

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of

| | |
|-------------------------------|---|
| |) |
| |) |
| |) |
| BDPCS, Inc., BTA Nos. B008, |) |
| B036, B055, B089, B110, B133, |) |
| B149, B261, B298, B331, B347, |) |
| B358, B391, B395, B407, B413, |) |
| and B447, Frequency Block C |) |

ORDER

Adopted: October 25, 1996

Released: October 28, 1996

By The Chief, Wireless Telecommunications Bureau:

1. By this action, we set forth the default payment obligations and procedures for BDPCS, Inc. ("BDPCS"), resulting from its failure to remit the required down payment on the licenses for which it was the successful high bidder in the Broadband Personal Communications Services ("PCS") C Block auction. Pursuant to the Commission's rules, BDPCS is in default on its down payment obligations for seventeen BTA licenses, and is subject to a default payment totalling \$60,695,653.23.¹ The specific default payment obligations for each license are set forth in Attachment A to this Order.

2. Background. On May 6, 1996, the Commission concluded the Broadband PCS C Block auction. BDPCS was the successful high bidder on seventeen licenses in the auction, with net bids totalling \$873,783,912.75. On May 8, 1996, the Commission announced by *Public*

¹ See 47 C.F.R. §§ 24.704, 24.708. See also 47 C.F.R §§ 1.2104, 1.2109.

*Notice*² that, pursuant to Section 24.711(a)(2) of the Commission's rules,³ winning bidders would be required to submit their total down payment amount within five business days. Consequently, under Section 24.711(a)(2), BDPCS was required to submit an initial down payment for the licenses in the amount of \$36,689,196.64 by May 15, 1996, to bring its total amount on deposit with the Commission for these licenses, including its upfront payment of \$7,000,000.00, to \$43,689,195.64.⁴

3. On May 15, 1996, BDPCS filed an Emergency Petition for Waiver of Section 24.711(a)(2), requesting that the Commission extend the deadline for submission of the down payments on its licenses.⁵ On May 20, 1996, the Wireless Telecommunications Bureau ("Bureau") denied BDPCS' request, finding that BDPCS had failed to meet the standards required to justify such a waiver.⁶ On May 22, 1996, BDPCS filed a Petition for Reconsideration of the *Order*, arguing that the Bureau had failed to adequately consider the merits of its Emergency Petition.⁷ On May 30, 1996, the Bureau issued an Order denying the Petition.⁸ On June 28, 1996, BDPCS filed an Application for Review of the Bureau's *Order* and *Order on Reconsideration* with the Commission.⁹ This Application for Review remains pending before the Commission.

² "Entrepreneurs' C Block Auction Closes," *Public Notice*, DA 96-716 (rel. May 8, 1996).

³ Section 24.711(a)(2) provides that "[e]ach winning bidder shall make a down payment equal to ten percent of its winning bid (less applicable bidding credits); a winning bidder shall bring its total amount on deposit with the Commission (including upfront payment) to five percent of its net winning bid within five business days after the auction closes, and the remainder of the down payment (five percent) shall be paid within five business days after the application required by § 24.809(b) is granted." 47 C.F.R. § 24.711(a)(2).

⁴ See 47 C.F.R. § 24.711(a)(2).

⁵ BDPCS, Inc., "Emergency Petition for Waiver of Deadline for Submission of Down Payment for the Broadband PCS C Block Auction" (filed May 15, 1996).

⁶ Emergency Petition for Waiver of Deadline for Submission of Down Payment for the Broadband PCS C Block Auction filed by BDPCS, Inc., *Order*, DA 96-811 (rel. May 20, 1996) ("*Order*").

⁷ BDPCS, Inc., "Petition for Reconsideration" (filed May 22, 1996).

⁸ Emergency Petition for Waiver of Deadline of Submission of Down Payment for the Broadband PCS C Block Auction filed by BDPCS, Inc., *Order on Reconsideration*, DA 96-874 (rel. May 30, 1996) ("*Order on Reconsideration*").

⁹ BDPCS, Inc., "Application for Review" (filed June 28, 1996).

4. On May 30, 1996, the Bureau released a *Public Notice*¹⁰ announcing that the seventeen licenses on which BDPCS had defaulted would be reaucted commencing July 3, 1996.¹¹ On July 17, 1996, the Commission announced by *Public Notice* that the reauction of the licenses was complete.¹² The successful net high bids for these licenses are set forth in Attachment A to this Order.

5. Discussion. Under the Commission's rules, a bidder who fails to remit the required down payment for the licenses for which it was the high bidder within five business days after the Commission declares the auction closed shall be deemed to be in default on those licenses.¹³ The Commission's rules also provide that under such circumstances, the Commission will dismiss the bidder's long-form application.¹⁴ A defaulting bidder is subject to certain default payment obligations.¹⁵ Specifically, such bidder is required to pay the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission (so long as the subsequent winning bid is less than the amount bid), plus an additional payment equal to three percent of the defaulter's bid or the subsequent winning bid, whichever is less.¹⁶ In the event

¹⁰ "18 Defaulted PCS Licenses To Be Reaucted; Reauction To Begin July 3rd," *Public Notice*, DA 96-872 (rel. May 30, 1996).

¹¹ Under Section 24.704(b), where a successful bidder defaults on its down payment obligations after the close of the auction, the Commission "may either re-auction the license to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids." 47 C.F.R. § 24.704(b). *See also* 47 C.F.R. § 1.2109(b).

¹² "FCC Announces Winning Bidders in the Reauction of 18 Licenses to Provide Broadband PCS in Basic Trading Areas: Auction Event No. 10," *Public Notice*, DA 96-1153 (rel. July 17, 1996).

¹³ Section 24.708(b) states that a bidder who defaults on a required payment will be subject to the consequences set forth in Section 1.2109. *See* 47 C.F.R. § 24.708(b). Section 1.2109(b) provides that "[i]f a license winner withdraws its bid after the Commission has declared competitive bidding closed or fails to remit the required down payment within five (5) business days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default payment specified in § 1.2104(g)(2). *See* 47 C.F.R. §§ 24.708, 1.2104(g), 1.2109.

¹⁴ 47 C.F.R. § 1.2109(b).

¹⁵ Section 24.704(a)(2) provides that:

[i]f a high bidder defaults or is disqualified after the close of the auction, the defaulting bidder will be subject to [a penalty equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission] plus an additional penalty equal to 3 percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent penalty will be calculated based on the defaulting bidder's bid amount.

47 C.F.R. § 24.704(a)(2). *See also* 47 C.F.R. § 1.2104(g).

¹⁶ 47 C.F.R. §§ 24.704(a)(2), 1.2104(g).

that a license is reauctoned for an amount greater than or equal to the defaulted bid, the total default payment is equal to three percent of the defaulted bid.¹⁷ In the event that the default payment cannot be determined (*i.e.*, because a license has not yet been reauctoned), the Commission has indicated that a deposit may be assessed of up to 20 percent of the defaulted bid price.¹⁸ Finally, the Commission's payment rules provide that if a defaulting bidder does not submit the default payment assessed by the Commission in the time required, any amounts overdue "will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission."¹⁹

6. BDPCS failed to remit the required initial down payment amount for the licenses for which it was the successful high bidder in the Broadband PCS C Block auction. As such, it is in default, and is subject to the default payment provisions specified in Sections 24.704(a)(2) and 1.2104(g) of the Commission's rules.²⁰ Under this formula, which is set forth in Attachment A to this Order, BDPCS' total default payment due the Commission is \$67,695,653.23. This amount represents the total difference between BDPCS' winning bid on each license and the amount, if less than BDPCS' bid, for which that license was offered by the Commission in the C Block reauction (\$42,765,088.50), plus an additional three percent of each of either BDPCS' bid or the winning bid in the C Block reauction, whichever is lower (\$24,930,564.73).²¹ Pursuant to Sections 24.704(a)(2) and 1.2104(g) of the Commission's rules, BDPCS' \$7,000,000.00 upfront payment has been applied to the total default payment. As a result, \$60,695,653.23 remains due on BDPCS' default payment obligations.

ORDERING CLAUSES

7. It is ORDERED that BDPCS is assessed a default payment in the amount of \$67,695,653.23, as computed in Attachment A. It is FURTHER ORDERED that payment of

¹⁷ *Id.*

¹⁸ *Fifth Report and Order* in PP Docket No. 93-253, FCC 94-178, 9 FCC Rcd 5523 (rel. July 15, 1994) at n. 51. See also *Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Second Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 2348 (1994) at ¶¶ 195-197; "Wireless Telecommunications Bureau Will Strictly Enforce Default Payment Rules," *Public Notice*, DA 96-481 (rel. April 4, 1996), 61 F.R. 16914 (April 18, 1996).

¹⁹ 47 C.F.R. §§ 24.704(a)(2), 1.2104(g).

²⁰ *Id.*

²¹ *Id.*

\$60,695,653.23 of this amount is to be made in accordance with the instructions set forth in Attachment B to this Order **within thirty days** from the release date of this Order.

8. It is FURTHER ORDERED that this Order shall be sent to the applicant by certified mail, return receipt requested. Action taken pursuant to delegated authority, 47 C.F.R. § 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Michele C. Farquhar
Chief, Wireless Telecommunications Bureau

ATTACHMENT B

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

PAYMENT BY WIRE TRANSFER

You must complete the FCC Remittance Advice (Form 159) when making your auction payment by wire transfer. Please fax a completed Form 159 to Mellon Bank at (412) 236-5702 at least one hour before placing the order for the wire transfer. On the cover sheet of the fax, indicate "Wire Transfer - Auction Payment for Auction Event 10. Please indicate on the upper left hand corner of the Form 159 the lockbox number **"358850."** The purpose of the FCC Form 159 is to identify who you are, how much you are paying and what you are paying for. It allows the bank to accurately process your remittance. Failure to accurately complete your FCC Form 159 could result in a delay in processing your remittance. Before completing an FCC Form 159, read the instructions below.

- 1) You must complete all of the blocks in the Payor Information Section, (Blocks 1 through 10).
- 2) You must complete the following auction-specific information in blocks, 14(A), 15(A), 16(a) and 17(A). **14(A) - Payment Type Code**, enter the letters **"AWCD"**; **block 15(A) - Quantity**, enter "1"; **block 16(A) enter the amount you are remitting**; and **block 17(A) - FCC Code 1**, enter "10".

When wiring funds, please give your bank the following information:

ABA Routing Number: 043000261;
Receiving Bank: Mellon Pittsburgh;
BNF: FCC/AC--9116106;
OBI Field: (Skip one space between each information item) "AUCTIONPAY"; FCC
ACCOUNT NO: _____ (Exactly as on Form 159, Block #1);
PAYOR NAME (BDPCS)
PAYMENT TYPE CODE: AWCD (Block #14);
FCC CODE 1:10

PAYMENT BY CASHIER'S CHECK

Each cashier's check and corresponding FCC Remittance Advice (Form 159) must be in an individual envelope and specifically addressed to: Mellon Bank, P.O. Box #358850, Pittsburgh, PA 15251-5850, Attn: Auction Payment.

If delivering an auction payment in person or by courier, the check and FCC Remittance

Advice (Form 159) must be delivered to Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153-2713, Pittsburgh, PA 15259-0001, (Attn: Wholesale Lockbox Shift Supervisor).

For further information or assistance, please call Regina Dorsey, Chief, Billings and Collections Branch at (202) 418-1995