

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Metro-Trak, L.L.C.	)	File No. 0000007442
	)	
Request for Extension of Final Payment	)	
Deadline for Multilateration Location and	)	
Monitoring Service Auction License -	)	
BEA 164C, Sacramento-Yolo, CA	)	

**ORDER**

**Adopted: August 2, 2000**

**Released: August 3, 2000**

By the Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

**I. Introduction**

1. On June 30, 1999, Metro-Trak, L.L.C. (Metro-Trak) requested an extension of time to make final payment on a license for which it was the winning bidder in the multilateration Location and Monitoring Service (LMS) auction, Auction No. 21.<sup>1</sup> For the reasons set forth herein, we deny Metro-Trak's request and find that Metro-Trak is in default on its full payment obligations with respect to the LMS Block C license in Basic Economic Area (BEA) 164, Sacramento-Yolo, CA.

**II. Background**

2. On March 5, 1999, the Commission completed its auction of 528 multilateration LMS licenses.<sup>2</sup> Metro-Trak was listed as the winning bidder of Markets BEA 107C, Minneapolis-St. Paul, MN-WI-IA, and BEA 164C, Sacramento-Yolo, CA.<sup>3</sup> After a preliminary review of submitted long-form applications, a number of applications, including Metro-Trak's, were accepted for filing.<sup>4</sup>

<sup>1</sup> See Letter to Paul D'Ari, Wireless Telecommunications Bureau from Davis R. Schwartz, Metro-Trak, L.L.C., dated June 30, 1999 (Metro-Trak Letter Request).

<sup>2</sup> See Location and Monitoring Service Auction Closes: Winning Bidders in the Auction of 528 Multilateration Licenses in the Location and Monitoring Service, *Public Notice*, 14 FCC Rcd. 3754 (WTB: 1999) (March 8, 1999 *Public Notice*).

<sup>3</sup> *Id.* at Attachment A.

<sup>4</sup> See Location and Monitoring Service Applications Accepted for Filing, *Public Notice*, 14 FCC Rcd. 7813 (WTB: 1999).

3. On June 8, 1999, the Bureau announced that it was prepared to grant the applications which had been accepted for filing upon the full and timely payment of the remaining balance of each applicant's winning bids.<sup>5</sup> The Bureau stated that payment of remaining balances must be received by June 22, 1999.<sup>6</sup> The Bureau also stated that, any winning bidder listed in the public notice who failed to pay its remaining balance by June 22, 1999, would be allowed to make payment within ten days after the payment deadline (*i.e.* July 6, 1999), provided that it also pays a late fee equal to five percent of the amount due.<sup>7</sup> Moreover, the Bureau stated that, pursuant to section 1.2109(a), 47 C.F.R. § 1.2109(a), any winning bidder listed in the Public Notice who failed to pay the balance of its winning bids by the late payment deadline of July 6, 1999, would be considered in default on its licenses and subject to the applicable default payments.<sup>8</sup>

4. The Bureau subsequently issued an *Erratum* on June 16, 1999, which rescinded its decision to include Metro-Trak's application for Market BEA 107C, Minneapolis-St. Paul, MN-WI as ready to grant.<sup>9</sup> The Bureau rescinded this decision because Hennepin County, Minnesota had filed a request to obtain an LMS license for Market BEA 107C, pursuant to section 337 of the Communications Act, as amended, and this request was still pending.<sup>10</sup> The Bureau stated that the Erratum applied only to Market BEA 107C and did not modify the June 22, 1999 or the July 6, 1999 deadlines for any other market listed on public notice as ready for grant.<sup>11</sup> Metro-Trak failed to pay the remaining balance of its winning bid for Market BEA 164C by the June 22, 1999 deadline. On June 30, 1999, Metro-Trak submitted its request for an extension of the June 22, 1999 and July 6, 1999 deadlines. Metro-Trak sought to extend its payment deadline for BEA 164C until the Commission is prepared to grant Metro-Trak's application for market BEA 107C.<sup>12</sup> On November 18, 1999, the Bureau denied Hennepin County's Petition, and dismissed its associated application.<sup>13</sup>

### III. Discussion

5. Metro-Trak effectively requests a waiver of section 1.2109(a) of the Commission's rules. The Commission's rules provide that a waiver request may be granted if: 1) the underlying purpose of the rule

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<sup>5</sup> See Wireless Telecommunications Bureau Announces It Is Prepared To Grant Location and Monitoring Service Licenses After Final Payment Is Made, *Public Notice*, 14 FCC Rcd. 9166 (WTB: 1999).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Erratum to Location and Monitoring Service Public Notice Released June 8, 1999, *Public Notice*, 14 FCC Rcd. 9657(WTB: 1999).

<sup>10</sup> See Hennepin County Application for Location and Monitoring Service License and Waiver under Section 337 of the Communications Act, *Public Notice*, 14 FCC Rcd. 2058 (WTB: 1999).

<sup>11</sup> *Id.*

<sup>12</sup> See Metro-Trak Letter Request, *supra*, n.1.

<sup>13</sup> See *In re Application of Hennepin County*, *Order*, 14 FCC Rcd. 19418 (WTB: 1999).

would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or 2) in view of unique or unusual factual circumstances of the instant case, application of the rules(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>14</sup>

6. The Commission's rules provide that auction winners are required to pay the balance of their winning bids within ten business days following the release of a public notice establishing the payment deadline.<sup>15</sup> Section 1.2109(a) provides that, if a winning bidder fails to pay the balance of its winning bids by the applicable deadline, it will be allowed ten business days after the initial deadline to pay the remaining balance, provided that it also pays a late fee equal to five percent of the amount due. A winning bidder failing to pay in full by the late payment deadline is considered in default and subject to the applicable default payments.<sup>16</sup>

7. Metro-Trak states that it bid on Markets BEA 107C and BEA 164C as a "set." Metro-Trak explains that it was proposing to conduct certain tests of its monitoring system and that its prospective clients were interested in such tests only if both markets were involved.<sup>17</sup> Metro-Trak argues that given the uncertainty of the status of market BEA 107C, requiring Metro-Trak to submit the remaining balance on Market BEA 164C, would not be in the public interest.<sup>18</sup> Metro-Trak also argues that application of this requirement would be unfair to Metro-Trak in this case because it would compromise its business plan.<sup>19</sup>

8. We have previously ruled that, if a waiver of the Commission's competitive bidding rules is not limited to unique or unusual circumstances, it would compromise the integrity of the licensing process.<sup>20</sup> In this case, Metro-Trak has not shown that the underlying purpose of section 1.2109(a) would be frustrated by enforcing the final payment deadline or that unique or unusual circumstances exist that would justify granting Metro-Trak a waiver of the final payment deadline. Nor does Metro-Trak persuade us that a waiver of the rule is in the public interest.

9. Although the Hennepin County Request was pending at the time Metro-Trak's payment was due, this does not provide a basis for waiving the Commission's competitive bidding rules. All potential bidders in the LMS auction were provided with notice that Market BEA 107C was the subject of a petition for waiver. On January 21, 1999, the Bureau issued a public notice announcing that Hennepin County, Minnesota had filed for an LMS license for Market BEA 164, pursuant to section 337 of the

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<sup>14</sup> 47 C.F.R. § 1.925(b)(3)(i)-(ii).

<sup>15</sup> 47 C.F.R. §§ 1.2109(a), 90.1015(a).

<sup>16</sup> *Id.*

<sup>17</sup> See Metro-Trak Letter Request, *supra*, n.1.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See *In re Rush Network Corp.*, Order, 13 FCC Rcd. 22866 (WTB: 1998).

Communications Act, as amended.<sup>21</sup> The Bureau also released a public notice requesting comment on Hennepin County's request on February 3, 1999.<sup>22</sup> On February 11, 1999, the Bureau released a *Due Diligence Public Notice* prior to the auction, which listed a number of pending cases, that could have an impact on the LMS auction. The *Due Diligence Public Notice* included the pending Hennepin Request.<sup>23</sup> Accordingly, Metro-Trak received notice prior to the LMS auction of the pending Hennepin Request.

10. Metro-Trak argues that failure by the Commission to extend the final payment deadline for BEA 164C would not be in the public interest because default would result in the delay or denial of the benefits of its service to the public in Markets BEA 107C and Markets BEA 164C.<sup>24</sup> Metro-Trak has not, however, provided any evidence in this case that waiver of section 1.2109(a) will prevent the delay of LMS to the public in Market BEA 164C. It is contrary to the integrity and fairness of our auction process to grant extensions of payment deadlines of certain licenses dependent upon whether or not the winning bidder is also the successful winning bidder of other specific markets. For these reasons, we deny Metro-Trak's Request, and Metro-Trak is, therefore, in default on its license for BEA 164C for failure to pay the balance of its winning bid.

11. Under the Commission's rules, a winning bidder that fails to timely remit the required full payment is deemed to have defaulted on its auction payment obligations.<sup>25</sup> The purpose of the default payment provisions,<sup>26</sup> is to assure that the winning bidder is obligated to pay the full amount of its winning bid (less any mitigation of damages arising from a subsequent auction of the spectrum) even if the winning bidder defaults or is determined to be disqualified and is never granted a license. The winning bidder's contractual obligation to pay the winning bid thus becomes fixed and established at the close of the auction.<sup>27</sup> A winning bidder that defaults on its full payment obligation will, therefore, be required to make

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<sup>21</sup> See Hennepin County Application for Location and Monitoring Service License and Waiver under Section 337 of the Communications Act, *Public Notice*, 14 FCC Rcd. 985 (WTB: 1999).

<sup>22</sup> See Wireless Telecommunications Bureau Seeks Comment On Request For Waiver by Hennepin County, Minnesota To Obtain A Location and Monitoring Service License Outside The Competitive Bidding Process, *Public Notice*, 14 FCC Rcd. 2058 (WTB: 1999).

<sup>23</sup> See Auction of 528 Multilateration Location and Monitoring Service Licenses: Report No. AUC-21-H (Auction No. 21), *Public Notice*, 14 FCC Rcd. 2735 (WTB: 1999) (*Due Diligence Public Notice*).

<sup>24</sup> See Metro-Trak Letter Request, *supra*, n.1.

<sup>25</sup> 47 C.F.R. § 1.2109(c); see also National Telecom PCS, Inc., *Memorandum Opinion and Order*, 12 FCC Rcd. 10163, 10171-72 (¶ 15)(1997); 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 (¶ 107)(1997).

<sup>26</sup> See In the Matter of Request for Waiver of Section 1.2104(g) of the Commission's Rules Filed by Grand Connectivity L.L.C., *Order*, 14 FCC Rcd. 13943, 13945 (¶ 5) (WTB: 1999)(*Grand Connectivity Order*).

<sup>27</sup> See Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications (PCS) Licensees, Amendment of Part 1 of the Commission's Rules -- Competitive Bidding

the Commission whole for the amount of the winning bid, subject to any mitigation of damages produced by the subsequent auction of the license (or licenses) for the same spectrum.

12. Accordingly, pursuant to sections 1.2104(g)(2) and 1.2106(c) the Commission's rules, Metro-Trak is subject to default payment obligations.<sup>28</sup> Specifically, Metro-Trak 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 defaulted bid), plus an additional payment equal to three percent of the defaulter's bid or the subsequent winning bid, whichever is less.<sup>29</sup> In the event that the subsequent winning bid is greater than or equal to Metro-Trak's defaulted bid, the total default payment is equal to three percent of Metro-Trak's defaulted bid.<sup>30</sup> Upfront and downpayment amounts on deposit with the Commission are first applied to default payments before being applied to payments owed on other licenses the bidder seeks to acquire.<sup>31</sup>

13. Because the license for market BEA 164C will be included in a future auction, we cannot at this time determine the full amount of the default payment owed by Metro-Trak. The Commission has stated that in such instances it will assess an initial default deposit of between three (3) and twenty (20) percent of the defaulted bid price until the full amount of the default payment can be determined.<sup>32</sup> As the Commission noted in a previous case, three percent is the minimum amount that a defaulting winning bidder like Metro-Trak could owe even under the most favorable circumstances.<sup>33</sup>

14. Therefore, pursuant to Commission practice, we will assess an initial default payment of \$3,471.00,<sup>34</sup> which is three percent of Metro-Trak's net winning defaulted bid of \$115,700.00 for the LMS license in BEA 107C.<sup>35</sup> Metro-Trak's amount on deposit for upfront and down payments will be applied

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Procedures, WT Docket No. 97-82, *Second Order on Reconsideration of the Second Report and Order*, 14 FCC Rcd. 6571, 6581, n.66 (¶ 17)(1999).

<sup>28</sup> 47 C.F.R. §§ 1.2104(g)(2), 1.2106(e) and 1.2109(c).

<sup>29</sup> 47 C.F.R. § 1.2104(g)(1).

<sup>30</sup> 47 C.F.R. § 1.2104(g)(2).

<sup>31</sup> 47 C.F.R. § 1.2106(e). See "Wireless Telecommunications Bureau Will Strictly Enforce Default Payment Rules; Bureau to Re-Auction Licenses Quickly," *Public Notice*, 11 FCC Rcd. 10853 (WTB: 1996).

<sup>32</sup> See *Grand Connectivity, Order*, 14 FCC Rcd. at 13946 (¶ 6).

<sup>33</sup> See *In the Matter of Mountain Solutions Ltd., Inc., Emergency Petition for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding Various BTA Markets in the Broadband Personal Communications Services (PCS) C Block Auction, Memorandum Opinion and Order*, 13 FCC Rcd. 21983, 21997 (¶ 25)(1998).

<sup>34</sup> See Appendix A, *infra*, for calculation on remaining deposit.

<sup>35</sup> *Id.*; see also *In the Matter of C.H. PCS, Inc., Order*, 14 FCC Rcd. 4131, 4133 (¶ 4)(WTB: 1999).

to this initial default payment (BEA 164C).<sup>36</sup> If additional payment is required after BEA 164C is re-auctioned, a second order will be issued to assess the amount due.

#### IV. Ordering Clauses

15. Accordingly, IT IS ORDERED that, pursuant to sections 0.331 and 1.925(b)(3) of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925(b)(3), Metro-Trak L.L.C.'s Letter, dated June 30, 1999, requesting a waiver of Section 1.2109(a) of the Commission's rules, 47 C.F.R. § 1.2109(a), IS DENIED.

16. IT IS FURTHER ORDERED that, pursuant to sections 0.331 and 1.2104(g) of the Commission's rules, 47 C.F.R. §§ 0.331, 1.2104(g), Metro-Trak L.L.C. is assessed an initial default payment in the amount of \$3,471.00.

17. IT IS FURTHER ORDERED that, pursuant to section 0.331 of the Commission's Rules, 47 C.F.R. § 0.331, Metro-Trak, L.L.C.'s amount on deposit, totaling \$89,100.00, will be applied to cover the default payment of \$3,471.00.

18. IT IS FURTHER ORDERED that, pursuant to sections 0.331, 24.704 and 1.2104(g), 47 C.F.R. §§ 0.331, 24.704, 1.2104(g), Metro-Trak, L.L.C. will be subject to the balance of the payment after the market for BEA 164 is auctioned and the full default payment is determined.

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<sup>36</sup> We are simultaneously releasing a default payment order against Metro-Trak for failure to make its final payment on LMS Market BEA107C, Minneapolis-St. Paul, MN-WI-IA in the amount of \$ 9,926.00. *See* In the Matter of Metro-Trak, LLC, for Multilateration Location and Monitoring Service Auction License - BEA 107C, Minneapolis-St. Paul, MN-WI-IA, *Order*, DA 00-1715 (WTB/CWD: rel. Aug. 3, 2000). Metro-Trak has \$89,100.00 on deposit with the Commission. This consists of Metro-Trak's upfront and down payments for LMS Markets BEA 164C, Sacramento-Yolo, CA and Market BEA 107C, Minneapolis-St. Paul, MN-WI-IA. Therefore, we subtract the 3% default payment amount of \$3,471.00, for Market BEA 164C, Minneapolis-St. Paul, MN-WI-IA from the \$89,100.00 on deposit. In the above referenced default payment order, we are subtracting the 3% payment, in the amount of \$9,926.00, for Market BEA 107C, Minneapolis-St. Paul, MN-WI-I from the \$89,100 on deposit.

19. IT IS FURTHER ORDERED that, pursuant to sections 0.331 and 1.2104(g), 47 C.F.R. §§ 0.331, 1.2104(g), the application of Metro-Trak, L.L.C. IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

William W. Kunze, Chief  
Commercial Wireless Division  
Wireless Telecommunications Bureau

**APPENDIX A:**

**DEFAULT CALCULATIONS ATTACHMENT**

**Metro-Trak, LLC, Auction No. 21:**

**Market BEA 164, Channel Block C,**

**\*\*\*Initial Default Deposit**

Net Winning Bid                      \$ 115,700.00  
(times 3% default payment)

(Initial Default Penalty)              \$ 3,471.00