



Federal Communications Commission  
Washington, D.C. 20554

December 13, 2004

**DA 04-3887**

**Via Certified Mail, Return Receipt Requested**

Dennis L. O'Neill, President  
Milkyway Broadband, LLC  
721 Bell Drive  
DeFuniak Springs, FL 32433

**Re: Final Bid Withdrawal Payment For Auction No. 44**

Dear Mr. O'Neill:

Milkyway Broadband, LLC ("Milkyway Broadband"), a participant in Auction No. 44, withdrew high bids on three licenses in that auction.<sup>1</sup> Auction No. 49, the subsequent auction for the licenses on which Milkyway Broadband withdrew high bids, has closed. As shown on Attachment A, in accordance with the Federal Communication Commission's ("Commission's") rules, we are now able to calculate Milkyway Broadband's final bid withdrawal payment obligations for two of the three withdrawn bids.<sup>2</sup>

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the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the subsequent winning bid. If a high bid is withdrawn on a license that remains unsold at the close of the auction, the withdrawing bidder will be required to make an interim payment equal to three percent (3%) of the net amount of the withdrawn bid.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 If, in a subsequent auction, that license receives a winning bid (or a subsequent withdrawn bid) in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed, and, upon appropriate request, the Commission will refund the interim three percent (3%)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

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<sup>1</sup> Those licenses are: CMA408C (Indiana 6 – Randolph), CMA728C (Puerto Rico 6 – Vieques), and CMA729C (Puerto Rico 7 – Culebra).

<sup>2</sup> License CMA729C (Puerto Rico 7 – Culebra) was not resold during Auction 49. "Lower 700 MHz Band Auction Closes," *Public Notice*, DA 03-1978 (rel. June 19, 2003). Accordingly, the Commission will assess a final withdrawal payment for that license once it receives a final bid. 47 C.F.R. § 1.2104(g)(1).

<sup>3</sup> Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5563 at n. 51 (1994); C.H. PCS, Inc., 11 FCC Rcd 14495 (1996) (requiring a three percent deposit).

<sup>4</sup> 47 C.F.R. § 1.2106(d) and (e).

<sup>5</sup> 47 C.F.R. § 1.2104(g)(1).

auction, the winning bid for that license (or subsequent withdrawn bid) 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 the subsequent net winning bid, or the difference between the bidder's gross withdrawn bid and the subsequent gross winning bid, whichever is less.<sup>6</sup>

As shown in Attachment A, in accordance with Section 1.2104(g)(1), after applying any interim bid withdrawal payments or amounts on deposit with the Commission, Milkyway Broadband has an outstanding balance of \$22,861.00.

Milkyway Broadband is in debt to the United States in the amount of \$22,861.00,<sup>7</sup> 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. Milkyway Broadband, 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.

### 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), Milkyway Broadband, LLC is ASSESSED final bid withdrawal payments as computed in Attachment A.

IT IS FURTHER ORDERED, that, pursuant to 47 C.F.R. §§ 1.2104 and 1.2106, Milkyway Broadband LLC's interim bid withdrawal payments or funds on deposit will be applied towards the sum of the final bid withdrawal payments.

IT IS FURTHER ORDERED that Milkyway Broadband LLC's debt of \$22,861.00 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 after 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.

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<sup>6</sup> 47 C.F.R. § 1.2104(g)(1).  
<sup>7</sup> See Attachments A and B.

*Mr. Dennis L. O'Neill*  
*December 13, 2004*

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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,

Rita Cookmeyer  
Financial Policy Analyst  
Auctions and Spectrum Access Division  
Wireless Telecommunications Bureau

cc: Thomas Gutierrez

**ATTACHMENT A**

**Multi-Auction Bid Withdrawal Payment Report**

License Number Frequency block	Withdrawn Gross Bids Auction #44	Withdrawn Net Bids Auction #44	Reauction Gross Bids Auction #49	Reauction Net Bids Auction #49	Final Bid Withdrawal Payment
CMA408C	\$65,000.00	\$42,250.00	\$29,000.00	\$18,850.00	\$23,400.00
CMA728C	\$2,600.00	\$1,690.00	\$1,400.00	\$910.00	\$780.00

Sum of Final Bid Withdrawal Payments	\$24,180.00
Less Total of Interim Withdrawal Payments and Amounts on Deposit	\$1,319.00
<b>Outstanding Balance Due on Final Withdrawal Payments</b>	<b>\$22,861.00</b>

## **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

500 Ross Street

Pittsburgh, PA 15262

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: ("44"))

PAYOR NAME (same as FCC Form 159, Block 2)

LOCKBOX No.: 358850

A completed FCC Remittance Advice Form (FCC Form 159, Version 2/03) 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, Office of the Managing Director, Financial Operations Center, Auctions Accounting Group, at (202) 418-0578.