



Federal Communications Commission
Washington, D.C. 20554

June 20, 2012

DA 12-966

Via Certified Mail, Return Receipt Requested

Talkline Communications, Inc.
Attn: Zev Brenner, President
165 West 91st Street
Suite 9A
New York, New York 10024

**Re: Notice of Interim Default Payment Obligation for Auction 62 Construction Permit
FM241-A (Narrowsburg, 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. Brenner:

This Order provides notice and demands payment of the interim default payment obligation for Talkline Communications, Inc. ("Talkline") with respect to its default arising out of Auction 62 and dismisses Talkline's long-form construction permit application (FCC Form 301).

As described fully below, Talkline had the winning bid in Auction 62 for the FM Broadcast construction permit FM241-A (Narrowsburg, NY).¹ After the close of Auction 62, Talkline defaulted on its payment obligation for its winning bid. Thus, Talkline became subject to the default provisions of section 1.2104(g) of the Commission's rules.²

On February 8, 2006, the Media Bureau and the Wireless Telecommunications Bureau ("Bureaus") announced the winning bidders in Auction 62, including Talkline.³ The Bureaus also announced that by no later than February 23, 2006, all Auction 62 winning bidders were required to have on deposit enough funds to bring each winning bidder's deposit to twenty percent (20%) of its winning bids.⁴ If a winning bidder's upfront payment was not sufficient to meet the down payment requirement, the winning bidder was required to deposit sufficient funds to meet its down payment.⁵ The Bureaus further instructed that by March 10, 2006, all winning bidders were required to submit their long-form

¹ See Auction of FM Broadcast Construction Permits Closes; Winning Bidders Announced for Auction No. 62, *Public Notice*, 21 FCC Rcd 1071 (WTB/MB 2006) ("*Auction 62 Closing Public Notice*").

² 47 C.F.R. § 1.2104(g)(2); see also *Auction 62 Closing Public Notice*, 21 FCC Rcd at 1074-75.

³ See *Auction 62 Closing Public Notice*, 21 FCC Rcd at 1081.

⁴ See *id.* at 1071-72; see also 47 C.F.R. § 1.2107(b).

⁵ See *Auction 62 Closing Public Notice*, 21 FCC Rcd at 1072.

applications.⁶ The rules applicable to winning bidders in Auction 62 required Talkline to submit its final payment ten business days after the release of a public notice announcing that the Commission had completed processing Talkline's application and was prepared to issue the permit (a "prepared-to-grant public notice").⁷

Talkline's net winning bid was \$252,850.00.⁸ The \$40,000.00 upfront payment amount that Talkline had on deposit was applied toward its down payment requirement and Talkline was notified that the additional amount due to meet its down payment obligation was \$10,570.00.⁹ Talkline timely submitted the down payment by February 23, 2006, and timely filed a long-form application for the construction permit by March 10, 2006.¹⁰

Despite more than twenty requests by Commission staff over the five years following the close of Auction 62, Talkline failed to provide the Media Bureau with the required showing that the tower it intended to use had been properly registered with the Federal Aviation Administration.¹¹ In a January 31, 2011, letter, the Media Bureau gave Talkline a final opportunity to submit the missing information and informed Talkline that if it did not correct the defects in the application within thirty days, its construction permit application would be dismissed.¹² Talkline submitted the requested information on March 1, 2011.

On September 15, 2011, the Media Bureau announced that it was prepared to grant Talkline's application for construction permit FM241-A (Narrowsburg, NY) from Auction 62.¹³ That prepared-to-grant public notice also announced that by September 29, 2011, Talkline was required to submit a final payment for the balance of its net winning bid.¹⁴ If the payment was not received by that date, Talkline had until October 14, 2011, to submit the payment plus a late fee equal to five percent (5%) of the amount due.¹⁵

⁶ See *id.* at 1071, 1076; see also 47 C.F.R. §§ 1.2107(c), 73.5005(a)(2006).

⁷ See *Auction 62 Closing Public Notice*, 21 FCC Rcd at 1072.

⁸ See *id.* at 1081.

⁹ See *id.* at 1097. On February 8, 2006, Commission staff sent to Talkline a pre-filled Remittance Advice (Form 159) showing the amount of Talkline's down payment and final payment in an overnight mailing that also included a copy of the *Auction 62 Closing Public Notice*.

¹⁰ See FCC Application for Construction Permit for Commercial Broadcast Station (FCC 301), File No. BNPH-20060309ACO (publicly available through the Media Bureau's Consolidated Database System, <http://www.fcc.gov/encyclopedia/media-bureau-filing-systems-and-databases>) (filed March 9, 2006, amended March 1, 2011).

¹¹ See Letter from Edna V. Prado, Supervisory Engineer, Audio Division, to Talkline Communications Inc., dated January 31, 2011.

¹² See *id.*

¹³ See Media Bureau is Prepared to Grant Auction 62 Broadcast Construction Permit Applications, *Public Notice*, 26 FCC Rcd 12,952 (MB 2011) ("*Auction 62 Prepared to Grant Public Notice*").

¹⁴ See *id.* at 12,952-53; see also *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 15,920 (1998) ("*Broadcast First Report and Order*").

¹⁵ 47 C.F.R. § 1.2109(a); see *Auction 62 Prepared to Grant Public Notice*, 26 FCC Rcd at 12,952-53.

Talkline failed to submit the final payment by the initial due date (September 29, 2011) or within the ten-day late payment period (October 14, 2011).¹⁶ Thus, Talkline became subject to the default provisions of section 1.2104(g) of the Commission's rules.¹⁷ Further, section 1.2109(c) of the Commission's 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 . . ."¹⁸

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.¹⁹ A bidder who defaults on that obligation or is disqualified is subject to a default payment.²⁰ 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 construction permit for the spectrum is won, should the subsequent winning bid be less than the defaulted bid.²¹ The second component of the default payment is an additional payment, which, pursuant to the rule in effect at the time of Auction 62, is equal to three percent (3%) of the defaulter's bid, or the subsequent winning bid, whichever is less.²² 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.²³

Until a construction permit for the relevant allotment is won in a subsequent auction, the Commission cannot determine the full amount of the default payment that is owed. Pursuant to its rules, the Commission therefore assesses an interim default payment amounting to between three and twenty percent of the net winning bid.²⁴ Once a subsequent winning bid for the relevant spectrum is established, the remaining amount owed by the defaulting party, if any, is then assessed.

Accordingly, Talkline is considered to be in default on the construction permit for which it was the winning bidder in Auction 62, its long-form application is dismissed, and it is subject to the applicable default payment.²⁵ Pursuant to section 1.2104(g)(2) of the Commission's rules and the procedures established for Auction 62, Talkline owes an interim default payment of \$7,585.50, which is three percent

¹⁶ See *Auction 62 Closing Public Notice*, 21 FCC Rcd at 1081.

¹⁷ 47 C.F.R. § 1.2104(g)(2).

¹⁸ 47 C.F.R. § 1.2109(c).

¹⁹ 47 C.F.R. § 1.2104(g)(2).

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

²¹ 47 C.F.R § 1.2104(g)(2)(i).

²² 47 C.F.R § 1.2104(g)(2) (2000).

²³ 47 C.F.R § 1.2104(g)(2).

²⁴ 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); Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5563 n.51 (1994); 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 2348, 2382-83 ¶ 197 (1994).

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

(3%) of its total net winning bid of \$252,850.00.²⁶ Pursuant to section 1.2106(e) of the rules, we will apply Talkline's \$40,000.00 payment on deposit toward satisfying this interim default payment obligation.²⁷ Once a subsequent winning bid is established for the relevant spectrum, we will determine Talkline's final default payment obligation. If an additional payment is required, a further order will assess such payment.²⁸

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), Talkline Communications, Inc. is ASSESSED an interim default payment of \$7,585.50.

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, Talkline Communications, Inc.'s funds on deposit with the Commission will be applied toward satisfying 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), Talkline Communications, Inc. will be subject to a final default payment for its defaulted winning bid during Auction 62 for construction permit FM241-A once the spectrum associated with the construction permit is won in a subsequent auction and the full default payment amount is determined.

IT IS FURTHER ORDERED that, pursuant to sections 0.331 and 1.2109 of the Commission's rules, 47 C.F.R. §§ 0.331 and 1.2109, that the FCC Form 301 long-form application of Talkline Communications, Inc., FCC File No. BNPH-20060309ACO, is DISMISSED with prejudice.

²⁶ *Id.*

²⁷ 47 C.F.R. § 1.2106(e).

²⁸ See Mountain Solutions Ltd., Inc., *Memorandum Opinion and Order*, 13 FCC Rcd 21,983, 21,997 ¶ 25 (1998).

IT IS FURTHER ORDERED that this Order shall be sent to Talkline Communications, 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

Peter H. Doyle
Chief, Audio Division
Media Bureau

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