



Federal Communications Commission
Washington, D.C. 20554

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DA 15-1108

By Certified Mail and Electronic Mail

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Re: Notice of Interim Default Payment Obligation for Auction 97 Licenses; Application of Northstar Wireless, LLC for AWS-3 Licenses in the 1695-1710 MHz, 1755-1780 MHz and 2155-2180 MHz Bands, ULS File Number 0006670613

Dear Mr. Dever:

This letter provides notice of the interim default payment obligation for Northstar Wireless, LLC (“Northstar”) with respect to its selective default arising out of Auction 97. As described in Northstar’s letter to the Commission dated October 1, 2015 (“Selective Default Letter”), Northstar was the winning bidder for 345 licenses offered in Auction 97, with a total of \$5,883,794,550 in net provisionally winning bids.¹ As described in the Selective Default Letter, Northstar has selectively defaulted on its final payment obligation for its winning bids. Thus, Northstar is subject to the default provisions of section 1.2104(g)(2) of the Commission’s rules.²

On January 30, 2015, the Wireless Telecommunications Bureau (“Bureau”) announced the winning bidders in Auction 97, including Northstar.³ The Bureau also announced that by no later than February 13, 2015, each Auction 97 winning bidder was required to have on deposit enough funds to bring its deposit to twenty percent (20%) of its winning bid(s).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 Bureau further instructed that by February 13, 2015, each winning bidder would be required to submit its long-form application.⁶ The rules applicable to winning bidders in Auction 97 required Northstar to submit the balance of the net amount of its winning

¹ Letter from Mark F. Dever, Drinker Biddle & Reath LLP, Counsel to Northstar Wireless, LLC, to Jean L. Kidoo, Deputy Bureau Chief, Wireless Telecommunications Bureau, Federal Communications Commission, ULS File No. 0006670613 (dated Oct. 1, 2015); Auction of Advanced Wireless Services (AWS-3) Licenses Closes, Winning Bidders Announced for Auction 97, *Public Notice*, 30 FCC Rcd 630 (2015) (“*Closing Public Notice*”).

² 47 C.F.R. § 1.2104(g)(2).

³ See *Closing Public Notice*, 30 FCC Rcd 630 at Attach. A.

⁴ See *id.* at 631 ¶ 5; see also 47 C.F.R. § 1.2107(b).

⁵ *Closing Public Notice*, 30 FCC Rcd at 631 ¶ 5.

⁶ See *id.* at 636 ¶ 27.

bids (“final payment”) no later than March 2, 2015.⁷ Northstar timely made its post-auction down payment on February 12, 2015, and timely made its post-auction final payment on March 2, 2015. Together with the funds on account from Northstar’s pre-auction upfront payment, the amount of funds Northstar had on deposit with the Commission for Auction 97 totaled \$5,883,794,550.

On August 18, 2015, the Commission released a *Memorandum Opinion and Order* (“*MO&O*”), in which it found that Northstar is not eligible for a very small business bidding credit and that Northstar was required to pay the full amount of its winning bids.⁸ The difference between Northstar’s gross winning bids and its net winning bids is \$1,961,264,850.

In the *MO&O*, the Commission directed Northstar to either submit payment in the amount of \$1,961,264,850 by 3:00 pm (ET) on September 17, 2015, or deliver to the Commission an acceptable irrevocable, standby letter of credit (“*LOC*”) in the amount of \$1,961,264,850 providing that the Commission may draw upon the *LOC* if Northstar shall have failed to submit payment in the amount of \$1,961,264,850 no later than 120 days from the release date of the *MO&O*.⁹ On September 17, 2015, the Bureau granted the Northstar request to extend the deadline to submit either the additional payment or the irrevocable, standby *LOC* from 3:00 pm (ET) September 17, 2015 to 3:00 pm (ET) October 1, 2015.¹⁰

On October 1, 2015, Northstar submitted the Selective Default Letter notifying the Commission that it was selectively defaulting on its winning bids in Auction 97. The Commission has previously allowed winning bidders at auction to default selectively on licenses where the applicant has a sufficient amount of money on deposit to cover the licenses the bidder wishes to retain, plus the associated interim default payment obligations.¹¹

Under the Commission’s rules, at the close of an auction, a winning bidder assumes a binding obligation to pay the full amount of its accepted winning bids.¹² A bidder who defaults on that obligation is subject to a default payment.¹³ 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 offered by the Commission, should the subsequent winning bid be less than the defaulted bid.¹⁴ The second component of the default payment is an additional payment, which,

⁷ See *id.* at 632 ¶ 8; see also 47 C.F.R. § 1.2109(a).

⁸ Northstar Wireless, LLC, SNR Wireless LicenseCo, LLC, Applications for New Licenses in the 1695-1710 MHz, and 1755-1780 MHz and 2155-2180 MHz Bands, *Memorandum Opinion and Order*, FCC 15-104 (rel. Aug. 18, 2015).

⁹ See *id.* ¶ 155.

¹⁰ See Northstar Wireless, LLC, SNR Wireless LicenseCo, LLC, Applications for New Licenses in the 1695-1710 MHz, and 1755-1780 MHz and 2155-2180 MHz Bands, *Order*, DA 15-1042 (rel. Sept. 17, 2015).

¹¹ See, e.g., LMDS Communications, Inc., Request for Waiver of Sections 1.2109(a) and (c), 1.2104(g) and 101.1105(b) of the Commission’s Rules Regarding BTA117, BTA122, BTA203, BTA215, BTA218, BTA287, BTA317, BTA328, BTA330, BTA335, BTA375 and BTA416, *Order*, 15 FCC Rcd 8618, 8622 n.30 (2000); Application of Baker Creek Communications, L.P. for Authority to Construct and Operate Local Multipoint Distribution Services in Multiple Basic Trading Areas, *Order*, 14 FCC Rcd 11529 (1999); Tel-Com Wireless Cable TV Corporation, *Order*, 12 FCC Rcd 6747 (1997).

¹² 47 C.F.R. § 1.2104(g)(2).

¹³ See 47 C.F.R. §§ 1.2104(g)(2), 1.2109(b).

¹⁴ *Id.* § 1.2104(g)(2)(i).

pursuant to the rule in effect at the time of Auction 97, is equal to fifteen percent (15%) of the defaulter's bid, or the subsequent winning bid, whichever is less.¹⁵ In the event that the subsequent winning bid is greater than or equal to the defaulted bid, the total default payment is equal to fifteen percent (15%) of the defaulted bid.¹⁶

Under the Commission's rules, winning bidders that choose to selectively default continue to remain responsible for their default obligations to the Commission. Until a license for the relevant spectrum is won in a subsequent auction, the Commission cannot determine the full amount of the default payment that is owed. Therefore, pursuant to Commission practice, we will assess an interim default payment toward the default payment ultimately owed by Northstar.¹⁷ Once a subsequent winning bid for the relevant spectrum is established, the remaining amount owed by Northstar, if any, will be assessed.

Pursuant to section 1.2104(g)(2) of the Commission's rules and the procedures established for Auction 97, and based on the election made by Northstar in the Selective Default Letter, Northstar owes an interim default payment of \$333,919,350, which is fifteen percent (15%) of the aggregate amount of all gross winning bids listed in Attachment 2 to the Selective Default Letter.¹⁸ Pursuant to section 1.2106(e) of the rules, we will apply Northstar's \$5,883,794,550 payment on deposit toward satisfying this interim default payment obligation.¹⁹ After satisfaction of its interim default payment obligation, Northstar will have \$5,618,930,400 (including an additional payment of \$69,055,200 timely made by Northstar to the Commission on October 1, 2015) remaining on deposit.

The \$5,618,930,400 on deposit with the Commission is sufficient for Northstar to purchase all of the licenses listed in Attachment 1 to the Selective Default Letter. Northstar has requested that the Commission confirm that its election to selectively default in the manner described in the Selective Default Letter does not render it a "current defaulter" or constitute "gross misconduct, misrepresentation, or bad faith" pursuant to our rules such that Northstar, its investors, or their respective affiliates might be ineligible to participate in future auctions such as the Incentive Auction and the re-auction of AWS-3 licenses. Consistent with Commission precedent, Northstar is not a current defaulter under section 1.2105(a)(2)(x) of the Commission's Part 1 Competitive Bidding rules because the Commission has sufficient funds on deposit with which to satisfy Northstar's interim default payment obligation.²⁰ Nor does Northstar's selective default in Auction 97 constitute action involving gross misconduct, misrepresentation or bad faith pursuant to section 1.2109(d). Accordingly, Northstar's selective default

¹⁵ *Id.* § 1.2104(g)(2); Auction of Advanced Wireless Services (AWS-3) Licenses Scheduled for November 13, 2014, Notice and Filing Requirements, Reserve Prices, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 97, *Public Notice*, 29 FCC Rcd 8386, 8451 ¶ 240 (2014) ("*Auction 97 Procedures Public Notice*").

¹⁶ *See id.*

¹⁷ *See* Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use 4660-4685 MHz, *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, *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, *Second Report and Order*, 9 FCC Rcd 2348, 2382-83 ¶ 197 (1994).

¹⁸ *See* 47 C.F.R. §§ 1.2104(g)(2), 1.2109(c).

¹⁹ *See id.* § 1.2106(e).

²⁰ *See, e.g.,* Ted W. Austin, Jr., Application for Review of Order Denying Request for Waiver of Down Payment Deadline for Auction 62, *Memorandum Opinion and Order*, 30 FCC Rcd 3486, 3490 ¶ 9 n.35 (2015).

on its obligations in Auction 97 will not render Northstar, its investors, or their respective affiliates ineligible to participate in future auctions.

Although the interim default payment owed by Northstar will be satisfied by the application of funds already on deposit at the Commission, the Commission cannot determine the full amount of the default payment that is owed until a license for the relevant spectrum is won in a subsequent auction. In the circumstances of this case, including the substantial amount of the potential deficiency payments, the Commission is concerned about the possibility that Northstar may be unable to make any such deficiency payments that may later be required under the rules following a re-auction of the licenses defaulted on. In order to address this Commission concern, Northstar and DISH Network Corporation (“DISH”) have provided the Commission with security against that risk in the form of a guaranty and revisions to the Credit Agreement between Northstar and DISH’s subsidiary, American AWS-3 Wireless II L.L.C. These security provisions entered into after the date of the *MO&O* will not be relied upon by the Commission to demonstrate control of Northstar by DISH. In addition, as Northstar acknowledges, any license issued with respect to licenses listed on Attachment 1 of the Selective Default Letter will include a condition with respect to any assignment or transfer of such license, obligating Northstar and the assignee or transferee of such license, jointly and severally, to make timely payment of its Proportional Share of any total payment that may subsequently be required by 47 C.F.R. § 1.2104(g)(2) with respect to licenses listed on Attachment 2 of the Selective Default Letter and providing that such license shall automatically terminate upon failure to comply with such condition.²¹ For the avoidance of doubt, whether or not any license is subsequently assigned or transferred, Northstar shall remain liable for the full amount of any payments required by the Commission’s rules with respect to any and all licenses listed on Attachment 2 of the Selective Default Letter.

Once subsequent winning bids are established for the relevant spectrum, we will determine Northstar’s final default payment obligation. If an additional payment is required, a further order will assess such payment.²²

Sincerely,

Roger C. Sherman
Chief, Wireless Telecommunications Bureau

cc: All Parties of Record

²¹ The Proportional Share shall be an amount equal to the total amount that is due with respect to all Attachment 2 licenses, multiplied by a fraction, the numerator of which is the winning bid listed on Attachment 1 for such license, and the denominator of which is the total amount of all winning bids listed in Attachment 1.

²² See *Mountain Solutions Ltd., Inc., Memorandum Opinion and Order*, 13 FCC Rcd 21983, 21997 ¶ 25 (1998).