



Federal Communications Commission
Washington, D.C. 20554

DA 07-1744

April 16, 2007

Via Certified Mail, Return Receipt Requested

Kemp Communications, Inc.
Attn: Will Kemp, President
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89109

Re: Final Bid Withdrawal Payments For Auction Nos. 37 and 62

Dear Mr. Kemp:

Kemp Communications, Inc. ("Kemp"), a participant in Auction Nos. 37 and 62, withdrew its high bids on FM broadcast construction permit FM318-C2 in both of those auctions.¹ Auction No. 68, the subsequent auction with a winning bid for the permit on which Kemp withdrew its high bids in Auction Nos. 37 and 62, has closed. As shown on Attachment A, in accordance with the Federal Communications Commission's ("Commission's") rules, we are now able to calculate Kemp's final bid withdrawal payment obligations.

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the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the subsequent winning bid. If a high bid is withdrawn on a license or permit that remains unsold at the close of the auction, the withdrawing bidder will be required to make an interim payment equal to three percent (3%) of the net amount of the withdrawn bid.² This payment amount is deducted from any upfront payments or down payments deposited for this bidder's account with the Commission.³ If, in a subsequent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,

¹ Kemp also withdrew bids on four other permits, FM015-C3, FM020-A, FM081-A and FM234-C1, in Auction No. 37. Permit FM234-C1 received a winning bid in Auction No. 37 for an amount equal to Kemp's bid, and, therefore, the Commission assessed no bid withdrawal payment for that permit. *See*, "FM Broadcast Construction Permits Auction Closes," *Public Notice*, DA 04-3694, 20 FCC Rcd 1021 (WTB/MB) 2004. Permit FM015-C3 was resold during Auction No. 62 for a higher amount and, therefore, the Commission assessed no bid withdrawal payment for that permit. Permits FM020-A and FM081-A were resold during Auction No. 62 for a lesser amount. Accordingly, the Commission assessed final bid withdrawal payments for those permits. *See* Letter to Kemp Communications, Inc., DA 06-2154, 21 FCC Rcd 12604 (Rel. October 31, 2006).

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).

that license or permit 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 or permit 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.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, Kemp has a refund due of \$42,878.00.

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), Kemp Communications, Inc. 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, Kemp Communications, Inc.'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 Kemp Communications, Inc.'s withdrawals 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.

⁴ 47 C.F.R. § 1.2104(g)(1).

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).

IT IS FURTHER ORDERED that this letter shall be sent to the applicant and its representatives by certified mail. 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

ATTACHMENT A

Multi-Auction Bid Withdrawal Payment/Refund Report

Permit Number	Withdrawn Gross Bid Auction No.	Withdrawn Net Bid Auction No.	Re-auction Gross Bid Auction No.	Re-auction Net Bid Auction No.	3% Deposit Withheld from Auction No.	Final Bid Withdrawal Payment
FM318-C2	37	37	68	68	37	
	\$875,000.00	\$656,250.00	\$892,000.00	\$579,800.00	\$19,688.00	\$0.00

Permit Number	Withdrawn Gross Bid Auction No.	Withdrawn Net Bid Auction No.	Re-auction Gross Bid Auction No.	Re-auction Net Bid Auction No.	3% Deposit Withheld from Auction No.	Final Bid Withdrawal Payment
FM318-C2	62	62	68	68	62	
	\$773,000.00	\$773,000.00	\$892,000.00	\$579,800.00	\$23,190.00	\$0.00

Total Final Bid Withdrawal Obligations for FM318-C2	\$0.00
Less Total of Interim Payments	\$42,878.00
Total Refund Due for FM318-C2	\$42,878.00

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.

- FCC-

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.