

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

In the Matter of)	
)	
Metro-Trak, L.L.C.)	File No. 0000007442
)	
For Multilateration Location and)	
Monitoring Service Auction License -)	
BEA 107C, Minneapolis-St. Paul, MN-WI-IA)	

ORDER

Adopted: August 2, 2000

Released: August 3, 2000

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

I. Introduction

1. This order sets forth the default payment obligations for Metro-Trak, L.L.C. (Metro-Trak) resulting from its failure to timely remit the total required payment on a license for which it was the winning bidder in the Multilateration Location and Monitoring Service (LMS) auction, Auction No. 21. For the reasons set forth herein, we 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) 107C, Minneapolis-St. Paul, MN-WI-IA.

II. Background

2. On March 5, 1999, the Commission completed its auction of 528 multilateration LMS licenses.¹ Metro-Trak was listed as the winning bidder of Markets BEA 107C, Minneapolis-St. Paul, MN-WI-IA, and BEA 164C, Sacramento-Yolo, CA. After a preliminary review of submitted long-form applications, a number of applications, including Metro-Trak's, were accepted for filing.² On June 8, 1999, the Bureau announced that it was prepared to grant the applications that had been accepted for filing upon the full and timely payment of the remaining balance of each applicant's winning bids.³

3. The Bureau subsequently issued an *Erratum* on June 16, 1999, which rescinded its decision to include Metro-Trak's application for Market BEA 107C, Minneapolis-St. Paul, MN-WI-IA as ready to

¹ See Location and Monitoring Service Auction Closes: Winning Bidders in the Auction of 528 Multilateration Licenses I the Location and Monitoring Service, *Public Notice*, 14 FCC Rcd. 3754 (WTB: 1999).

² See Location and Monitoring Service Applications Accepted for Filing, *Public Notice*, 14 FCC Rcd. 7813 (WTB: 1999).

³ See Wireless Telecommunications Bureau Announces It Is Prepared To Grant Location and Monitoring Service Licenses After Payment is Made, *Public Notice*, 14 FCC Rcd. 9166 (WTB: 1999).

grant.⁴ The Bureau rescinded this decision because Hennepin County, Minnesota had filed a request to obtain an LMS license for Market BEA 107C, pursuant to section 337 of the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.⁵ On November 18, 1999, the Bureau denied Hennepin County's Petition, and dismissed its associated application.⁶

4. On May 26, 2000, the Bureau released a Public Notice stating that the Bureau was ready to grant the license for BEA 107C, Minneapolis-St. Paul, MN-WI-IA to Metro-Trak.⁷ The Public Notice stated that payment of the remaining balance must be received from Metro-Trak, L.L.C. by June 12, 2000.⁸ The Public Notice also stated that if Metro-Trak failed to pay its remaining balance by June 12, 2000, it would be allowed to make payment within ten days after the payment deadline (*i.e.* June 26, 2000), provided that it also pays a late fee equal to five percent of the amount due. Moreover, the Public Notice stated that, pursuant to section 1.2109(a), if Metro-Trak failed to pay the balance of its winning bids by the late payment deadline of June 26, 2000, it would be considered in default on its licenses and subject to the applicable default payments.⁹ Metro-Trak did not submit full and timely payment of the remaining balance and, thereby, defaulted on its obligation under the Commission's rules.¹⁰

III. Discussion

5. 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.¹¹ The purpose of the default payment provisions¹² 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

⁴ See Erratum to Location and Monitoring Service Public Notice, *Public Notice*, 14 FCC Rcd. 9657 (WTB: 1999).

⁵ 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 (1999).

⁶ See *In re Application of Hennepin County*, *Order*, 14 FCC Rcd. 19418 (1999).

⁷ See Wireless Telecommunications Bureau Announces It Is Prepared To Grant Location and Monitoring Service License For Market BEA 107C After Payment is Made, *Public Notice*, 15 FCC Rcd. 9139 (2000).

⁸ *Id.*

⁹ *Id.*

¹⁰ 47 C.F.R. § 1.2109.

¹¹ 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).

¹² See 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*).

the subsequent auction.¹³ A winning bidder that defaults on its full payment obligation will, therefore, be required to make 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.

6. Because the license for market BEA 107C 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.¹⁴ 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.¹⁵

7. Therefore, pursuant to Commission practice, we will assess an initial default payment of \$9,926.00, which is three percent of Metro-Trak's net winning defaulted bid of \$330,850.00 for the LMS license in BEA 107C.¹⁶ Metro-Trak's amount on deposit for upfront and down payments will be applied to this initial default payment (BEA 107C).¹⁷ If additional payment is required after BEA 107C is re-auctioned, a second order will be issued to assess the amount due.

IV. Ordering Clauses

8. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 309 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 309, and sections 0.331 and 1.2104 of the Commission's Rules, 47 C.F.R. §§ 0.331, 1.2104, the Form 175 application for Market BEA 107C, Minneapolis - St. Paul, MN-WI-IA, filed by Metro-Trak, L.L.C. IS DISMISSED.

¹³ 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 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).

¹⁴ *Grand Connectivity Order*, 14 FCC Rcd. at 13946 (¶ 6).

¹⁵ 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).

¹⁶ *Id.*; see also C.H. PCS, Inc., *Order*, 14 FCC Rcd. 4131, 4133 (¶ 4)(WTB: 1999).

¹⁷ We are simultaneously releasing an order denying Metro-Trak's request for an extension of payment deadline for LMS Market BEA 164C, Sacramento-Yolo, CA. See In the Matter of Metro-Trak, LLC, Request for Extension of Final Payment Deadline for Multilateration location and Monitoring Service Auction License - BEA 164C, Sacramento-Yolo, CA, *Order*, DA 00-1716 (WTB/CWD: rel. Aug. 3, 2000). Metro-Trak has on deposit at the Commission \$89,100, which 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 9,926.00, for Market BEA 107C, Minneapolis-St. Paul, MN-WI-IA from the \$89,100 on deposit. Simultaneously, we are subtracting the 3% , in the amount of \$3,471.00, for Market BEA 164C, Sacramento-Yolo, CA from the \$89,100 on deposit.

9. IT IS FURTHER ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and 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 of \$9,926.00.

10. 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 \$9,926.00.

11. IT IS FURTHER ORDERED that, pursuant to sections 0.331, 1.2104(g), and 24.704, 47 C.F.R. §§ 0.331, 1.2104(g), 24.704, Metro-Trak, L.L.C. will be subject to the balance of the payment once the market for BEA 107C, Minneapolis - St. Paul, MN-WI-IA, is re-auctioned and the full default payment is determined.

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 BEA107, Channel Block C,

*****Initial Default Deposit**

Net Winning Bid \$ 330,850.00

Initial Default Penalty \$ 9,926.00
(3% of the net winning bid)