



Federal Communications Commission
Washington, D.C. 20554

May 7, 2021

DA 21-542

Via Email and Certified Mail, Return Receipt Requested

LocaLoop, Inc.
Attn: Carl J. Torarp, CEO
3280 Gorham Avenue, Suite 201
St. Louis Park, MN 55426

Re: Notice of LocaLoop, Inc.'s Interim Default Payment Obligation for Licenses Won in Auction 105

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

Dear Mr. Torarp:

This Order provides notice and demands payment of the interim default payment obligation for LocaLoop, Inc. (“LocaLoop”) with respect to its default arising out of Auction 105 and dismisses LocaLoop’s long-form license application (FCC Form 601).

As described fully below, LocaLoop was the winning bidder in Auction 105 for 122 Priority Access Licenses (PALs) in the 3550-3650 MHz portion of the 3.5 GHz band.¹ After the close of Auction 105, LocaLoop made its down payment of \$871,734.40, but failed to make its final payment of the balance of its net payment amount of \$3,486,937.60. LocaLoop became subject to the default provisions of section 1.2104(g) of the Commission’s rules when it failed to make that final payment within the time provided under the rules.²

On September 2, 2020, the Office of Economics and Analytics and Wireless Telecommunications Bureau announced the winning bidders in Auction 105, including LocaLoop.³ The *Auction 105 Closing Public Notice* also announced that, by no later than September 17, 2020, every Auction 105 winning bidder was required to submit its long-form application and to have on deposit enough funds to bring its 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, that winning bidder was required to deposit sufficient funds to meet its down payment obligation.⁵ The *Auction 105 Closing Public Notice* further instructed that by October 1, 2020, all winning bidders were required to submit final payments for the balance of the

¹ See *Auction of Priority Access Licenses in the 3550-3650 MHz Band Closes; Winning Bidders Announced for Auction 105*, Public Notice, 35 FCC Rcd 9287 (OEA/WTB 2020) (“*Auction 105 Closing Public Notice*”).

² 47 C.F.R. § 1.2104(g)(2); see also *Auction 105 Closing Public Notice*, 35 FCC Rcd at 9290, paras. 13-14.

³ *Auction 105 Closing Public Notice*, 35 FCC Rcd 9287.

⁴ *Id.* at 9289, 9294, paras. 10, 31; see also 47 C.F.R. § 1.2107(b), (c).

⁵ *Id.* at 9289-90, paras. 10-11.

net amount of their winning bids.⁶

LocaLoop's net winning bids totaled \$4,358,672.00, so its required 20% down payment was \$871,734.40.⁷ The *Auction 105 Closing Public Notice* indicated that the \$347,720.00 upfront payment amount that LocaLoop had on deposit had been applied toward its down payment requirement, and it notified LocaLoop that the additional amount due to meet its down payment obligation was \$524,014.40.⁸ LocaLoop timely submitted that additional amount to meet its required down payment, but failed to remit the final payment that was due by October 1, 2020,⁹ and did not make any payment by the late final payment deadline of October 16, 2020. LocaLoop's failure to meet that final payment deadline meant that it became subject to the default provisions of section 1.2104(g) of the Commission's rules.¹⁰

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.¹¹ A bidder who defaults on that obligation or is disqualified is subject to a default payment.¹² The default payment has two components. The first component is a deficiency payment, which is assessed if the subsequent winning bid the next time a license for the spectrum is won is lower than the defaulted bid.¹³ The deficiency payment 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 results in a lower payment.¹⁴ The second component of the default payment is an additional payment, which, pursuant to the rule in effect at the time of Auction 105, is equal to twenty percent (20%) 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 twenty percent (20%) of the original defaulted bid.¹⁶

Until new licenses for the relevant spectrum are won in a subsequent auction, the Commission cannot determine the full amount of the default payment that LocaLoop owes. Therefore, pursuant to Commission practice, we will assess an interim default payment amounting to twenty percent (20%) of

⁶ *Id.* at 9290, paras. 13-14; *see also* 47 C.F.R. § 1.2109(a).

⁷ *Id.* at 9330.

⁸ *Id.*

⁹ On October 1, 2020, LocaLoop notified the Commission that it was unable to make its final payment for its Auction 105 winning bids. Letter from Carl J. Torarp, CEO, LocaLoop, Inc., to Scott Radcliffe, Office of the Managing Director, FCC (Oct. 1, 2020).

¹⁰ 47 C.F.R. § 1.2104(g)(2).

¹¹ *Id.*

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

¹³ 47 C.F.R. § 1.2104(g)(2)(i).

¹⁴ *Id.*

¹⁵ 47 C.F.R. § 1.2104(g)(2)(ii); *see Auction of Priority Access Licenses for the 3550-3650 MHz Band; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 105*, AU Docket No. 19-244, Public Notice, 35 FCC Rcd 2140 (2020) ("*Auction 105 Procedures Public Notice*").

¹⁶ 47 C.F.R. § 1.2104(g)(2); *see Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2204, paras. 227-28.

the net winning bids.¹⁷ 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, LocaLoop is in default on the licenses for which it was the winning bidder in Auction 105, its long-form application is dismissed, and it is subject to the applicable default payment.¹⁸ Pursuant to section 1.2104(g)(2) of the Commission's rules and the procedures established for Auction 105, LocaLoop owes an interim default payment of \$871,734.40, which is twenty percent (20%) of its total net winning bid of \$4,358,672.00.¹⁹ Pursuant to section 1.2106(e) of the rules, we will apply LocaLoop's \$871,734.40 payments on deposit toward satisfying this interim default payment obligation.²⁰ Once a subsequent winning bid is established for the relevant spectrum, we will determine LocaLoop's final default payment obligation. If an additional payment is required, a further order will assess such payment.²¹

In an October 23, 2020, email to then-Commission Chairman Ajit Pai, LocaLoop requested that it be allowed to purchase 17 of the 122 licenses for which it was the winning bidder, despite having defaulted on its final payment. The Commission has previously allowed winning bidders at auction to default selectively on licenses only 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.²² Because LocaLoop's interim default payment obligation will be satisfied by applying all of its funds on deposit with the Commission, LocaLoop does not have sufficient funds on deposit to pay in full for 17, or indeed any of the licenses it won in Auction 105. Accordingly, LocaLoop's request to default selectively is denied.

Likewise, we do not grant LocaLoop's additional requests for relief as sought in its February 11, 2021, email.²³ In that message, in addition to reiterating its proposal to default selectively, LocaLoop requested either a refund of its down payment or an extension of time, until July 31, 2021, to pay the balance of its winning bid. Down and final payments are requirements that are dictated by Commission rules that apply to every winning bidder.²⁴ As such, we may consider any request for relief from those

¹⁷ 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, para. 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, para. 197 (1994).

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

¹⁹ 47 C.F.R. §§ 1.2104(g)(2), 1.2109(c); see *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2204, para. 228.

²⁰ 47 C.F.R. § 1.2106(e).

²¹ See *Mountain Solutions Ltd., Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 21983, 21997, para. 25 (1998).

²² 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).

²³ Email from Nick Stanley, CTO, LocaLoop, Inc., to William Huber, Office of Economics and Analytics, FCC (Feb. 11, 2021).

²⁴ 47 C.F.R. §§ 1.2107(b), 1.2109(a).

requirements only where a party demonstrates that it meets the standard applicable to requests for waiver of the rules.²⁵ As stated above, LocaLoop's down payment on deposit with the Commission will be used to satisfy LocaLoop's default payment obligation, pursuant to section 1.2106(e) of the Commission's rules. LocaLoop has provided no justification for waiver of either that provision or the default provisions of section 1.2104(g). Accordingly, LocaLoop has no funds remaining on deposit with the Commission to be refunded to it.

LocaLoop also offers no justification for waiving the final payment deadline. The Commission has long held that prompt payment of auction obligations is an objective indicator that a winning bidder is financially able to meet its obligations and intends to provide service to the public.²⁶ Strict enforcement of payment deadlines enhances the integrity of the auction and licensing process, and eliminates the possibility that insincere bidders who lack financial resources to deploy systems can shop their newly won licenses to gain financing.²⁷ Granting LocaLoop a waiver of the Auction 105 final payment deadline and extending the deadline for its final payment by an additional ten months would conflict with these policies. Therefore, we decline to do so.

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), LocaLoop, Inc. is ASSESSED an interim default payment of \$871,734.40, as computed in Attachment A.

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, LocaLoop, Inc.'s funds on deposit with the Commission will be applied toward satisfying LocaLoop's 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), LocaLoop, Inc. will be subject to a final default payment for its defaulted winning bid during Auction 105 for 122 Priority Access Licenses in the 3550-3650 MHz portion of the 3.5 GHz band, once the spectrum associated with the licenses 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, the FCC Form 601 long-form application of LocaLoop, Inc., FCC File No. 0009225393, is DISMISSED with prejudice.

²⁵ Specifically, to receive a waiver under section 1.925 of the Commission's rules, a party must show that: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of waiver would be in the public interest, or (2) in view of the unique or unusual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or that the applicant has no reasonable alternative to seeking a waiver of the rule. 47 C.F.R. § 1.925(b)(3). *See also* 47 C.F.R. § 1.3.

²⁶ *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, Report and Order, 21 FCC Rcd 891, 909, para. 45 (2006); *Abundant Life, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 4006, 4011-12, para. 14 (2002) (denying request for waiver of final payment deadline).

²⁷ *WSS, LLC, Request for Waiver of Section 1.2109 of the Commission's Rules*, Memorandum Opinion and Order, 21 FCC Rcd 6635, 6637-38, para. 6 (WTB ASAD 2006).

IT IS FURTHER ORDERED that this Order shall be sent to LocaLoop, Inc. and its representatives by certified mail, return receipt requested. This action is taken pursuant to authority delegated by sections 0.21(m) and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.21(m), 0.331.

Sincerely,

Jonathan M. Campbell
Chief, Auctions Division
Office of Economics and Analytics

Roger Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

Attachment

ATTACHMENT A

Interim Default Payment Report

Bidder	Defaulted Gross Bids Auction 105	Defaulted Net Bids Auction 105	Interim Payment Amount (20%)
LocaLoop, Inc. (122 licenses)	\$5,811,563.00	\$4,358,672.00	\$871,734.40

Interim Default Amount	\$871,734.40
Less Total of Amounts on Deposit	\$871,734.40
Outstanding Balance	\$0.00