



Federal Communications Commission
Washington, D.C. 20554

October 17, 2001

DA 01-2404

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Michael K. Kurtis, Esq.
Jeanne W. Stockman, Esq.
Kurtis & Associates, P.C.
2000 M Street, NW
Suite 600
Washington, D.C. 20036

Ms. Deborah Lynn Langford
President
Mountain Solutions, Ltd., Inc.
7220 W. Jefferson Ave., #402
Lakewood, CO 80235

Re: Mountain Solutions, Ltd., Inc.

Dear Mr. Kurtis, Ms. Stockman, and Ms. Langford:

This order sets forth the final default payment obligations of Mountain Solutions Ltd., Inc. ("Mountain Solutions") resulting from its failure to remit the required down payment on ten licenses for which it was the successful high bidder in the first broadband Personal Communications Services ("PCS") C block auction ("Auction No. 5"). The specific default payment obligation with respect to each license is set forth in Attachment A to this order.

1. Background

Mountain Solutions was the high bidder on ten broadband PCS C block markets¹ in Auction No. 5, which closed on May 6, 1996.² At that time, Section 24.711(a)(2) of the Commission's rules required winning bidders to submit a ten percent down payment on C block licenses won at auction.³ Each

¹ B053 (Bozeman, MT), B168 (Grand Junction, CO), B172 (Greeley, CO), B187 (Hays, KS), B188 (Helena, MT), B224 (Kalispell, MT), B247 (Lawrence, KS), B275 (Manhattan, KS), B366 (Pueblo, CO), and B381 (Rock Springs, WY).

² "Entrepreneur's C Block Auction Closes: FCC Announces Winning Bidders in the Auction of 493 Licenses to Provide Broadband PCS in Basic Trading Areas," *Public Notice*, DA 96-716 (rel. May 8, 1996). Mountain Solutions also was the high bidder on two broadband PCS C block markets, B089 (Colorado Springs, CO) and B149 (Ft. Collins, CO), in the second C block auction ("Auction No. 10"). "Entrepreneurs' C Block Reauction Closes," *Public Notice*, 11 FCC Rcd 8183 (1996).

³ 47 C.F.R. § 24.711(a)(2) (1996).

winning bidder had to bring its total amount on deposit with the Commission (including upfront payment) to five percent of its net winning bid within five business days after the auction closed, with the remainder of the down payment (five percent) paid within five business days after the long-form application required by Section 24.809(b)⁴ of the Commission's rules was granted. Mountain Solutions made the first five percent down payment on the required due date. The second five percent down payment was due on September 24, 1996.⁵ Instead of making this payment, Mountain Solutions filed a petition seeking waiver of the second down payment deadline in order to allow time to secure financing.⁶

The Wireless Telecommunications Bureau ("Bureau") denied Mountain Solutions' waiver request, finding that Mountain Solutions had failed to meet the standards required to justify a waiver of the second down payment deadline.⁷ Mountain Solutions filed an Application for Review challenging the Bureau's Order.⁸ In October 1998, the Commission denied Mountain Solutions' Application for Review, affirmed the Bureau's denial of the waiver request, and assessed an initial default payment with respect to Mountain Solutions' default on the ten licenses.⁹ Specifically, Mountain Solutions' down payment of \$1,227,096.30 from Auction No. 5 was applied toward an initial default payment of \$736,257.78, leaving \$490,038.52 on deposit with the Commission.¹⁰ Subsequently, Mountain Solutions appealed the Commission's decision to the Court of Appeals for the District of Columbia Circuit.¹¹ In January 1999, Mountain Solutions filed an Application for Review challenging a Bureau Public Notice that established procedures for the March 23, 1999 auction of broadband PCS spectrum in the C, D, E and F blocks ("Auction No. 22").¹² In the Application for Review, Mountain Solutions also sought waiver of the down payment default rule.¹³ Subsequently, the Commission denied the Application for Review.¹⁴

⁴ 47 C.F.R. §24.809(b) (1996).

⁵ "FCC Announces Grant of Broadband Personal Communications Service Entrepreneurs' C Block BTA Licenses; Final Down Payment Due by September 24, 1996," *Public Notice*, 11 FCC Rcd 11316 (1996).

⁶ In the Matter of Mountain Solutions Ltd., Inc. Request for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding Market Nos. B053, B168, B172, B187, B188, B224, B247, B275, B366, and B381, *Order*, 12 FCC Rcd 5904 (WTB 1997).

⁷ *Id.*

⁸ 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*, FCC 98-220, 13 FCC Rcd 21983 (1998) ("*Memorandum Opinion and Order*").

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Mountain Solutions Ltd., Inc. v. FCC*, Case No. 98-1503, Notice of Appeal, filed October 30, 1998, U.S. Court of Appeals for the District of Columbia. In December of 1999, the appellate court denied Mountain Solutions' request for review of the *Memorandum Opinion and Order*. *Mountain Solutions Ltd., Inc. v. FCC*, 197 F.3d 512 (D.C. Cir. 1999).

¹² Auction of C, D, E, and F Block Broadband Personal Communications Services Licenses Scheduled for March 23, 1999, Application for Review, filed by Kurtis and Associates, P.C. on behalf of Mountain Solutions Ltd., Inc., January 22, 1999.

¹³ *Id.*

In Auction No. 22, the Commission offered 10 licenses for spectrum associated with the licenses upon which Mountain Solutions had previously defaulted.¹⁵ Seven of the ten licenses were won by bidders in that auction.¹⁶ The remaining three¹⁷ were offered on a reconfigured basis and won by bidders in the broadband PCS auction (“Auction No. 35”), which concluded on January 26, 2001.¹⁸

2. Discussion

Pursuant to the Commission’s rules, a winning bidder who fails to remit the required second down payment or final payment for a license for which it was the high bidder is subject to a default payment.¹⁹ Specifically, such bidder 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 amount bid), plus an additional payment equal to three percent of the defaulter's bid, or the subsequent winning bid, whichever is less.²⁰ 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 of the defaulted bid.²¹

Mountain Solutions made its initial down payment but failed to make its second down payment for the ten licenses for which it was the high bidder in Auction No. 5. Because all ten licenses were auctioned in Auction Nos. 22 and 35, the Commission is able to assess the full amount of the default payment for each license.²² Using the formula in the Commission’s default payment rules, the sum of Mountain Solutions’ default payments on all ten licenses is \$18,115,463.83, as calculated in Attachment A. Each default payment is comprised of two components:

- For each license, the first portion of the default payment represents the total difference between Mountain Solutions’ defaulted winning bid and the amount of the winning bid in Auction No. 22 or 35.²³ The cumulative sum of those differences is \$17,916,704.25.

¹⁴ In the Matter of DiGiPH Application for Review of Public Notice DA 98-2604; Mountain Solutions Application for Review of Public Notice DA 98-2604, *Memorandum Opinion and Order*, FCC 01-248 (rel. September 11, 2001).

¹⁵ “C, D, E, and F Block Broadband PCS License Auction Closes; Winning Bidders of 302 Licenses Announced,” *Public Notice*, 14 FCC Rcd 6688 (rel. April 20, 1999).

¹⁶ Licenses B053 (Bozeman, MT), B168 (Grand Junction, CO), B187 (Hays, KS), B247 (Lawrence, KS), B275 (Manhattan, KS), B366 (Pueblo, CO), and B381 (Rock Springs, WY).

¹⁷ Licenses B172 (Greeley, CO), B188 (Helena, MT), B224 (Kalispell, MT).

¹⁸ “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced; Down Payments Due February 12, 2001, FCC Forms 601 and 602 Due February 12, 2001; Ten-Day Petition to Deny Period,” *Public Notice*, 16 FCC Rcd 2339 (rel. Jan. 29, 2001); *see also* Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Sixth Report and Order and Order on Reconsideration*, 15 FCC Rcd 16266 (2000) (“*C/F Block Sixth Report and Order*”).

¹⁹ 47 C.F.R. §§ 1.2109(b), 24.704, 1.2104(g)(2) (1996).

²⁰ 47 C.F.R. § 24.704 (1996).

²¹ *Id.*

²² Note that licenses B172, B188, and B224 were reconfigured in Auction No. 35 into three 10 MHz licenses. *C/F Block Sixth Report and Order*, 15 FCC Rcd 16266 (2000).

²³ The first component of the default payment is the difference between the original net winning bid and the subsequent net winning bid or the difference between the original gross winning bid and the subsequent gross

| | | |
|--------------------|------|------------------------|
| Bozeman, MT | B053 | \$1,650,205.75 |
| Grand Junction, CO | B168 | \$4,522,500.00 |
| Greeley, CO | B172 | N/A |
| Hays, KS | B187 | \$451,200.00 |
| Helena, MT | B188 | N/A |
| Kalispell, MT | B224 | N/A |
| Lawrence, KS | B247 | \$2,878,937.00 |
| Manhattan, KS | B275 | \$2,800,875.00 |
| Pueblo, CO | B366 | \$4,804,486.50 |
| Rock Springs, WY | B381 | \$808,500.00 |
| Total | | \$17,916,704.25 |

- For each license, the second portion of the default payment is an additional three percent of the lower of Mountain Solutions' defaulted winning bid or the subsequent winning bid for each of the ten defaulted licenses. The cumulative sum of three percent (3%) is \$198,759.58.

| | | |
|--------------------|------|---------------------|
| Bozeman, MT | B053 | \$1,928.80 |
| Grand Junction, CO | B168 | \$10,710.00 |
| Greeley, CO | B172 | \$115,222.50 |
| Hays, KS | B187 | \$1,224.00 |
| Helena, MT | B188 | \$34,740.00 |
| Kalispell, MT | B224 | \$21,465.00 |
| Lawrence, KS | B247 | \$3,364.89 |
| Manhattan, KS | B275 | \$3,273.75 |
| Pueblo, CO | B366 | \$5,615.64 |
| Rock Springs, WY | B381 | \$1,215.00 |
| Total | | \$198,759.58 |

- Thus, the sum of the ten separate default payment obligations is \$18,115,463.83.

| | |
|--------------------|------------------------|
| Sum of Differences | \$17,916,704.25 |
| Sum of 3% | \$198,759.58 |
| Total | \$18,115,463.83 |

Mountain Solutions previously deposited with the Commission an initial down payment in the amount of \$1,227,096.30 for Mountain Solutions' ten PCS C block markets from Auction No. 5. As noted above, the initial default payment of \$736,257.78 was deducted from these funds leaving a remaining amount of \$490,038.52 on deposit with the Commission. That initial default payment and the remaining amount on deposit have now been applied to the sum of the final default payment for each license. Thus, the remaining balance due is \$16,888.367.53.

| | |
|---------------------------------|-----------------|
| Total Default Payments | \$18,115,463.83 |
| Less 3% initial default payment | \$736,257.78 |

winning bid, whichever is lower. 47 C.F.R. § 1.2104(g)(2). Here, where the subsequent winning bid is greater than the defaulted bid, the first portion of the default payment for such license is not applicable ("N/A"). 47 C.F.R. § 24.704(a) (1996).

| | |
|----------------------------------------------|------------------------|
| Less remainder of Down Payment Auction No. 5 | \$490,038.52 |
| Total Default Payment Balance | \$16,888,367.53 |

As previously noted, Mountain Solutions was the high bidder on two PCS C block licenses from Auction No. 10.²⁴ Mountain Solutions currently has on deposit an initial down payment in the amount of \$1,180,988.90 for the two PCS C block licenses from Auction No. 10. Pursuant to the Commission's rules and precedent, if Mountain Solutions fails to pay the remaining balance due of \$16,888,367.53 for the Auction No. 5 licenses within 30 days from the date of this order, we will also apply Mountain Solutions' Auction No. 10 initial down payment of \$1,180,988.90 toward its Auction No. 5 total default payment balance.²⁵ If it intends to maintain the viability of its Auction No. 10 applications, Mountain Solutions will have ten days from the date we apply its initial down payment of \$1,180,988.90 from Auction No. 10 toward the total default payment balance within which to satisfy its remaining Auction No. 5 debt and to replenish its initial down payment for its two PCS C block markets, B089 and B149, from Auction No. 10. If it fails to do so, Mountain Solutions' long-form applications for such licenses will be dismissed and an initial default payment assessed on those two Auction No. 10 licenses.²⁶

Based on the above, Mountain Solutions is in debt to the United States in the amount of \$16,888,367.53, payable in full, immediately, and without further demand. As permitted under 31 U.S.C. § 3717, the debt is subject to interest, penalties, and administrative costs, and interest accrues from the date of this ORDER, which is also its mailing date. Mountain Solutions, the debtor, may avoid payment of the interest if it tenders to the Commission full payment within 30 days of the date of the ORDER. Moreover, the debt is subject to an additional charge to cover the cost of processing and handling of delinquent debts, and a penalty charge in the amount permitted by law. The penalty charge for delinquent debt payments permitted by 31 U.S.C. § 3717 currently is 6 percent per year for the failure to pay any part of the debt more than 90 days past due.

3. Conclusion

For the reasons detailed above, it is ORDERED that pursuant to 47 C.F.R. §§ 24.704, 24.708, 1.2104, and 1.2109 of the Commission's rules, Mountain Solutions is assessed a final default payment in the amount of \$1,652,134.55 for license B053, \$4,533,210.00 for license B168, \$115,222.50 for license B172, \$452,424.00 for license B187, \$34,740.00 for license B188, \$21,465.00 for license B224,

²⁴ See *supra* note 2.

²⁵ 47 C.F.R. §§ 24.704(a)(2), 1.2104(g)(2) (1996). 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 due "will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission." *Id.*; see Letter from Michele C. Farquhar, Chief, Wireless Telecommunications Bureau, to Kenneth Hobbs, C.H. PCS, DA 97-260 (rel. February 4, 1997) (noting that because C.H. PCS, Inc. failed to pay the initial default payment for one C block PCS license for which it was the high bidder in Auction No. 10, the Commission applied C.H. PCS, Inc.'s down payment for the seven C block PCS licenses for which it was the high bidder in Auction No. 5 toward the initial default payment for Auction No. 10).

²⁶ 47 C.F.R. §§ 24.711(a)(2), 1.2109, 1.2104(g); see Wireless Telecommunications Bureau Dismisses C.H.PCS, Inc. Applications for Auction No. 5, *Public Notice*, 13 FCC Rcd 22255 (1998) (WTB) (dismissing C.H. PCS, Inc.'s long-form applications for the seven C block PCS licenses for which it was the high bidder in Auction No. 5 because it failed to replenish the Auction No. 5 down payments which had been applied towards C.H. PCS, Inc.'s initial default payment from Auction No. 10); C.H.PCS, Inc. BTA Nos. B124, B144, B222, B322, B362, B420, and B486, Frequency Block C, *Order*, 14 FCC Rcd 4131 (1999) (WTB) (assessing C.H. PCS, Inc.'s initial default payment for the seven C block PCS licenses for which it was the high bidder in Auction No. 5).

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\$2,882,301.89 for license B247, \$2,804,148.75 for license B275, \$4,810,102.14 for license B366, and \$809,715.00 for license B381, as computed in Attachment A.

It is FURTHER ORDERED that pursuant to 47 C.F.R. §§ 24.704, 24.708, 1.2104, and 1.2109 of the Commission's rules, the \$736,257.78 initial default payment assessed and the \$490,038.52 remainder of Mountain Solutions' initial down payment for its ten PCS C block markets from Auction No. 5 will be applied towards the sum of its final default payments for the ten C block licenses. Mountain Solutions must make payment in accordance with the instructions set forth in Attachment B to this ORDER.

It is FURTHER ORDERED that Mountain Solutions' debt of \$16,888,367.53 be paid immediately, and that if it is unpaid 30 days after the date of this ORDER, Mountain Solutions' initial down payment in the amount of \$1,180,988.90 from Auction No. 10 will be applied towards the final default payments for the ten licenses including any accrued interest from the date of this ORDER along with penalties and administrative costs permitted by 31 U.S.C. § 3717. If it intends to maintain the viability of its Auction No. 10 applications, Mountain Solutions will have ten days from the date we apply its initial down payment of \$1,180,988.90 from Auction No. 10 toward the total default payment balance within which to satisfy its remaining Auction No. 5 debt and to replenish its initial down payment for its two PCS C block markets, B089 and B149, from Auction No. 10. If it fails to do so, Mountain Solutions' long-form applications for such licenses will be dismissed and an initial default payment assessed on those two Auction No. 10 licenses.

This action is taken pursuant to authority delegated by Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Margaret Wiener, Chief
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau

cc: VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jeff B. Smith
Vice President
Mountain Solutions, Ltd., Inc.
7220 W. Jefferson Ave., #402
Lakewood, CO 80235

Dale Gray

Mr. Kurtis, Ms. Stockman, and Ms. Langford
October 17, 2001

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Clark H. Vera
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Deborah Lynn Langford
President
Mountain Solutions, Ltd., Inc.
PO Box 36192
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ATTACHMENT A

| Auction No. 5 | | C-Block | C-Block Auction No. 22 and 35 | | | Default Payment | | |
|--------------------|------|----------------------------------|--------------------------------------|----------------------------------------|---------------------------------------|------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|------------------------------------------------|
| Licenses | | Mountain Solutions' Net High Bid | Auction No. 35 Reconfigured Licenses | High Bidder | Net High Bid in Auction Nos. 22 or 35 | Difference Between Mountain Solutions' Net High Bid and Net High Bids in Auction Nos. 22 or 35 | 3% of the Lower of Mountain Solutions' Net High Bid or Net High Bids in Auction Nos. 22 or 35 | The Final Default Payment Due for Each License |
| Bozeman, MT | B053 | \$1,714,500.75 | N/A | Leap Wireless International, Inc. | \$64,295.00 | \$1,650,205.75 | \$1,928.80 | \$1,652,134.55 |
| Grand Junction, CO | B168 | \$4,879,500.00 | N/A | Glenn W. Ishihara | \$357,000.00 | \$4,522,500.00 | \$10,710.00 | \$4,533,210.00 |
| Greeley, CO | B172 | \$3,840,750.00 | B172C3 | Cellco Partnership | \$2,702,000.00 | N/A | \$115,222.50 | \$115,222.50 |
| | | | B172C4 | Salmon PCS, LLC | \$2,074,500.00 | | | |
| | | | B172C5 | Summit Wireless, LLC | \$2,140,500.00 | | | |
| Hays, KS | B187 | \$492,000.00 | N/A | RTSC Communications, Inc. | \$40,800.00 | \$451,200.00 | \$1,224.00 | \$452,424.00 |
| Helena, MT | B188 | \$1,158,000.00 | B188C3 | Summit Wireless, LLC | \$654,750.00 | N/A | \$34,740.00 | \$34,740.00 |
| | | | B188C4 | VoiceStream PCS | \$815,000.00 | | | |
| | | | B188C5 | Alaska Native Wireless | \$419,250.00 | | | |
| Kalispell, MT | B224 | \$715,500.75 | B224C3 | VoiceStream PCS | \$1,675,000.00 | N/A | \$21,465.00 | \$21,465.00 |
| | | | B224C4 | Alaska Native Wireless | \$1,197,000.00 | | | |
| | | | B224C5 | VoiceStream PCS | \$1,616,000.00 | | | |
| Lawrence, KS | B247 | \$2,991,000.00 | N/A | ABC Wireless, LLC | \$112,163.00 | \$2,878,937.00 | \$3,364.89 | \$2,882,301.89 |
| Manhattan, KS | B275 | \$2,910,000.00 | N/A | ABC Wireless, LLC | \$109,125.00 | \$2,800,875.00 | \$3,273.75 | \$2,804,148.75 |
| Pueblo, CO | B366 | \$4,991,674.50 | N/A | Leap Wireless International, Inc. | \$187,188.00 | \$4,804,486.50 | \$5,615.64 | \$4,810,102.14 |
| Rock Springs, WY | B381 | \$849,000.00 | N/A | Personal Communications Services, Inc. | \$40,500.00 | \$808,500.00 | \$1,215.00 | \$809,715.00 |

| | |
|------------------------------|------------------------|
| Sum of Differences | \$17,916,704.25 |
| Sum of 3% | \$198,759.58 |
| Total Default Payment | \$18,115,463.83 |
| Down Payment No. 5 | \$1,227,096.30 |
| Balance Due | \$16,888,367.53 |

ATTACHMENT B

The following information is being provided to assist you in making your payment.

PAYMENT INSTRUCTIONS

All payments must be made in U.S. currency in the form of a wire transfer. No personal checks, cashier's checks or other forms of payment will be accepted.

Wire transfer payments must be received by Mellon Bank by 6:00 PM Eastern Time, no later than thirty days from the date of the ORDER; however, if the 30th day falls on a non-business day, e.g., Saturday, Sunday or holiday, it is due the next business day. Applicants must allow sufficient time for the wire transfer to be initiated and for the transmission to be completed prior to the deadline. To submit funds by wire, applicants will need the following information to properly effect the transmittal:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/Account #911-6106
OBI Field: (Skip one space between each information item)
"AUCTIONPAY"
TAXPAYER IDENTIFICATION NO. (same as FCC Form 159, Block 12)
PAYMENT TYPE CODE (enter "ADFT") same as FCC Form 159, Block 24A
FCC CODE 1 (same as FCC Form 159, Block 28A: ("5 or 10")
PAYOR NAME (same as FCC Form 159, Block 2)
LOCKBOX No.: 358850

A completed FCC Remittance Advice Form (FCC Form 159, Version 2/00) must accompany payments. On the same business day that the applicant submits payment to Mellon Bank, the applicant must submit a completed FCC Form 159 via facsimile at (412) 209-6045, at least one-hour prior to placing the order for the wire transfer.

The specified debt is due and payable to the United States immediately and without demand, and it is subject to interest, penalties, and additional administrative costs. Interest accrues from the date of the ORDER; however, to avoid the payment of charges (i.e., interest, penalties, and administrative costs) and enforced collection, full payment must be made and received within 30 days from the date of the ORDER. Debtor's failure to make complete timely payment will result in assessment of such charges permitted by 31 U.S.C. § 3717.

For questions regarding the submission of payment, and the FCC Form 159, contact Gail Glasser or Tim Dates, Office of the Managing Director, Financial Operations Center, Auctions Accounting Group, at (202) 418-0578 or (202) 418-0496.