block 2)

LOCKBOX NO.: #**979088**

Please fax a completed remittance advice (Form 159) to U.S. Bank, St. Louis, Missouri at (314) 418-4232 **at least one hour before initiating the wire transfer** (but on the same business day).

For questions regarding the submission of payment, and the FCC Form 159, contact Gail Glasser, Office of the Managing Director, Financial Operations, Auctions Accounting Group, at (202) 418-0578.