

June 12, 1998

Mr. Tyrone Brown  
Senior Vice President, ClearComm, L.P.  
1750 K Street, N.W.  
Washington, D.C. 20006

Re: Reduction of Bid Withdrawal Payments for License B324

Dear Mr. Brown:

This letter responds to the May 19, 1998 request of ClearComm, L.P. for further reduction of an outstanding bid withdrawal payment assessed during the broadband Personal Communications Services (PCS) C block auction.<sup>1</sup> ClearComm (then doing business as PCS 2000) submitted an erroneous bid for the Norfolk, Virginia license B324 during round 11 of the auction, but notified the Commission of the mistaken bid prior to round 12. ClearComm withdrew the bid in the next round.<sup>2</sup>

In accordance with the Commission's May 3, 1996 *Order* in Atlanta Trunking,<sup>3</sup> the Bureau granted a partial waiver of Section 24.704(a)(1) of the Commission's Rules to ClearComm, resulting in a reduction of the required bid withdrawal payment to two times the minimum bid increment, or \$3,273,374.00. The Bureau noted in its December 20, 1996 *Order* assessing the payment against ClearComm that no intentional conduct led to the erroneous bid and that

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<sup>1</sup>Letter of Tyrone Brown, Senior Vice-President of ClearComm, L.P. to Dan Phythyon, Chief Wireless Telecommunications Bureau, Federal Communications Commission, May 19, 1998 (hereinafter, "*May 19 Letter*").

<sup>2</sup>There are other facts and circumstances surrounding round 11 of the auction and ClearComm's bid withdrawal. See *Notice of Apparent Liability for Forfeiture*, Applications of PCS 2000, L.P., for Broadband PCS Block C Personal Communications Systems Facilities, 12 FCC Rcd 1703 (1997)

<sup>3</sup>See Atlanta Trunking Associates, Inc., and MAP Wireless, L.L.C., Requests to Waive Bid Withdrawal Payment Provisions, *Order*, 11 FCC Rcd. 17189 (1996); and Atlanta Trunking Associates, Inc. and MAP Wireless, L.L.C., Petition for Reconsideration of Bid Withdrawal Payment, and Georgia Independent PCS Corporation, Application for Review of Request to Waive Bid Withdrawal Payment, *Memorandum, Opinion and Order*, 12 FCC Rcd 6382 (1997)(hereinafter referred to as "*1996 Atlanta Trunking Order*" and "*1997 Atlanta Trunking Order*," respectively, or jointly as the "*Atlanta Trunking Orders*").

ClearComm acted expeditiously to correct its error.<sup>4</sup>

In an application for review pending at the Commission, ClearComm has requested a complete waiver of the bid withdrawal payment assessed by the Bureau. ClearComm has indicated that it is willing to request dismissal of its Application for Review contingent upon reduction of its bid withdrawal payment to \$425,000.00.<sup>5</sup>

At the time ClearComm submitted its erroneous bid, the Commission's bid withdrawal payment provisions did not contemplate erroneous, unintentional bids.<sup>6</sup> In the *Atlanta Trunking Orders*, the basis for the Bureau's initial reduction of ClearComm's bid withdrawal payment, the Commission delegated authority to the Bureau to grant waivers of bid withdrawal payments on a case-by-case basis.<sup>7</sup> Waivers are permissible in instances where there is no evidence of insincere or frivolous bidding or other acts of bad faith related to the actual bid.<sup>8</sup> Due to the changed circumstances related to the auctions process, the Bureau has decided to revisit ClearComm's case at this juncture. Our decision to do so conforms to both the spirit and intent of the waiver policy set forth in the *Atlanta Trunking Orders*.<sup>9</sup>

The totality of the circumstances here present compelling reasons for reducing the bid withdrawal payment assessed against ClearComm. The factors essential to a bid withdrawal reduction cited in the *Atlanta Trunking Orders* are all present in ClearComm's case. ClearComm's conduct was unintentionally erroneous, it withdrew immediately upon discovery of its error, the error occurred during an early phase of the auction, and the auction process corrected itself to prevent harm caused by the erroneous bid. The Bureau also determined that this withdrawal did not result in an alteration of the ultimate winning bid amount. Finally, the imposition of the currently assessed bid withdrawal payment would cause extreme and unnecessary financial hardship to ClearComm.

In addition, since the *Atlanta Trunking Orders*, the Commission has implemented "click box bidding" in an effort to improve the auction process and eliminate erroneous bids. Also, the electronic bidding format has been modified to limit withdrawals. As a result, the possibility of future erroneous bids has been substantially reduced and the Commission has

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<sup>4</sup>See PCS 2000, L.P., Request for Waiver of Section 24.704(a)(1) of the Commission's Rules, *Order*, DA 96-2156 (rel. December 20, 1996)

<sup>5</sup>See *May 19 Letter* at ¶ 2.

<sup>6</sup>See e.g., 47 C.F.R. §§ 1.2104(g)(1), 24.704(a) and 90.805(a) (1996 version).

<sup>7</sup>See *1996 Atlanta Trunking Order* at ¶ 21 and *1997 Atlanta Trunking Order* at ¶ 7.

<sup>8</sup>*Id.*

<sup>9</sup>*Id.*, see also 47 C.F.R. §§ 0.131 and 0.331.

declared that prior policy directed at combatting speculative and strategic bidding is moot.<sup>10</sup>

Because "click box bidding" has substantially reduced the possibility of erroneous bids, the large bid withdrawal payment assessed is no longer necessary to serve the Commission's stated purpose of discouraging insincere bidding. We find that the amount proposed by ClearComm for its erroneous bid is sufficient to deter future insincere bids.

Accordingly, we hereby grant ClearComm's request for reduction of the bid withdrawal payment to \$425,000.00. This action will take effect upon the Bureau's dismissal with prejudice of ClearComm's January 21, 1997 Application for Review.

This action is taken pursuant to delegated authority under Section 0.331 of the Commission's Rules. 47 C.F.R. § 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Daniel B. Phythyon  
Chief, Wireless Telecommunications Bureau

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<sup>10</sup>See In the Matter of Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, *Third Report and Order and Second Further Notice of Proposed Rule Making*, WT Docket No. 97-82, (rel. December 31, 1997) at ¶ 147.