



Federal Communications Commission
Washington, D.C. 20554

April 22, 2010

DA 10 -671

Robert W. Card
Lazy Eight, Inc.
2122 Park Street
St. Petersburg, FL 33710

Re: Lazy Eight, Inc. -- Eligibility for Refund of Amount on Deposit for Auction 6

Dear Mr. Card:

By this letter, we notify Lazy Eight, Inc. (Lazy Eight) that it is eligible to seek a refund of the amount it had deposited with the Commission in connection with its participation in the Federal Communications Commission's auction of Multipoint Distribution Service licenses (Auction 6).

Lazy Eight, a participant in Auction 6, was the winning bidder for a license covering the Hilo, HI Basic Trading Area (BTA 190),¹ and filed a long-form application for the license.² Lazy Eight's long form application was not immediately acted upon and remained under review within the Commission's Mass Media Bureau due to outstanding questions and issues raised related to the competitive bidding process. In 2002, the Wireless Telecommunications Bureau assumed responsibility from the Mass Media Bureau for the administration of the Multipoint Distribution Service (MDS) and other related services.³ In 2004, as part of the process of transitioning Broadband Radio Service (BRS) to geographic area licensing, the Commission directed the Wireless Telecommunications Bureau to "dismiss all pending applications to modify MDS and ITFS stations, except for modification applications that could change an applicant's [protected service area], or applications for facilities that would have to be separately applied for under the rules we adopt today."⁴ Subsequently, on September 17, 2004, the long-form application was erroneously dismissed, due to a mistaken belief on the part of Bureau staff that Lazy Eight's long form application fell within the scope of applications that the Commission had directed to be dismissed.⁵

¹ See "Winning Bidders in the Auction of Authorizations to Provide Multipoint Distribution Service in 493 Basic Trading Areas," *Public Notice*, rel. March 29, 1996 (*Auction 6 Closing Public Notice*).

² See FCC File No. 19970616UL. Lazy Eight timely made its first down payment for the license, as required by 47 C.F.R. § 21.955(b).

³ See "Radio Services Transferred from Mass Media Bureau to Wireless Telecommunications Bureau," *Public Notice*, DA 02-638, 17 FCC Rcd 5077 (2002). To better reflect the forward-looking vision for this wireless service, the Commission renamed MDS as the Broadband Radio Service. See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Report and Order and Further Notice of Proposed Rulemaking, WT Docket Nos. 03-66, et al., 19 FCC Rcd 14165 (2004) (*BRS/EBS R&O*).

⁴ See *BRS/EBS R&O*, 19 FCC Rcd at 14191 ¶ 58.

⁵ See Dismissal Letter, Ref. No. 3043501 (Sep. 20, 2004). This letter was mailed to Lazy Eight.

Lazy Eight did not file a petition for reconsideration of that action and has not preserved its rights in any way associated with the application. Accordingly, the dismissal of Lazy Eight's application became final.⁶

Because the Bureau dismissed the long-form application in error prior to making a final determination regarding Lazy Eight's qualifications to become a Commission licensee, Lazy Eight is relieved of any financial obligations arising out of its participation in Auction 6. In particular, Lazy Eight is not in default under the Commission's rules and not liable for any default payment as a result of its participation in Auction 6.⁷

Lazy Eight currently has \$28,560 on deposit with the Commission that it submitted in connection with its participation in Auction 6. Since Lazy Eight is not subject to any further payment obligations with respect to its participation in Auction 6, it may request a refund of that money by following the instructions in Attachment A.

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, Lazy Eight, Inc. may seek a refund of any amounts on deposit with the Commission in connection with Auction 6.

⁶ See 47 U.S.C. § 405; 47 C.F.R. §§ 1.106(f), 1.113(a) and 1.117. On April 24, 2009, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended, the Bureau released a public notice announcing an auction of BRS licenses within the Commission's inventory and seeking comment on competitive bidding procedures to be used in Auction 86. See "Auction of Broadband Radio Service (BRS) Licenses Scheduled for October 27, 2009; Comment Sought on Competitive Bidding Procedures For Auction 86," *Public Notice*, DA 09-843, 24 FCC Rcd 4605 (2009) (*Auction 86 Comment Public Notice*). Neither Lazy Eight nor any other entity objected to inclusion of a Hilo, Hawaii license in the inventory for Auction 86.

⁷ See 47 C.F.R §§ 1.2109 and 1.2104(g)(2).

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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,

Margaret W. Wiener
Chief, Auctions and Spectrum Access Division
Wireless Telecommunications Bureau

Blaise A. Scinto
Chief, Broadband Division
Wireless Telecommunications Bureau

Attachment A – Refund Instructions
ACH Payment Enrollment Form – SF 3881 Form

cc: Marshall Communications

ATTACHMENT A

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

- For each payer of record submit, an Automated Clearing House Vendor/Miscellaneous Payment Enrollment Form (“ACH form”) (see sample attached).⁸ 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 payer 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 payer of record.

⁸ 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.