



Federal Communications Commission
Washington, D.C. 20554

August 23, 2001
DA 01-1995

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Re: 220 MHz Auction Group's Request for Refund of Its Interim Bid Withdrawal Payment

Dear Mr. Taylor:

This letter sets forth the bid withdrawal payment obligations of 220 MHz Auction Group ("Auction Group") resulting from its withdrawal of net high bids on licenses BEA058-B (Northern Michigan, MI) and EAG001-F (Northeast) in the Phase II 220 MHz Auction ("Auction No. 24").¹ For the reasons set forth below, Auction Group is subject to interim bid withdrawal payments with respect to these licenses. Further, Auction Group's request for a refund of the two interim bid withdrawal payments is denied.

Background. During Auction No. 24, Auction Group withdrew net high bids on licenses BEA058-B, and EAG001-F.² On June 30, 1999, the Commission completed Auction No. 24.³ At the close of the auction, licenses BEA058-B and EAG001-F⁴ remained unsold.⁵ Consequently, the Commission, pursuant to its bid withdrawal rules and policy,⁶ deducted \$12.00 (three-percent of Auction

¹ During Auction No. 24, Auction Group also withdrew a net high bid of \$193,700.00 on license EAG003-F, which subsequently sold to Auction Group in the same auction for \$176,150.00. Accordingly, the Public Notice issued at the close of Auction No. 24 included a calculation of the final bid withdrawal payment for license EAG003-F (the difference between Auction Group's withdrawn net high bid and its subsequent winning bid, \$193,700.00 – 176,150.00 = \$17,550.00). The Public Notice also indicated that the final bid withdrawal payment of \$17,550.00 for license EAG003-F was deducted from the upfront payments submitted by Auction Group in Auction No. 24. Phase II 220 MHz Service Spectrum Auction Closes, *Public Notice*, 14 FCC Rcd 11218, 11238-39 (1999) ("220 MHz Closing PN") at Attachments B and C.

² *Id.*

³ *Id.* at 11239.

⁴ *220 MHz Closing PN*, 14 FCC Rcd at 11239.

⁵ *Id.*

⁶ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5563 at n. 51 (1994) ("*Competitive Bidding Fifth Report and Order*"); WCS Auction Closes; Winning Bidders in the Auction of 128 Wireless Telecommunications Service Licenses, *Public Notice*, 12 FCC Rcd 21,653 (1997) ("*WCS Closing PN*"); 800 MHz SMR Auction Closes; Winning Bidders in the Auction of 525 Specialized Mobile Radio Licenses, 12 FCC Rcd 20417 (1997) ("*800 MHz SMR*");

Group's \$390.00 withdrawn net high bid on license BEA058-B), and \$2,925.00 (three-percent of Auction Group's \$97,500.00 withdrawn net high bid on license EAG001-F)⁷ from Auction Group's \$150,000.00 upfront payment.⁸ The Commission has not held a subsequent auction for these licenses.

On October 7, 1999, Auction Group submitted a letter requesting a refund of its \$2,937.00 interim bid withdrawal payment.⁹ In its request, Auction Group contends that the Commission's rules do not permit the retention of a three-percent interim bid withdrawal payment. Auction Group argues that Section 1.2104(g),¹⁰ the bid withdrawal rule, simply provides that the withdrawing bidder must pay the difference between the withdrawn bid and the subsequent winning bid and does not provide for a three-percent interim bid withdrawal payment. Accordingly, Auction Group requests a refund of its \$2,937.00 interim bid withdrawal payment.¹¹

Discussion. Under the Commission's rules, a bidder who withdraws a high bid during the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the subsequent winning bid.¹² If a high bid is withdrawn on a license that remains unsold at the close of the auction, the bidder will be required to make an interim payment equal to three-percent of the net amount of the withdrawn bid.¹³ This payment amount is deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.¹⁴ If, in a subsequent auction, that license receives a winning bid in an amount equal to or

Closing PN"); LMDS Auction Closes; Winning Bidders in the Auction of 986 Local Multipoint Distribution Service (LMDS) Licenses, *Public Notice*, 13 FCC Rcd 18217 (1998) ("*LMDS Closing PN*"); VHF Public Coast Service Auction Closes; Winning Bidders in the Auction of 42 Licenses in the 156-162 MHz VHF Public Coast Service, *Public Notice*, 14 FCC Rcd 480 (1998) ("*VHF Public Coast Closing PN*"); Phase II 220 MHz Service Auction Closes; Winning Bidders in the Auction of 908 Phase II 220 MHz, *Public Notice*, 14 FCC Rcd 605 (1998) ("*908 Phase II 220 MHz Closing PN*"); Location and Monitoring Service Auction Closes; Winning Bidders in the Auction of 528 Multilateration Licenses in the Location and Monitoring Service, *Public Notice*, 14 FCC Rcd 3754 (1999) ("*LMS Closing PN*"); C, D, E, and F Block Broadband PCS License Auction Closes; Winning Bidders of 302 Licenses Auctioned, *Public Notice*, 14 FCC Rcd 6688 (1999) ("*C, D, E, and F Block Closing PN*"); Location and Multipoint Distribution Service Auction Closes; Winning Bidders in the Auction of 161 Licenses in the Local Multipoint Distribution Service (LMDS), *Public Notice*, DA 99-927 (rel. May 14, 1999) ("*161 LMDS Closing PN*"); 220 MHz Closing PN, 14 FCC Rcd 11218; 47 C.F.R. § 1.2104(g)(1) (1999).

⁷ 220 MHz Closing PN, 14 FCC Rcd at 11239.

⁸ Phase II 220 MHz Service Spectrum Auction: 18 Qualified Bidders, *Public Notice*, 14 FCC Rcd 7905, 7912 (1999) ("*220 MHz Qualified Bidders Notice*"); 220 MHz Closing PN, 14 FCC Rcd at 11238.

⁹ Letter to Amy Zoslov, Chief, Auctions & Industry Analysis Division, from Mr. Russ Taylor, Counsel for 220 MHz Auction Group (Oct. 7, 1999) ("*220 MHz Auction Group Letter*"). In his letter, Mr. Taylor does not dispute the validity of Auction Group's \$17,550.00 bid withdrawal payment for license EAG003-F.

¹⁰ 47 C.F.R. § 1.2104(g) (1999).

¹¹ 220 MHz Auction Group Letter.

¹² 47 C.F.R. § 1.2104(g)(1) (1999).

¹³ 220 MHz Closing PN, 14 FCC Rcd at 11221; see 908 Phase II 220 MHz Closing PN, 14 FCC Rcd at 608 (citing *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd, at 5563, n. 51; *CHPCS Order*, 11 FCC Rcd at 22432-33).

greater than the withdrawn bid amount, then no final bid withdrawal payment is assessed, and upon appropriate request, the Commission will refund the interim three-percent payment.¹⁵ If, in a subsequent auction, the winning bid for that license is less than the bidder's withdrawn bid amount, then the bidder will be required to make a final bid withdrawal payment equal to either the difference between the net withdrawn bid and the subsequent net winning bid, or the difference between the gross withdrawn bid and the subsequent gross winning bid, whichever is less.¹⁶

The bid withdrawal payment rules are critically important to the success of the Commission's competitive bidding system. Allowing bidders to withdraw bids without any consequences would encourage insincere bidding, and insincere bidding, whether purely frivolous or strategic, distorts the auction process and reduces its efficiency.¹⁷ Thus, the bid withdrawal rules were adopted to discourage insincere bidding without causing bidders to be too cautious in attempting to aggregate licenses.¹⁸ The Commission has recently explained in the *Part 1 Fifth Report and Order* that the assessment of an interim bid withdrawal payment not only furthers this policy of discouraging insincere bidding, but also "ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment."¹⁹

Initially, where the Commission did not have a subsequent winning bid to use to determine the amount of the bidder's withdrawal payment it required a 20 percent payment from withdrawing high bidders.²⁰ Subsequently, in the 1996 *CHPCS Order*,²¹ which resolved a down payment default, the Wireless Telecommunications Bureau ("Bureau") noted that because three percent is the minimum amount that a defaulting winning bidder could owe even under the most favorable circumstances, a three-percent interim default payment would be appropriate.²² The policy of assessing a three-percent interim

¹⁴ 47 C.F.R. § 1.2104(g)(1) (1999); see *220 MHz Closing PN*, 14 FCC Rcd at 11221-22; *908 Phase II 220 MHz Closing PN*, 14 FCC Rcd at 608; Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2379, ¶ 176 (1994) ("*Competitive Bidding Second Report and Order*").

¹⁵ *220 MHz Closing PN*, 14 FCC Rcd at 11221-22.

¹⁶ 47 C.F.R. § 1.2104(g)(1) (1999); *220 MHz Closing PN*, 14 FCC Rcd at 11221-22.

¹⁷ *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2373-74, ¶¶ 146-153; 47 C.F.R. § 1.2104(g)(1) (1999); *220 MHz Closing PN*, 14 FCC Rcd at 11221-22.

¹⁸ *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2373-74, ¶¶ 146-153.

¹⁹ Amendment of Part 1 of the Commission's Rules-Competitive Bidding Procedures, WT Docket 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293, 15302, ¶ 15 (2000) ("*Part 1 Fifth Report and Order*").

²⁰ *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5563, n. 51 ("[i]f a bidder has withdrawn a bid or defaulted but the amount of the penalty cannot yet be determined, the bidder will be required to make a deposit of 20 percent of the amount bid on such licenses. When it becomes possible to calculate and assess the penalty, any excess deposit will be refunded. Upfront payments will be applied to such deposits and to bid withdrawal and default penalties due before being applied toward the bidder's down payment on licenses the bidder has won and seeks to acquire"); D, E, and F Block Auction Closes Winning Bidders in the Auction of 1,479 Licenses to Provide Broadband PCS in Basic Trading Areas, *Public Notice*, DA 97-81 (rel. Jan. 15, 1997).

²¹ C.H. PCS, Inc., *Order*, 11 FCC Rcd 22430, 22432-33 (WTB 1996) ("*CHPCS Order*").

payment was then extended to bid withdrawal payments²³ and has since been codified into the Commission's competitive bidding rules.²⁴

It has been the Commission's policy to impose interim payments on bidders who withdraw high bids during the course of an auction.²⁵ Consistent with this policy, the *220 MHz Closing PN* stated that "[i]f a high bid is withdrawn on a license that remains unsold at the close of the auction, [the bidder] will be required to make an interim payment equal to three (3) percent of the net amount of the withdrawn bid. This payment amount is deducted from any upfront payments or down payments that [the bidder] has deposited with the Commission."²⁶ Auction Group was on notice²⁷ prior to the auction that it was the Commission's policy to impose interim withdrawal payments on bidders that withdraw high bids during an auction. Accordingly, we reject its argument for a refund.

For the reasons stated above, Auction Group's request for a refund of the two interim bid withdrawal payments totaling \$2,937.00 is **DENIED**. Because licenses BEA058-B and EAG001-F will be included in a future auction, at this time we cannot determine the full amount of the bid withdrawal payments owed by Auction Group. Until the Commission has received a subsequent winning bid for these licenses, we retain the two interim bid withdrawal payments.

²² *Id.* (stating that although the deposit amount is 20 percent of the bid price, "if [the license] is reauctioned for an amount greater than [the bidder's] bid for the license, the default payment will be only three percent of [the bidder's] defaulted bid. Consequently, a three-percent payment is the minimum amount that [the bidder] could owe under even the most favorable circumstances."); *see e.g.* In the Matter of Request for Waiver of Section 1.2104(g) of the Commission's Rules filed by Grand Connectivity L.L.C., 14 FCC Rcd 13943 (1999) ("*Grand Connectivity Order*").

²³ *WCS Closing PN*, 12 FCC Rcd 21,653; *800 MHz SMR Closing PN*, 12 FCC Rcd 20417; *LMDS Closing PN*, 13 FCC Rcd 18217; *VHF Public Coast Closing PN*, 14 FCC Rcd 480; *908 Phase II 220 MHz Closing PN*, 14 FCC Rcd 605; *LMS Closing PN*, 14 FCC Rcd 3754; *C, D, E, and F Block Closing PN*, 14 FCC Rcd 6688; *161 LMDS Closing PN*, DA 99-927; *220 MHz Closing PN*, 14 FCC Rcd 11218; 47 C.F.R. § 1.2104(g)(1) (1999).

²⁴ *Part I Fifth Report and Order*, 15 FCC Rcd 15293.

²⁵ *WCS Closing PN*, 12 FCC Rcd 21,653; *800 MHz SMR Closing PN*, 12 FCC Rcd 20417; *LMDS Closing PN*, 13 FCC Rcd 18217; *VHF Public Coast Closing PN*, 14 FCC Rcd 480; *908 Phase II 220 MHz Closing PN*, 14 FCC Rcd 605; *LMS Closing PN*, 14 FCC Rcd 3754; *C, D, E, and F Block Closing PN*, 14 FCC Rcd 6688; *161 LMDS Closing PN*, DA 99-927; *220 MHz Closing PN*, 14 FCC Rcd 11218. *See Grand Connectivity Order*, 14 FCC Rcd 13943 (three percent interim bid withdrawal payments applied to Auction No. 23). In the context of down payment defaults, which are also governed by section 1.2104(g) of the Commission's rules, interim default payments are also deducted from funds on deposit with the Commission. *CHPCS Order*, 11 FCC Rcd at 22432-33 (requiring three percent deposits for default payments); In the Matter of Metro-Trak, L.L.C. for Multilateration Location and Monitoring Service Auction License – BEA 107C, Minneapolis-St. Paul, *Order*, 15 FCC Rcd 13365 (2000).

²⁶ *220 MHz Closing PN*, 14 FCC Rcd at 11221.

²⁷ *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5563, n. 51; *WCS Closing PN*, 12 FCC Rcd 21,653; *800 MHz SMR Closing PN*, 12 FCC Rcd 20417; *LMDS Closing PN*, 13 FCC Rcd 18217; *VHF Public Coast Closing PN*, 14 FCC Rcd 480; *908 Phase II 220 MHz Closing PN*, 14 FCC Rcd 605; *LMS Closing PN*, 14 FCC Rcd 3754; *C, D, E, and F Block Closing PN*, 14 FCC Rcd 6688; *161 LMDS Closing PN*, DA 99-927; *220 MHz Closing PN*, 14 FCC Rcd 11218; 47 C.F.R. § 1.2104(g)(1) (1999).

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Accordingly, **IT IS ORDERED** that pursuant to section 0.331 and 1.2104(g)(1) of the Commission's rules, 47 C.F.R. §§ 0.331, 1.2104(g), and the *220 MHz Closing PN*, Auction Group is assessed an interim bid withdrawal payment for license BEA058-B and for license EAG001-F totaling \$2,937.00.

It is **FURTHER ORDERED** that Auction Group's interim bid withdrawal payments totaling \$2,937.00 will be retained by the Commission until there is a subsequent winning bid for licenses BEA058-B and EAG001-F at which point the Bureau will issue an order calculating Auction Group's final bid withdrawal payments, if any.

It is **FURTHER ORDERED** that this letter shall be send to the applicant by certified mail, return receipt requested. This action is taken pursuant to delegated authority, 47 C.F.R. § 0.331.

Sincerely,

Margaret Wiener
Chief
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau