



Federal Communications Commission
Washington, D.C. 20554

December 16, 2022

DA 22-1323

Via Email and Certified Mail, Return Receipt Requested

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

Re: Final Default Payment 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 a debt owed to the United States based on the default of Ace Radio Corporation (Ace) on its final payment for a construction permit it won in Auction 62. Ace was the winning bidder for FM broadcast construction permit FM 459-A (Mertzon, Texas). After the close of Auction 62, Ace defaulted on its final payment obligation for the permit. Thus, pursuant to the Commission's rules,¹ Ace owes a default payment, which is a debt owed to the United States.²

In 2015, the Commission assessed an interim default payment of \$9,282.00 from the monies Ace had on deposit, and explained that it could not determine the full amount of Ace's default payment until a new construction permit for the relevant allotment is won in a subsequent auction.³ A new construction permit for the underlying allotment was offered in Auction 98, and because it received a winning bid,⁴ the Commission is able to calculate Ace's final default payment obligation with respect to the permit.⁵

¹ 47 CFR §§ 1.2104(g)(2), 1.2109.

² 31 U.S.C. § 3701(b)(1).

³ 47 CFR § 1.2104(g)(2); Letter from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, and Peter H. Doyle, Chief, Audio Division, Media Bureau, to Ace Radio Corporation, 30 FCC Rcd 586, 588 (WTB 2015) (*Letter Order*). The functions of the Auctions and Spectrum Access Division were shifted from the Wireless Telecommunications Bureau to the Auctions Division of the Commission's Office of Economics and Analytics. *See Establishment of the Office of Economics and Analytics*, Order, 33 FCC Rcd 1539 (2018); *see also* 83 Fed. Reg. 63073 (Dec. 7, 2018).

⁴ *See Auction of FM Broadcast Construction Permits Closes; Winning Bidders Announced for Auction 98*, Public Notice, 30 FCC Rcd 8313, Attach. C (WTB 2015) (*Auction 98 Closing Public Notice*).

⁵ 47 CFR § 1.2104(g)(2).

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.⁶ 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.⁷ The default payment has two components: a deficiency payment and an additional payment amount.⁸ 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.⁹ 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.¹⁰ The additional payment amount is owed by each defaulting bidder.¹¹ Pursuant to the rule in effect for 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.¹²

As shown in Attachment A, and in accordance with section 1.2104(g)(2) of the Commission's rules, we have completed the final default payment calculation and, after applying the monies Ace has on deposit,¹³ Ace owes an outstanding balance of \$159,250.00. This debt to the United States is payable in full and without further demand within 30 days of the date of this Order in accordance with the Important Notice Information provided below and Payment Instructions in Attachment B.

Important Notice Information

The following provides notification of procedures and information required by the Debt Collection Improvement Act of 1996 (DCIA).¹⁴ The outstanding balance shown in Attachment A is a debt Ace owes to the United States. It is payable in full and without further demand, and payment must be received no later than the payment due date, which is 30 days from the date of this Order (Due Date).¹⁵ Any portion of the debt unpaid at the end of the Due Date will be considered delinquent and administrative charges (incurred for processing and handling delinquent debts),¹⁶ interest,¹⁷ and

⁶ *Id.*

⁷ 47 CFR §§ 1.2104(g)(2), 1.2109.

⁸ 47 CFR § 1.2104(g)(2).

⁹ 47 CFR § 1.2104(g)(2)(i).

¹⁰ *Id.*

¹¹ 47 CFR § 1.2104(g)(2).

¹² *See id.*; *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 (WTB 2005).

¹³ ARC paid an upfront payment of \$1,100,000.00 to participate in Auction 62. *See Auction of FM Broadcast Construction Permits Closes; Winning Bidders Announced for Auction No. 62*, Public Notice, 21 FCC Rcd 1071, Attach. B (WTB 2006) (*Auction 62 Closing Public Notice*). Of this amount, the Commission withheld \$61,880.00 to satisfy ARC's down payment obligation for this Permit and applied those monies to satisfy ARC's interim default payment obligation of \$9,282.00. *See Letter Order*, 30 FCC Rcd at 588.

¹⁴ Pub. L. No. 104-134, 110 Stat. 1321 (1996) (codified in relevant parts at 31 U.S.C. §§ 3716 (administrative offset) and 3717 (interest and penalty on claims)); *see also* 47 CFR §§ 1.1901, 1.1911, 1.1912, 1.1940 and 1.1941.

¹⁵ As noted in Attachment B, if the 30th day falls on a non-business day, payment must be received on the next business day.

¹⁶ 31 U.S.C. § 3717(e)(1); 47 CFR § 1.1940(c).

penalties¹⁸ will accrue beginning from that date. Interest accrues at a minimum annual rate established annually by the United States Treasury in accordance with 31 U.S.C. § 3717.¹⁹ However, the Commission will waive payment of the accrued interest, if the full amount of the debt is paid within 30 days of the Due Date.²⁰ A penalty of up to six percent (6%) accrues on any portion of the debt that remains unpaid for more than 90 days from the Due Date.²¹ In addition to these charges, the Commission may initiate administrative offset,²² and it may refer the delinquent debt to the United States Treasury or the Department of Justice (DOJ) for further collection action.²³ The United States Treasury will impose an additional administrative collection charge,²⁴ and it may also commence administrative offset.²⁵ An additional surcharge may be imposed if the DOJ initiates judicial action to recover judgment.²⁶ Furthermore, any portion of the debt that is unpaid after the Due Date specified in this Order is a delinquent debt, which will trigger application of the Commission's red light procedures at 47 CFR § 1.1910.

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 CFR § 1.2104(g)(2), Ace Radio Corporation is ASSESSED a final default payment obligation as computed in Attachment A.

IT IS FURTHER ORDERED that, pursuant to sections 1.2104 and 1.2106 of the Commission's rules, 47 CFR §§ 1.2104 and 1.2106, Ace Radio Corporation's interim payment or funds on deposit will be applied towards the final default payment.

IT IS FURTHER ORDERED that Ace Radio Corporation's debt of \$159,250.00 is payable in full, immediately, and without further demand, and it must be paid within 30 days of the date of this Order (the Due Date), in accordance with the payment instructions in Attachment B, and any portion of the debt unpaid after the Due Date is delinquent, and under 31 U.S.C. § 3717, administrative charges, interest, and penalties will accrue.

¹⁷ 31 U.S.C. § 3717(b); 47 CFR § 1.1940(b).

¹⁸ 31 U.S.C. § 3717(e)(2); 47 CFR § 1.1940(d).

¹⁹ 47 CFR § 1.1940(b).

²⁰ 31 U.S.C. § 3717(d); 47 CFR § 1.1940(g).

²¹ 31 U.S.C. § 3717(e)(2); 47 CFR § 1.1940(d).

²² 47 CFR § 1.1912. Under this provision, the Commission may refer the debt to the United States Treasury for centralized administrative offset whereby, subject to certain exceptions, money otherwise payable to the debtor by the United States government may be used to satisfy the debt. In addition, "unless otherwise prohibited by law," the Commission may conduct non-centralized, ad hoc case-by-case offsets when centralized offset is unavailable or inappropriate. 47 CFR § 1.1912(c).

²³ 31 U.S.C. §§ 3711(g), 3716; 28 U.S.C. § 3001 *et seq.*; 47 CFR § 1.1912. Transfer may be made without further notice at any time after the Due Date.

²⁴ 31 U.S.C. § 3717(e); 31 CFR § 285.12(j).

²⁵ 31 U.S.C. § 3716; 47 CFR § 1.1912(b) (mandatory centralized administrative offset).

²⁶ 28 U.S.C. § 3011.

IT IS FURTHER ORDERED that this Order shall be sent to Ace Radio Corporation and its representatives by certified mail, return receipt requested. This action is taken pursuant to authority delegated by sections 0.21(m) and 0.271 of the Commission's rules, 47 CFR §§ 0.21(m), 0.271.

Sincerely,

Gary D. Michaels
Deputy Chief, Auctions Division
Office of Economics and Analytics

Attachments

ATTACHMENT A

Multi-Auction Default Payment Report

Construction Permit	Defaulted Gross Bid Auction 62	Defaulted Net Bid Auction 62	Re-auction Gross Bid Auction 98	Re-auction Net Bid Auction 98	3% Payment	Lower Difference Payment	Final Payment
FM 459-A (Mertzon, Texas)	\$476,000.00	\$309,400.00	\$91,000.00	\$91,000.00	\$2,730.00	\$218,400.00	\$221,130.00

Total Final Default Payment Due	\$221,130.00
Less Amount on Deposit	\$61,880.00
Outstanding Balance Due on Final Default Payment	\$159,250.00

ATTACHMENT B

PAYMENT INSTRUCTIONS

The following information is being provided to assist you in making your payment.

All payments must be made in U.S. currency in the form of a wire transfer. No personal checks, cashier's checks or other forms of payment will be accepted. Wire transfer payments must be received by 6:00 PM Eastern Time, no later than thirty days from the date of this Order; however, if the 30th day falls on a non-business day, *e.g.*, Saturday, Sunday or Federal holiday, it is due the next business day. Applicants must allow sufficient time for the wire transfer to be initiated and for the transmission to be completed prior to the deadline. To submit funds by wire, applicants will need the following information to properly effect the transmittal:

ABA Routing Number: **021030004**

Receiving Bank: **TREAS NYC**

33 Liberty Street
New York, NY 10045

ACCOUNT NAME: **FCC**

ACCOUNT NUMBER: **27000001**

OBI Field: (Skip one space between each information item) "AUCTIONPAY"

APPLICANT FRN:

PAYMENT TYPE CODE: ("**APEN**")

FCC CODE 1: ("**62**")

PAYOR NAME:

CONTACT PHONE NUMBER:

Please Note: The Commission no longer requires the submission of FCC Form 159 (Remittance Advice) with such payments.

For questions, please contact Scott Radcliffe, Office of the Managing Director, Financial Operations Center, Revenue & Receivables Operations Group/Auctions, at (202) 418-7518.