



Federal Communications Commission
Washington, D.C. 20554

DA 02-493

March 4, 2002

Ms. Sabrina Cruz-Sablan, President
Communications Pacific, Inc.
1700 Route 16, Suite 107
Harmon, Guam 96912

Communications Pacific, Inc.
Gualo Rai Center Bldg., Suite 102
P.O. Box 3405 CK
Saipan, MP 96950

Re: Final Withdrawal and Default Payments for Auction No. 16

Dear Ms. Cruz-Sablan:

This letter sets forth the final default payment obligations of Communications Pacific, Inc. ("CommPac") resulting from its failure to remit the required final payment on license EA 173C for which it was the successful high bidder in the 800 MHz Specialized Mobile Radio Service ("SMR") Phase 1 (Upper 10 MHz Block) Auction ("Auction No. 16"). This letter also sets forth the final withdrawal payment obligations of CommPac resulting from its withdrawal of a high bid for license EA 173B in Auction No. 16.¹ Additionally, we deny CommPac's request for reimbursement of its initial default payment on license EA 173C.²

1. Background

On December 8, 1997, the Federal Communications Commission ("Commission") completed Auction No. 16.³ During Auction No. 16, CommPac withdrew a bid of \$748,000.00 (net bid \$486,200.00) on license EA 173B.⁴ The license remained unsold at the close of the auction. CommPac was also the high bidder for license EA 173C with a bid of \$736,000.00 (net bid \$478,000.00).⁵ After close of the auction, CommPac defaulted on its final payment obligation with respect to license EA 173C. On July 11, 2000, the Commercial Wireless Division, Wireless Telecommunications Bureau, issued an order assessing an initial withdrawal

¹ Licenses EA 173B and EA 173C are in the Guam-Northern Mariana market.

² Letter from Sabrina Cruz-Sablan, President of Communications Pacific, to William W. Kunze, Deputy Chief, Commercial Wireless Division, Federal Communications Commission, dated May 8, 2001.

³ 800 MHz SMR Auction Closes Winning Bidders In The Auction of 525 Specialized Mobile Radio Licenses, Report No. AUC-97-16-G (Auction No. 16), *Public Notice*, 12 FCC Rcd. 20,417 (1997) ("*Auction 16 Closing PN*").

⁴ *Id.*, Attachment C: "Withdrawal Payment Report."

⁵ *Auction 16 Closing PN*, 12 FCC Rcd. 20,417, Attachment A: "Round Results, High Bids," p. 25 of 26.

payment for license EA 173B in the amount of \$14,586.00 and an initial default payment for license EA 173C in the amount of \$14,352.00.⁶

The 800 MHz SMR General Category Service Auction (“Auction No. 34”),⁷ the subsequent auction for the licenses on which CommPac withdrew a bid and defaulted on its final payment obligation, has closed.⁸ The winning bid for license EA 173B was \$113,000.00 (net bid \$84,750.00) and the winning bid for license EA 173C was \$196,000.00 (net bid \$147,000.00).⁹

2. Discussion

Pursuant to 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.¹⁰ 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.¹¹ This payment amount is deducted from any up-front payments or down payments the bidder has deposited with the Commission.¹² 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, if appropriate, the interim three percent (3%) payment will be refunded.¹³ If, in a subsequent auction, the winning bid for that license is less than the bidder’s withdrawn 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 subsequent net winning bid, or the difference between the bidder’s gross withdrawn bid and the subsequent gross winning bid, whichever is less.¹⁴

⁶ In The Matter Of Communications Pacific, Inc., Conditional Grantee For License EA 173C (Guam-Northern Mariana), Auction No. 16, *Order*, 15 FCC Rcd. 11,774, 11,776 ¶ 8 (2000) (“*Initial Default Payment Order*”).

⁷ 800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes, *Public Notice*, DA 00-2037 (rel. Sept. 6, 2000) (“*Auction No. 34 Closing PN*”).

⁸ *Id.*, Attachment A “Round Results, High Bids,” p. 50 of 50.

⁹ *Id.*

¹⁰ 47 C.F.R. § 1.2104(g)(1) (1996).

¹¹ *Id.*

¹² 47 C.F.R. § 1.2106(e) (1996).

¹³ 47 C.F.R. § 1.2104(g)(1) (1996).

¹⁴ *Id.*

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.¹⁵ Each default payment is comprised of two parts. The first component is the difference between the bidder's net defaulted bid and the net winning bid or the difference between the bidder's gross withdrawn 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).¹⁶ The second component is equal to three percent (3%) of the defaulter's bid, or the subsequent winning bid, whichever is less.¹⁷ 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.¹⁸ 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.¹⁹

The winning bid in the subsequent auction for license EA 173B was less than CommPac's withdrawn bid on license EA 173B.²⁰ The winning bid for license EA 173C was also less than CommPac's winning bid on license EA 173C.²¹ Accordingly, in accordance with Section 1.2104 of the Commission's rules, CommPac is assessed a final withdrawal payment for license EA 173B in the amount of \$401,450.00 and a final default payment for license EA 173C in the amount of \$335,410.00. CommPac's final withdrawal and default payments, combined, total \$736,860.00.²²

The Commission has previously deducted the interim withdrawal and default payments totaling \$28,938.00 from the \$110,266.00 CommPac had on deposit with the Commission leaving a balance of \$81,358 on deposit with the Commission.²³ The initial withdrawal and default payment and remaining funds on deposit with the Commission will be applied towards the total amount due leaving a balance due of \$626,564.00 ($\$736,860.00 - \$28,938.00 - \$81,358.00 = \$626,564.00$).

¹⁵ 47 C.F.R. §§ 1.2109(b), 1.2104(g)(2) (1996).

¹⁶ 47 C.F.R. § 1.2104(g)(2).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Auction No. 34 Closing PN*, Attachment E: Multi-Auction Withdrawal Payment Report.

²¹ *Id.*, Attachment D: Default Payment Report.

²² Attachment A to this Order, Auction Report; *see also Auction No. 34 Closing PN*.

²³ *Initial Default Payment Order*, 15 FCC Rcd. at 11,776 ¶ 6.

As a result, CommPac is in debt to the United States in the amount of \$626,564.00, 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. CommPac, the debtor, may avoid payment of the interest if it tenders to the Commission full payment within 30 days of the date of the 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.

3. 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), CommPac IS ASSESSED a final withdrawal payment of \$401,450.00 as a result of CommPac's withdrawal of its bid on license EA 173B and a final default payment of \$335,410.00 as a result of CommPac's failure to meet its payment obligations on license EA 173C, as computed in Attachment A.

IT IS FURTHER ORDERED, that CommPac's initial withdrawal and default payments totaling \$28,938.00 and the remaining amount of \$81,358.00 on deposit with the Commission will be applied towards the sum of the final withdrawal and default payments for licensees EA 173B and EA 173C, leaving CommPac with a debt to the Commission of \$626,564.00.

It is FURTHER ORDERED that CommPac's debt of \$626,564.00 be paid 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,

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

cc: Johnny G. Sablan
P.O. Box 1983
Hagatna, Guam 96932

Angelo D. Cruz
P.O. Box 22891
GMF, Guam 96921

ATTACHMENT B

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

PAYMENT INSTRUCTIONS

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”

TAXPAYER IDENTIFICATION NO. (same as FCC Form 159, Block 12)

PAYMENT TYPE CODE (enter “ADFT”) same as FCC Form 159, Block 24A

FCC CODE 1 (same as FCC Form 159, Block 28A: (“5 or 10”)

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 ORDER; 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 ORDER. 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.