

Before the
Federal Communications Commission
Washington, D.C. 20554

In re: Application of)
)
The ERIE Radio Company, LLC) File No. BNPH-20151009AIH
)
For a Construction Permit for a new FM Broadcast)
Station at Westfield, NY)
)
Informal Request for Extension of Time)

MEMORANDUM OPINION AND ORDER

Adopted: May 12, 2017

Released: May 12, 2017

By the Chiefs, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau and Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we deny an “Informal Request for Extension of Time” filed by The ERIE Radio Company, LLC (ERIE), which was a winning bidder for one FM station construction permit in Westfield, New York, (MM-FM1090-A) in Auction 98. ERIE failed to make its required down payment for the permit by the deadline established under Section 1.2107(b) of the Commission’s rules¹ and now seeks a waiver of that deadline.² For the reasons set forth below, we deny ERIE’s Request, assess an interim default payment, and dismiss its long-form application for the Westfield, New York, FM permit.

II. BACKGROUND

2. On March 16, 2015, the Wireless Telecommunications Bureau and Media Bureau (collectively, the Bureaus) announced an auction of certain construction permits in the FM broadcast service (Auction 98).³ On April 22, 2015, following a period of public comment, the Bureaus released a Public Notice announcing the procedures that would govern Auction 98.⁴ The *Auction 98 Procedures Public Notice* described the requirements for participation in the auction and explained the post-auction procedures, including deadlines for the submission of down payments and the filing of long-form applications by winning bidders. The *Auction 98 Procedures Public Notice* specifically stated that down payments would be due from winning bidders ten business days after the release of the auction’s closing public notice, as required by Section 1.2107(b) of the Commission’s rules.⁵ It also stated that “[a]ny

¹ 47 CFR § 1.2107(b).

² The ERIE Radio Company, LLC Informal Request for Extension of Time (Nov. 20, 2015) (Request).

³ See *Auction of FM Broadcast Construction Permits Scheduled for July 23, 2015, Comment Sought on Competitive Bidding Procedures for Auction 98*, Public Notice, 30 FCC Rcd 1755 (MB/WTB 2015).

⁴ See *Auction of FM Broadcast Construction Permits Scheduled for July 23, 2015, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 98*, Public Notice, 30 FCC Rcd 3544 (MB/WTB 2015) (*Auction 98 Procedures Public Notice*).

⁵ *Id.* at 3583, para. 164.

winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time . . . or is otherwise disqualified) will be subject to the payments described in Section 1.2104(g)(2).⁶ In addition, the *Auction 98 Procedures Public Notice* indicated that long-form applications would be due thirty days after the release of the *Auction 98 Closing Public Notice*, as required by Section 73.5005(a) of the Commission's rules.⁷

3. ERIE timely filed its short-form application to participate in the auction (FCC Form 175) and timely submitted an upfront payment in the amount of \$25,000. Subsequently, the Bureaus released a public notice listing ERIE as a qualified bidder.⁸ Bidding in Auction 98 began on July 23, 2015, and ended on August 6, 2015. On August 12, 2015, the Bureaus released the *Auction 98 Closing Public Notice*, which announced the close of Auction 98 and identified the winning bidders.⁹ The *Auction 98 Closing Public Notice* indicated that ERIE was the winning bidder for one FM broadcast construction permit, MM-FM1090-A, at Westfield, New York, with its net winning bid of \$535,500.00.

4. In keeping with the Commission's rules, the *Auction 98 Closing Public Notice* declared that each winning bidder was required to have enough funds to cover its down payment on deposit with the Commission on August 26, 2015.¹⁰ The *Auction 98 Closing Public Notice* advised that "[e]ach winning bidder should coordinate with its financial institution well ahead of the due date regarding its wire transfer and should allow sufficient time for each wire transfer to be initiated and completed prior to the deadline."¹¹ The *Auction 98 Closing Public Notice* further noted that the "Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer."¹² ERIE was required to submit \$107,100 to the Commission by August 26, 2015, to satisfy its down payment obligation.¹³ ERIE failed, however, to pay this amount by the August 26, 2015, deadline and did not complete its wire transfer payment until 4:35 pm on the following day.

5. On November 20, 2015, ERIE filed its "Informal Request for Extension of Time" which seeks a one-day extension of the August 26, 2015, down payment deadline pursuant to Sections 1.41 and 1.46 of the Commission's rules.¹⁴ ERIE contends that circumstances beyond its control caused any delay in the down payment, and therefore, "special circumstances" warrant an extension.¹⁵ ERIE claims that for

⁶ *Id.* at 3584, para. 167 (citing 47 CFR § 1.2104(g)(2)).

⁷ *Id.* at 3583, para. 166 (citing 47 CFR § 73.5005(a)).

⁸ *Auction of FM Broadcast Construction Permits, 88 Bidders Qualified to Participate in Auction 98*, Public Notice, 30 FCC Rcd 7159 (MB/WTB 2015).

⁹ *Auction of FM Broadcast Construction Permits Closes, Winning Bidders Announced for Auction 98*, Public Notice, 30 FCC Rcd 8313 (MB/WTB 2015) (*Auction 98 Closing Public Notice*).

¹⁰ *Id.* at 8313-14, paras. 3-5.

¹¹ *Id.* at 8314-15, para. 9. *Cf. Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3570, para. 94 (similarly advising potential Auction 98 participants with regard to upfront payments to discuss arrangements with their bankers "several days" before executing their wire transfers and to allow sufficient time for transfers to be initiated and completed before the deadline).

¹² *Auction 98 Closing Public Notice*, 30 FCC Rcd at 8315, para. 9.

¹³ Attachment B of the *Auction 98 Closing Public Notice* advised winning bidders of the exact amounts for deposits due after the application of the bidder's upfront payment. *Auction 98 Closing Public Notice*, 30 FCC Rcd at 8330, Attach. B. The *Auction 98 Closing Public Notice* shows that ERIE had an upfront payment amount of \$25,000 on deposit and therefore was required to submit an additional \$82,100 by August 26, 2015, to satisfy the \$107,100 down payment obligation. *Id.* at 8332.

¹⁴ *See Request* at 1.

¹⁵ *Request* at 4.

several days prior to the down payment deadline, it contacted its bank “multiple times” about the wire transfer and that on the August 26 deadline, one of its owners “repeatedly contacted his bank to execute the wire transfer,” but provides no further information on any such contacts.¹⁶ To support its claim, ERIE submits a one-sentence letter from the bank stating that “[d]espite our customers [sic] best efforts to wire the funds on August 26, 2015 First National Bank was unable to execute the wire until August 27, 2015.”¹⁷ Furthermore, ERIE asserts that throughout the bidding and post-auction periods, it had sufficient funds in its bank account to satisfy the final payment. ERIE claims that after it learned that its bank did not wire the down payment by the August 26 deadline, it wired the total balance of its bid six days in advance of the final payment deadline to demonstrate that it was financially capable of meeting its payment obligations.¹⁸ Finally, ERIE declares that it intends to construct as rapidly as possible a new station in Westfield, New York, a community it claims is underserved.¹⁹

6. Connoisseur Media Licenses, LLC (Connoisseur) filed an objection to ERIE’s Request.²⁰ Connoisseur argues that a bank error that delays a down payment cannot justify a waiver of the Commission’s down payment deadline.²¹

III. DISCUSSION

7. Pursuant to Section 1.2107(b) of the Commission’s rules, each winning bidder in Auction 98, including ERIE, was required to submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for its winning bids to 20 percent of the net amount of its winning bids within ten business days after release of the *Auction 98 Closing Public Notice*.²² Although couched as an “informal request” under Section 1.41 for an extension of time pursuant to Section 1.46, ERIE is essentially seeking a waiver of its obligations under Section 1.2107(b). This section has been the subject of numerous petitions for waiver filed by winning bidders in various spectrum auctions, and the Commission has denied each one.²³ ERIE cannot side-step this ample adverse precedent – which ERIE wholly ignores in its Request – by seeking an extension of time under Section 1.46. Accordingly, we will treat ERIE’s Request as a petition for waiver of Section 1.2107(b).

8. The Commission may waive rule provisions “for good cause shown” by the petitioner.²⁴ As interpreted by the courts, the party seeking waiver of a rule’s requirements must demonstrate that

¹⁶ *Id.* at 1-2.

¹⁷ *Id.* at Attach. B. Contrary to its own attachment to its Request, ERIE does not concede that its down payment was in fact untimely. *See, e.g., id.* at 1 (“[U]pon information and belief, there may have been a several hour delay with ERIE Radio’s down payment . . .”) (emphasis added). Nevertheless, ERIE has provided no evidence to the Commission in this Request or otherwise to suggest that its down payment arrived on or before the August 26 deadline.

¹⁸ *Id.* at 1.

¹⁹ *Id.* at 1, 3.

²⁰ Connoisseur Media Licenses, LLC Opposition to Informal Request for Extension of Time (Dec. 21, 2015) (Connoisseur Opposition).

²¹ *Id.* at 2.

²² 47 CFR § 1.2107(b). *See Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3583, para. 164.

²³ *See infra* para. 10.

²⁴ 47 CFR § 1.3. This waiver standard, and the waiver standard applied in the context of wireless radio services licenses, 47 CFR § 1.925, have been found to be substantially the same. *See Delta Radio, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 16889, 16891, para. 7 & n.19 (2003) (citing *Bellsouth Corporation v. FCC*, 162 F.3d 1215, 1225 n.10 (D.C. Cir. 1999)). Even if Section 1.46 were to apply, ERIE would also have to show “good cause” for an extension of time under that rule. *See, e.g., David Titus Amateur Radio Operator and Licensee of*

(continued....)

“special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”²⁵ In order to demonstrate the required special circumstances, a party must show that the application of the rule would be inequitable, unduly burdensome or contrary to the public interest or that no reasonable alternative existed which would have allowed the party to comply with this rule.²⁶ Alternatively, a party bears the burden of convincing us that a waiver would not conflict with the policy underlying this rule.²⁷

9. ERIE has failed to demonstrate good cause, and we therefore deny ERIE’s Request. The Commission has long explained that one of the principal purposes of the requirement that winning bidders make a full and timely down payment is “to ensure that bidders are financially capable of constructing and operating their systems,” and that “[t]imely payment of both upfront and down payment obligations is one of the best indicators prior to award of licenses of a bidder’s *bona fide* ability to pay.”²⁸ When it adopted the down payment deadline rule, the Commission rejected suggestions to allow a flexible period between the close of the auction and the down payment, because “[s]uch a procedure could give winning bidders the opportunity to ‘game’ [the Commission’s] processes by making an upfront payment, bidding on a license, and then assessing afterwards whether to go forward with the award of the license.”²⁹ The Commission observed that “a substantial delay between auction and down payment would subvert [its] objective of reducing speculative bidding because it would provide financially unqualified bidders with an opportunity to ‘shop’ a winning bid in an effort to obtain financing for a down payment,” and concluded that such conduct “would undermine the integrity of the auction itself.”³⁰

10. In light of these important policy objectives, the Commission has consistently enforced the down payment deadline and denied all waiver requests to accommodate late down payments.³¹ In fact, the Commission recently denied a waiver request from Ted W. Austin, Jr., that was nearly identical

(...continued from previous page)

Amateur Radio Station KB7ILD, Decision, 29 FCC Rcd 14066, 14069, para. 8 (2014) (holding that there was no “good cause” under Section 1.46 without “an extenuating circumstance that justifies waiving a filing deadline”).

²⁵ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). Accord, e.g., *NetworkIP, LLC, v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008). See also 47 CFR § 1.925(a)(3)(i).

²⁶ See 47 CFR § 1.925(a)(3)(ii). See also *Northeast Cellular*, 897 F.2d at 1166.

²⁷ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1155, 1157 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (1972), *cert. denied*, 93 S. Ct. 461 (1972) (finding that the Commission may decide in some instances that rule waiver serves the public interest if an applicant’s proposal will not undermine the policy served by the rule). See also *Thomas Radio v. FCC*, 716 F.2d 921, 924 (D.C. Cir. 1983).

²⁸ *BDPCS, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 17590, 17598-99, paras. 15-16 (2000). See also *Mountain Solutions Ltd., Inc. v. FCC*, 197 F.3d 512, 518 (D.C. Cir. 1999) (*Mountain Solutions*) (upholding Commission policy of strict enforcement of down payment deadlines).

²⁹ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2381-82, para. 192 (1994).

³⁰ *Id.* at 2382, para. 192.

³¹ See *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 (2015) (*Austin*). See also *TPS Utilicom, Inc.*, Order on Reconsideration, 18 FCC Rcd 2516, 2520, para. 9 (2003) (*TPS Order*) (denying request for waiver where petitioner submitted down payments for some but not all licenses where it was the high bidder); *Kankakee Valley Broadcasting Co., Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 8591 (WTB/ASAD 2007) (denying request for waiver of Section 1.2107(b) and dismissing long-form application for FM construction permit where winning bidder claimed to be “unaware” of deadlines because of principal’s distraction due to medical treatments).

to ERIE's Request.³² In *Austin*, the Commission upheld the Bureaus' denial of a waiver for a late down payment, holding that the "[s]trict enforcement of the downpayment deadline for auction winners is a programmatic approach that promotes the expeditious deployment of services by minimizing opportunities for defaulters to contest the consequences of their default and thereby delay the award of licenses."³³ The United States Court of Appeals for the District of Columbia Circuit has upheld the Commission's strict enforcement of the down payment deadline in an earlier case, recognizing the Commission's position that "the integrity and functioning of the auction process is dependent on having payment obligations on winning bids promptly met."³⁴

11. ERIE presents no arguments that persuade us to depart from our well-established policy of strict enforcement of the down payment rule. ERIE claims that the Commission's policy objectives would not be frustrated because ERIE had funds in its bank that were sufficient to satisfy the final payment and because it made its final payment six days early.³⁵ We do not agree. A waiver based on these facts would essentially negate the down payment requirement, notwithstanding the important policy goals served by strict enforcement of the down payment deadline. Adopting such an approach would also require the Commission to investigate on a case-by-case basis winning bidders' financial resources to determine whether they should be held to the down payment deadline. Clearly, this would be impracticable as substantial resources would be required to perform such investigations. Indeed, the Commission rejected the same argument in *Austin*, observing that the strict enforcement of the down payment deadline "eliminates the need for the Commission to undertake an individualized analysis of the financial circumstances of each auction applicant."³⁶ The Commission concluded that "a uniform and predictable application of the rule serves its underlying purpose and, accordingly, the public interest."³⁷

12. Moreover, the ability to pay the final bid amount does not necessarily correspond to the winning bidder's willingness or intent to pay. ERIE fails to recognize that winning bidders with the financial ability to pay the final bid amount could still game the auction process and shop the licenses just like winning bidders without such resources – both of which would undermine the integrity of the auction system. The Commission identified this very concern in *Austin*.³⁸

13. ERIE further claims that its final payment six days prior to that deadline demonstrates that it had no intent to game the auction process. Even if ERIE's post-hoc description of its intent were true, that does not support grant of its request. As the Wireless Telecommunications Bureau has held, "*Regardless of whether it specifically intends to shop the license, a winning bidder that cannot demonstrate its financial capability at the initial down payment deadline is an insincere bidder insofar as its failure to pay its winning bid undermines the goal of the auction process . . .*"³⁹ Because there is no feasible way for the Commission to undertake the inherently difficult process of determining each

³² See *Austin*, 30 FCC Rcd at 3487, para. 2. Notably, ERIE does not even mention *Austin* in its Request, much less successfully distinguish it. Cf. Connoisseur Opposition at 2-3 ("If anything, ERIE's circumstances are even less compelling than those presented in *Austin* . . .").

³³ *Id.* at 3492, para. 12.

³⁴ *Mountain Solutions*, 197 F.3d at 517.

³⁵ Request at 3.

³⁶ *Austin*, 30 FCC Rcd at 3491, para. 11.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Aircom Consultants, Inc.*, Order on Reconsideration, 18 FCC Rcd 1806, 1809, para. 8 (WTB 2003) (emphasis added) (*Aircom*) (rejecting AirCom's arguments that it was not a speculative bidder seeking to "shop" its winning bid).

winning bidder's intent, the Commission's policy of strictly enforcing the down payment deadline is in the public interest.

14. Furthermore, we are not persuaded that whatever efforts ERIE may have undertaken to wire the down payment on the date of the deadline constitute unique facts or circumstances that merit relief from the down payment deadline required by Section 1.2107(b). The *Auction 98 Procedures Public Notice* instructed all bidders, including ERIE, well in advance of the auction that down payments would be due within ten business days after the release of the *Auction 98 Closing Public Notice*.⁴⁰ Moreover, both the *Auction 98 Procedures Public Notice* and the *Auction 98 Closing Public Notice* explicitly warned all winning bidders to coordinate with their banks in advance of payment deadlines to ensure that their wire transfers could be initiated and completed prior to those deadlines.⁴¹ To reinforce this point, the *Auction 98 Closing Public Notice* added an even more direct warning: "The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer."⁴²

15. Notwithstanding this clear notice of its obligation and the potential pitfalls associated with wire transfers, ERIE's wire transfer did not arrive prior to the down payment deadline. ERIE's Request provides no factual information about the particular circumstances pertaining to the wire transfer of the down payment. For example, ERIE refers to circumstances beyond its control,⁴³ but never directly claims that its bank erred in its submission of the wire transfer on the August 26 deadline.⁴⁴ Nor does ERIE's bank admit as much in its one-sentence letter addressed to ERIE's attorney. The bank's letter simply refers to ERIE's "best efforts to wire funds on August 26, 2015."⁴⁵ ERIE claims to have taken "every possible step," including having "contacted its bank multiple times" prior to the due date and on the due date about the wire transfer.⁴⁶ But ERIE's purported "best efforts" and various contacts – whatever they may have consisted of – were ultimately unsuccessful. Based on the record, we are unable to conclude that any unique circumstance exists that would support a waiver of the down payment deadline.

16. Wire transfer difficulties are not unique circumstances that warrant departure from our policy of strict enforcement of the down payment rule. The Commission has long warned winning bidders of problems that may foreseeably arise in the wire transfer process to avoid missing the deadline for completion of required payments. In fact, the *Auction 98 Closing Public Notice* expressly cautioned winning bidders about the potential difficulties of last-minute payments by wire transfer.⁴⁷ In addition, the Commission addressed circumstances in *Austin* that are similar to those here. The *Austin* petitioner's bank did not complete the wire transfer until the day after the down payment deadline due to difficulties

⁴⁰ The *Auction 98 Procedures Public Notice* was released more than four months before the down payment deadline, and provided ample notice to prospective applicants of the down payment deadline.

⁴¹ *Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3570, para. 94 (advising potential Auction 98 participants with regard to upfront payments to discuss arrangements with their bankers "several days" before executing their wire transfers and to allow sufficient time for transfers to be initiated and completed before the deadline); *Auction 98 Closing Public Notice*, 21 FCC Rcd at 1073.

⁴² *Id.* at 8315, para. 9; see *Connoisseur Opposition* at 4.

⁴³ See Request at 3.

⁴⁴ See *Connoisseur Opposition* at 3 (observing that ERIE offered no details about its inability to meet the deadline "beyond the bank's bare bones statement").

⁴⁵ Request at Attach. C.

⁴⁶ Request at 1-2 & Attach. C.

⁴⁷ *Auction 98 Closing Public Notice*, 30 FCC Rcd at 8315, para. 9. We note that the Commission's order in *Austin*, which addressed a late wire transfer, was released only four months prior to the *Auction 98 Closing Public Notice*.

that arose when the petitioner sought to initiate a wire transfer payment on the due date.⁴⁸ And the petitioner attached to its waiver request a letter from his bank in which the bank took responsibility for the delay.⁴⁹ Nevertheless, the Commission disagreed with the petitioner's claim to be an "inadvertent victim" because the petitioner had made no effort to pay the down payment until just prior to the payment deadline.⁵⁰

17. Finally, we are not persuaded that ERIE's asserted intent to bring a new station to "the underserved community" of Westfield, New York outweighs the public interest benefit in consistent enforcement of the Commission's competitive bidding rules. The petitioner in *Austin* made the same arguments, which the Commission rejected: "Where an entity has presented circumstances that raise questions about its ongoing ability and willingness to fulfill its payment obligations, assertions about the provision of service do not outweigh those questions."⁵¹

18. None of the arguments presented by ERIE merits our relieving ERIE of its obligations pursuant to Section 1.2107(b) to have made the down payment on its winning bid by the August 26, 2015, deadline. Accordingly, we deny ERIE's request for an extension of the down payment deadline associated with Auction 98.

IV. INTERIM DEFAULT PAYMENT

19. The Commission's rules 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.⁵² These payment obligations include both a deficiency payment, equal to the difference between the amount of the defaulter's bid and the amount of the winning bid the next time a permit or license covering the same spectrum is won in an auction, plus an additional payment equal to a percent of the defaulter's bid or the subsequent winning bid, whichever is less.⁵³ The additional default payment for Auction 98 permits was set to 20 percent of the applicable bid.⁵⁴

20. Section 1.2109(b) of the Commission's rules provides that a winning bidder who fails to remit the required down payment within ten business days after the Commission has declared competitive bidding closed will be deemed to have defaulted, its application will be dismissed, and it will be liable for the applicable default payment obligations specified in 47 CFR § 1.2104(g).⁵⁵ Although we cannot

⁴⁸ *Ted W. Austin, Jr., Request for Waiver of Down Payment Deadline for Auction 62*, Memorandum Opinion and Order, 25 FCC Rcd 1439, 1441, para. 5 (MB/WTB 2010) (*Austin Staff Decision*).

⁴⁹ *Id.*

⁵⁰ *Austin*, 30 FCC Rcd at 3490 n.39, para. 10.

⁵¹ *Austin Staff Decision*, 25 FCC Rcd at 1445, para. 14. ERIE's assertions of benefits to the Westfield, New York, community are similar to the public interest arguments the Commission has consistently rejected in declining to grant other requests for waiver of its competitive bidding rules. See, e.g., *Southern Communications Systems, Inc.*, Second Memorandum Opinion and Order, 16 FCC Rcd 18357, 18361, para. 9 (2001) ("[E]nforcing the Commission's payment rules . . . serves the public interest better than relying on the wholly unsubstantiated possibility that [petitioner] might have provided service in its license area sooner than the successor licensees will."); see also *Spectrum IVDS, L.L.C.*, Order, 23 FCC Rcd 8800, 8807, para. 19 (2008) (Commission noted that "[a]llowing winning bidders to retain licenses when they are unable to pay their winning bids prevents the auction process from assigning licenses to those parties best able to serve the public."); *Aircom*, 18 FCC Rcd at 1810-11, paras. 12-13 (following Commission precedent in rejecting the petitioner's argument that the down payment and default rules should be waived to provide communications services to underserved tribal lands and rural areas).

⁵² 47 CFR §§ 1.2109(b), 1.2104(g)(2).

⁵³ *Id.*

⁵⁴ *Auction 98 Closing Public Notice*, 30 FCC Rcd at 8316, para. 14.

⁵⁵ 47 CFR §§ 1.2104(g) and 1.2109(b).

determine ERIE's total default payment at this time, we will assess an interim default payment owed by ERIE, amounting to 20 percent of its defaulted net bid for the Westfield construction permit, or \$107,100.⁵⁶ Pursuant to Section 1.2106(e) of the Commission's rules, we will apply ERIE's payment on deposit to satisfy this interim default payment obligation.⁵⁷

V. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 309, and Section 1.3 of the Commission's rules, 47 CFR § 1.3, that The ERIE Radio Company, LLC's Informal Request for Extension of Time, dated November 20, 2015, is DENIED.

22. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 309, and Sections 1.2107(b), 1.2109(b), and 1.2104(g), of the Commission's rules, 47 CFR §§ 1.2107(b), 1.2109(b), and 1.2104(g), that The ERIE Radio Company, LLC is assessed an interim default payment in the amount of \$107,100.00 for the construction permit associated with MM-FM1090-A, at Westfield, New York.

23. IT IS FURTHER ORDERED, pursuant to Sections 1.2104 and 1.2106 of the Commission's rules, 47 CFR §§ 1.2104 and 1.2106, that the funds of The ERIE Radio Company, LLC on deposit will be applied to satisfy the interim default payment obligation.

24. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.2104(g) of the Commission's rules, 47 CFR § 1.2104(g), that The ERIE Radio Company, LLC will be subject to the balance of the default payment specified in Section 1.2104(g) of the Commission's rules, 47 CFR § 1.2104(g), once the actual default payment is determined.

25. IT IS FURTHER ORDERED that, pursuant to 47 CFR § 1.2109(c), the long-form application of The ERIE Radio Company, LLC, File Number BNPH-20151009AIH, is DISMISSED.

⁵⁶ 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 construction permit covering the same spectrum is re-auctioned and the final default payment can be calculated. *See AirCom Communication Consultants, Inc.*, Order, 16 FCC Rcd 17685, 17691 n.47 (WTB 2001), *recon. denied sub nom.*, *AirCom Consultants, Inc.*, Order on Reconsideration, 18 FCC Rcd 1806 (WTB 2003). *See also* 47 CFR § 1.2104(g)(2).

⁵⁷ *See* 47 CFR § 1.2106(e). *See also TPS Order*, 18 FCC Rcd at 2516.

26. This action is taken pursuant to delegated authority under Sections 0.283, 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.283, 0.131 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Margaret W. Wiener
Chief, Auctions and Spectrum Access Division
Wireless Telecommunications Bureau

Peter H. Doyle
Chief, Audio Division
Media Bureau