



## II. BACKGROUND

2. Fireside seeks relief from the bid withdrawal payment obligations incurred under section 1.2104(g) of the Commission's rules as a result of withdrawing provisionally winning bids during Auction No. 37.<sup>4</sup> Fireside participated in the Commission's Auction No. 37 and submitted high bids on four FM construction permits – Whitehall, MT (FM 185), Breckenridge, TX (FM 277), Manville, WY (FM 352), and Eureka, MT (FM 171). During the auction, Fireside withdrew its high bids on these four construction permits. The Eureka, MT construction permit received a subsequent winning bid in Auction No. 37. The unsold Breckenridge, TX, and Manville, WY construction permits on which Fireside had withdrawn high bids were subsequently offered and won in Auction No. 62. The Whitehall, MT construction permit was not won in Auction 62 and has not been re-offered at auction since then. Under the Commission's rules, a bidder that withdraws a provisionally winning bid during the course of an auction is subject to a bid withdrawal payment equal to any difference between the amount of the withdrawn bid and the amount of the subsequent winning bid.<sup>5</sup>

3. After Auction 37, the final withdrawal payment relating to the Eureka, MT construction permit was calculated pursuant to section 1.2104(g) of our rules, and paid by Fireside out of its upfront payment, along with interim withdrawal payments relating to the other three construction permits. After Auction No. 62 closed, under section 1.2104(g) of our rules, the Commission accordingly assessed final withdrawal payments against Fireside with respect to the two permits that received winning bids in that auction. Although the bid withdrawal payment for the Eureka, MT construction permit has been paid, the Commission also assessed against Fireside as yet unpaid final withdrawal payments of \$41,137 (Breckenridge) and \$67,755 (Manville), for a total amount due of \$108,892. Fireside subsequently notified the Commission that due to financial hardship, it was unable to pay the withdrawal payments.<sup>6</sup> In this Order, we compromise these two debts.

## III. DISCUSSION

4. Fireside is seeking elimination in their entirety of the debts under the compromise provisions of 31 U.S.C. § 3711. The debts in question are each less than \$100,000; therefore, this is within the Commission's compromise authority.<sup>7</sup> The scope of compromise is limited to four situations: (a) inability to pay; (b) inability of the Government to collect within a reasonable time using enforced collection proceedings; (c) diminishing returns; and (d) "significant doubt" concerning the Government's ability to prove its case in court.<sup>8</sup> In this case, we are compromising the debts due to Fireside's inability to pay the full amount of the debts within a reasonable time.

5. From the content of its request, Fireside asks that the Commission compromise the two unpaid withdrawal payments due to an inability to pay. We have said in the past, in the context of a waiver petition, that our withdrawal and default payment rules are intended to provide incentives for

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<sup>4</sup> 47 C.F.R. § 1.2104(g).

<sup>5</sup> 47 C.F.R. § 1.2104(g)(1).

<sup>6</sup> In addition, Fireside filed two petitions for reconsideration of the public notices announcing the closing of Auctions 37 and 62, disputing, *inter alia*, the withdrawal payment obligations. *See Petition for Reconsideration of Bidder Withdrawal Payment Penalties Assessed against Fireside Media upon Conclusion of FM Auction 37*, filed Jan. 3, 2005; *Urgent Petition for Reconsideration of DA 06-252*, filed Mar. 10, 2006. In light of our decision to compromise Fireside's existing debt, we do not reach the merits of Fireside's pending petitions for reconsideration challenging the assessment against Fireside of the subject bid withdrawal payments.

<sup>7</sup> 31 U.S.C. § 3711, 31 C.F.R. § 902.2, 47 C.F.R. § 1.1915.

<sup>8</sup> 31 C.F.R. § 902.2(a); *see* 47 C.F.R. § 1.1915.

auction participants to make certain of their financial capabilities prior to the auction.<sup>9</sup> Our intent is to encourage auction bidders not to bid without sufficient financial backing. Indeed, we hold bidders responsible for their actions and financial obligations. Nonetheless, as in this case, where one has established an inability to pay any portion of one or both debts, we may exercise our authority to resolve these two debts of \$41,137 and \$67,755 that have been pending at the Commission for several years. We believe Fireside has shown it is unable to pay these debts and any additional debt resulting from Fireside's bid withdrawals in Auction 37.

6. We find that this case meets the criteria of debt compromise.<sup>10</sup> Under our rule, a request to compromise one or more claims must be submitted in writing with full justification.<sup>11</sup> We have received, in writing, an explanation of Mr. Garey's financial situation for 2004 and 2005.<sup>12</sup> These were the years relevant to Auction No. 37, which took place during November 2004, and this was the most current financial information at the time two petitions for reconsideration were filed. The submitted financial materials demonstrate that neither Mr. Garey's nor Fireside's assets, are sufficient to pay these debts and any future debts arising from Auction 37.<sup>13</sup> Our rules also require that the debtor comply with the regulatory requirements to provide verified information to establish that the debtor is unable to pay more than the amount offered and the justification for compromise. Again, the submitted data and discussion explains the income and losses sustained since the withdrawal payment obligations were calculated as well as Mr. Garey's loss of full time employment. In conclusion, we have decided to compromise in their entirety the two unpaid debts of \$41,137 (Breckenridge) and \$67,755 (Manville) attributable to Fireside and Mr. Garey.<sup>14</sup> Accordingly, there is no further debt, and because of the demonstrated financial situation, there will be no future assessments of withdrawal payments for any of Fireside's Auction 37 withdrawals, including its withdrawal of its high bid on the Whitehall, MT construction permit, based on the result of any future auction.<sup>15</sup> Therefore, there is also no corresponding debtor status applicable to Fireside or Mr. Garey as a result of his bid withdrawals during Auction 37. In addition, in light of the showings that Fireside/Mr. Garey have made, the Commission will refund at least \$8,659 of the \$17,318 Fireside paid toward withdrawal obligations assessed after Auction No. 37 that remains in the Commission's possession. Fireside may make a showing, under the Commission's rules, that it is entitled to an additional portion of the \$17,318.

#### IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 159, and 303(r), this ORDER is HEREBY ADOPTED.

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<sup>9</sup> See *BDPCS Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 17590, 17600-01, ¶¶ 17-18 (2000).

<sup>10</sup> 31 U.S.C. § 3711.

<sup>11</sup> 47 C.F.R § 1.1915.

<sup>12</sup> According to Mr. Garey's Tax Advisor, "Mr. Garey's income was ... negated by his expenses/losses in 2004" and "again negated by his expenses/losses in 2005." See Letter from Jennifer Strojny Milligan, Certified Financial Planner, to Chairman Kevin Martin, FCC (Feb. 4, 2008).

<sup>13</sup> In fact, Mr. Garey sustained business losses in those two years exceeding his income. See *id.*

<sup>14</sup> See "Auction of FM Broadcast Construction Permits Closes," Public Notice, Report No. AUC-06-62-G (Auction No. 62), 21 FCC Rcd 1071 (2006).

<sup>15</sup> As previously noted, Mr. Garey has already paid the bid withdrawal payment for the Eureka, MT construction permit.

8. IT IS FURTHER ORDERED that Fireside's petitions, *Petition for Reconsideration of Bidder Withdrawal Payment Penalties Assessed against Fireside Media upon Conclusion of FM Auction 37*, filed Jan. 3, 2005; *Urgent Petition for Reconsideration of DA 06-252*, filed Mar. 10, 2006, are MOOT.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary