



Federal Communications Commission
Washington, D.C. 20554

DA 08-1915

October 1, 2008

Via Certified Mail, Return Receipt Requested

John B. Walton, President
Walton Stations – New Mexico, Inc.
1096 Mechem Drive
Suite G2/G3
Ruidoso, NM 88345

Re: Interim Default Payment Obligation for Auction 37

Dear Mr. Walton:

This letter provides notice of the interim default payment obligation for Walton Stations – New Mexico, Inc. (Walton Stations) with respect to its default arising out of a Federal Communications Commission (“Commission”) auction of FM broadcast construction permits (“Auction 37”). Walton Stations was the winning bidder on FM broadcast construction permit FM226 (Tularosa, NM) in Auction 37.¹ As described below, Walton Stations defaulted on its final payment obligation for the winning bid. Accordingly, this letter sets forth the interim default payment obligation of Walton Stations for its defaulted bid and dismisses Walton Stations’ Form 301 long-form application.²

On April 7, 2008, the Media Bureau announced that it was prepared to grant Walton Stations’ application for permit FM226 from Auction 37.³ The Media Bureau also announced that by no later than April 21, 2008, Walton Stations was required to submit its final payment for that permit in accordance with the procedures adopted in the *Broadcast First Report and Order*.⁴ If the payment was not received by that date, Walton Stations had until May 5, 2008, to submit the payment plus a late fee equal to five percent (5%) of the amount due.⁵ Walton Stations’ net winning bid for permit FM226 was \$604,000.00.⁶ The Commission has applied the amount on deposit for permit FM226 which includes the \$50,000.00

¹ See FM Broadcast Construction Permits Auction Closes; Auction No. 37 Winning Bidders Announced; Payment and Application Deadlines Established, *Public Notice*, DA 04-3694, 20 FCC Rcd 1021 (MB/WTB 2004) (“*Closing Public Notice*”).

² See Application File No. BNPH-20041221ABA.

³ See Media Bureau is Prepared to Grant Certain Auction 37 Broadcast Construction Permit Applications, DA 08-811, *Public Notice*, 23 FCC Rcd 5663 (MB 2008).

⁴ *Implementation of 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services, First Report and Order* in MM Docket No. 97-234, GC Docket No. 91-52 and GEN Docket No. 90-264, 13 FCC Rcd 15920 (1998) (“*Broadcast First Report and Order*”).

⁵ 47 C.F.R. § 1.2109(a).

⁶ See *Closing Public Notice* at Attachment A.

upfront payment and an additional first down payment of \$70,800.00 which satisfied Walton Stations' down payment obligation totaling \$120,800.00 towards the final payment due.⁷ Walton Stations was required to pay the remaining balance of \$483,200.00 for FM broadcast construction permit FM226 not later than April 21, 2008 (or by May 5, 2008, along with an appropriate late payment) and it did not make a payment on the remaining balance.

Accordingly, Walton Stations is considered to be in default on FM broadcast construction permit FM226 for which it was the high bidder in Auction 37, its long-form application is dismissed, and it is subject to the applicable default payment.⁸ Under the Commission's rules, a bidder who fails to timely remit the required down or final payment for a license or permit for which it was the high bidder is in default, its application is dismissed, and it is subject to a default payment.⁹ The default payment has two components. The first component 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, the next time the license or permit is offered by the Commission (so long as the subsequent winning bid is less than the defaulted bid).¹⁰ The second component of the default payment is an additional payment equal to three percent (3%) of the defaulter's bid, or the subsequent winning bid, whichever is less.¹¹ If either bid amount is subject to a bidding credit, the three percent (3%) will be calculated using the same bid amounts and basis (net or gross bids) as in the first component of the default payment.¹² In the event that the subsequent winning bid is greater than or equal to the defaulted bid, the total default payment is equal to three percent (3%) of the defaulted bid.¹³ Since the Commission cannot determine the full amount of the default payment that is owed until there is a subsequent winning bid for the license, the Commission assesses an interim payment amounting to between three and twenty percent of the net winning bid.¹⁴ The remainder, if any, is assessed once a

⁷ See *Closing Public Notice*. See also 47 C.F.R. § 1.2107(b). Winning bidders were required to have on deposit enough funds to cover the twenty percent (20%) down payment requirement within ten business days of the release of the *Closing Public Notice*.

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

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

¹⁰ 47 C.F.R. § 1.2104(g)(2).

¹¹ *Id.* (2004). Pursuant to recent modifications to the rule governing default payments, the percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Since those modifications were not in effect prior to the beginning of this auction, the previous rule will apply. Accordingly, the additional default payment is three percent of the applicable bid. See Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Report and Order*, 21 FCC Rcd 891, 901-04 ¶¶ 24-32 (2006), petitions for recon. pending.

¹² 47 C.F.R. § 1.2104(g)(2).

¹³ *Id.*

¹⁴ 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 ¶ 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 at 5563 n.51 (1994); see also Implementation of Section 309(j) of

subsequent winning bid for the defaulted permit is established. Pursuant to Section 1.2104(g)(2) of the rules, Walton Stations owes an interim default payment totaling \$18,120.00, which is three-percent (3%) of its total net winning bid of \$604,000.00.¹⁵ Pursuant to Section 1.2106(e) of the Rules, we will apply Walton Stations' payments on deposit to satisfy this interim default payment obligation.¹⁶ Once a subsequent high bid is established for the relevant spectrum, we will determine Walton Stations' final default payment obligation.¹⁷ If an additional payment is required, a further order will assess such payment.¹⁸

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), Walton Stations – New Mexico, Inc. is ASSESSED an interim default payment in the amount of \$18,120.00 for the defaulted high bid for FM broadcast construction permit FM226 in Auction 37.

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, Walton Stations – New Mexico, Inc.'s funds on deposit will be applied to satisfy the interim default payment obligation.

IT IS FURTHER ORDERED that, pursuant to Section 1.2109 of the Commission's Rules, 47 C.F.R. 1.2109, the Form 301 long-form application of Walton Stations – New Mexico, Inc., File Number BNPH-20041221ABA, is DISMISSED with prejudice.

IT IS FURTHER ORDERED that, pursuant to Section 1.2104(g) of the Commission's Rules, 47 C.F.R. § 1.2104(g), Walton Stations – New Mexico, Inc. will be subject to a final default payment for the defaulted high bid for FM broadcast construction permit FM226 in Auction 37 once the spectrum associated with the permit is re-auctioned and the full default payment amount is determined.

the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd at 2382-83 ¶ 197 (1994).

¹⁵ 47 C.F.R. § 1.2104(g)(2) (2004). 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 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 (Pub. Safety Div. 2001), recon. denied *sub nom.*, AirCom Consultants, Inc., *Order on Reconsideration*, 18 FCC Rcd 1806 (Pub. Safety Div. 2003). *See also* 47 C.F.R. § 1.2104(g)(2).

¹⁶ 47 C.F.R. § 1.2106(e).

¹⁷ *Id.*

¹⁸ *See* Mountain Solutions Ltd., Inc., FCC 98-220, *Memorandum Opinion and Order*, 13 FCC Rcd. 21,983, 21,997 ¶ 25 (1998). In the event that the amount of the final default payment is determined to be less than the amount of the remaining monies on deposit, such excess will be refunded to the payor of record.

IT IS FURTHER ORDERED that this letter shall be sent to the applicant and its representatives by certified mail, return receipt requested. This action is taken pursuant to authority delegated by Sections 0.283 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.283 and 0.331.

Sincerely,

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

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: Richard J. Hayes, Esq.