

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of

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C.H. PCS, Inc., BTA No. B347)
Frequency Block C)

ORDER

Adopted: November 4, 1996

Released: November 4, 1996

By The Chief, Wireless Telecommunications Bureau:

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 license for which it was the successful high bidder in the Broadband Personal Communications Services ("PCS") C Block reauction. Pursuant to the Commission's rules, CHPCS is in default on its down payment obligations for license number B347, and is subject to an initial default payment in the amount of \$5,031,232.50.

2. Background. On July 3, 1996, the Commission began the reauction of 18 PCS C Block licenses on which successful bidders had defaulted.¹ In the reauction, which closed on July 16, 1996,² CHPCS was the successful bidder for one license -- license number B347 for the Phoenix, Arizona BTA -- with a net total bid of \$213,807,750.00. Consequently, CHPCS was required to submit an initial down payment for the license in the amount of

¹ See "18 Defaulted PCS Licenses To Be Reauctoned. Reauction To Begin July 3rd," *Public Notice*, DA 96-872 (rel. May 30, 1996).

² "Entrepreneurs' C Block Reauction Closes," *Public Notice*, DA 96-1153 (rel. July 17, 1996).

\$9,307,387.50 by July 24, 1996, to bring its total amount on deposit with the Commission for that license to \$10,690,387.50.³

3. On July 24, 1996, CHPCS filed an Emergency Petition for Waiver of Section 24.711(a)(2), requesting that the Commission extend the deadline for submission of its down payment on license number B347.⁴ On August 9, 1996, the Wireless Telecommunications Bureau ("Bureau") denied CHPCS's request, finding that CHPCS had failed to meet the standards required to justify such a waiver, and was therefore in default on the initial down payment for the Phoenix, Arizona BTA.⁵ On November 4, 1996, the Bureau announced by *Public Notice* that the Phoenix, Arizona BTA would be reauctoned, with the date of the reaction to be determined.⁶

4. 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.⁷ The Commission's rules also provide that under such circumstances, the Commission will dismiss the bidder's application.⁸ As a result, the defaulting bidder is subject to certain default payment obligations.⁹ This payment is equal to the difference between the amount bid and the amount of

³ See 47 C.F.R. § 24.711(a)(2).

⁴ C.H. PCS, Inc. Emergency Petition for Waiver of Section 24.711(a)(2) of the Commission's Rules (filed July 24, 1996).

⁵ In re C.H. PCS, Inc., Request for Waiver of Section 24.711(a)(2) of the Commission's Rules, *Order*, DA 96-1273 (rel. August 9, 1996). CHPCS subsequently met with Bureau staff to discuss the circumstances leading to its default on license number B347 and to request that the Commission reaucton the license and postpone assessing the full default payment required by the Commission's Rules. See Letter to Kathleen O'Brien Ham, Chief, Auction Division, Wireless Telecommunications Bureau, from John A. Pendergast and D. Cary Mitchell, Counsel to C.H. PCS, Inc. (August 26, 1996).

⁶ See "Wireless Telecommunications Bureau Announces Reaucton of Broadband PCS C Block License for the Phoenix, Arizona BTA," *Public Notice*, DA 96-1826 (rel. November 4, 1996)

⁷ Section 24.708(b) states that a bidder who defaults on a required payment will be subject to the payment set forth under Section 1.2109. 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 penalty specified in Section 1.2104(g)(2). 47 C.F.R. §§ 24.708(b), 1.2109.

⁸ 47 C.F.R. § 1.2109(b).

⁹ 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

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 a license is reauctioned for an amount greater than or equal to the defaulted bid, the total default payment is equal to three percent of the defaulted bid. In the event that the default payment cannot be determined (*i.e.*, because a license has not yet been reauctioned), the Commission has stated that it will assess an initial default payment of 20 percent of the defaulted bid price until the full amount of the default payment can be determined.¹¹ 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."¹²

5. CHPCS failed to remit the required down payment amount for license number B347 in the Broadband PCS C Block reauction. As such, it is in default, and is subject to the payment provisions specified in Sections 24.704(a)(2) and 1.2104(g) of the Commission's rules.¹³ Because the Phoenix, Arizona BTA has yet to be reauctioned and we cannot yet determine the full amount of the default payment, we will assess a deposit towards the default payment ultimately owed by CHPCS.¹⁴ Although the Commission provided that this deposit amount will be 20 percent of the bid price on which CHPCS defaulted,¹⁵ we note that if license number B347 is reauctioned for an amount greater than CHPCS's bid for the license, the default payment due will be only three

winning bid the next time the license of 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).

¹⁰ *Id.*

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 ("Fifth Report and Order"). *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.

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

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

¹⁴ *See Fifth Report and Order*, 9 FCC Rcd 5532, 5563 at n. 51; "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).

¹⁵ *Id.*

percent of CHPCS's defaulted bid.¹⁶ Consequently, a three percent payment is the minimum amount which CHPCS could owe under even the most favorable circumstances. We therefore require an initial deposit of three percent of CHPCS's defaulted bid for the license, or \$6,414,232.50. Pursuant to Sections 24.704 (a)(2) and 1.2104(g) of the Commission's rules, CHPCS's upfront payment of \$1,383,000.00 for the license has been applied to this initial default payment. As a result, \$5,031,232.50 remains due at this time. If additional payment is required following the reauction of license number B347, a second Order will assess such payment. If CHPCS fails to remit this amount in its entirety within the time required, any amounts overdue will be deducted from any upfront payments or down payments which CHPCS currently has on deposit with the Commission.¹⁷

ORDERING CLAUSES

6. It is ORDERED that CHPCS is assessed an initial default payment in the amount of \$6,414,232.50. It is FURTHER ORDERED that payment of \$5,031,232.50 of this amount is to be made in accordance with the instructions set forth in Attachment A to this Order **within thirty days** from the release date of this Order.

7. It is FURTHER ORDERED that CHPCS will be subject to the balance of the payment specified in Section 24.704(a)(2) of the Commission's rules, 47 C.F.R. § 24.704(a)(2), once the Phoenix, Arizona BTA is reauctioned and the actual default payment is determined.

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

¹⁷ 47 C.F.R. § 24.704(a)(2). In this connection, we note that CHPCS was the successful bidder for seven licenses in the Broadband PCS C Block auction which closed on May 6, 1996. Prior to the start of the C Block auction, CHPCS submitted an upfront payment of \$299,000.00. As required by the Commission's rules, CHPCS submitted an initial down payment for these licenses of \$1,206,812.50 on May 15, 1996. Consequently, prior to submitting any funds for the C Block reauction, CHPCS had a total of \$1,505,812.50 on deposit with the Commission.

8. 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

Michele C. Farquhar
Chief, Wireless Telecommunications Bureau

ATTACHMENT A

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) -\$5,031,232.50**; 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: 6192456536 (Exactly as on Form 159, Block #1);
PAYOR NAME (CHPCS)
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.