



Federal Communications Commission
Washington, D.C. 20554

April 14, 2005

DA05-623

Via Certified Mail, Return Receipt Requested

Alva Fearon, President
In Vibration, Inc.
3600 South State Road #7
Suite 306
Miramar, FL 33023

Re: Notice of Interim Default Payment Obligations for Auction No. 37

Dear Ms. Fearon:

This letter provides notice of interim default payment obligations for In Vibration, Inc. ("In Vibration") with respect to its defaults arising out of a Federal Communications Commission ("Commission") auction of FM broadcast construction permits ("Auction No. 37"). In Vibration, a participant and high bidder in Auction No. 37, was the winning bidder on two FM broadcast construction permits.¹ As described below, In Vibration defaulted on its payment obligations for its winning bids. Accordingly, this letter sets forth the interim default payment obligations of In Vibration for its two defaulted bids and dismisses In Vibration's Form 301 long-form applications.²

Under the Commission's rules, a bidder who fails to timely remit the required down or final payment for a construction permit for which it was the high bidder is in default, its application is dismissed, and it is subject to a default payment.³ The default payment has two components. The first component is the difference between the bidder's net defaulted bid and the subsequent net winning bid, or the difference between the bidder's gross defaulted bid and the subsequent gross winning bid, whichever is less, the next time the construction permit is offered by the Commission (so long as the subsequent winning bid is less than the defaulted bid).⁴ This component of the default payment cannot be determined until after the construction permits on which In Vibration defaulted are re-auctioned. The second component of the default payment is an additional payment equal to three percent (3%) of the defaulter's bid, or the

¹ FM broadcast construction permit nos. FM063-A (Cedar Key, FL) and FM068-A (Perry, FL). See "FM Broadcast Construction Permits Auction Closes," DA 04-3694, *Public Notice*, at Attachment A, (rel. Dec. 1, 2004) ("*Auction No. 37 Closing Public Notice*").

² See File Nos. BNPH-20050103AFB and BNPH-20050103AFC.

³ 47 C.F.R. § 1.2104(g)(2), 1.2109(b).

⁴ 47 C.F.R. § 1.2104(g)(2).

subsequent winning bid, whichever is less.⁵ If either bid amount is subject to a bidding credit, the three percent (3%) will be calculated using the same bid amounts and basis (net or gross bids) as in the first component of the default payment.⁶ 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 (3%) of the defaulted bid.⁷

On December 1, 2004, the Wireless Telecommunications Bureau and the Media Bureau (collectively “the Bureaus”) announced the winning bidders in Auction No. 37.⁸ The Bureaus also announced that by no later than December 15, 2004, all Auction No. 37 winning bidders were required to submit down payments that would bring each winning bidder’s deposit to twenty-percent (20%) of its winning bids and that by January 3, 2005, the FCC Form 301 long-form applications were required to be submitted.⁹ In Vibration’s net winning bids totaled \$878,150.00.¹⁰ The Bureaus applied In Vibration’s \$46,500.00 of upfront money toward the down payment requirement and notified In Vibration of the remaining \$129,130.00 balance due. In Vibration failed to timely submit payment for the full amount of the remaining balance by December 15, 2004.¹¹

Accordingly, In Vibration is considered to be in default on the two FM broadcast construction permits for which it was the high bidder in Auction No. 37, its long-form applications are dismissed, and it is subject to the applicable default payments.¹² Pursuant to Section 1.2104(g)(2) of the Commission’s rules, In Vibration owes an interim default payment of \$26,344.50, which is three-percent (3%) of its net winning bids of \$878,150.00.¹³ Pursuant to Section 1.2106(e) of the Commission’s rules, we will apply In Vibration’s payments on deposit

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *See Auction No. 37 Closing Public Notice, supra* note 1.

⁹ *See id.* at 1-2.

¹⁰ *See id.* at Attachment A. The amounts of In Vibration’s net winning bids and interim default payment debt are presented in Attachment A of this letter.

¹¹ While In Vibration did submit \$70,000.00, this amount does not satisfy the entire balance due. Pursuant to Section 1.2107(b) of the Commission’s rules, the required down payment amount is due on all licenses for which the applicant is the winning bidder. *See* 47 C.F.R. § 1.2107(b). Accordingly, In Vibration is in default for each of its licenses. Commission precedent has never allowed a bidder to pay an initial down payment for only select high bids and not others at the down payment stage. *See* “In the Matter of TPS Utilicom,” DA 03-480, *Order on Reconsideration*, 18 FCC Rcd. 2,516 (rel. Feb. 21, 2003).

¹² 47 C.F.R. §§ 1.2104(g)(2), 1.2109(c).

¹³ 47 C.F.R. § 1.2104(g)(2).

to satisfy this initial default payment obligation.¹⁴ Once subsequent high bids are established for the relevant spectrum, we will determine In Vibration's final default payment obligation.¹⁵ If an additional payment is required, a further order will assess such payment.¹⁶

Ordering Clauses

Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.2104(g)(2) of the Commission's rules, 47 C.F.R. § 1.2104(g)(2), In Vibration, Inc. is ASSESSED an interim default payment of \$26,344.50 for its defaulted high bids for FM broadcast construction permits FM063-A (Cedar Key, FL) and FM068-A (Perry, FL) in Auction No. 37.

IT IS FURTHER ORDERED that, pursuant to Sections 1.2104 and 1.2106 of the Commission's rules, 47 C.F.R. §§ 1.2104 and 1.2106, In Vibration, Inc.'s funds on deposit will be applied to satisfy the interim default payment obligations.

IT IS FURTHER ORDERED that, pursuant to Section 1.2109 of the Commission's rules, 47 C.F.R. 1.2109, the Form 301 long-form applications of In Vibration, Inc., File Numbers BNPH-20050103AFB and BNPH-20050103AFC, are DISMISSED with prejudice.

IT IS FURTHER ORDERED that, pursuant to Section 1.2104(g) of the Commission's rules, 47 C.F.R. § 1.2104(g), that In Vibration, Inc. will be subject to a final default payment for its defaulted high bids for FM broadcast construction permits FM063-A (Cedar Key, FL) and FM068-A (Perry, FL) in Auction No. 37 once the spectrum associated with these FM broadcast construction permits is re-auctioned and the full default payment amount is determined.

IT IS FURTHER ORDERED that this letter shall be sent to the applicant and its representatives by certified mail, return receipt requested. This action is taken pursuant to authority delegated by Sections 0.283 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.283 and 0.331.

Sincerely,



Margaret Wiener
Chief, Auctions and Spectrum Access Division
Wireless Telecommunications Bureau



Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁴ See 47 C.F.R. § 1.2106(e).

¹⁵ *Id.*

¹⁶ See Mountain Solutions Ltd., Inc., FCC 98-220, *Memorandum Opinion and Order*, 13 FCC Rcd. 21,983, 21,997 ¶ 25 (1998).

cc: Richard P. Hanno

ATTACHMENT A

Interim Default Payment

Permit Number Frequency block	Gross Winning Bids Auction # 37	Net Winning Bids Auction # 37	Interim Default Payments (3% of net winning bids)
FM063-A (Cedar Key, FL)	\$823,000.00	\$534,950.00	\$16,048.50
FM068-A (Perry, FL)	\$528,000.00	\$343,200.00	\$10,296.00
		Total	\$26,344.50