

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

In the Matter of )  
 )  
Hilliary Acquisition Corp 2016, LLC )  
 )  
Request for Waiver of )  
Down Payment Deadline for Auction 105 )

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 18, 2022**

**Released: July 18, 2022**

By the Chiefs, Auctions Division, Office of Economics and Analytics, and Mobility Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. In this Order, we deny a request filed by Hilliary Acquisition Corp 2016, LLC (“Hilliary”), a winning bidder of 42 licenses in Auction 105, for waiver of the down payment deadline.<sup>1</sup> Hilliary failed to make its required down payment for the licenses by the deadline established under the Commission’s rules, instead submitting a payment three weeks late.<sup>2</sup> Subsequently, Hilliary submitted a request for waiver of the down payment deadline.<sup>3</sup> For the reasons set forth below, we deny Hilliary’s request, assess an interim default payment, and dismiss Hilliary’s long-form applications.

**II. BACKGROUND**

2. Auction 105 was an auction of Priority Access Licenses in the 3550-3650 MHz band.<sup>4</sup> In the *Auction 105 Procedures Public Notice*, the Wireless Telecommunications Bureau (WTB) and the Office of Economics and Analytics (OEA) 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.<sup>5</sup> The *Auction 105 Procedures Public Notice* stated specifically that down payments would be due from winning bidders ten business days after the release of the auction’s closing public notice, consistent with the requirement set forth in the Commission’s rules.<sup>6</sup> Winning bidders who failed to make their down payments on time would be considered in default, and defaulting bidders would be liable for default payments.<sup>7</sup> The *Auction 105 Procedures Public Notice* also

<sup>1</sup> 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*).

<sup>2</sup> 47 CFR § 1.2107(b).

<sup>3</sup> Request for Waiver and Extension of Hilliary Acquisition Corp 2016, LLC (filed November 4, 2020) (Request for Waiver).

<sup>4</sup> See *Auction of Priority Access Licenses for the 3550-3650 MHz Band, Comment Sought on Competitive Bidding Procedures for Auction 105*, Public Notice, 34 FCC Rcd 9215 (2019) (*Auction 105 Comment Public Notice*).

<sup>5</sup> 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*, Public Notice, 35 FCC Rcd 2140 (OEA/WTB 2020) (*Auction 105 Procedures Public Notice*).

<sup>6</sup> *Id.* at 2202; 47 CFR § 1.2107(b).

<sup>7</sup> *Id.* at 2204 (citing 47 CFR § 1.2104(g)(2)).

made clear that long-form applications would be due ten business days after the release of the *Auction 105 Closing Public Notice*, as required by the Commission's rules.<sup>8</sup>

3. Hilliary was found to be a qualified bidder for Auction 105, after it filed a complete short-form application and submitted an upfront payment in the amount of \$102,700.00.<sup>9</sup> Hilliary claimed eligibility for a fifteen percent bidding credit as a rural service provider.<sup>10</sup> Bidding in Auction 105 began on June 25, 2020, and it ended on August 25, 2020.

4. On September 2, 2020, WTB and OEA announced the close of Auction 105 and identified the winning bidders in the *Auction 105 Closing Public Notice*. The *Auction 105 Closing Public Notice* announced that Hilliary was the winning bidder for 42 licenses across 21 counties, with net winning bids totaling \$805,965.00.<sup>11</sup> Pursuant to section 1.2107(b) of the Commission's rules, each winning bidder in Auction 105 was required to make a down payment within ten business days after the release of the *Auction 105 Closing Public Notice*.<sup>12</sup> Accordingly, each winning bidder was required to satisfy its down payment obligation no later than September 17, 2020.<sup>13</sup> The *Auction 105 Closing Public Notice* further advised winning bidders to make payment arrangements well in advance of the deadline.<sup>14</sup> The down payments would bring each winning bidder's total amount of money on deposit with the Commission up to twenty percent of the net amount of its winning bids.<sup>15</sup>

5. To satisfy its down payment obligation to bring its amount on deposit with the Commission up to twenty percent of its net winning bids, Hilliary was required to submit \$58,493.00 to the Commission by September 17, 2020.<sup>16</sup> Hilliary failed to make any payment by that deadline, thereby defaulting on its winning bids.

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<sup>8</sup> *Id.* at 2202 (citing 47 CFR § 1.2107(c)).

<sup>9</sup> *Auction of Priority Access Licenses for the 3550-3650 MHz Band, 271 Applicants Qualified to Bid in Auction 105*, Public Notice, 35 FCC Rcd 6672, 6691 (2020) (*Auction 105 Qualified Bidders Public Notice*).

<sup>10</sup> *Auction 105 Qualified Bidders Public Notice*, 35 FCC Rcd at 6685 (Attachment A).

<sup>11</sup> *Auction 105 Closing Public Notice*, 35 FCC Rcd at 9306 (Attachment A).

<sup>12</sup> 47 CFR § 1.2107(b). See *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2202.

<sup>13</sup> *Auction 105 Closing Public Notice*, 35 FCC Rcd at 9289; see also *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2202.

<sup>14</sup> "To avoid untimely payments, each winning bidder should discuss arrangements with its financial institution . . . several days before it plans to make the wire transfer, and each should allow sufficient time for the transfer to be initiated and completed prior to the deadline. 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." *Auction 105 Closing Public Notice*, 35 FCC Rcd at 9291 (emphasis added). Cf. *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2182 (similarly advising potential Auction 105 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). Prospective bidders were also reminded of dates and the consequences of failing to meet them in a free, public Application Tutorial that was available for playback from the FCC's website: [https://wireless.fcc.gov/auctions/105/Auction-105-Application-Tutorial\\_3/presentation\\_html5.html](https://wireless.fcc.gov/auctions/105/Auction-105-Application-Tutorial_3/presentation_html5.html).

<sup>15</sup> *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2204, paras. 227-29 (citing 47 CFR § 1.2104(g)(2)).

<sup>16</sup> Attachment B of the *Auction 105 Closing Public Notice* advised winning bidders of the exact amounts for deposits due after the application of the bidder's upfront payment. *Auction 105 Closing Public Notice*, 35 FCC Rcd at 9318-43. The *Auction 105 Closing Public Notice* shows that Hilliary had an upfront payment amount of \$102,700.00 on deposit and therefore was required to submit an additional \$58,493.00 by September 17, 2020, to satisfy its \$161,193.00 down payment obligation. Attachment B also shows that Hilliary's final payment amount would have been \$644,772.00.

6. Pursuant to section 1.2109(a) of the rules, a winning bidder that timely makes its down payment is required to pay a final payment, consisting of its remaining balance due.<sup>17</sup> Section 1.2109(a) provides that any such winner also has an option to pay the final balance ten business days after the final payment deadline, provided that it also pays a late fee equal to five percent of the amount due.<sup>18</sup> The *Auction 105 Closing Public Notice* announced that the final payment deadline was October 1, 2020, and that the late final payment deadline was October 16, 2020.<sup>19</sup>

7. Hilliary made a payment in the amount of \$738,428.25 on October 8, 2020, three weeks after the deadline for down payments had passed. Subsequently, on November 4, 2020, Hilliary submitted an amendment to its long-form application seeking waiver of the down payment deadline and acceptance of its late payment.<sup>20</sup> In it, Hilliary states that, as the September 17 down payment deadline approached, Hilliary was “working diligently” for weeks to complete its Auction 105 long-form applications, as well as a separate short-form application to participate in another Commission auction of wireless licenses, Auction 107.<sup>21</sup> Hilliary claims that, in the second week of September, its Chief Financial Officer (CFO) and one other “principal executive” learned that they had been exposed to the coronavirus “and immediately underwent self-quarantine outside of [Hilliary’s] offices” for two weeks each.<sup>22</sup> Further, Hilliary submits that “at least four members of [its] executive and senior management group . . . were operating on a limited capacity while quarantined outside the office and/or tending to health and family issues.”<sup>23</sup>

8. Hilliary states that its officers’ September 2020 quarantines curtailed its ability to execute routine business operations and meet a series of FCC auction deadlines.<sup>24</sup> As a result, Hilliary says that its CFO took on considerable additional responsibilities while in quarantine, which contributed to a miscommunication between the CFO, its staff, and its bank regarding its down payment. Hilliary states that it only realized this error after the October 1, 2020, final payment deadline had passed. Hilliary explains that its October 8 payment was intended to cover the down payment and final payment, along with an additional 5% “late fee.”<sup>25</sup>

### III. DISCUSSION

9. The Commission’s rules may be waived for good cause shown.<sup>26</sup> As interpreted by the courts, the party seeking waiver of a rule’s requirements must demonstrate that “special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”<sup>27</sup> Thus, in order to receive the waiver it seeks, Hilliary must demonstrate either: (1) that “[t]he underlying purpose of

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<sup>17</sup> 47 CFR § 1.2109(a).

<sup>18</sup> *Id.*

<sup>19</sup> *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2202 (citing 47 CFR § 1.2109(a)).

<sup>20</sup> Request for Waiver at 1.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 2.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> 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)).

<sup>27</sup> *See, e.g., Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). *See also* 47 CFR § 1.925(b)(3)(i)-(ii).

the rule would not be served or would be frustrated by application to the instant case, and that a grant of the waiver would be in the public interest;” or (2) that, “[i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative” to comply, other than seeking a waiver of the rule.<sup>28</sup> We find that Hilliary has made neither of these two possible demonstrations for a waiver.

10. As to the first showing, Hilliary’s proffered justifications for waiver echo those that we have rejected in the past, and Hilliary has not persuaded us to depart from that precedent. The Commission has enforced the initial down payment deadline in cases where unsuccessful waiver applicants blamed a late down payment, in whole or in part, on a medical exigency or bank error.<sup>29</sup> Hilliary submits that the pandemic’s impacts on its capacity to meet the down payment deadline are unique and unusual circumstances that justify waiver of the rule.<sup>30</sup> We disagree.

11. Waiver of Auction 105’s down payment deadline would conflict with the policies that undergird the rule and would thereby impair our ability to meet the Commission’s policy objectives in future auctions.<sup>31</sup> The Commission strictly enforces the down payment rule—thus far, without exception. We do so not simply to confirm each winning bidder’s ability to pay, but also to safeguard the integrity of the auction process by avoiding opportunities to game the auction process.<sup>32</sup> We decline to depart from that practice here.

12. The Commission has consistently rejected arguments that it should waive the down payment rule where a winning bidder made a payment very shortly after the deadline, and for reasons similar to those presented here. In one such instance, winning bidder Ted W. Austin sought waiver of Auction 62’s down payment deadline after he made his payment just one day late.<sup>33</sup> There, Mr. Austin said that a family emergency made it impossible for him to appear at his bank and initiate the wire transfer on the due date.<sup>34</sup> The Commission nonetheless explained that it would not waive the down payment deadline, “reasoning that ‘the integrity and functioning of the auction process is dependent on having payment obligations on winning bids promptly met.’”<sup>35</sup> And, the policy of strictly enforcing the rule serves a

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<sup>28</sup> 47 CFR § 1.925(b)(3)(i)-(ii). See also *Northeast Cellular*, 897 F.2d at 1166; *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); *Thomas Radio v. FCC*, 716 F.2d 921, 924 (D.C. Cir. 1983).

<sup>29</sup> *Ted W. Austin, Jr.*, Memorandum Opinion and Order, 30 FCC Rcd 3486, 3487, 3489, paras. 4, 8 (2015) (*Austin Order*) (affirming denial of request for waiver where down payment was one day late and winning bidder claimed that a family emergency prevented him from appearing in person at the bank to initiate the wire transfer on the due date); see also *Kankakee Valley Broadcasting Co., Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 8591, 8593-98, paras. 8-16 (WTB/ASAD 2007) (*Kankakee Order*) (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).

<sup>30</sup> Request for Waiver at 1-2.

<sup>31</sup> See *BDPCS, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 17590, 17598-600, paras. 15-16 (2000), *review denied BDPCS, Inc. v FCC*, 351 F.3d 1177 (D.C. Cir. 2003) (reviewing the purposes of the down payment rule and the reasons for its strict enforcement); *Mountain Solutions Ltd., Inc. v. FCC*, 197 F.3d 512, 518 (D.C. Cir. 1999) (upholding Commission policy of strict enforcement of down payment deadlines).

<sup>32</sup> *Austin Order*, 30 FCC Rcd at 3491, para. 11.

<sup>33</sup> *Id.* at 3487, para. 4.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 3489, para. 8 (quoting *Mountain Solutions Ltd., Inc. v. FCC*, 197 F.3d 512, 518 (D.C. Cir. 1999)). See also *Erie Radio Company, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 3890, 3893, para. 10 (2017) (noting the

(continued....)

broader purpose by eliminating the need for the Commission to undertake an individualized analysis of the financial circumstances of each auction applicant.<sup>36</sup> Like Mr. Austin, Hilliary asserts that by eventually transmitting its down payment, along with an additional amount, it has demonstrated its ability to pay.<sup>37</sup> But the Commission has concluded that uniform, predictable, and strict enforcement of the rule best serves its purpose.<sup>38</sup>

13. Hilliary also contends that its particular circumstances satisfy the requirements of the second possible showing in support of waiver. Hilliary asks us to find that the challenges it faced in September 2020 following a few of its key officials' exposure to—or positive tests for—COVID-19 render strict enforcement of the down payment rule inequitable, unduly burdensome, or at odds with the public interest.<sup>39</sup> Again, we disagree.

14. While we are aware of the burdens and challenges imposed by the COVID-19 pandemic, we are not persuaded that Hilliary has presented any unique facts or circumstances that merit waiving its obligation to have timely submitted its down payment by the Commission's September 17, 2020, deadline.<sup>40</sup> Consistent with the Commission's practice, the *Auction 105 Procedures Public Notice* explicitly instructed all potential bidders that down payments would be due within ten business days after the release of the *Auction 105 Closing Public Notice*. Moreover, both the *Auction 105 Procedures Public Notice* and the *Auction 105 Closing Public Notice* warned all winning bidders to coordinate with their banks well in advance of the payment deadlines to ensure that their wire transfers could be timely initiated and completed.<sup>41</sup>

15. Hilliary submits that its officers were first forced to quarantine in the second week of September 2020, and that its staffing and logistical difficulties followed, culminating in the communication breakdown that caused Hilliary to miss the down payment deadline.<sup>42</sup> The fact that Hilliary's key personnel were either afflicted by illness or exposed to it is not novel nor is it necessarily

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Commission's unwavering strict enforcement of the down payment deadline); *TPS Utilicom, Inc.*, Order on Reconsideration, 18 FCC Rcd 2516, 2520, para. 9 (2003) (denying request for waiver where petitioner submitted down payments for some but not all licenses where it was the high bidder); *Kankakee Order*, 22 FCC Rcd at 8596-97, para. 13.

<sup>36</sup> *Id.* at 3491, para. 11.

<sup>37</sup> See Request for Waiver at 2-3. See also *Austin Order*, 30 FCC Rcd at 3491, para. 11 (rejecting this argument because “[i]f [it] were correct, any winning bidder that could show it had had the required amount of funds in its bank account at the time the initial down payment was due could justify a request for waiver of the deadline seeking an extension for any length of time.”)

<sup>38</sup> See *id.*

<sup>39</sup> Request for Waiver at 2.

<sup>40</sup> Hilliary's mere statement that its circumstances are “narrowly unique and highly unusual,” and thus, not likely to be encountered by other Commission applicants, is not sufficient to satisfy the requirements of *WAIT Radio*. See *Northeast Cellular*, 897 F.2d at 1166-67 (explaining that, if we deviate from our general rule to grant a waiver, we “must explain why deviation better serves the public interest and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation”).

<sup>41</sup> *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2182 (advising potential Auction 105 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 that deadline); *Auction 105 Closing Public Notice*, 35 FCC Rcd at 9291.

<sup>42</sup> Request for Waiver at 2.

unique or unexpected six months after the onset of the COVID-19 pandemic.<sup>43</sup> To that end, we note that the *Auction 105 Procedures Public Notice* was released and available to prospective bidders more than six months before the eventual down payment deadline, and more than 200 winning bidders met that deadline, despite the ongoing pandemic.<sup>44</sup> We conclude that Hilliary's failure to meet its first post-auction obligation does not constitute a special circumstance that warrants a deviation from our general rule.

16. Nor are we persuaded that applying the rule to Hilliary in these circumstances would be contrary to the public interest. Hilliary asserts that it is actively exploring CBRS spectrum investment and deployment opportunities to serve communities on Tribal lands in Oklahoma.<sup>45</sup> Without the waiver, Hilliary says, those efforts will be delayed. We are not convinced that Hilliary's asserted intent outweighs the public interest benefit that is attendant to consistent enforcement of the Commission's competitive bidding rules. As noted above, the Commission has never granted a request for waiver of a down payment deadline, and we decline to do so here. We further observe that Hilliary's asserted intent to benefit communities on Tribal lands in Oklahoma are similar to public interest arguments that the Commission has consistently rejected in declining to grant other requests for waiver of its competitive bidding rules.<sup>46</sup>

17. None of Hilliary's arguments merit that we waive the down payment deadline. Accordingly, we deny Hilliary's request.

#### IV. INTERIM DEFAULT PAYMENT

18. 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.<sup>47</sup> 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.<sup>48</sup> 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

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<sup>43</sup> See *Kankakee Order*, 22 FCC Rcd at 8594, para. 9 ("The Commission has held that something as common as an employee's illness does not rise to the level of a unique or unusual circumstance, warranting special consideration by the Commission.") (internal quotation marks omitted). See also Proclamation No. 9994, 85 FR 153337 (Mar. 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

<sup>44</sup> See *Wireless Telecommunications Bureau Announces that Applications for Auction 105 Licenses are Accepted for Filing*, Public Notice, 35 FCC Rcd 14080 (WTB 2020); *Wireless Telecommunications Bureau Announces Additional Applications for Auction 105 Licenses are Accepted for Filing*, Public Notice, 36 FCC Rcd 798 (WTB 2021).

<sup>45</sup> Request for Waiver at 3.

<sup>46</sup> 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 Consultants, Inc.*, Order on Reconsideration, 18 FCC Rcd 1806, 1810-11 (WTB 2003) (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).

<sup>47</sup> 47 CFR §§ 1.2109(b), 1.2104(g)(2).

<sup>48</sup> 47 CFR § 1.2104(g)(2)(i).

bid, whichever results in a lower payment.<sup>49</sup> 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.<sup>50</sup> 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.

19. 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).<sup>51</sup> Although we cannot determine Hilliary's total default payment at this time, we will assess an interim default payment owed by Hilliary, amounting to 20 percent of its defaulted net bid for the licenses, or \$161,193.00.<sup>52</sup> Pursuant to section 1.2106(e) of the Commission's rules, we will apply Hilliary's payment on deposit to satisfy this interim default payment obligation.<sup>53</sup>

## V. ORDERING CLAUSES

20. 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 1.925 of the Commission's rules, 47 CFR § 1.925, that Hilliary Acquisition Corp 2016, LLC's Request for Waiver and Extension, filed November 4, 2020, is DENIED.

21. 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 Hilliary Acquisition Corp 2016, LLC is ASSESSED an interim default payment in the amount of \$161,193.00 for the 42 Priority Access Licenses in the 3550-3650 MHz portion of the 3.5 GHz band for which it was the winning bidder in Auction 105.<sup>54</sup>

22. 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 Hilliary Acquisition Corp 2016, LLC's funds on deposit will be applied toward satisfying its interim default payment obligation.

23. 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 Hilliary Acquisition Corp 2016, 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), after the spectrum associated with the licenses is won in a subsequent auction and the full default payment amount is determined.

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<sup>49</sup> *Id.*

<sup>50</sup> 47 CFR § 1.2104(g)(2)(ii); *see Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2204, paras. 227-28.

<sup>51</sup> 47 CFR §§ 1.2104(g) and 1.2109(b).

<sup>52</sup> 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, after licenses covering the same spectrum are 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).

<sup>53</sup> *See* 47 CFR § 1.2106(e). *See also TPS Order*, 18 FCC Rcd at 2516.

<sup>54</sup> Attachment A lists those 42 licenses upon which Hilliary has defaulted.

24. IT IS FURTHER ORDERED that, pursuant to sections 0.331 and 1.2109 of the Commission's rules, 47 CFR §§ 0.331 and 1.2109, the long-form applications of Hilliary Acquisition Corp 2016, LLC, File Numbers 0009227434 and 0009227450, are DISMISSED.

25. This action is taken pursuant to delegated authority under sections 0.21(m), 0.131(c), 0.271 and 0.331 of the Commission's rules, 47 CFR §§ 0.21(m), 0.131(c), 0.271, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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

Roger Noel  
Chief, Mobility Division  
Wireless Telecommunications Bureau

## Attachment A

This table provides a list of the 42 Priority Access Licenses for which Hilliary Acquisition Corp 2016, LLC, was the winning bidder in Auction 105.

Market Number	Market Description	File Number
D48009	Archer, TX	0009227434
D48009	Archer, TX	0009227434
D48077	Clay, TX	0009227434
D48077	Clay, TX	0009227434
D48087	Collingsworth, TX	0009227434
D48087	Collingsworth, TX	0009227434
D48101	Cottle, TX	0009227434
D48101	Cottle, TX	0009227434
D48155	Foard, TX	0009227434
D48155	Foard, TX	0009227434
D48197	Hardeman, TX	0009227434
D48197	Hardeman, TX	0009227434
D48247	Jim Hogg, TX	0009227434
D48247	Jim Hogg, TX	0009227434
D48269	King, TX	0009227434
D48269	King, TX	0009227434
D48485	Wichita, TX	0009227434
D48485	Wichita, TX	0009227434
D48487	Wilbarger, TX	0009227434
D48487	Wilbarger, TX	0009227434
D48505	Zapata, TX	0009227434
D48505	Zapata, TX	0009227434
D40015	Caddo, OK	0009227450
D40015	Caddo, OK	0009227450
D40031	Comanche, OK	0009227450
D40031	Comanche, OK	0009227450
D40033	Cotton, OK	0009227450
D40033	Cotton, OK	0009227450
D40057	Harmon, OK	0009227450
D40057	Harmon, OK	0009227450
D40067	Jefferson, OK	0009227450
D40067	Jefferson, OK	0009227450
D40075	Kiowa, OK	0009227450
D40075	Kiowa, OK	0009227450
D40077	Latimer, OK	0009227450
D40077	Latimer, OK	0009227450
D40127	Pushmataha, OK	0009227450
D40127	Pushmataha, OK	0009227450
D40137	Stephens, OK	0009227450
D40137	Stephens, OK	0009227450
D40141	Tillman, OK	0009227450
D40141	Tillman, OK	0009227450