



Federal Communications Commission
Washington, D.C. 20554

March 23, 2012

DA 12-457

Via Certified Mail, Return Receipt Requested

Scott A. Blank
Senior Vice President
Xanadoo 700 MHz DE, LLC
225 City Line Avenue
Suite 200
Bala Cynwyd, PA 19004

Re: Xanadoo 700 MHz DE, LLC - Eligibility for Refund of Amount on Deposit for Auction 73 for licenses WY-BEA137-A (Lubbock, TX)

Dear Mr. Blank:

By this letter, we notify Xanadoo 700 MHz DE, LLC (“Xanadoo”) of the availability of a refund of funds on deposit with the Federal Communications Commission (“Commission”) in connection with Xanadoo’s participation in the Commission’s auction of 700 MHz licenses (Auction 73).

Xanadoo withdrew provisionally winning bids during Auction 73 for three 700 MHz Band licenses in the following areas: Lubbock, TX (WY-BEA137-A); Steubenville-Weirton, OH-WV (WY-CMA199-B); and Sherman-Denison, TX (WY-CMA292-B). Two of these licenses, Steubenville-Weirton, OH-WV and Sherman-Denison, TX, received subsequent winning bids during Auction 73, and the Commission assessed final withdrawal payments for these licenses from the monies Xanadoo had on deposit in the amounts of \$4,500.00 and \$3,000.00, respectively.¹ The remaining license, Lubbock, TX, remained unsold at the end of Auction 73 and the Commission assessed Xanadoo an interim bid withdrawal payment of \$54,075.00 from the monies it had on deposit.² A new license for the same spectrum was offered in a subsequent auction of 700 MHz Band licenses (Auction 92), and because it received a winning bid,³ the Commission is now able to calculate Xanadoo’s final bid withdrawal payment obligation with respect to the Lubbock, TX license.⁴

Under the Commission’s rules, a bidder that withdraws a provisionally winning 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the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the subsequent winning bid.⁵ Pursuant to the rule in effect at the time of Auction 73, if a provisionally winning bid is withdrawn on a license that remains unsold at the

¹ See “Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73,” *Public Notice*, 23 FCC Rcd 4572 (WTB 2008).

² See *id.*

³ See “Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 92,” *Public Notice*, 26 FCC Rcd 10,494 (WTB 2011).

⁴ See 47 C.F.R. § 1.2104(g)(1).

⁵ *Id.*

close of the auction, the withdrawing bidder will be required to make an interim payment equal to ten percent (10%) of the net amount of the withdrawn bid.⁶ This payment amount is deducted from any upfront payments or down payments deposited for the withdrawing bidder's account with the Commission.⁷ 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 refunds the interim payment.⁸ If, in a subsequent auction, the winning bid for that license is less than the bidder's withdrawn amount, then the bidder is 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.

As shown in Attachment A, in accordance with section 1.2104(g)(1) of the Commission's rules,⁹ because the subsequent winning bid on the Lubbock, TX license exceeded Xanadoo's withdrawn bid, Xanadoo is not liable for a withdrawal payment and the interim withdrawal payment assessed is available for refund. Therefore, in accordance with section 1.2104 of the Commission's rules, the Commission is prepared to refund the payor(s) of record the \$54,075.00 remaining funds on deposit with the Commission. To obtain a refund, the payor(s) of record¹⁰ must submit a request in accordance with the instructions set forth in Attachment B.

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)(1) of the Commission's rules, 47 C.F.R. § 1.2104(g)(1), Xanadoo 700 MHz DE, LLC is ASSESSED a final bid withdrawal payment as computed in Attachment A.

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 Xanadoo 700 MHz DE, LLC's withdrawal referenced above. To obtain a refund, the payor(s) of record must submit a request(s) in accordance with the instructions set forth in Attachment B.

⁶ *Id.*; "Auction of 700 MHz Band Licenses Scheduled for January 24, 2008, Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76," *Public Notice*, 22 FCC Rcd 18,141, 18,211 ¶¶ 267-68 (2007). See also 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 n. 51 (1994).

⁷ See 47 C.F.R. § 1.2106(d) and (e).

⁸ See 47 C.F.R. § 1.2104(g)(1).

⁹ *Id.*

¹⁰ See Entertainment Unlimited, Inc., Request for Refund of Late Payment Fees for PCS Licenses Purchased in Auction 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).

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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,

Gary D. Michaels
Deputy Chief, Auctions and Spectrum Access Division
Wireless Telecommunications Bureau

Attachments

ATTACHMENT A

Multi-Auction Bid Withdrawal Payment/Refund Report

| License Number Frequency Block | Withdrawn Gross Bid Auction 73 | Withdrawn Net Bid Auction 73 | Re-auction Gross Bid Auction 92 | Re-auction Net Bid Auction 92 | 10% Deposit Withheld from Auction 73 | Final Bid Withdrawal Payment |
|---|---|---|--|--|---|---|
| WY-BEA137-A | \$721,000.00 | \$540,750.00 | \$1,915,000.00 | \$1,436,250.00 | \$54,075.00 | \$0.00 |

| | |
|---|--------------------|
| Total Final Bid Withdrawal Obligation for WY-BEA137-A | \$0.00 |
| Total of Interim Withdrawal Payment and Amounts on Deposit | \$54,075.00 |
| Total Refund Due for WY-BEA137-A | \$54,075.00 |

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).¹¹ 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) 418-2980. The mailing address is: Federal Communications Commission, Office of the Managing Director, Attention: Auctions Accounting Group, Room 1-C864, 445 12th Street SW, Washington, DC 20554. If you have 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.

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-

¹¹ 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.