



PUBLIC NOTICE

Federal Communications Commission
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DA 02-1316
June 6, 2002

CELLULAR RURAL SERVICE AREAS AUCTION CLOSES Winning Bidders Announced

Down Payments Due June 20, 2002
FCC Forms 601 and 602 Due June 20, 2002
Ten-Day Petition to Deny Period

Report No. AUC-02-45-F (Auction No. 45)

On June 4, 2002, the Federal Communications Commission completed the auction of three cellular Rural Service Area (RSA) licenses ("Auction No. 45"), raising (in net high bids) a total of \$15,871,000 for the U.S. Treasury. Three winning bidders won a total of 3 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 and withdrawal bid payments owed by winning bidders, if any.
- Attachment C:** "Instructions for Completing FCC Form 601" provides detailed information about how a winning bidder should complete the required FCC Form 601 and FCC Form 602 for cellular RSA license applications.
- Attachment D:** "Instructions for Using ULS to Associate Call Signs With the FRN and File FCC Form 601 Electronically."
- Attachment E:** "Accessing the FCC Network using Windows 95/98 for ULS 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 June 20, 2002**, winning bidders in Auction No. 45 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Mellon Bank in Pittsburgh, Pennsylvania, enough funds to cover 1) down payments on winning bids, and 2) payments for withdrawn bids, if applicable.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.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159 are necessary only if a winning bidder's upfront payment does not cover the required total of down payments and withdrawn bid payments (as reflected in Attachment B)*.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 cycle², 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.³ 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).⁴

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).⁵ 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 Gail Glasser at 202-418-0578 or Tim Dates at 202-418-0496. **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 June 20, 2002. Winning bidders should coordinate with their bankers ahead of time regarding their wire transfers,

¹ 47 C.F.R. §§ 1.2104(g), 1.2107(b). 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. 47 C.F.R. § 1.2104(g)(1).

² 47 C.F.R. § 1.2108.

³ 47 C.F.R. §§ 1.2107(b), 1.2109.

⁴ 47 C.F.R. § 1.2109(a).

⁵ 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 calling the Commission's Fax-On-Demand at 202-418-2830.

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"
APPLICANT'S TAXPAYER IDENTIFICATION NO.: (same as FCC Form 159, Block 22)
APPLICANT'S FCC REGISTRATION NO. (FRN): (same as FCC Form 159, Block 21)
PAYMENT TYPE CODE: (enter "A45D")
FCC CODE 1: (same as FCC Form 159, Block 28A: "45")
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 (TIN) / FCC Registration Number (FRN) used on their FCC Form 175.**⁶ Questions concerning the calculation and submission of down payments should be directed to Gail Glasser at 202-418-0578 or Tim Dates at 202-418-0496.

D. 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.⁷ In Auction No. 45 there were no bid withdrawals during the course of the auction. If a high bidder defaults or is disqualified after the close of the auction, the defaulting bidder will be subject to the following payment obligations: 1) the difference between the high bid and the amount of the winning bid the next time the license is offered by the Commission, and 2) 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 June 20, 2002, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for a default payment as described

⁶ 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.

⁷ 47 C.F.R. §§ 1.2104(g), 1.2109.

above. In such event, the Commission, at its discretion, may either auction the license(s) to existing or new applicants, or offer it to the other highest bidders (in descending order) at their final bids.⁸

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.⁹ 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).¹⁰ In such event, the Commission may either auction the license(s) to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids.¹¹

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.¹²

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 at 202-418-0578 or Tim Dates at 202-418-0496.

F. FCC Form 601

By **6:00 p.m. ET on June 20, 2002** winning bidders must submit a completed long-form license application(s) covering each license for which they were the winning high bidder. **Attachment C** 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 D**.

Failure to timely file FCC Form 601 will result in default. Late-filed applications will not be accepted without a showing of good cause.¹³

⁸ 47 C.F.R. § 1.2109(b).

⁹ 47 C.F.R. § 1.2109(a).

¹⁰ 47 C.F.R. § 1.2104(g)(2).

¹¹ 47 C.F.R. § 1.2109(c).

¹² 47 C.F.R. § 1.2109(d).

¹³ 47 C.F.R. § 1.2107(c).

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 C.

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.¹⁴ 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) (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 C. 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 C.

I. 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.

¹⁴ 47 C.F.R. § 1.919. *See* 47 C.F.R. § 1.2107(f).

J. Application Processing and License Grant

Pursuant to 47 C.F.R. § 1.2108(b) and the Balanced Budget Act of 1997,¹⁵ 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.¹⁶ The petitioner may file a reply to such opposition within **five (5) business days** after the time for filing oppositions has expired.¹⁷ 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.¹⁸

K. Anti-collusion Rules

To ensure the competitiveness of the auction process, the Commission's rules prohibit competing 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. 45 Procedures Public Notice*,¹⁹ this prohibition began with the filing of short-form applications and ends on the down payment due date, or June 20, 2002.²⁰ 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.

L. Return of SecurID Cards

Bidders are encouraged to return their SecurID cards to the FCC by **June 20, 2002** for recycling. The Commission will send bidders a copy of this *Public Notice* and a pre-addressed, stamped envelope. All bidders should use the envelope to return the cards now that the auction is over. Please note that each

¹⁵ Pub. L. No. 105-33, 111 Stat. 251 (1997).

¹⁶ See 47 C.F.R. § 1.2108(c).

¹⁷ See *id.*

¹⁸ See Commission Taking Tough Measures Against Frivolous Pleadings, *Public Notice*, 11 FCC Rcd 3030 (1996).

¹⁹ See Auction No. 45 Cellular Rural Service Areas Auction Scheduled for May 29, 2002; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures, *Public Notice*, DA 02-470 (rel. March 4, 2002), 67 Fed. Reg. 16383 (rel. April 5, 2002) ("*Auction No. 45 Procedures Public Notice*").

²⁰ *Auction No. 45 Procedures Public Notice* at 3.

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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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 202-418-0578 or 202-418-0496

Wireless Telecommunications Bureau,
Commercial Wireless Division
(FCC Form 601 and 602 questions) Dwain Livingston, Engineer, at 202-418-1338
Michael Kleeb, Analyst, at 202-418-1306
Evan Baranoff, Attorney, at 202-418-7142
Amal Abdallah, Attorney, at 202-418-7307

Wireless Telecommunications Bureau,
Auctions and Industry Analysis Division
(Auction-related questions) Barbara Sibert, Project Manager at 717-338-2888
Denise Coca, Attorney, at 202-418-0660

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