



Federal Communications Commission
Washington, D.C. 20554

January 29, 2015

DA 15-120

Via Certified Mail, Return Receipt Requested

Ace Radio Corporation
c/o Stephen M. Hackerman
4203 Montrose Blvd.
Suite 603
Houston, TX 77006-5471

**Re: Notice of Interim Default Payment Obligation for Auction 62 Construction Permit
FM 459-A (Mertzon, Texas)**

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

Dear Mr. Hackerman:

This Order provides notice and demands payment of the interim default payment obligation for Ace Radio Corporation (“ARC”) with respect to its default arising out of Auction 62 and dismisses ARC’s long-form construction permit application (FCC Form 301). As described fully below, ARC had the winning bid in Auction 62 for FM broadcast construction permit FM 459-A (Mertzon, Texas).¹ After the close of Auction 62, ARC defaulted on its final payment obligation for its winning bid. Thus, ARC became subject to the default provisions of section 1.2104(g)(2) 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 ARC.³ The Bureaus also announced that by no later than February 23, 2006, each Auction 62 winning bidder was required to have on deposit enough funds to bring each winning bidder’s 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 Bureaus further instructed that by March 10, 2006, each winning bidder would be required to submit its long-form application.⁶ The rules applicable to winning bidders in Auction 62 required ARC to submit its final payment ten business days after the release of a public notice announcing that the Commission had completed processing

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

² 47 C.F.R. § 1.2104(g)(2).

³ See *Auction 62 Closing Public Notice*, 21 FCC Rcd at 1080 Attach. A.

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

⁵ *Auction 62 Closing Public Notice*, 21 FCC Rcd at 1071-72.

⁶ *Auction 62 Closing Public Notice*, 21 FCC Rcd at 1076.

ARC's application and was prepared to issue the permit (a "prepared-to-grant public notice").⁷

ARC's net winning bid was \$309,400.00.⁸ The Bureaus applied the \$1,100,000.00 upfront payment amount that ARC had on deposit toward its down payment requirement of \$61,880.00.⁹ ARC timely filed a long-form application for the construction permit by March 10, 2006.¹⁰

On November 10, 2014, the Media Bureau announced that it was prepared to grant ARC's application for permit FM 459-A.¹¹ The prepared-to-grant public notice also announced that by November 25, 2014, ARC was required to submit a final payment for the balance of its net winning bid for permit FM 459-A.¹² If the payment was not received by that date, ARC had until December 10, 2014, to submit the payment plus a late fee equal to five percent (5%) of the amount due.¹³ ARC failed to submit the final payment by the initial due date (November 25, 2014) or within the ten-business-day grace period (December 10, 2014). Thus, ARC became subject to the default provisions of sections 1.2104(g)(2) and 1.2109 of the Commission's rules.¹⁴ Moreover, 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 . . ."¹⁵

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.¹⁶ A bidder who defaults on that obligation or is disqualified is considered to be a defaulting bidder under the Commission's rules and is subject to a default payment.¹⁷ The default payment has two components: a deficiency payment and an additional payment amount.¹⁸ The deficiency payment component applies only in the event that the subsequent winning bid the next time a construction permit for the allotment is won is less than the defaulted bid. The deficiency payment amount 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.¹⁹ The additional payment amount is owed by each defaulting

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

⁸ See *id.* at 1080 Attach. A.

⁹ See *id.* at 1093 Attach. B.

¹⁰ See FCC Application for Construction Permit for Commercial Broadcast Station (FCC 301), File No. BNPH-20060308AJG (publicly available through the Media Bureau's Consolidated Database System, <http://www.fcc.gov/encyclopedia/media-bureau-filing-systems-and-databases>) (filed on March 8, 2006 and amended by ARC on November 20, 2006, March 9, 2007, June 26, 2008, March 19, 2012, and June 11, 2012).

¹¹ Media Bureau Is Prepared to Grant Auction 62 Broadcast Construction Permit Application, DA 14-1618, *Public Notice* (rel. Nov. 10, 2014) ("*Auction 62 Prepared to Grant Public Notice*").

¹² *Auction 62 Prepared to Grant Public Notice*, DA 14-1618, at 1.

¹³ 47 C.F.R. § 1.2109(a); see *Auction 62 Prepared to Grant Public Notice*, DA 14-1618, at 1.

¹⁴ 47 C.F.R. §§ 1.2104(g)(2), 1.2109.

¹⁵ 47 C.F.R. § 1.2109(c).

¹⁶ 47 C.F.R. § 1.2104(g)(2).

¹⁷ 47 C.F.R. §§ 1.2104(g)(2), 1.2109.

¹⁸ 47 C.F.R. § 1.2104(g)(2).

¹⁹ 47 C.F.R. § 1.2104(g)(2)(i).

bidder.²⁰ Pursuant to the rule in effect at the time of Auction 62, the additional payment amount is equal to three percent (3%) of the defaulter's bid, or the subsequent winning bid, whichever is less.²¹

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 three percent (3%) of the net winning bid.²² Once a subsequent winning bid for the relevant allotment is established, the Bureaus will determine ARC's final default payment and the remaining amount owed by ARC, if any, will be assessed.

Accordingly, ARC is considered to be in default on construction permit FM 459-A 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.²³ Pursuant to section 1.2104(g)(2) of the Commission's rules and the procedures established for Auction 62, ARC owes an interim default payment of \$9,282.00, which is three percent (3%) of its total net winning bid of \$309,400.00.²⁴ In accordance with section 1.2106(e), we will apply ARC's \$61,880.00 payment on deposit toward satisfying this interim default payment obligation.²⁵ Once a subsequent winning bid is established for the relevant allotment, we will determine ARC's final default payment obligation. If an additional payment is required, a further order will assess such payment.²⁶

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), Ace Radio Corporation is ASSESSED an interim default payment of \$9,282.00.

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, Ace Radio Corporation'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), Ace Radio Corporation will be subject to a final default payment for its defaulted winning bid during Auction 62 for construction permit FM 459-A (Mertzon, Texas) once the

²⁰ 47 C.F.R. § 1.2104(g)(2).

²¹ See *id.*; see also Auction of FM Broadcast Construction Permits Scheduled for November 1, 2005; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 62, *Public Notice*, 20 FCC Rcd 10492, 10536-37 (2005) (“*Auction 62 Procedures Public Notice*”).

²² 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); 47 C.F.R. § 1.2104(g)(2); 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).

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

²⁴ 47 C.F.R. § 1.2104(g)(2).

²⁵ 47 C.F.R. § 1.2106(e).

²⁶ See Mountain Solutions Ltd., Inc., *Memorandum Opinion and Order*, 13 FCC Rcd 21983, 21997 ¶ 25 (1998).

allotment associated with the construction permit is won in a subsequent auction and the full payment amount is determined.

IT IS FURTHER ORDERED that, pursuant to sections 0.283, 0.331, and 1.2109 of the Commission's rules, 47 C.F.R. §§ 0.283, 0.331, and 1.2109, Ace Radio Corporation's FCC Form 301 long-form application, FCC File No. BNPH-20060308AJG, is DISMISSED with prejudice.

IT IS FURTHER ORDERED that this Order shall be sent to Ace Radio Corporation 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

cc: Rodney D. Tow, Trustee
Tow and Koenig, PLLC
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