



Federal Communications Commission
Washington, D.C. 20554

DA 02-953
April 24, 2002

Via certified mail, return-receipt requested

Mr. Jimmy Evans
220 MHz Auction Group
5440 NW 33rd Avenue, Suite 106
Ft. Lauderdale, FL 33309

Mr. Russ Taylor, Esq.
Gardner, Carton & Douglas
1301 K Street, NW
Suite 900, East Tower
Washington, DC 20005

Re: Auction No. 24 Final Bid Withdrawal Payment

Dear Messrs. Evans and Taylor:

220 MHz Auction Group ("Auction Group"), a participant in Auction No. 24, withdrew high bids on licenses BEA058-B and EAG001-F in that auction.¹ Auction No. 43, the subsequent auction for the licenses on which Auction Group withdrew high bids in Auction No. 24, has closed.² Therefore, in accordance with the Commission's rules, we are now able to calculate Auction Group's final bid withdrawal obligations.³

Under the Commission's Rules, a bidder that 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the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the subsequent winning bid.⁴ If a high bid is withdrawn on a license that remains unsold at the close of the auction, the withdrawing bidder will be required to make an interim

¹ Auction Group also withdrew a net high bid of \$193,700.00 on license EAG003-F, which subsequently was sold in the same auction for \$176,150.00. Accordingly, pursuant to section 1.2104(g) of the Commission's rules, a \$17,550.00 final bid withdrawal payment for license EAG003-F (the difference between Auction Group's withdrawn net high bid and its subsequent winning bid, \$193,700.00 – 176,150.00 = \$17,550.00) was deducted from Auction Group's deposits with the Commission. Phase II 220 MHz Service Spectrum Auction Closes, *Public Notice*, 14 FCC Rcd 11,218, 11,238-39 at Attachments B and C (1999) ("220 MHz Closing PN").

² Multi-Radio Service Auction Closes, *Public Notice*, 17 FCC Rcd 1446 (2002) ("Multi-Radio Service Closing PN").

³ Following Auction No. 24, Auction Group requested a refund of its \$2,937 interim bid withdrawal payment, contending that the Commission's rules do not permit the retention of a three-percent interim bid withdrawal payment. Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, from Mr. Russ Taylor, Counsel for 220 MHz Auction Group (Oct. 7, 1999). The Auctions and Industry Analysis Division subsequently denied Auction Group's refund request. Letter to Russ Taylor, Esq., Counsel for 220 MHz Auction Group, from Margaret Wiener, Chief, Auctions and Industry Analysis Division, 16 FCC Rcd 15,776 (2001) ("220 MHz Auction Group Letter").

⁴ 47 C.F.R. § 1.2104(g)(1) (1999).

payment equal to three percent (3%) of the net amount of the withdrawn bid.⁵ This payment amount is deducted from any up-front payments or down payments deposited for this bidder's account with the Commission.⁶ If, in a subsequent auction, that license receives a winning bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed, and upon appropriate request, the Commission will refund the interim three percent (3%) payment.⁷ 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 bidder's net withdrawn bid and the subsequent net winning bid, or the difference between the bidder's gross withdrawn bid and the subsequent gross winning bid, whichever is less.⁸

With respect to Auction Group's bid withdrawals in Auction No. 24, the Commission has previously deducted an interim bid withdrawal payment of \$2,937 from funds on deposit with the Commission because licenses BEA058-B and EAG001-F remained unsold at the end of the auction.⁹ As shown in Attachment A, in Auction No. 43, the subsequent auction of these licenses, the winning bid amount for license BEA058-B was more than Auction Group's withdrawn bid. Accordingly, no final bid withdrawal payment is due for this license. Attachment A also shows that, in Auction No. 43, the winning bid amount of \$78,000 for license EAG001-F was less than Auction Group's \$97,500 withdrawn bid amount.¹⁰ In accordance with Section 1.2104 of the Commission's rules,¹¹ Auction Group owes a final bid withdrawal payment of \$19,500 in connection with license EAG001-F. After applying the interim bid withdrawal payment of \$2,937, Auction Group owes an outstanding balance of \$16,563.¹²

Auction Group is in debt to the United States in the amount of \$16,563, 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 letter, which is also its mailing date. Auction Group, the debtor, may avoid payment of the interest if it tenders to the Commission full payment within 30 days of the date of this letter. 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 a year for the failure to pay any part of the debt more than 90 days past due.

⁵ 47 C.F.R. § 1.2104(g)(1); *220 MHz Closing PN*, 14 FCC Rcd at 11,238-39. This attachment identifies bidders that withdrew bids in Auction No. 24 and states the interim three percent bid withdrawal payment.

⁶ See 47 C.F.R. § 1.2106(e); *220 MHz Closing PN*, 14 FCC Rcd at 11,238.

⁷ 47 C.F.R. § 1.2104(g)(1); see also, *220 MHz Auction Group Letter*.

⁸ *Id.*

⁹ See *220 MHz Closing PN*, 14 FCC Rcd at 11,238 (setting forth Auction Group's interim bid withdrawal payments of \$12.00 (three-percent of Auction Group's \$390 withdrawn net high bid on license BEA058-B), and \$2,925 (three-percent of Auction Group's \$97,500 withdrawn net high bid on license EAG001-F) – totaling \$2,937).

¹⁰ *Multi-Radio Service Closing PN*, 17 FCC Rcd at 1454.

¹¹ 47 C.F.R. § 1.2104(g)(1).

¹² *Id.* To make a final bid withdrawal payment, Auction Group must submit payment in accordance with the instructions set forth in Attachment B.

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) of the Commission's Rules, 47 C.F.R. § 1.2104(g), Auction Group IS ASSESSED a final withdrawal payment of \$19,500 on license EAG001-F as computed in Attachment A.

IT IS FURTHER ORDERED that no final withdrawal payment is due on license BEA058-B.

IT IS FURTHER ORDERED that, pursuant to 47 C.F.R. §§ 1.2104 and 1.2106, Auction Group's interim withdrawal payment of \$2,937 will be applied to the final withdrawal payment for licensee EAG001-F, leaving Auction Group with a debt to the Commission of \$16,563.

IT IS FURTHER ORDERED that Auction Group's debt of \$16,563 be paid in full immediately, in accordance with the payment instructions in Attachment B within 30 days of the date of this letter, and if it is unpaid 30 days of the date of this letter, interest will accrue from the date of this letter along with penalties and administrative costs permitted by 31 U.S.C. § 3717.

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 Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

Sincerely,

Kelly A. Quinn, Deputy Chief
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau

Attachment A

**Multi-Radio Services Auction
 Multi-Auction Withdrawal Payment/Refund Report**

License Number	Market Description	Auction 43: Aer Wave's Net High Bid	Auction No. 24: Auction Group's Withdrawn Net High Bid	Auction No. 43: Auction Group's Withdrawal Payment	Auction No. 24: Auction Group's Interim Withdrawal Payment (3% of	Auction Group's Final Withdrawal Payment (Auction No. 43 Withdrawal Payment withdrawn net bid) – Auction No. 24 Interim Withdrawal Payment
BEA058-B	Northern Michigan, MI	\$1,700.00	\$390.00	0.00	\$12.00	0.00
EAG001-F	Northeast	\$78,000.00	\$97,500.00	\$19,500.00	\$2,925.00	\$16,575.00

Total Final Withdrawal Payments: \$19,500.00
 Less Total Interim Withdrawal Payments: (\$2,937.00)
Total Amount Due: \$16,563.00

Attachment B

PAYMENT INSTRUCTIONS

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

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"
FCC REGISTRATION NO. (FRN) (same as FCC Form 159, Block 11 and/or 21)
PAYMENT TYPE CODE (enter "APEN") same as FCC Form 159, Block 24A
FCC CODE 1 (same as FCC Form 159, Block 28A: ("24")
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 letter; 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 letter. 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.