Federal Communications Commission (F.C.C.)

Notice of Apparent Liability for Forfeiture

IN THE MATTER OF COMMERCIAL REALTY ST. PETE, INC.
File No. 519WT0002

Applications for Licenses in the Interactive Video and Data Services
FCC 95-58

Adopted: February 15, 1995
Released: February 16, 1995

By the Commission:

I. INTRODUCTION

1. We find in this Notice of Apparent Liability for Forfeiture that Commercial Realty St. Pete, Inc. (Commercial Realty) violated Commission Rules and repeatedly abused the Commission's processes in connection with (i) the Commission's auctions of licenses in the Interactive Video and Data Services (IVDS), [FN1] and (ii) the investigation of Commercial Realty's conduct. Specifically, Commercial Realty communicated with other bidders in violation of our anti-collusion rules, falsely certified that it was financially qualified'tc fulfill its bidding obligations and falsely certified that it was entitled to designated entity status as a woman owned business. As a result of these violations, the Commission makes a finding of apparent liability for forfeiture in the amount of $390,000.

2 Commercial Realty's applications will ultimately be dismissed with prejudice and Commercial Realty will also be subject to all applicable default penalties following reauction of the IVDS licenses.

3. In addition to this Notice of Apparent Liability for Forfeiture, in view of their apparent gross misconduct, the Commission will issue an Order to Show Cause why Commercial Realty and its principals should not be barred from participating in any future Commission auctions and why the same parties should not be prohibited from becoming Commission licensees.

II BACKGROUND

4. On July 28 and 29, 1994, the Commission conducted auctions for 594 IVDS

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licenses in 279 markets across the nation. Winning bidders in the auctions were required, inter alia, to tender within five business days after the close of bidding down payments sufficient to bring their amount on deposit with the government up to 10 percent of each winning bid (or adjusted bid, if a bidding credit was claimed). Thus, down payments were due on or before August 8, 1994. See, e.g., Public Notice "Notice and Filing Requirements for the First Auction of Interactive Video Data Service Licenses/ Report No. ABC-94-02, released May 23, 1994. Commercial Realty submitted winning bids for IVDS licenses in 20 markets [FN2] for a total amount of $41,250,000, requiring a total down payment of at least $3,266,750. [FN3] It did not tender its down payment. [FN4]

5. After the conclusion of the IVDS auction, it came to the Commissions attention that the Commission's Rules and other IVDS auction requirements may have been violated by some of the participants. Therefore, by Order, in GN Docket No. 94-96, FCC 94-222 (released August 30, 1994) (Order), the Commission ordered an investigation of the conduct of the applicants in the IVDS auction to determine whether misconduct had occurred. One target of the investigation was Commercial Realty. Subpoenas, seeking testimony and documentation from Commercial Realty, James C. Hartley and Teresa Hartley, were issued, and all three parties refused to testify and to provide the Commission the information requested. The U.S. District Court for the District of Columbia subsequently granted the government's petition to enforce the subpoenas against the parties. [FN5] Consequently, Mr. and Mrs. Hartley, in compliance with the FCC's subpoenas, appeared in Washington, D.C. on January 18 and 19, 1995, and provided the testimony and most of the documentation.

6 Commercial Realty is a for-profit company incorporated in Florida on September 10, 1984. At that time, its sole director, President, and Registered Agent was James C. Hartley. On February 17, 1994, James C. Hartley's wife, Teresa Hartley purchased all of the outstanding shares of stock in Commercial Realty from a third party. She paid $500 for the stock. On April 15, 1994, Mrs. Hartley amended the corporation's bylaws to provide for a board of directors consisting solely of herself. On June 13, 1994, Commercial Realty authorized Mr. Hartley to enter into and execute FCC applications, contracts, and any other documents in connection with the acquisition of IVDS licenses on behalf of the corporation. Mr. Hartley was also authorized to acquire a 40 percent voting interest in, and become the sole director of, the corporation. On the same day, Mrs. Hartley was elected President, Treasurer, and Chief Executive Officer, and Mr. Hartley was elected Secretary, Executive Director, and Chief Operating Officer. Also on June 13, 1994, Mr. Hartley authorized Commercial Realty to accept a loan of $4,000,000 from Dean H. Tyler for the acquisition of IVDS licenses; [FN6] authorized Ralph E. Howe to bid on behalf of Commercial Realty at the IVDS auctions; and accepted an offer from Mrs. Hartley to loan Commercial Realty $60,000 to enable the corporation to participate in the IVDS auctions. [FN7]

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7. On June 23, 1994, Commercial Realty filed with the Commission a FCC Form 175 (Application to Participate in an FCC Auction), wherein Commercial Realty, inter alia, certified that it was a woman-owned small business, and that it was legally, technically and financially qualified, and that it had not and would not enter into any undisclosed agreements or understandings regarding the amount to be bid, bidding strategies, or the particular license on which it or other parties would or would not bid. Commercial Realty's FCC Form 175 also specified that it intended to bid for licenses in 277 markets, [FN8] and identified Ralph E. Howe as the person authorized to make or withdraw bids on behalf of the company. The certification was signed by Ralph E. Howe, who identified himself as a director of Commercial Realty.

8. In connection with Commercial Realty's decision to participate in the IVDS auctions, Mr. Hartley began gathering information about IVDS. He conducted research at the University of South Florida's library; acquired information from two IVDS equipment manufacturers, EON Corporation (EON) [FN9] and Interactive Return Service; attended the Commissions pre-auction seminar on June 6, 1994; received information directly from the Commission, including a "Bidder's Information Package;" and watched a video tape concerning IVDS, which was produced for the Commission. Mr. and Mrs. Hartley and Mr. Howe (all of whom reside in Florida) came to Washington, D.C., in order to participate in the IVDS auctions.

9. Although Mr. Howe was specified in Commercial Realty's FCC Form 175 as the person authorized to make bids on behalf of the corporation, he decided to forego this responsibility. Richard Kent, II later agreed to assist Mr. Hartley with the bidding. Mr. Kent thereafter sought and obtained, from Commission officials, authority to bid on behalf of Commercial Realty.

10. On Thursday, July 28, 1994, Mr. Hartley, with Mrs. Hartley's and Mr. Kent's assistance, submitted winning bids totalling $41,250,000 for IVDS licenses in 20 of the markets put up for auction. Sometime during the next two days, Mr. Hartley made at least one unsuccessful attempt to visit EON's offices in nearby Reston, Virginia.

11. Within the next few days, Mr. Hartley began expressing second thoughts about his involvement in IVDS. Mr. Hartley apparently was concerned that EON, which was the only manufacturer of IVDS equipment that had been "type accepted" by the Commission, would not be able to supply equipment to licensees early enough to enable the licensees to meet the Commissions build-out requirements. [FN10] On July 30, 1994, he had a discussion with Christopher Pedersen, a principal of Interactive America, which had also submitted winning bids for a number of IVDS licenses. Mr. Pedersen told Commission investigators that Mr. Hartley conveyed to him doubts about EON's reliability.

12. By Monday, August 1, 1994, Mr. Hartley was discussing with counsel the possibility of formally requesting the Commission to delay the August 8, 1994 down payment deadline. Also on August 1, Mr. Hartley told his IVDS consultant,

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Steven J. Schupak, who was a former Development Product Manager at EON, that rather than risk losing a substantially larger down payment by failing to meet the Commissions construction requirements and having the Commission cancel Commercial Realty's licenses, he would forfeit his upfront deposit.

13. The next day, August 2, 1994, Mr. Hartley met for six hours with Fernando Morales, the Chief Executive Officer of Interactive Return Service, which has also developed IVDS equipment. Mr. Morales said that during the meeting Mr. Hartley expressed to him the belief that the Commissions build-out requirements were unfair and that he risked losing his entire investment if he made the down payment. According to Mr. Morales, Mr. Hartley pressed Mr. Morales for assurances prior to making his down payments that his investment in IVDS would be successful, but Mr. Morales said that he could not give such assurances.

14. Leaving Mr. Morales, Mr. Hartley went directly to a meeting and product demonstration with executives at EON. At this meeting Mr. Hartley displayed no interest in the consumer applications of IVDS or in the cost of constructing an IVDS system. Instead, he insisted on highlighting perceived deficiencies in EON's technology and he solicited EON's support in seeking a postponement in the down payment deadline. Later that day Mr. Hartley spoke over the telephone with Christopher Pedersen, the principal of Interactive America. The two men discussed the perceived inability of winning bidders to timely construct IVDS systems and Mr. Hartley suggested that Commercial Realty and Interactive America overbid for their licenses.

15. On August 3, 1994, Mr. Hartley, who by this time apparently had decided to have Commercial Realty default on its down payments, [FN11] transmitted by facsimile a letter to all of the other winning bidders urging them to join with him in petitioningthe Commission to delay the down payment deadline. In the letter, Mr. Hartley advised his fellow auction winners that investigations had led Commercial Realty to conclude that reliable technology was not yet available to enable the construction of IVDS facilities, nor would the situation change for some time. He therefore surmised that a delay in the down payment deadline would prompt the Commission to approve additional vendors' IVDS technology so that the new licensees would have sources other than EON for their equipment. He also expressed the need for prompt group action, and asked auction winners to send letters of support to his communications counsel, William J. Franklin, and to direct any questions they might have to Schupak. He added, that both would be "more than happy to coordinate all of your efforts." [FN12] Mr. Hartley further advised his fellow auction winners that they should, either by telephone, facsimile, or overnight courier, seek Congress' assistance in pressing the FCC to delay the down payment deadline. Finally, Mr. Hartley sent an accompanying form letter pleading for delay that the recipients of his letter could use to contact Mr. Franklin and Members of Congress.

16. The impact of Mr. Hartley's call-to-action letter was immediate. Two winning bidders informed the Commission that the letter and its attendant

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publicity had caused investors who had previously committed venture capital to withdraw their commitments. Because of what happened to these auction winners, numerous informal inquiries about delaying the down payment deadline, and widespread press reports about Mr. Hartley's letter, the Commission, on August 5, 1994, issued a Public Notice entitled "IVDS Bidder Alert? The Public Notice stated unequivocally that the deadline would not be altered and warned that bidders who failed to submit their down payments by the deadline would be considered in default and their licenses would be reauctioned. It also stated that efforts to encourage other winning bidders to default would constitute an abuse of the Commissions processes and might violate antitrust or other federal laws as well. See Public Notice, "IVDS Bidder Alert," released August 5, 1994. The Commission sent the "IVDS Bidder Alert" via overnight delivery to each IVDS winning bidder.

17. On August 5, 1994, Mr. Hartley's agent prepared and delivered to major news organizations across the nation a press release making Commercial Realty's arguments regarding IVDS, the availability of equipment, the Commissions build-out schedule, and down payment requirements. The press release stated that Mr. Hartley had decided not to submit Commercial Realty's down payment pending a formal appeal to the FCC.

18. On August 8, 1994, Commercial Realty defaulted on its obligation to make the required down payment.

III. DISCUSSION

Anti-collusion Rule Violations

19. The Second Report and Order established special rules to prohibit potential collusive conduct in competitive bidding. See 47 C.F.R. § 1.2105(a)(2) (viii), (a)(2)(ix),(c). The rules require disclosure of all agreements, arrangements or understandings with any parties which relate to the competitive bidding process, prohibit all bidders, from the time they file their applications to participate in the auction process until after the high bidder makes the required down payment, from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other bidders.

20. Mr. Hartley apparently engaged in prohibited discussions, or other communications, with other bidders on several occasions before the down payments were due. Moreover, the purpose of these discussions and communications can reasonably be assumed to have been to discourage other bidders from making down payments by suggesting that winning bidders overpaid for their licenses and arguing that they would risk substantial financial loss if they continued to pursue IVDS licenses by timely tendering down payments. The first occasion occurred on July 30, when Mr. Hartley and Christopher Pedersen met at the Omni

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Shoreham Hotel in Washington, D.C. and the two discussed misgivings that Mr. Hartley had with EON's IVDS technology. The second occurred on August 2, 1994, when Mr. Pedersen and Mr. Hartley discussed over the telephone the perceived inability of winning bidders to timely construct IVDS systems and concluded that Commercial Realty and Interactive America had overbid for their licenses. Based on these facts, we find that Mr. Hartley's two discussions with Pedersen constituted two separate flagrant violations of the anti-collusion rules, warranting maximum forfeitures of $10,000 for each violation. Consequently, we assess a $20,000 forfeiture for Commercial Realty's violations of Section 1.2105(c) of the Commissions Rules.

Abuse of the Commissions Processes

21. Financial qualification: The Second Report and Order specified that applicants for the IVDS auctions would be required to complete FCC Form 175, including a certification that the applicant is legally, technically, financially and otherwise qualified to acquire a radio license. 9 FCC Rcd 2357, 2376.

22. On June 23, 1994, Commercial Realty certified that it was financially qualified to become an IVDS licensee. Commercial Realty's almost total absence of assets transforms its proffered certification into a willful misrepresentation constituting an abuse of the Commission's processes. [FN13] The only financial asset that Commercial Realty appears to have held at the time it filed its FCC Form 175 was $60,000 that Mrs. Hartley had loaned the corporation in order to enable it to submit bids for licenses in 277 markets. [FN14] Mr. Hartley claims to have relied on an alleged promise from Dean H. Tyler to loan Mr. Hartley $4,000,000 in cash in order to enable him to fulfill Commercial Realty's down payment obligations. [FN15] Mr. Hartley has testified, however, that Mr. Tyler's commitment was never committed to writing. Moreover, Mr. Hartley was unable to provide any specifics regarding the terms of the loan other than (i) the interest rate was to be fifteen percent, and (ii) that neither Mr. Hartley nor Commercial Realty were required to furnish any collateral to secure the loan or even provide Mr. Tyler with a business plan. [FN16] Mr. Hartley testified that he neither asked for nor was provided with any assurances that Mr. Tyler had set aside $4,000,000 for the loan or even if he had the available assets to do so. In fact, Mr. Hartley testified that he was not sure when or where Mr. Tyler made his promise to loan the $4,000,000. According to his testimony, all that Mr. Hartley remembers was that he had told Mr. Tyler that IVDS was a no lose opportunity to make a good deal of money and that he would guarantee Mr. Tyler a fifteen percent return on his investment if Mr. Tyler would be willing to provide Mr. Hartley with $4,000,000 in cash for the down payment on the $40,000,000 that Mr. Hartley intended to spend at the IVDS auctions, and that Mr. Tyler's response was "let's do it" or words to that

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effect. It was upon these facts, that Mr. Hartley committed Commercial Realty to incurring financial obligations exceeding $40,000,000. In addition, no arrangements were made, or even seriously considered, regarding how Commercial Realty would raise the money needed to honor its spectrum purchase and build-out obligations. Given these facts, Commercial Realty was not ever financially able to submit the minimum down payment amounts for IVDS licenses in the 20 markets for which it submitted winning bids. Moreover, the deception was continued after Commercial Realty completed its bidding. Richard Kent, Commercial Realty's director, on each of Commercial Realty's High Bid Acknowledgment Forms (FCC Form 178), in addition to confirming the amount of each of Commercial Realty's winning bids, confirmed that Commercial Realty had thoroughly reviewed and was willing to be bound by all of the Commissions auction requirements, which includes that the bidder have the available resources to honor the financial obligations it has incurred. As before, this certification was completely baseless. Accordingly, the submission of Commercial Realty's bids, which had no financial backing, constituted multiple violations of Section 1.17 of the Commissions Rules, as well as a flagrant abuse of the Commission's processes, warranting the maximum forfeiture. A forfeiture of $10,000 per market times the 20 markets that it won at auction for a total forfeiture of $200,000 is therefore assessed.

23. Designated entity: The Commission, in the Second Report and Order, supra., established the eligibility criteria and general rules governing the award of bidding preferences in Commission auctions for designated entities. Designated entities are small businesses, businesses owned by members of minority groups and/or women, as defined in 47 C.F.R. §§ 1.2110(b) and 95.816(d). In order for a corporation to claim a preference as a designated entity, at least 50.1 percent of the corporations stock must be held by minority or female principals and the applicants must be prepared to demonstrate that actual, de facto, control truly resides with the minority or female principal. Second Report and Order at 2396-97.

24. On its June 23, 1994 application and at the July 28, 1994 auction, Commercial Realty claimed designated' entity preference as a woman-owned business on the basis that Teresa Hartley held 60 percent equity interest in the corporation and was also its President, Treasurer, and Chief Executive Officer. The testimony with the facts adduced during the investigation unequivocally show that actual, de facto control resided with Mr. Hartley, however. Mr. and Mrs. Hartley each testified that the only active role that Mrs. Hartley played in Commercial Realty's affairs was to sign the corporations checks. Mr. Hartley, without first consulting with Mrs. Hartley, or obtaining her specific authorization, inter alia, authorized the corporation to accept a purported loan of $4,000,000 for the purchase of IVDS licenses; hired Ralph E. Howe to represent Commercial Realty at the IVDS auctions; authorized all of Commercial Realty's bids, which totalled $41,250,000; decided when Commercial Realty would

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cease bidding; hired Steven J. Schupak as Commercial Realty's IVDS consultant; and retained William J. Franklin as Commercial Realty's communication counsel. Moreover, all of the actions taken in the name of Commercial Realty to have the down payment deadline postponed were orchestrated singularly by Mr. Hartley, and it was he who made the decision to have Commercial Realty default on its down payments. Finally, Mr. and Mrs. Hartley each testified that Commercial Realty had no other function than to acquire IVDS licenses. The research into the viability of IVDS on behalf of the corporation was conducted solely by Mr. Hartley. In view of these facts, we find that Commercial Realty willfully abused the Commissions processes and the Commissions designated entity eligibility rules, 47 C.F.R. §§ 1.2110(b), 95.816(d), by improperly claiming bidding-credits as a women-owned business on each of the 17 times it claimed the credits. A forfeiture of $10,000 is therefore assessed for each time Commercial Realty improperly claimed to be a woman-owned business for a total forfeiture of $170,000.

IV. CONCLUSIONS

25. We find that Commercial Realty has violated the Commissions Rules and repeatedly and deliberately abused the Commissions processes. Pursuant to Sections 503(b) (1) (B) and (2)(B) of the Act, a total forfeiture of $390,000 is therefore assessed against Commercial Realty. In addition, Commercial Realty, will be held liable for a substantial default penalty, which will be assessed following the reauction of the defaulted IVDS licenses. [FN17]

V. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, 47 U.S.C. § 503(b), and Section 1.80 of the Commissions Rules, 47 C.F.R. § 1.80, that Commercial Realty St. Pete, Inc. IS HEREBY NOTIFIED of an APPARENT LIABILITY FOR FORFEITURE in the amount of three hundred ninety thousand dollars ($390,000) for willful and repeated violations of the Sections 1.17 and 1.2105(c) of the Commissions Rules, 47 C.F.R. §§ 1.17 and 1.2105(c), and willful and repeated abuses of the Commissions processes.

27. IT IS FURTHER ORDERED, pursuant to Section 1.80(f)(3) of the Commissions Rules, 47 C.F.R. § 1.80(f)(3), that Commercial Realty St. Pete, Inc. SHALL PAY within thirty (30) days of the release date of this Notice the full amount specified above in the manner provided for in Section 1.80(h) of the Rules [FN18] or SHALL FILE a response showing why a forfeiture should not be imposed or should be reduced.

28. IT IS FURTHER ORDERED, that the Secretary shall sent a copy of this Notice to Commercial Realty St. Pete, Inc. by Certified Mail, Return Receipt Requested.

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FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Secretary

FN1 IVDS is a point-to-multipoint short distance communications service in which licensees may provide information, products, or services to individual subscribers located at fixed locations within a service area and subscribers may provide responses. The Commissions Fourth Report and Order, PP Docket No. 93-253, 9 FCCRcd 2330 (1994) established the rules and procedures for auctioning licenses in the IVDS.

FN2 The markets in which Commercial Realty was the high bidder were Detroit-Ann Arbor, MI; St. Louis, MO; Miami, FL; Pittsburgh, PA; Baltimore, MD; Minneapolis-St. Paul, MN; Atlanta, GA; San Diego, CA; Denver-Boulder, CO; Seattle-Everett, WA; Milwaukee, WI; Tampa-St. Petersburg, FL; Kansas City, MO; Phoenix, AZ; Indianapolis, IN; Portland, OR; Sacramento, CA; Greensboro, NC; Charlotte, NC; and Raleigh-Durham, NC.

FN3 Commercial Realty claimed designated entity status as a woman-owned business. This status would have made Commercial Realty eligible for a 25 percent discount from its actual winning bid amounts in all but the San Diego, Tampa-St. Petersburg, and Portland, OR markets, for which bidding credits were not available.

FN4 At the end of each round of bidding, the two high bidders were required to sign a High Bid Acknowledgment Form. See Public Notice, supra. Subsequent to bidding, Commercial Realty and other high bidders filed requests for a waiver from the Commission that would permit them to delay the payment of their down payments. The requests were denied October 7, 1994. See Order, 9 FCCRcd 6384 (Com.Car.Bur.1994) (applications for review and petitions for reconsideration pending).

FN5 See United States of America v. Commercial Realty St. Pete, Inc., et al., No. 94-345 (D.D.C. Dec. 21, 1994), appealed sub nom. Commercial Realty St. Pete, Inc. v. U.S., No. 94-5391 (D.C.Cir. docketed Dec. 30, 1994).

FN6 Mr. Tyler later admitted under a grant of testimonial and transactional immunity by the Department of Justice that he neither loaned, nor agreed to loan, $4,000,000 to Commercial Realty.

FN7 In order to be eligible to bid at the auctions, each applicant was required to present a cashiers check in the amount of $2,500. High bidders were required

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to submit an upfront payment of $2,500 for every five licenses for which they were the high bidders immediately after the first license was won. See Fourth Report and Order, 9 FCCRcd at 2334.

FN8 Although Commercial Realty indicated that it intended to bid for 277 markets, it was only required to make "up front" payments for the 20 markets for which it submitted winning bids.

FN9 Because EON has an interest in companies that were to participate in the auctions and thus wanted to avoid the potential for collusion with other would-be bidders, its representatives refused to provide Hartley any information concerning the state of its IVDS equipment and its availability for purchase. They also refused to provide him with any information about the relative value of an IVDS license in a particular market.

FN10 See Report and Order, 7 FCCRcd 1630 (1992).

FN11 In a memorandum dated August 3, 1994, to James C. Hartley from William J. Franklin, his communications counsel, Franklin noted that "you have decided not to file any deposits, and have instructed me to file a deferral petition/

FN12 Neither Mr. Franklin nor Mr. Schupak had any prior knowledge of the letter. Nor had either given his consent to have his name appear as Mr. Hartley's contact person. As a result, Mr. Franklin, who had counseled Mr. Hartley to timely honor Commercial Realty's down payment obligation, resigned as Commercial Realty's communication counsel the next day. Mr. Schupak resigned as Commercial Realty's consultant four days later.

FN13 Abuse of process is a broad concept that includes use of a Commission process to achieve a result that the process was not intended to achieve or use that process to subvert the purpose the process was intended to achieve. See Broadcast Renewal Applicants, 3 FCC Rcd 5179, 5199 n. 2 (1988).

FN14 Although Mrs. Hartley claims she was the sole lender, she and Mr. Hartley have testified that the $60,000 was drawn from a personal bank account that Mr. and Mrs. Hartley jointly control.

FN15 On September 2, 1994, Commercial Realty filed with the Commission a Petition for Partial Reconsideration. The petition sought to expand the scope of the investigation instituted by the August 30, 1994 Order. Commercial Realty attached to its petition a declaration of Mr. Tyler, executed under penalty of perjury, stating that he had agreed prior to the auctions to loan Commercial Realty $4,000,000 for its acquisition of IVDS licenses and that the money was

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available to him through banks and through other investors. Mr. Tyler subsequently testified, however, that his declaration was entirely false and misleading. Testifying under a Department of Justice grant of immunity from prosecution, Mr. Tyler said that he never made any loan commitment before the auctions to either Mr. Hartley or Commercial Realty and that he did not have the $4,000,000 to make any such commitment. He said that he proffered the declaration solely as a favor to Mr. Hartley because Mr. Hartley told him that the technology for IVDS did not work and, thus, Mr. Tyler would never have to provide the money promised. Moreover, Mr. Tyler testified that the document was drafted after the auctions. According to Mr. Tyler, Mr. Hartley drafted the document and included the $4,000,000 figure because that sum constituted Commercial Realty's 10 percent down payment obligation. Because Mr. Hartley's testimony disputes Mr. Tyler's rendition of what transpired, this matter will be the subject of the Show Cause proceeding that we intend to initiate.

FN16 Mr. Hartley has failed to demonstrate that a document summarizing Commercial Realty's business plans was ever drafted.

FN17 Pursuant to Section 1.2104(g)(2) of the Commissions Rules, the default penalty will be based on the difference between the amount of the defaulted bid and the amount the government receives when the license is reauctioned plus an additional 3 percent of the defaulted bid amount or the subsequent winning bid amount, whichever is less. In any case, even if the subsequent winning bids are higher than Commercial Realty's defaulted bids, the minimum default penalty will be $1,237,500 (3% of Commercial Realty's defaulted bids).

FN18 Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission to · Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the File Number of the above captioned proceeding.
10 F.C.C.R. 4277, 10 FCC Rcd. 4277, 77 Rad. Reg. 2d (P & F) 485, 1995 WL 173226 (F.C.C.)
END OF DOCUMENT

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