



Federal Communications Commission
Washington, D.C. 20554

October 31, 2006

DA 06- 2177

Via Certified Mail, Return Receipt Requested

Viacel Corporation
Attn: Robert T. Miller, President
531 Main Street
Suite 1212
New York, NY 10044

Re: Final Bid Withdrawal Payment For Auction No. 49

Dear Mr. Miller:

Viacel Corporation ("Viacel"), a participant in Auction No. 49, withdrew high bids on six licenses in that auction. Auction No. 60, the subsequent auction for four of the licenses on which Viacel withdrew high bids, has closed.¹ As shown on Attachment A, in accordance with the Federal Communications Commission's ("Commission's") rules, we are now able to calculate Viacel's final bid withdrawal payment obligation for the four licenses.

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the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the subsequent winning bid. If a high bid is withdrawn on a license that remains unsold at the close of the auction, the withdrawing bidder will be required to make an interim payment equal to three percent (3%) of the net amount of the withdrawn bid.² This payment amount is deducted from any upfront payments or down payments deposited for this bidder's account with the Commission.³ If, in a subsequent auction, that license receives a winning bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed, and, upon appropriate request, the Commission will refund the interim three percent (3%) payment.⁴ If in a subsequent auction, the winning bid for that license is less than the bidder's withdrawn amount, then the bidder will be required to make a

¹ The four licenses are: CMA169C (Mayaguez, PR), CMA202C (Arecibo, PR), CMA723C (Puerto Rico 1 – Rincón), and CMA727C (Puerto Rico5 – Celba). Viacel also withdrew bids on two other licenses, CMA204C (Aguadilla, PR) and CMA728C (Puerto Rico 6 - Vieques). One license, CMA728C, was resold during Auction No. 49 for a higher bid and the other license, CMA204C, was resold for less. Accordingly the Commission assessed a final withdrawal payment for CMA204C totaling \$650.00. "Lower 700 MHz Band Auction Closes," *Public Notice*, DA 03-1978, 18 FCC Rcd. 11,873 (rel. June 18, 2003).

² 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).

³ 47 C.F.R. § 1.2106(d) and (e).

⁴ 47 C.F.R. § 1.2104(g)(1).

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.⁵

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, Viacel has a refund due of \$2,050.00.

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), Viacel 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, Viacel'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, in accordance with Section 1.2104 of the Commission's rules, the Commission is prepared to refund to the payor(s) of record, the remaining funds withheld in connection with Viacel's withdrawal referenced above. To obtain a refund, the payor(s) of record⁶ must submit a request(s) in accordance with the instructions set forth in Attachment B.

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

⁵ 47 C.F.R. § 1.2104(g)(1).

⁶ 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).

ATTACHMENT A

**Multi-Auction
Bid Withdrawal Payment/Refund Report**

License Number Frequency Block	Withdrawn Gross Bid Auction # 49	Withdrawn Net Bid Auction # 49	Re-auction Gross Bid Auction # 60	Re-auction Net Bid Auction # 60	3% Deposit Withheld from Auction # 49	Final Bid Withdrawal Payment	Refund Due
CMA169C	\$59,000.00	\$38,350.00	\$200,000.00	\$130,000.00	\$1,151.00	\$0.00	\$1,151.00
CMA202C	\$32,000.00	\$20,800.00	\$174,000.00	\$113,100.00	\$624.00	\$0.00	\$624.00
CMA723C	\$4,300.00	\$2,795.00	\$23,000.00	\$14,950.00	\$84.00	\$0.00	\$84.00
CMA727C	\$9,800.00	\$6,370.00	\$57,000.00	\$42,750.00	\$191.00	\$0.00	\$191.00

Total Refund Due	\$2,050.00
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ATTACHMENT B

The Commission will make refunds upon compliance with the following procedures:

- For each payor of record, submit an Automated Clearing House Vendor/Miscellaneous Payment Enrollment Form (“ACH form”) (see sample attached).⁷ You may obtain additional copies of this form at <http://www.fms.treas.gov/pdf/3881.pdf>.

The ACH form may be either faxed or mailed to the Commission. The fax number is: (202) 418-2843. The mailing address is: Federal Communications Commission, Office of the Managing Director, Attention: Auctions Accounting Group, Room 1-C864, 445 12th St. SW, Washington, D.C. 20554. If you have any questions concerning the completion of this form, please contact Gail Glasser at (202) 418-0578.

- Submit a letter (along with the ACH form) signed by the payor of record, requesting a refund. The Commission will calculate the amount of the applicable refund.

Refunds will be processed within approximately two weeks of the Commission’s receipt of the ACH form and accompanying letter from the payor of record.

⁷ Refunds will be processed via ACH credits. ACH is a domestic funds transfer system providing an electronic parallel to the Federal Reserve check clearing system. ACH is governed by the Rules of the National Automated Clearing House Association. Generally, speaking, an ACH is an instrument for moving money electronically from one participating financial institution to another.