

July 16, 2001

Mark Crosby, Esq.
Access Spectrum, LLC
3 Bethesda Metro Center,
Suite 700
Bethesda, Maryland 20814

Re: Refunds For Auction No. 33

Dear Mr. Crosby:

Access Spectrum, LLC (“Access”), a participant in Auction No. 33, withdrew a high bid on license MEA012(A) in that auction.¹ Auction No. 38, the subsequent auction for the license on which Access withdrew a high bid in Auction No. 33, has closed.² Therefore, in accordance with the Commission’s rules, we are now able to determine that no withdrawal payment is owed and calculate the appropriate refund, as described below.

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the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the subsequent winning bid.³ If a high bid is withdrawn on a license that remains unsold at the close of the auction, the withdrawing bidder will be required to make an interim payment equal to three percent (3%) of the net amount of the withdrawn bid.⁴ This payment amount is deducted from any up-front payments or down payments deposited for this bidder’s account with the Commission.⁵ If, in a subsequent auction, that license receives a winning bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed, and upon appropriate request, the Commission will refund the interim three percent (3%) payment.⁶ If, in a subsequent auction, the winning bid for that license is less than the bidder’s withdrawn bid amount, then the bidder will be required to make a final bid withdrawal payment equal to either the difference between the bidder’s net withdrawn bid and the subsequent net winning bid, or the difference between the bidder’s gross withdrawn bid and the subsequent gross winning bid, whichever is less.⁷

¹ 700 MHz Guard Bands Auction Closes, Winning Bidders Announced, Down Payments Due October 10, 2000, *Ten-Day Petition to Deny Period, Public Notice*, DA 00-2154 at Attachment C (rel. September 25, 2000) (“*Auction No. 33 Winning Bidders’ Public Notice*”). Access also withdrew a high bid with respect to license MEA047. However, that license was sold in Auction No. 33 for a net high bid greater than Access’ withdrawn bid, thus no withdrawal payment attached.

² 700 MHz Guard Bands Auction Closes, Winning Bidders Announced, Down Payments Due March 8, 2001, *Ten-Day Petition to Deny Period, Public Notice*, DA 01-478 (rel. February 22, 2001) (“*Auction No. 38 Winning Bidders’ Public Notice*”).

³ 47 C.F.R. § 1.2104(g)(1).

⁴ *Id.*; *Auction No. 33 Winning Bidders’ Public Notice* at Attachment C. This attachment identifies bidders that withdrew bids in Auction 33 and indicates the interim three percent bid withdrawal payment.

⁵ See 47 C.F.R. § 1.2106(e); *Auction No. 33 Winning Bidders’ Public Notice* at Attachment C.

⁶ 47 C.F.R. § 1.2104(g)(1).

⁷ *Id.*

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With respect to Access's withdrawal in Auction No. 33, the Commission has previously deducted an interim withdrawal payment of \$60,795.00 from the funds on deposit with the Commission.⁸ As shown in Attachment A, the net winning bid amount, \$3,831,000.00, in the subsequent auction of license MEA012(A) was greater than Access' net withdrawn bid amount, \$2,026,500.00.⁹ Therefore, in accordance with Section 1.2104 of the Commission's rules, the Commission is prepared to refund the payor(s) of record the \$60,795.00 withheld in connection with license MEA012(A). To obtain a refund, the payor(s) of record should follow the instructions set forth in Attachment B.¹⁰

If you have additional questions or require further information, please contact Howard C. Davenport in the Auctions and Industry Analysis Division at (202) 418-0660.

Sincerely,

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

⁸ See *Auction No. 33 Winning Bidders' Public Notice*, at Attachments B and C. In Attachment B, the Commission set forth the amount of Access' interim bid withdrawal payment, \$60,795.00. In Attachment C, the Commission explained that the \$60,795.00 interim bid withdrawal payment was based on three percent (3%) of the net withdrawn bid on license MEA012 ($\$2,026,500 \times 3\% = \$60,795.00$).

⁹ Attachment A (calculates the refund); *Auction No. 38 Winning Bidders' Public Notice* at Attachment C (Attachment C sets forth the withdrawal payments or refunds, based upon a reconciliation of final results in Auction No. 33 and Auction No. 38).

¹⁰ *Id.*; See Entertainment Unlimited, Inc., Request for Refund of Late Payment Fees for PCS Licenses Purchased in Auction No. 22, *Memorandum Opinion and Order*, FCC No. 01-155 (rel. May 9, 2001) (noting that the Commission does not accept instructions regarding the refund of excess upfront payments from entities or individuals other than the payor of record).

ATTACHMENT A

**700 MHz Guardband Auction
Multi-Auction Refund Report**

License Number	Freq Blk	Market Description	Pegasus Guard Band, LLC's Net Bid Amount (Auction 38)	Access Spectrum, LLC's Withdrawn Gross Bid Amount (Auction 33)	Access Spectrum, LLC's Withdrawn Net Bid Amount (Auction 33)	Access Spectrum, LLC's Original Withholding	Access Spectrum, LLC's Withdrawal Payment	Refund Amount Due Access Spectrum, LLC
MEA012	A	Pittsburg, PA	\$3,831,000.00	\$2,702,000.00	\$2,026,500.00	\$60,795.00	\$0.00	\$60,795.00

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ATTACHMENT B

REQUESTING REFUND INSTRUCTIONS

In order to process refund requests, the FCC must receive wire transfer instructions that include the following information:

Name and Address of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
Correspondent Bank (if applicable)
ABA Number
Account Number

Please include your Taxpayer Identification Number (TIN) and a copy of this letter. This information should be sent to the Auctions Accounting Group:

Federal Communications Commission
Auctions Accounting Group
Attn: Michelle Bennett or Gail Glasser
445 12th Street, SW, Room 1-A843
Washington, DC 20554

Requests can also be faxed to the Auctions Accounting Group at (202) 418-2843.