

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

In the Matter of
Communications Pacific, Inc.,
Conditional Grantee for License
EA 173C (Guam - Northern Mariana),
Auction No. 16
File No. 0000000020

ORDER

Adopted: July 6, 2000

Released: July 7, 2000

I. INTRODUCTION

1. In this order, the Commercial Wireless Division of the Wireless Telecommunications Bureau sets forth the default payment obligations for Communications Pacific, Inc. (Communications Pacific) resulting from its failure to timely remit the total required payment on a license for which it was the winning bidder in Economic Area (EA) 173C (Guam-Northern Mariana), Auction No. 16. As discussed below, Communications Pacific is in default on its full payment obligations for this 800 MHz Specialized Mobile Radio (SMR) geographic license and is subject to an initial default deposit in the amount of \$14,352.00. We also dismiss the long-form license application filed by Communications Pacific.

II. BACKGROUND

2. On December 8, 1997, the Commission completed its auction of 525 licenses for the upper 200 channels of the SMR service in the 800 MHz band. After review, the FCC long-form application (FCC Form 601) submitted by Communications Pacific for the 800 MHz SMR license in EA 173C (Guam-Northern Mariana) was accepted for filing. On September 11, 1998, the Wireless Telecommunications Bureau, under delegated authority, conditionally granted Communications Pacific's application. That license grant was conditioned upon the full and timely payment of the remaining balance of Communications Pacific's winning bid within ten business days. Communications Pacific did not submit full and timely payment of the remaining balance and, thereby, defaulted on its obligation under the Commission's rules.

1 Public Notice, 800 MHz SMR Auction Closes: Winning Bidders in the Auction of 525 Specialized Mobile Radio Licenses, 12 FCC Rcd. 20417 (1997) (Auction No. 16 Closing PN).

2 Public Notice, Application Accepted for Filing, 13 FCC Rcd. 17629 (1998).

3 Public Notice, FCC Announces the Grant of One 800 MHz SMR License, 13 FCC Rcd. 17834 (1998) (requiring full and timely payment of the remaining balance of the applicant's winning bid by September 25, 1998). Communications Pacific also withdrew a high bid for the 800 MHz SMR license in EA 173B and was assessed an initial withdrawal deposit in the amount of \$14,586.00. See Auction No. 16 Closing PN, Attachment B (the Auction No. 16 License Number and Block Designator was YCE173B, see n.11, infra).

4 47 C.F.R. § 1.2109.

III. DISCUSSION

3. 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.⁵ Defaulters are subject to a payment comprised of two components that are added together to calculate the full default payment.⁶ The first component of the default payment is the difference between the gross defaulted bid and the gross subsequent winning bid, or the difference between the net defaulted bid and the net subsequent winning bid, whichever is less.⁷ In the event that the difference between either the gross bids or the net bids, as calculated above, is less than or equal to zero, the first component of the payment will be set to zero. The second component of the payment is computed by taking three percent of the subsequent winning bid or the defaulted bid, whichever is less. When a bidding credit applies to the winning bid from either the original or the subsequent auction, the calculation of the three percent payment is based on the smaller of the two gross bids or smaller of the two net bids, whichever basis (gross or net) was used to figure the first component. Thus, if the difference between the gross bids is less than the difference between the net bids, the three percent payment will be computed on the lower of the gross bids. If the difference between the net bids is less than or equal to the difference between the gross bids, the three percent payment will be computed on the lower of the net bids. However, if the differences between both the gross bids and the net bids are less than or equal to zero, three percent payment will be computed on the lower of the net bids.⁸

4. The purpose of the default payment provisions,⁹ section 1.2104(g)(2) of the Commission's rules, 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 the auction.¹⁰ 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.

⁵ 47 C.F.R. § 1.2109(c); 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 (1997).

⁶ 47 C.F.R. § 1.2104(g).

⁷ The gross bid is the dollar amount bid, exclusive of any bidding credits. The net bid is the dollar amount bid taking account of any bidding credit for which the high bidder is eligible under Commission Rules.

⁸ See *In the Matter of Baker Creek Communications, L.P. for Authority to Construct and Operate Local Multipoint Distribution Services in Multiple Basic Trading Areas*, *Order*, 14 FCC Rcd. 11529, 11532 (¶ 3)(WTB/PSPWD: 1999).

⁹ See *In the Matter of 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/Auctions: 1999) (*Grand Connectivity Order*).

¹⁰ 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 (¶ 17), n.66 (1999).

5. Because the license for market EA 173C will be included in the next auction of 800 MHz SMR spectrum, which has not yet been held,¹¹ we cannot at this time determine the full amount of the default payment owed by Communications Pacific.¹² 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.¹³ As the Commission noted in a previous case, three percent is the minimum amount that a defaulting winning bidder like Communications Pacific could owe even under the most favorable circumstances.¹⁴

6. Therefore, pursuant to Commission practice, we will assess an initial default deposit of \$14,352.00, which is three percent of Communications Pacific's net winning defaulted bid for the 800 MHz SMR license in EA 173C. Communications Pacific's upfront payment, first down payment, and initial withdrawal deposit payment totaling \$110,266.00 will be applied to this initial default deposit (EA 173C) and the initial withdrawal payment deposit (EA 173B).¹⁵ If additional payment is required after Auction 34, a second order will be issued to assess the amount due.

IV. ORDERING CLAUSES

7. 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 Section 1.2104 of the Commission's Rules, 47 C.F.R. § 1.2104, that the application, File No. 0000000020, filed by Communications Pacific, Inc., IS DISMISSED.¹⁶

8. 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 section 1.2104(g) of the Commission's rules, 47 C.F.R. § 1.2104(g), Communications Pacific IS ASSESSED an initial default deposit of \$14,352.00.

¹¹ *Public Notice*, Auction of Licenses for 800 MHz Specialized Mobile Radio (SMR) Service in the General Category Band (851-854 MHz) and Upper Band (861-865 MHz), DA 00-1100 (WTB: rel. May 18, 2000) (listing "Upper Band Licenses to be Auctioned" at the end of Attachment A).

¹² This conclusion is also true for the withdrawal payment that may be owed with respect to EA 173B. *Supra*, n. 3.

¹³ *Grand Connectivity Order*, 14 FCC Rcd. at 13946 (¶ 6).

¹⁴ 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*, 13 FCC Rcd. 21983, 21997 (¶ 25) (1998).

¹⁵ *Id.* The Auctions and Industry Analysis Division of the Wireless Communications Bureau assessed a three percent default deposit in another case as well. See In the Matter of C.H. PCS, Inc., *Order*, 14 FCC Rcd. 4131, 4133 (¶ 4) (1999). Regarding the initial withdrawal payment deposit for EA 173B, see n. 3, *supra*.

¹⁶ Auction No. 16: Market BEA 173, Channel Block C, File No. 0000000020. The Auction No. 16 License Number and Block Designator was YCE173C; the Auction No. 34 License Number and Block Designator is YCBEA173C.

9. This action is taken pursuant to delegated authority granted under the provisions of Sections 4(i) and 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), and Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

William W. Kunze
Deputy Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

DEFAULT CALCULATIONS ATTACHMENT

Communications Pacific, Inc., Auction No. 16:

Market BEA 173, Channel Block C, File No. 0000000020

Outstanding Balance:	Payments Received:
Net Winning Bid - \$478,400.00	Upfront Payment \$ 10,600.00
Withdrawal Deposit -	1 st Down Payment \$ 95,680.00
<u>(BEA173B)¹⁷</u> + \$ 14,586.00	<u>Withdrawal Payment</u> + \$ 3,986.00
Total \$492,986.00	Total Payments Rec. \$110,266.00
 (Less: payments to FCC) - \$110,266.00	
 Outstanding Balance of: <u>\$382,720.00</u>	

*****Initial Default Deposit**

Net Winning Bid \$ 478,400.00
(times 3%)
<u>Total</u> \$ <u>14,352.00</u>
(Initial Default Deposit)

¹⁷ Communications Pacific withdrew from the bidding for the “B” block for Guam-Northern Mariana during the auction and an initial withdrawal deposit in the amount of \$14,586.00 was assessed. *See, n.2, supra.*