



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

DA 01-478
February 22, 2001

700 MHz GUARD BANDS AUCTION CLOSES

Winning Bidders Announced

Down Payments Due March 8, 2001
FCC Forms 601 and 602 Due March 8, 2001
Ten-Day Petition to Deny Period

Report No. AUC-38-F (Auction No. 38)

On February 21, 2001, the Federal Communications Commission completed the auction of 8 licenses in the 700 MHz Guard Bands Auction (“Auction No. 38”), raising (in net high bids) a total of \$20,961,500 for the U.S. Treasury. Three winning bidders won a total of 8 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 and both the gross and net high winning bid amounts.
- Attachment B:** “Bidder Payment/Refund Report” lists down payments owed by winning bidders.
- Attachment C:** “Multi-Auction Withdrawal Payment Report” contains total withdrawn bid payments owed by bidders in Auction No. 33 based upon reconciliation of final results of Auction No. 33 and Auction No. 38.
- Attachment D:** “Instructions for Completing FCC Form 601” provides detailed information about how a winning bidder should complete the required FCC Form 601 for 700 MHz license applications.
- Attachment E:** “Instructions for Using ULS to Register TIN and Call Signs With FCC and File FCC Form 601 Electronically.”
- Attachment F:** “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 **6:00 p.m. ET on March 8, 2001**, winning bidders in Auction No. 38 must have on deposit with Mellon Bank in Pittsburgh, Pennsylvania, enough funds to cover down payments on winning bids for Auction No. 38. If a winning bidder's upfront payment is not sufficient to meet this requirement, the winning bidder must deposit additional funds. See 47 C.F.R. § 1.2107(b).

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 (as reflected in Attachment B). Each winning bidder's down payment must be a total of 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).¹ If applicable, a partially completed copy of 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 transfer payments must be **received** by Mellon Bank by **6:00 p.m. ET, on March 8, 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

¹ 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).

BNF: 911-6106
OBI Field: (Skip one space between each information item) "AUCTIONPAY"
TAXPAYER IDENTIFICATION NO. (same as FCC Form 159, Block 12)
PAYMENT TYPE CODE (enter "A38D")
FCC CODE 1 (same as FCC Form 159, Block 28A: "38")
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.**² 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, 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.³ This payment amount is deducted from any upfront payments or down payments 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 Bidder X may request a refund of 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.

Now that Auction No. 38 is complete, we are in a position to calculate and assess final bid withdrawal payments owed as a result of withdrawals on licenses in Auction No. 33. These final bid withdrawal

² 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.

³ *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). We note that there are no unsold licenses at the close of Auction No. 38.

payments are identified in **Attachment C**. 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). Forthcoming orders will assess such payments.

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 the differences between both the gross bids and 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 March 8, 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 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 (for winning bidders).

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. Winning bidders must fax the necessary wire transfer instructions 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. Refund of Upfront Payments (for non-winning bidders).

Non-winning bidders must fax the necessary wire transfer instructions to Gail Glasser or Tim Dates at 202-418-2843. Any questions concerning refunds for non-winning bidders should be referred to Gail Glasser or Tim Dates at 202-418-1995.

G. FCC Form 601.

By **6:00 p.m. ET on March 8, 2001**, winning bidders must submit a completed long-form license application(s) covering each license for which they were the winning high bidder. **Attachment D** 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 E**.

Failure to timely file FCC Form 601 will result in default. Late-filed applications will not be accepted without a showing of good cause.⁴

H. 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. *See* Attachment D.

I. 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 (3676). 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 (rel. May 25, 1999).

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

Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA 17325-7245

⁴ 47 C.F.R. § 1.2107(c).

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 D. 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 D.

J. Applications for Multiple Licenses.

Applicants may submit one FCC Form 601 (including all required schedules, attachments, and exhibits) and Form 602 for multiple licenses 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, channel block, and/or market name may be different (*i.e.*, WXMEA012A– Pittsburgh; WXMEA014B – Columbus).

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 lands 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 lands bidding credit. The other application would include those markets in which the applicant is not seeking a tribal lands bidding credit.

K. Maintaining Accuracy of Information.

After the auction closes, applicants are required to make all changes in the ULS system (Forms 601/602). Applicants are no longer required to maintain accuracy and completeness of information furnished on their FCC Form 175 and exhibits.

L. 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 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 discourage and deter the filing of frivolous pleadings. *See* Commission Taking Tough Measures Against Frivolous Pleadings, *Public Notice*, 11 FCC Rcd 3030 (1996).

M. 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. 38 Procedures Public Notice*,⁵ this prohibition began with the filing of short-form applications and ends on the down payment due date.⁶ 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.

* * * * *

For further information, contact

News Media:	Mark Rubin at 202-418-2924
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)	JoAnn Epps, Industry Analyst, at 202-418-1342, Gary Oshinsky, Attorney, at 202-418-7167 or Erin McGrath, Attorney, at 202-418-2042 Amal Abdallah, Attorney, at 202-418-7307
Wireless Telecommunications Bureau, Auctions and Industry Analysis Division Auctions (Auction-related questions)	Linda Sanderson, Project Manager at 717-338- 2888, Howard Davenport, Attorney, at 202-418- 0660

- FCC -

⁵ See "Auction of Licenses for the 700 MHz Guard Bands Scheduled for February 13, 2001; Auction Notice and Filing Requirements for 8 Licenses in the 700 MHz Guard Bands; Minimum Opening Bids and Other Procedural Issues," *Public Notice*, DA 00-2571 (rel. November 14, 2000) 65 Fed. Reg. 83024 ("*Auction No. 38 Procedures Public Notice*").

⁶ See *id.* at 6.