



Federal Communications Commission
Washington, D.C. 20554

June 19, 2012

DA 12-967

Via Certified Mail, Return Receipt Requested

David Miller
5001 CR 1430
Lubbock, TX 79407

**Re: David Miller - Eligibility for Refund of Amount on Deposit for Bid Withdrawal
Payment on Auction 73 License WY-BEA052-A (Wheeling, WV-OH)**

Dear Mr. Miller:

By this letter, we notify you of the availability of a refund of funds on deposit with the Federal Communications Commission ("Commission") in connection with your participation in the Commission's auction of 700 MHz licenses (Auction 73).

You withdrew a provisionally winning bid during Auction 73 for a 700 MHz Band license in the Wheeling, WV-OH (WY-BEA052-A) area.¹ In 2008, the Commission assessed an interim bid withdrawal payment of \$11,400.00 from the monies you had on deposit.² The Wheeling, WV-OH (WY-BEA052-A) area license 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 your final bid withdrawal payment obligation.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the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the subsequent winning bid.⁵ Pursuant to the rule in effect at the time of Auction 73, if a provisionally winning bid is withdrawn on a license that remains unsold at the close of the auction, the withdrawing bidder is required to make an interim payment equal to ten

¹ See Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73, *Public Notice*, 23 FCC Rcd 4572, 4664 (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, 10,503 (WTB 2011).

⁴ See 47 C.F.R. § 1.2104(g)(1).

⁵ *Id.*

percent (10%) of the net amount of the withdrawn bid.⁶ This payment amount is deducted from any upfront payments or down payments deposited for the withdrawing bidder's account with the Commission.⁷ If, in a subsequent auction, that license receives a winning bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment is assessed, and, upon appropriate request, the Commission refunds the interim payment.⁸ If, in a subsequent auction, the winning bid for that license is less than the bidder's withdrawn amount, then the bidder is required to make a final bid withdrawal payment equal to either the difference between the bidder's net withdrawn bid and the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.⁹

As shown in Attachment A, in accordance with section 1.2104(g)(1) of the Commission's rules,¹⁰ because the subsequent winning bid on the Wheeling, WV-OH license exceeded your withdrawn bid, you are 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 \$11,400.00 remaining funds on deposit with the Commission. To obtain a refund, the payor(s) of record¹¹ 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), David Miller 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, 47 C.F.R. § 1.2104, the Commission is prepared to refund to the payor(s) of record, the remaining funds withheld in connection with David Miller'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 47 C.F.R. § 1.2104(g)(1) (2008); *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 (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 *Id.*

¹¹ *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,

Margaret W. Wiener
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-BEA052-A	\$152,000.00	\$114,000.00	\$427,000.00	\$320,250.00	\$11,400.00	\$0.00

Total Final Bid Withdrawal Obligation for WY-BEA052-A	\$0.00
Total of Interim Withdrawal Payment and Amounts on Deposit	\$11,400.00
Total Refund Available for WY-BEA052-A	\$11,400.00

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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).¹² 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.

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¹² 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.