

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of)
)
)
C.H. PCS, Inc., BTA Nos.)
B124, B144, B222, B322, B362,)
B420, and B486)
Frequency Block C)

ORDER

Adopted: January 21, 1999

Released: January 22, 1999

By the Chief, Auctions and Industry Analysis Division:

1. By this action, we set forth the default payment obligations and procedures for C.H. PCS, Inc. ("CHPCS"), resulting from its failure to remit the required down payment on the seven licenses for which it was the successful high bidder in the broadband personal communications services ("PCS") C block auction, Auction Event No. 5.¹ Pursuant to the Commission's rules, CHPCS is in default on its down payment obligations for these seven licenses and is subject to an initial default payment in the amount of \$903,487.50.

2. Background. In addition to the aforementioned seven licenses, CHPCS was the high bidder on license B347 in the first C block reaction, Auction Event No. 10.² On August 9, 1996,

¹ See *Public Notice*, *Entrepreneurs' C Block Auction Closes*, DA No. 96-716 (May 8, 1996). CHPCS was declared the winning bidder for the following seven licenses: PBB124C (El Centro, CA), PBB144C (Flagstaff, AZ), PBB222C (Kahului, HI), PBB322C (Nogales, AZ), PBB362C (Prescott, AZ), PBB420C (Sierra Vista, AZ), and PBB486C (Yuma, AZ).

² "Entrepreneurs' C Block Reaction Closes," *Public Notice*, DA 96-1153 (rel. July 17, 1996). License B347 is for the Phoenix, Arizona BTA.

due to CHPCS's failure to pay the down payment for license B347 on time, the Wireless Telecommunications Bureau dismissed CHPCS's long form application for this license.³ In an Order released on November 4, 1996, the Bureau assessed CHPCS a default payment with respect to the default on license B347.⁴ The Bureau subsequently notified CHPCS that it had applied CHPCS's initial down payment for the seven licenses won in Auction Event No. 5 to the default payment owed for license B347.⁵ Following this notification, CHPCS failed to remit any funds to replenish its down payment obligation for the seven licenses, and the Bureau released a Public Notice on November 6, 1998, dismissing the applications for these licenses.⁶

3. Discussion. Under the Commission's rules, a "winning bidder who is found unqualified to be a licensee. . . or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted"⁷ and will be liable for certain default payment obligations.⁸ As a result of its default on the seven licenses won in Auction Event No. 5, CHPCS is subject to the payment provisions specified in Sections 24.704 and 1.2104(g) of the Commission's rules.⁹ Because, under the Commission's rules, a winning bidder is obligated to pay the full amount of its winning bid, the default payment is 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 (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.¹⁰ 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 of the defaulted bid.

³ In re C.H. PCS, Inc., Request for Waiver of Section 24.711(a)(2) of the Commission's Rules, *Order*, 11 FCC Rcd 9343 (1996).

⁴ C.H. PCS, Inc., BTA No. B347 Frequency Block C, *Order*, 11 FCC Rcd 22,430 (1996) ("*CHPCS Payment Order I*").

⁵ Letter from Wireless Telecommunications Bureau, Federal Communications Commission, to Mr. Kenneth Hobbs, CHPCS, DA 97-260 (February 4, 1997).

⁶ See Wireless Telecommunications Bureau Dismisses C.H. PCS, Inc. Applications for Auction Event No. 5, *Public Notice*, DA 98-2270 (rel. November 6, 1998).

⁷ 47 C.F.R. § 1.2109(c).

⁸ See 47 C.F.R. §§ 24.704, 1.2104(g).

⁹ *Id.*

¹⁰ *Id.*

4. Until the close of the broadband PCS auction, Auction Event No. 22, which will include the licenses upon which CHPCS defaulted, we cannot determine the full amount of the default payment that is owed to the U. S. Government. Therefore, pursuant to Commission practice, we will assess a deposit toward the default payment ultimately owed by CHPCS¹¹ amounting to three percent of CHPCS's net bids.¹² The remainder will be assessed once a new bid price for each of the defaulted licenses is established. Consequently, a three percent payment based on CHPCS's net bids is the minimum amount that CHPCS could owe under even the most favorable circumstances.¹³ We therefore require an initial deposit of three percent of CHPCS's net bids for the seven licenses, or \$903,487.50.¹⁴ If additional payment is required following the C Block auction, a further Order will assess such payment.

ORDERING CLAUSES

5. It is ORDERED that CHPCS is assessed an initial default payment in the amount of \$903,487.50. It is FURTHER ORDERED that this payment 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.

6. It is FURTHER ORDERED that CHPCS will be subject to the balance of the payment specified in Sections 24.704 and 1.2104(g), once licenses B124, B144, B222, B322, B362, B420, and B486 are auctioned and the actual default payment for each license is determined.

¹¹ See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Fifth Report and Order*, PP Docket No. 93-253, FCC 94-178, 9 FCC Rcd 5532 (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*, 11 FCC Rcd 10853 (1996).

¹² 47 C.F.R. §§ 24.704 and 1.2104(g).

¹³ The Bureau used this approach in *CHPCS Payment Order I*; see *supra* n. 5.

¹⁴ See Attachment A for specific calculations.

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

FEDERAL COMMUNICATIONS COMMISSION

Amy J. Zoslov
Chief, Auctions and Industry Analysis Division
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 5." Please indicate in Block #1 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 2 through 10).
- 2) You must complete the following auction-specific information in blocks, 20(A), 21(A), 22(a) and 23(A). **20(A) - Payment Type Code**, enter the letters "**ADFT**"; **Block 21(A) Quantity**, enter "1"; **Block 22(A) - \$903,487.50**; and **Block 23(A) - FCC Code 1** enter "5".

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"

TAXPAYER IDENTIFICATION NO. (enter "**TIN#**")

PAYMENT TYPE CODE (enter "**ADFT**")

FCC

CODE 1 (enter "**__5__**")

PAYOR NAME

LOCKBOX NO. (enter "**358850**")

Bidders must fax a completed FCC Form 159 to Mellon Bank at 412-236-5702 at least one hour before placing the order for the wire transfer (but on the same business day).

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