



Federal Communications Commission
Washington, D.C. 20554

August 12, 2002

DA 02-1996

Via certified mail, return receipt requested

Mr. Bradford H. Hughes
Mr. Kingdon R. Hughes
Ralph A. Haller
Rush Network Corporation
2201 N. Central Expressway, Suite 115
Richardson, TX 75080-2718

Mr. Bradford H. Hughes
Mr. Kingdon R. Hughes
Mr. Ralph A. Haller
16475 Dallas Parkway, Suite 440
Addison, TX 75001

Mr. Whitney R. Hughes
314 Willow Avenue, No. 5
South San Francisco, CA 94080

Re: Final Bid Withdrawal and Default Payments For Auction No. 18

Dear Messrs. Hughes and Haller:

Rush Network Corporation, ("Rush"), a participant in Auction No. 18, withdrew high bids on three licenses during the course of the auction.¹ These licenses were not sold in Auction No. 18. After the close of Auction No. 18, Rush also defaulted on its final payment obligations for an additional ten licenses.² Auction No. 24, the subsequent auction for the licenses on which Rush withdrew high bids and defaulted on its final payment obligations in Auction No. 18, has closed. Therefore, in accordance with the Federal Communications Commission's ("Commission") rules, we are now able to calculate Rush's final bid withdrawal and final default payment obligations.

¹ BEA 080E (Mobile, AL), BEA 081E (Pensacola, FL), and BEA 085E, (Lafayette, LA). Phase II 220 MHz Service Auction Closes: Winning Bidders In the Auction of 908 Phase II 220 MHz Service Licenses, Report No. AUC-18-F (Auction No. 18), *Public Notice*, 14 FCC Rcd 605 at Attachment C, 660 (1999) ("*Auction No. 18 Winning Bidders Public Notice*").

² BEA 053E (Pittsburgh, PA-WV), BEA 067E (Indianapolis, IN-IL), BEA 099E (Kansas City, MO-KS), BEA 124E (Tulsa, OK-KS), BEA 125E (Oklahoma City, OK), BEA 129E (San Angelo, TX), BEA 132E (Corpus Christi, TX), BEA 133E (McAllen-Edinburg-Mission, TX), BEA 134E (San Antonio, TX), and BEA 135E (Odessa-Midland, TX). *Auction No. 18 Winning Bidders Public Notice*, 14 FCC Rcd at Attachment A, 626, 629, 637, 643-45; Phase II 220 MHz Service Auction Closes: Winning Bidders In the Auction of 225 Licenses in the Phase II 220 MHz Service, Report No. AUC-24-E (Auction No. 24), *Public Notice*, 14 FCC Rcd 11218 at Attachment D, 11240 (1999) ("*Auction No. 24 Winning Bidders Public Notice*").

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the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the subsequent winning bid.³ If a high bid is withdrawn on a license that remains unsold at the close of the auction, the withdrawing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 upfront 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

Under the Commission's rules, a bidder who fails to remit the required down or final payment for a license for which it was the high bidder is subject to a default payment.⁸ The default payment has two components. The first component is the difference between the bidder's net defaulted bid and the subsequent net winning bid, or the difference between the bidder's gross defaulted bid and the subsequent gross winning bid, whichever is less, the next time the license is offered by the Commission (so long as the subsequent winning bid is less than the defaulted bid).⁹ The second component of the default payment is an additional payment equal to three percent (3%) of the defaulter's bid, or the subsequent winning bid, whichever is less.¹⁰ If either bid amount is subject to a bidding credit, the three percent (3%) will be calculated using the same bid amounts and basis (net or gross bids) as in the first component of the default payment.¹¹ In the event that the subsequent winning bid is greater than or equal to the defaulted bid, the total default payment is equal to three percent of the defaulted bid.¹²

With respect to Rush's bid withdrawals of three high bids in Auction No. 18 on licenses BEA 080E, BEA 081E, and BEA 085E, the Commission previously deducted interim bid withdrawal

³ 47 C.F.R. § 1.2104(g)(1) (1998).

⁴ 47 C.F.R. § 1.2104(g)(1); *Auction No. 18 Winning Bidders Public Notice*, 14 FCC Rcd at 608, Attachment C (identifies bidders that withdrew bids in Auction No. 18 and states the interim three percent bid withdrawal payment).

⁵ *See* 47 C.F.R. § 1.2106(e) (1998); *Auction No. 18 Winning Bidders Public Notice*, 14 FCC Rcd at 608.

⁶ 47 C.F.R. § 1.2104(g)(1) (1998).

⁷ *Id.*

⁸ 47 C.F.R. §§ 1.2104(g)(2), 1.2109(b) (1998).

⁹ 47 C.F.R. § 1.2104(g)(2).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

payments totaling \$281.00 from the funds on deposit with the Commission.¹³ As shown in Attachment A, in Auction No. 24, the subsequent auction of the three licenses, the winning bid amounts for licenses BEA 080E and BEA 081E were each greater than Rush's withdrawn bids on these licenses and the winning bid amount of \$3,330.00 for license BEA 085E was less than Rush's withdrawn bid amount of \$4,810.00.¹⁴ Therefore, in accordance with Section 1.2104 of the Commission's rules,¹⁵ no final bid withdrawal payments are due for licenses BEA 080E and BEA 081E, and the Commission assesses a final bid withdrawal payment of \$1,510.00 in connection with license BEA 085E.

With respect to Rush's default on licenses BEA 053E, BEA 067E, BEA 099E, BEA 124E, BEA 125E, BEA 129E, BEA 132E, BEA 133E, BEA 134E, and BEA 135E, as shown in Attachment B, the final winning bid amounts for two of the ten licenses were each less than the defaulted bid amounts and the final winning bid for the remaining eight licenses were each greater than the defaulted bid amounts.¹⁶ The cumulative sum of the final default payments is \$3,526.00 as shown below and in Attachment B to this letter and explained below.¹⁷ For each license, the first portion of the default payment represents the total difference between Rush's defaulted winning bid and the amount of the winning bid in Auction No. 24. The cumulative sum of these differences is \$1,625.00.

Pittsburgh, PA-WV	BEA053E	N/A
Indianapolis, IN-IL	BEA 067E	N/A
Kansas City, MO-KS	BEA 099E	\$1,300.00
Tulsa, OK	BEA 124E	\$ 325.00
Oklahoma City, OK	BEA 125E	N/A
San Angelo, TX	BEA 129E	N/A
Corpus Christi, TX	BEA 132E	N/A
McAllen, TX	BEA 133E	N/A
San Antonio, TX	BEA 134E	N/A
Odessa-Midland, TX	BEA 135E	N/A
Total		\$1,625.00

¹³ *Auction No. 18 Wining Bidders Public Notice*, 14 FCC Rcd at Attachment B, 657 and Attachment C, 660.

¹⁴ *See* Attachment A to this letter (calculates the final bid withdrawal payment).

¹⁵ 47 C.F.R. § 1.2104(g)(1).

¹⁶ *Auction No. 24 Winning Bidders Public Notice*, 14 FCC Rcd 11218 at Attachment D, 11240.

¹⁷ Attachment B calculates the final default payment for each of the licenses; *Auction No. 24 Winning Bidders Public Notice* at Attachment E.

For each license the second portion of the default payment is an additional three percent (3%) of the lower of Rush's defaulted winning bid or the subsequent winning bid for each of the ten defaulted licenses. The cumulative sum of three percent (3%) is \$1901.00.

Pittsburgh, PA-WV	BEA053E	\$ 254.00
Indianapolis, IN-IL	BEA 067E	\$ 187.00
Kansas City, MO-KS	BEA 099E	\$ 273.00
Tulsa, OK	BEA 124E	\$ 205.00
Oklahoma City, OK	BEA 125E	\$ 215.00
San Angelo, TX	BEA 129E	\$ 49.00
Corpus Christi, TX	BEA 132E	\$ 109.00
McAllen, TX	BEA 133E	\$ 51.00
San Antonio, TX	BEA 134E	\$ 507.00
Odessa-Midland, TX	BEA 135E	\$ 51.00
Total		\$1,901.00

The sum of the ten separate default payment obligations \$3,526.00, as shown below:

Sum of Differences	\$1,625.00
Sum of 3%	\$1,901.00
Total Default Payments	\$3,526.00

Thus, the cumulative sum of Rush's final bid withdrawal and default payments is \$5,036.00 (\$1,510.00 + \$3,526.00). After applying the interim default payments of \$281.00 and the down payment of \$12,987.00, no outstanding balance is owed to the Commission.¹⁸ Accordingly, the Commission is prepared to refund the payor(s) of record the \$8,232.00 remaining funds on deposit with the Commission. To obtain a refund, the payor(s) of record¹⁹ must submit a request(s) in accordance with the instructions set forth in Attachment C. If you have any additional questions or require further information, please contact Robert B. Krinsky in the Auctions and Industry Analysis Division at (202) 419-0660.

¹⁸ 47 C.F.R. § 1.2104(g)(2).

¹⁹ See Entertainment Unlimited, Inc., Request for Refund of Late Payment Fees for PCS Licenses Purchased in Auction No. 22, *Memorandum Opinion and Order*, 16 FCC Rcd. 10,030 (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).

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 of the Commission's Rules, 47 C.F.R. § 1.2104(g), Rush IS ASSESSED a final withdrawal payment in the amount of \$1,510.00 for license BEA 085E as computed in Attachment A.

IT IS FURTHER ORDERED that no final withdrawal payments are due on licenses BEA 080E and BEA 081E.

IT IS FURTHER ORDERED that Rush IS ASSESSED a final default payment in the amount of \$254.00 for license BEA 053E, \$187.00 for license BEA 067E, \$1,573.00 for license BEA 099E, \$530.00 for license BEA 124E, \$215.00 for license BEA 125E, \$49.00 for license BEA 129E, \$109.00 for license BEA 132E, \$51.00 for license BEA 133E, \$507.00 for license BEA 134E, and \$51.00 for license BEA 135E as computed in Attachment B.

IT IS FURTHER ORDERED, that, pursuant to 47 C.F.R. §§ 1.2104 and 1.2106, the sum of Rush's interim bid withdrawal payments of \$281.00 and Rush's down payment of \$12,987.00 will be applied towards the sum of the final bid withdrawal and final default payments of \$5,036.00 from Auction No. 18, leaving Rush with a total balance on deposit with the Commission in the amount of \$8,232.00.

IT IS FURTHER ORDERED that to obtain a refund in the amount of \$8,232.00, the payor(s) of record must submit a request(s) in accordance with the instructions set forth in Attachment C.

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

ATTACHMENT A

**Phase II 220 MHz Service Spectrum License Auction
 Multi-Auction Bid Withdrawal Payment Report**

License Number	Market Description	AUCTION 18, Rush's Withdrawn Gross Bid Amount	AUCTION 18, Rush's Withdrawn Net Bid Amount	AUCTION 24, Intek License Acquisition Corp.'s Gross Bid Amount	AUCTION 24, Intek License Acquisition Corp.'s Net Winning Bid Amount	Rush's Final Bid Withdrawal Payment (Difference between the Auction 18 and Auction 24 Net Bids)	Rush's Interim Withdrawal Payment (3% of withdrawn net bid)
BEA 080E	Mobile, AL	\$4,100.00	\$2,665.00	\$6,500.00	\$6,500.00	0.00	\$80.00
BEA 081E	Pensacola, FL	\$2,900.00	\$1,885.00	\$6,500.00	\$6,500.00	0.00	\$57.00
BEA 085E	Lafayette, LA	\$7,400.00	\$4,810.00	\$3,300.00	\$3,300.00	\$1,510.00	\$144.00

ATTACHMENT B

**Phase II 220 MHz Service Spectrum License Auction
 Multi-Auction Default Payment Report**

License Number	Market	AUCTION 18 Rush's Defaulted Gross Bid	AUCTION 18 Rush's Defaulted Net Bid	AUCTION 24 Final Gross Bid	AUCTION 24 Final Net Bid	Lower Difference	3% Payment	Final Default Payment	AUCTION 24 Winning Bidder
BEA 053E	Pittsburg, PA-WV	\$13,000.00	\$8,450.00	\$17,000.00	\$11,050.00	\$0.00	\$254.00	\$254.00	Data Radio Management Co.
BEA 067E	Indiana- polis, IN- IL	\$9,600.00	\$6,240.00	\$13,000.00	\$13,000.00	\$0.00	\$187.00	\$187.00	Intek License Acquisition Corp.
BEA 099E	Kansas City, MO- KS	\$16,000.00	\$10,400.00	\$14,000.00	\$9,100.00	\$1,300.00	\$273.00	\$1,573.00	Data Radio Management Co.
BEA 124E	Tulsa, OK-KS	\$11,000.00	\$7,150.00	\$10,500.00	\$6,825.00	\$325.00	\$205.00	\$530.00	Rush Network Co.
BEA 125E	Oklahoma City, OK	\$11,000.00	\$7,150.00	\$13,000.00	\$8,450.00	\$0.00	\$215.00	\$215.00	Data Radio Management Co.

ATTACHMENT B (continued)

Phase II 220 MHz Service Spectrum License Auction

Multi-Auction Default Payment Report

License Number	Market	AUCTION 18 Rush's Defaulted Gross Bid	AUCTION 18 Rush's Defaulted Net Bid	AUCTION 24 Final Gross Bid	AUCTION 24 Final Net Bid	Lower Difference	3% Payment	Final Default Payment	AUCTION 24 Winning Bidder
BEA 129E	San Angelo, TX	\$2,500.00	\$1,625.00	\$2,900.00	\$1,885.00	\$0.00	\$49.00	\$49.00	Warren C. Havens
BEA 132E	Corpus Christi, TX	\$5,600.00	\$3,640.00	\$6,200.00	\$6,200.00	\$0.00	\$109.00	\$109.00	Intek License Acquisition Corp.
BEA 133E	McAllen, TX	\$2,600.00	\$1,690.00	\$2,600.00	\$1,690.00	\$0.00	\$51.00	\$51.00	Rush Network Co.
BEA 134E	San Antonio, TX	\$26,000.00	\$16,900.00	\$27,000.00	\$27,000.00	\$0.00	\$507.00	\$507.00	Intek License Acquisition Corp
BEA 135E	Odessa-Midland, TX	\$2,600.00	\$1,690.00	\$2,900.000	\$1,885.00	\$0.00	\$51.00	\$51.00	Warren C. Havens

Sum of Final Default Payments
\$3,526.00

ATTACHMENT C

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
FCC Registration Number (FRN)
Taxpayer Identification Number (see below)
Correspondent Bank (if applicable)
ABA Number
Account Number

Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse funds. Please include your TIN and a copy of this letter. This information should be sent to the Auctions Accounting Group:

Federal Communications Commission
Auctions Accounting Group
Attn: 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.