

DA 98-1794

September 4, 1998

Mr. Jack Bond
Mountain SMR Group, L.L.C.
920 S.W. Stephenson Court
Portland, Oregon 97219-7642

Re: Erratum to February 26, 1998 Letter to Mr. Jack Bond from Kathleen O'Brien Ham

Dear Mr. Bond:

This letter is in reference to an Order, released February 26, 1998, in which Mountain SMR Group, L.L.C. ("Mountain SMR") was assessed withdrawal and default payments.¹ Mountain SMR, the high bidder for license E-172 A (Honolulu, Hawaii) in the 800 MHz Specialized Mobile Radio auction,² which closed December 8, 1997, withdrew its high bid and defaulted on its down payment. In letters dated December 5 and 18, 1997, Mountain SMR requested a waiver of 47 C.F.R. §§ 90.905(b) and 90.909(b) of the Commission's rules governing bid withdrawal payments and down payment deadlines. On February 26, 1998, the Auctions and Industry Analysis Division ("Division") denied the waiver request and set default and bid withdrawal payments in the amount of \$86,628.

Following release of the *February 26th Order*, the Division discovered an error in its calculation of the amount owed by Mountain SMR. Instead of the \$86,628 amount set forth in the *February 26th Order*, Mountain SMR actually owes the Commission a total payment of \$34,251. This amount represents a total of: (1) a bid withdrawal payment of \$30,550, less Mountain SMR's upfront payment of \$5,542, resulting in a net bid withdrawal payment of \$25,008, plus (2) a default payment of \$9,243, which is three percent (3%) of the defaulted net bid amount (\$308,100) as required under Section 90.905 of the Commission's rules.³ To date, no

¹ See Letter to Mr. Jack Bond from Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 98-378 (rel. February 26, 1998) ("February 26th Order" or "Order").

² See "800 MHz SMR Auction Closes," *Public Notice*, DA 97-2583 (December 9, 1997) ("December 9th Public Notice").

³ The Commission's rules state that a bidder that defaults on a required payment will be subject to a payment equal to the difference between the amount bid and amount of the winning bid the next time the license is offered by the Commission plus an additional monetary assessment equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent payment will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payment or down payments that the defaulting bidder has deposited with the Commission. 47 C.F.R. §§ 1.2109

payment has been made by Mountain SMR.

Our revised calculation does not change the essence of the *February 26th Order*. In that Order, we stated that, under the Commission's rules, a winning bidder that fails to remit its required down payment for the license within ten business days after the Commission declares the auction closed shall be deemed to be in default.⁴ Under such circumstances, the Commission will dismiss the bidder's application,⁵ and the defaulting bidder will be liable for default payments. Because Mountain SMR failed to meet its down payment obligations, Mountain SMR is deemed in default on its payment obligation for License E-172 A. Mountain SMR is therefore subject to the default payment, as well as the bid withdrawal payment, specified under Sections 90.905 and 90.909 of the Commission's Rules.⁶

For the reasons stated above, IT IS ORDERED that Mountain SMR remit payment in the total amount of \$34,251, which includes a net bid withdrawal payment of \$25,008 and a default payment in the amount of \$ 9,243.

IT IS FURTHER ORDERED that the total payment obligation of \$34,251 in this Erratum is the corrected amount due and owing, and supersedes the payment obligation of \$86,628 originally set forth in the February 26, 1998 Order.

IT IS FURTHER ORDERED that payment of the total amount due and owing of \$34,251 is to be made in accordance with the instructions set forth in Attachment A to this letter within thirty days from the release of this letter.⁷

IT IS FURTHER ORDERED that Mountain SMR will be subject to the balance of the payment specified in Section 90.905(c) of the Commission's rules, 47 C.F.R. § 90.905(c), once License E-172 A is reauctoned and the actual default payment is determined.

IT IS FURTHER ORDERED that this letter shall be sent to the applicant by certified mail, return receipt requested. This action is taken under delegated authority pursuant to Section 0.331 of the Commission's Rules.

and 90.905(b) and (c).

⁴ Section 90.909(b) states that a bidder that withdraws its bid subsequent to the close of bidding, defaults on a payment due, or is disqualified, will be subject to the payments specified in § 90.905 or § 1.2109, as applicable. 47 C.F.R. § 90.909(b). *See February 26th Order*.

⁵ 47 C.F.R. § 1.2109(b).

⁶ 47 C.F.R. §§ 90.905 and 90.909.

⁷ Also, a partially completed FCC Remittance Advice form, FCC Form 159, is attached for use in making payment.

Sincerely,

Amy J. Zoslov
Chief, Auctions and Industry Analysis Division
Wireless Telecommunications Bureau

