



PUBLIC NOTICE

Federal Communications Commission
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LOWER AND UPPER PAGING BANDS AUCTION CLOSURES Winning Bidders Announced

Down Payments Due December 27, 2001
FCC Forms 601 and 602 Due December 27, 2001
Ten-Day Petition to Deny Period

Report No. AUC-01-40-N (Auction No. 40)

On December 5, 2001, the Federal Communications Commission completed the auction of 15,514 licenses in the Lower and Upper Paging Bands Auction ("Auction No. 40"), raising (in net high bids) a total of \$12,897,127 for the U.S. Treasury. 182 winning bidders won a total of 5,323 licenses in this auction.

This *Public Notice* provides detailed information concerning winning bidders, down payments, bid withdrawal payments and/or deposits, FCC Forms 601 and 602 filing requirements, requests for rule waivers, and licensing matters. Key information appears in the following attachments:

- Attachment A:** "Round Results, High Bids" lists winning bidders, the number of licenses they won, and both their total gross and net high winning bid amounts. In previous auctions, Attachment A has listed the winning bidder and bid amounts for each license. However, due to the large volume of licenses in Auction No. 40, a list of the licenses won will be provided in electronic format only, available with this public notice at <http://wireless.fcc.gov/auctions/40/>.
- Attachment B:** "Bidder Payment/Refund Report" lists down payments and withdrawal bid payments owed by winning bidders, if any.
- Attachment C:** "Withdrawal/Payment Report" lists withdrawal bid payments owed by all bidders.
- Attachment D:** "Multi-Auction Withdrawal Payment Report" lists amount(s) or refund(s) due for bidders in Auction No. 26 based upon reconciliation of final results of Auction No. 26 and Auction No. 40.
- Attachment E:** "Instructions for Completing FCC Form 601 for Paging License

Applicants” provides detailed information about how a winning bidder should complete the required FCC Form 601 and FCC Form 602 for paging license applications.

Attachment F: “Instructions for Using ULS to Register FRN and Call Signs With FCC and File FCC Form 601 Electronically.”

Attachment G: “Accessing the FCC Network using Windows 95/98 for Universal Licensing System Filing.”

A copy of this *Public Notice* will be sent via overnight mail to each winning bidder.

A. Down Payments

The Commission’s rules require that within ten business days after the release of this *Public Notice*, in this case before **6:00 p.m. ET on December 27, 2001**, winning bidders in Auction No. 40 must have on deposit with Mellon Bank in Pittsburgh, Pennsylvania, enough funds to cover 1) down payments on winning bids, and 2) payments for withdrawn bids, if applicable. If a winning bidder’s upfront payment is not sufficient to meet both of these requirements, the winning bidder must deposit additional funds. *See* 47 C.F.R. §§ 1.2104(g), 1.2107(b).¹

The amount now due from each winning bidder, if any, is set out in the last column of **Attachment B**. *Note that a payment and FCC Form 159 are necessary only if a winning bidder’s upfront payment does not cover the required total of down payments and withdrawn bid payments (as reflected in Attachment B)*. Each winning bidder’s down payment must be a total of any withdrawal payments (if applicable) plus twenty (20) percent of its net winning bid(s).

B. Final Payments

After the termination of the licensing pleading cycle (*see* 47 C.F.R. § 1.2108), the Commission will issue a public notice announcing that it is prepared to grant the licenses. Within ten business days after the date of that public notice, winning bidders will be required to make full payment of the balance of their winning bids. *See* 47 C.F.R. §§ 1.2107(b), 1.2109. Licenses will be granted only after the full and timely payment of winning bids and any applicable late fees, in accordance with Section 1.2109(a). *See* 47 C.F.R. § 1.2109(a).

C. Method of Payment

All payments must be in U.S. dollars and made in the form of a wire transfer. No personal checks, credit card payments, or other forms of payment will be accepted. All payments must be accompanied by a completed FCC Remittance Advice Form (FCC Form 159).² If applicable, a partially completed copy of

¹ *See* 47 C.F.R. § 1.2104(g)(1). In the event a bidder has withdrawn a bid(s) and is subject to a bid withdrawal payment(s), the bidder’s upfront payment will be first applied to satisfy the withdrawal payment(s) before being applied toward its down payment.

² Copies of the FCC Form 159 may be obtained by calling the Commission’s Forms Distribution Center at 1-800-418-3676 (outside Washington, D.C.) or 202-418-3676 (in the Washington D.C. area). Copies of the FCC Form 159 can also be obtained via the Internet (<http://www.fcc.gov/formpage.html>) or by Fax-On-Demand (202-418-2830).

the FCC Form 159 will be sent along with this *Public Notice* to facilitate submission of the correct down payment. Questions regarding FCC Form 159 should be addressed to Tim Dates or Gail Glasser at 202-418-1995. **Please note, however, that winning bidders are ultimately responsible for insuring the verification and submission of the correct down payment from their bank to Mellon bank.**

Wire transfers for down payments must be **received** by Mellon Bank by **6:00 p.m. ET, on December 27, 2001**. Winning bidders should coordinate with their bankers ahead of time regarding their wire transfers, and allow sufficient time for the wire transfer to **be initiated and completed prior to the deadline**.

To submit funds by wire transfer, winning bidders will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC Account Number 910-6106
OBI Field: (Skip one space between each information item) "AUCTIONPAY"
TAXPAYER IDENTIFICATION NO.: (same as FCC Form 159, Block 12)
PAYMENT TYPE CODE: (enter "A40D")
FCC CODE 1: (same as FCC Form 159, Block 28A: "40")
PAYOR NAME: (same as FCC Form 159, Block 2)
LOCKBOX NO.: 358850

Winning bidders must fax a completed FCC Form 159 to Mellon Bank at 412-209-6045 at least one hour before placing the order for the wire transfer (but on the same business day).

Proper completion of the FCC Form 159 is critical to ensuring correct credit of bidder deposits. **Winning bidders must use the same Taxpayer Identification Number used on their FCC Form 175.**³ Questions concerning the calculation and submission of down payments should be directed to Gail Glasser at 202-418-1995.

D. Withdrawal, Default and Disqualification Payments

The Commission imposes payments on bidders that withdraw high bids during the course of an auction, those that default on payments due after an auction closes, or those that are disqualified. *See* 47 C.F.R. §§ 1.2104(g), 1.2109.

1. Bid Withdrawal Payments. A bidder (Bidder X) that withdraws a high bid during the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount withdrawn and the amount of the subsequent winning bid. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids equals or exceeds that withdrawn bid. If a high bid is withdrawn on a license that remains unsold at the close of the auction, Bidder X will be required to make an interim payment equal to three (3) percent of the net amount of the withdrawn bid.⁴ This payment amount is deducted from any upfront payments or down payments

³ If, subsequent to final submission of its FCC Form 175, a bidder has provided the Commission with a written correction of its Taxpayer Identification Number, the bidder should use the corrected number.

⁴ 47 C.F.R. § 1.2104(g)(1); Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and*

that Bidder X has deposited with the Commission. If, in a subsequent auction, that license receives a valid 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 will refund the interim three (3) percent payment. If, in a subsequent auction, the winning bid amount for that license is less than Bidder X's withdrawn bid amount, then Bidder X will be required to make a final bid withdrawal payment equal to either the difference between Bidder X's net withdrawn bid and the subsequent net winning bid, or the difference between Bidder X's gross withdrawn bid and the subsequent gross winning bid, whichever is less. The three (3) percent interim payment will be applied toward the withdrawal payment.

Attachment C identifies bidders that owe withdrawal payments to the Commission as a result of bid withdrawals made in Auction No. 40. Any upfront payments or down payments that the withdrawing bidder has deposited with the Commission will first be applied to satisfy the withdrawal payment(s) amount before being applied towards a winning bidder's down payment. *See* 47 C.F.R. §1.2104(g)(1).

2. *Bid Default/Disqualification Payments.* If a high bidder defaults or is disqualified after the close of the auction, the defaulting bidder will be subject to the same bid withdrawal payment obligations as described above, plus an additional payment equal to three (3) percent of the subsequent winning bid or three (3) percent of the defaulted bid, whichever is less. Where a bidding credit applies to the winning bid in either the original or the subsequent auction, the calculation of the three percent payment is based on the smaller of the two gross bids or smaller of the two net bids, whichever basis (gross or net) was used to figure the first component. Thus, if the difference between the gross bids is less than the difference between the net bids, the three percent payment will be computed on the lower of the gross bids. If the difference between the net bids is less than or equal to the difference between the gross bids, the three percent payment will be computed on the lower of the net bids. However, if both the difference between the gross bids and the difference between the net bids are less than or equal to zero, the three percent payment will be computed on the lower of the net bids.

If a winning bidder fails to remit the required down payment within ten (10) business days after the Commission has released this *Public Notice*, in this case by December 27, 2001, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for a default payment as described above. In such event, the Commission, at its discretion, may either auction the spectrum to existing or new applicants, or offer it to the other highest bidders (in descending order) at their final bids. *See* 47 C.F.R. § 1.2109(b).

If a winning bidder fails to pay the balance of its winning bids in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment within ten (10) business days after the payment deadline provided that it also pays a late fee equal to five (5) percent of the amount due. When a winning bidder fails to pay the balance of its winning bid plus late fee by the late payment deadline, it is considered to be in default on its license(s) and subject to the applicable default payments.

Licenses will be awarded upon the full and timely payment of winning bids and any applicable late fees. *See* 47 C.F.R. §1.2109(a). A winning bidder that is found unqualified to be a licensee, fails to remit the

Order, and Fourth Further Notice of Proposed Rule Making, 15 FCC Rcd 15293, 15301-02 (2000); *see* 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); *see also* Phase II 220 MHz Service Auction Closes, Winning Bidders in the Auction of 908 Phase II 220 MHz Service Licenses, *Public Notice*, 14 FCC Rcd 605 (1999).

balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted and will be liable for the payment set forth in Section 1.2104(g)(2). In such event, the Commission may either auction the spectrum to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. *See* 47 C.F.R. § 1.2109(c).

Additionally, bidders that are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of their upfront payment, down payment, or full bid amount, and may be prohibited from participating in future auctions. *See* 47 C.F.R. § 1.2109(d).

E. Refund of Excess Upfront Payments

Upfront monies on deposit that are in excess of the required down payment, withdrawal and/or default payment amounts will be refunded to the payer of record as identified on FCC Form 159 promptly upon receipt of the necessary wire transfer instructions. Such instructions must be faxed to Gail Glasser at 202-418-2843. Any questions concerning refunds should be referred to Gail Glasser or Tim Dates at 202-418-1995.

F. FCC Form 601

By **6:00 p.m. ET on December 27, 2001**, winning bidders must submit a completed long-form license application(s) covering each license for which they were the winning high bidder. **Attachment E** sets out instructions for completing the FCC Form 601. Applications **must** be filed electronically. Detailed instructions for filing the Form 601 electronically are set out in **Attachment F**.

Failure to timely file FCC Form 601 will result in default. Late-filed applications will not be accepted without a showing of good cause.⁵

G. Tribal Land Bidding Credit

The Commission has implemented a tribal land bidding credit to encourage the growth of wireless services in federally recognized tribal lands. For information relating to the tribal land bidding credit, *see* Attachment E.

H. FCC Form 602

Pursuant to Section 1.919 of the Commission's rules, an applicant for a license in an auctionable service must have on file with the Commission a current FCC Form 602 regarding ownership information of the applicant. *See* 47 C.F.R. § 1.919. Therefore, unless the applicant already has a current FCC Form 602 on file with the Commission, the applicant must submit one at the time the FCC Form 601 is filed. Any late-filed FCC Form 602 must contain a request for waiver of the filing requirement in 47 C.F.R. § 1.919.

FCC Form 602 must be filed **manually** (not electronically), and may be obtained from the Internet at <http://www.fcc.gov/formpage.html> or by calling the FCC's Form Distribution Center at 1-800-418-FORM

⁵ 47 C.F.R. § 1.2107(c).

(3676) (outside Washington, D.C.) or 202-418-3676 (in the Washington D.C. area). For more detailed information on FCC Form 602, *see* “Wireless Telecommunications Bureau Answers Frequently Asked Questions Concerning Reporting of Ownership Information on FCC Form 602,” *Public Notice*, DA 99-1001, 14 FCC Rcd 8261 (1999).

Applicants that do not have a current FCC Form 602 on file should send the form to:

Federal Communications Commission
Rear entrance 35 York Street
Gettysburg, PA 17325

Filing an FCC Form 602 is a separate requirement from, and in addition to, the ownership reporting requirements associated with filing FCC Form 601, Exhibit A, as set forth in Attachment E. However, to avoid duplication, applicants may provide certain information required in Exhibit A by attaching a copy of their FCC Form 602 (in Adobe PDF Format) to their FCC Form 601 submission. Applicants are reminded, however, that an original FCC Form 602 still must be filed manually in Gettysburg, PA. For further information, see Instructions in Attachment E.

I. Applications for Multiple Licenses

Applicants winning licenses in multiple radio services must complete a separate FCC Form 601 for each radio service. Applicants winning multiple licenses may submit one FCC Form 601 per service (including all required schedules, attachments, and exhibits) and Form 602 if **all** filing information (name and address information, all ownership and eligibility attachments, and waiver requests) associated with the application is identical **except** for the market designator and market name. Licensing information such as market designator, block, and/or market name may be different (*i.e.*, CPBEA001CA - Bangor, Maine; CPBEA021CN - Greenville, North Carolina) or (*i.e.*, CZMEA011AB - Miami; CZMEA003AV - Buffalo).

Filers whose name and address, ownership, eligibility, and waiver requests are identical for some licenses but different for other licenses must submit a separate Form 601 and 602 for those licenses for which filing information is unique. The streamlined filing procedure described in the above paragraph may only be used for licenses that have identical filing information.

Applicants seeking a tribal land bidding credit for one or more markets are encouraged to submit two applications. One application would include markets in which the applicant intends to apply for a tribal land bidding credit. The other application would include those markets in which the applicant is not seeking a tribal land bidding credit. Applicants that intend to seek a tribal land bidding credit in multiple services would need to submit two applications per service.

J. Maintaining Accuracy of Information

After the auction closes, applicants are required to make all changes in the ULS system (Form 601). Applicants are no longer required to maintain accuracy and completeness of information furnished on their FCC Form 175 and exhibits.

K. Application Processing and License Grant

Pursuant to 47 C.F.R. § 1.2108(b) and the Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat. 251

(1997), interested parties will have **ten (10) days** to file petitions to deny after the Commission releases a public notice announcing the FCC Forms 601 and 602 that are acceptable for filing. An applicant may file an opposition to any petition to deny within **five (5) business days** after the time for filing petitions to deny has expired. *See* 47 C.F.R. §1.2108(c). The petitioner may file a reply to such opposition within **five (5) business days** after the time for filing oppositions has expired. *See* 47 C.F.R. §1.2108(c). If the Commission determines an applicant is qualified and there is no substantial and material issue of fact concerning that determination, the Commission will issue a public notice announcing that it is prepared to grant the application conditioned upon the full and timely payment of the remaining balance of the applicant's winning bid. Once the Commission has received full payment of the applicant's winning bid, it will issue a public notice announcing grant of the license (or licenses) to the applicant.

Frivolous Pleadings. The Commission reminds parties to our proceedings and their attorneys that the Commission intends to use its authority fully to deter the filing of frivolous pleadings. *See* Commission Taking Tough Measures Against Frivolous Pleadings, *Public Notice*, 11 FCC Rcd 3030 (1996).

L. Anti-collusion Rules

To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. As explained more fully in the *Auction No. 40 Procedures Public Notice*,⁶ this prohibition began with the filing of short-form applications and ends on the down payment due date, or December 27, 2001.⁷ The prohibition ends on the down payment due date whether or not a high bidder must supplement its upfront payment to cover its down payment. Applicants certified their compliance with Section 1.2105(c) when their FCC Form 175 short-form applications were signed.

M. Return of SecurID Cards

Bidders are encouraged to return their SecurID cards to the FCC by **December 27, 2001** for recycling. A pre-addressed, stamped envelope is provided in this mailing that bidders should use to return the cards now that the auction is over. Please note that each SecurID card is tailored to a specific auction, therefore, the cards issued for this auction will not work for future auctions.

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⁶ *See* Lower and Upper Paging Bands Auction Scheduled for June 26, 2001; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedural Issues, *Public Notice*, DA 01-850, 16 FCC Rcd 7657 (2001) ("*Auction No. 40 Procedures Public Notice*").

⁷ *Id.* at 7664-65.

For further information, contact

News Media:

Meribeth McCarrick at 202-418-0654

Technical Support Hotline:

Technical Support Personnel at
202-414-1250 (V)
or 202-414-1255 (text telephone (TTY))

Office of the Managing Director
Auctions Accounting Group
(Payment, FCC Form 159 and refund
questions)

Gail Glasser or Tim Dates
at 202-418-1995

Wireless Telecommunications Bureau,
Commercial Wireless Division
(FCC Form 601 and 602 questions)

Bettye Woodward, Industry Analyst, at 202-418-1345
Gary Oshinsky, Attorney, at 202-418-7167
Amal Abdallah, Attorney, at 202-418-7307

Wireless Telecommunications Bureau,
Auctions and Industry Analysis Division
(Auction-related questions)

Lisa Stover, Project Manager at 717-338-2888
Erik Salovaara, Attorney, at 202-418-0660

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