



Federal Communications Commission
Washington, D.C. 20554

April 3, 2012

DA 12-519

Via Certified Mail, Return Receipt Requested

Mr. Michael Huffman
Chief Financial Officer
East Kentucky Network, LLC
101 Technology Drive
Ivel, KY 41642

Re: Final Bid Withdrawal Payment on Auction 73 License WY-CMA681-B

**DO NOT DISCARD THIS IMPORTANT NOTICE
OF A DEMAND FOR PAYMENT
OF A DEBT OWED THE UNITED STATES AND ORDER OF PAYMENT**

Dear Mr. Huffman:

This Order provides notice and demands payment of a debt owed to the United States based on East Kentucky Network, LLC's ("East Kentucky") withdrawal of a provisionally winning bid placed during the course of Auction 73.

East Kentucky Network, LLC withdrew a provisionally winning bid during Auction 73 for a 700 MHz Band license in Lee, Virginia (WY-CMA681-B). Thus, pursuant to the Commission's rules,¹ East Kentucky owes a bid withdrawal payment, which is a debt owed to the United States.² In 2008, the Commission assessed East Kentucky an interim bid withdrawal payment of \$143,400.00 from the monies it had on deposit.³ 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bid,⁴ the Commission is now able to calculate East Kentucky's final bid withdrawal obligation with respect to its withdrawn bid in Auction 73.⁵

¹ See 47 C.F.R. § 1.2104(g)(1).

² See 31 U.S.C. § 3701(b)(1).

³ See Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73, *Public Notice*, 23 FCC Red 4572, 4627, 4637-38 (WTB 2008).

⁴ See Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 92, *Public Notice*, 26 FCC Red 10,494, 10,503 (WTB 2011).

⁵ See 47 C.F.R. § 1.2104(g)(1).

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the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the subsequent winning bid.⁶ Under the rule in effect at the time of Auction 73, if a high bid is withdrawn on a license that remains unsold at the close of the auction, the withdrawing bidder is required to make an interim payment equal to ten percent (10%) of the net amount of the withdrawn bid.⁷ This payment amount is deducted from any upfront payments or down payments deposited for the withdrawing bidder's account with the Commission.⁸ If, in a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 is assessed, and, upon appropriate request, the Commission refunds the interim ten percent (10%) payment.⁹ 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.¹⁰

As shown in Attachment A, in accordance with section 1.2104(g)(1) of the Commission's rules,¹¹ we have completed the final bid withdrawal payment calculation and, after applying any interim bid withdrawal payment or monies East Kentucky has on deposit, East Kentucky owes an outstanding balance of \$1,147,600.00. This debt to the United States is payable in full and without further demand within 30 days of the date of this Order in accordance with the Notice Information provided below and Payment Instructions in Attachment B.

Important Notice Information

The following provides notification of procedures and information required by the Debt Collection Improvement Act of 1996 ("DCIA").¹² The outstanding balance shown in Attachment A is a debt East Kentucky owes to the United States. It is payable in full and without further demand, and payment must be received no later than the payment due date, which is 30 days from the date of this Order ("Due Date").¹³ Any portion of the debt unpaid at the end of the Due Date will be considered delinquent and administrative charges (incurred for processing and handling delinquent debts),¹⁴ interest,¹⁵ and penalties¹⁶ will accrue beginning from that date. Interest accrues at a minimum annual

⁶ *Id.*

⁷ *Id.*; See 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 (WTB 2007).

⁸ See 47 C.F.R. § 1.2104(g)(1), 1.2106(d) and (e).

⁹ See 47 C.F.R. § 1.2104(g)(1).

¹⁰ *Id.*

¹¹ *Id.*

¹² Public Law 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996) *codified in relevant part at* 31 U.S.C. §§ 3716 (administrative offset) and 3717 (interest and penalty on claims); *see also* 47 C.F.R. §§ 1.1911, 1.1912, and 1.1940.

¹³ As noted at Attachment B, if the 30th day falls on a non-business day, payment must be received on the next business day.

¹⁴ 31 U.S.C § 3717(e)(1); 47 C.F.R. § 1.1940(c).

¹⁵ 31 U.S.C. § 3717(b); 47 C.F.R. § 1.1940(b).

rate established annually by the United States Treasury in accordance with 31 U.S.C. § 3717.¹⁷ A penalty of six percent (6%) accrues on any portion of the debt that remains unpaid for more than 90 days from the Due Date.¹⁸ However, the Commission will waive payment of the accrued interest, if the full amount of the debt is paid within 30 days of the Due Date.¹⁹ In addition to these charges, the Commission may initiate administrative offset²⁰ and it may refer the delinquent debt to the United States Treasury or the Department of Justice (“DOJ”) for further collection action.²¹ The United States Treasury will impose an additional administrative collection charge,²² and it may also commence administrative offset.²³ An additional surcharge may be imposed, if DOJ initiates judicial action to recover judgment.²⁴ Furthermore, any portion of the debt that is unpaid after the Due Date is a delinquent debt, which will trigger application of the Commission’s red light procedures at 47 C.F.R. § 1.1910.

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), East Kentucky Network, LLC is ASSESSED a final bid withdrawal payment as computed in Attachment A.

IT IS FURTHER ORDERED that, pursuant to sections 1.2104 and 1.2106 of the Commission’s rules, 47 C.F.R. §§ 1.2104 and 1.2106, East Kentucky Network, LLC’s interim bid withdrawal payment or funds on deposit will be applied towards the sum of the final bid withdrawal payment.

IT IS FURTHER ORDERED that East Kentucky Network, LLC’s debt of \$1,147,600.00 is payable in full and without further demand, and it must be paid within 30 days of the date of this Order (the Due Date), in accordance with the payment instructions in Attachment B, and any portion of the debt unpaid after the Due Date is delinquent, and under 31 U.S.C. § 3717, administrative charges, interest, and penalties will accrue.

¹⁶ 31 U.S.C. § 3717(e); 47 C.F.R. § 1.1940(d).

¹⁷ 47 C.F.R. § 1.1940(b).

¹⁸ 31 U.S.C. § 3717(e)(2); 47 C.F.R. § 1.1940(d).

¹⁹ 31 U.S.C. § 3717(d); 47 C.F.R. § 1.1940(g).

²⁰ 47 C.F.R. § 1.1912. Under this provision, the Commission may refer the debt to the United States Treasury for centralized administrative offset whereby, subject to certain exceptions, money otherwise payable to the debtor by the United States government may be used to satisfy the debt. In addition, “unless otherwise prohibited by law,” the Commission may conduct non-centralized, ad hoc case-by-case offsets when centralized offset is unavailable or inappropriate. 47 C.F.R. § 1.1912(c).

²¹ 31 U.S.C. §§ 3711(g); 3716; 28 U.S.C. § 3001, *et seq.*; 47 C.F.R. § 1.1912. Transfer may be made without further notice at any time after the Due Date.

²² 31 U.S.C. § 3717(e); 31 C.F.R. § 285.12(j).

²³ 31 U.S.C. § 3716; 47 C.F.R. § 1.1912(b) (mandatory centralized administrative offset).

²⁴ 28 U.S.C. § 3011.

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IT IS FURTHER ORDERED that this Order and a FCC Remittance Advice Form (FCC Form 159, Version 2/03) shall be sent to East Kentucky Network, LLC 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 Report

License Number Frequency Block	Withdrawn Gross Bid Auction No. 73	Withdrawn Net Bid Auction No. 73	Re-auction Gross Bid Auction No. 92	Re-auction Net Bid Auction No. 92	Difference Between Withdrawn Bid Amount and Final Bid Amount in Subsequent Auction	Final Withdrawal Payment
WY-CMA681-B	\$1,434,000.00	\$1,434,000.00	\$143,000.00	\$107,250.00	\$1,291,000.00	\$1,291,000.00

Final Bid Withdrawal Payment	\$1,291,000.00
Less Total of Interim Withdrawal Payment and Amounts on Deposit	\$143,400.00
Outstanding Balance Due on Final Withdrawal Payment	\$1,147,600.00

ATTACHMENT B

Payment Instructions

The following information is being provided to assist you in making your payment.

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 6:00 PM Eastern Time, no later than thirty days from the date of this 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: **021030004**

Receiving Bank: **TREAS NYC**

33 Liberty Street
New York, NY 10045

ACCOUNT NAME: **FCC**

ACCOUNT NUMBER: **27000001**

OBI Field: (Skip one space between each information item) "AUCTIONPAY"

APPLICANT FRN: (same as FCC Form 159, block 21)

PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: "AWLD")

FCC CODE 1: (same as FCC Form 159, Block 28A: ("73"))

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

LOCKBOX NO.: #**979088**

Please fax a completed remittance advice (Form 159) to U.S. Bank, St. Louis, Missouri at (314) 418-4232 **at least one hour before initiating the wire transfer** (but on the same business day).

For questions regarding the submission of payment, and the FCC Form 159, contact Gail Glasser, Office of the Managing Director, Financial Operations, Auctions Accounting Group, at (202) 418-0578.