



PUBLIC NOTICE

Federal Communications Commission
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DA 03-1472
May 2, 2003

1670-1675 MHz BAND AUCTION CLOSES Winning Bidder Announced

Down Payments Due May 16, 2003
FCC Forms 601 and 602 Due May 16, 2003
Ten-Day Petition to Deny Period

Report No. AUC-03-46-H (Auction No. 46)

On April 30, 2003, the Federal Communications Commission completed the auction of one nationwide license in the 1670-1675 MHz bands ("Auction No. 46"), raising a total of \$12,628,000 for the U.S. Treasury.

This *Public Notice* provides detailed information concerning the winning bidder, down payment, 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 the winning bidder, and both the gross and net high winning bid amounts.
- Attachment B:** "Bidder Payment/Refund Report" lists the down payment owed by the winning bidder.
- Attachment C:** "Instructions for Completing FCC Form 601" provides detailed information about how the winning bidder should complete the required FCC Form 601 and FCC Form 602 for a 1670-1675 MHz license application.
- 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 the 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 May 16, 2003**, the winning bidder in Auction No. 46 must have on deposit with Mellon Bank in Pittsburgh, Pennsylvania, enough funds to cover the down payment on its winning bid. The winning bidder's total deposit must be twenty (20) percent of its net winning bid. If the winning bidder's upfront payment is not sufficient to meet this requirement, the winning bidder must deposit additional funds.¹ In this case the winning bidder's upfront payment is sufficient to meet this requirement.

B. Final Payments

After the termination of the licensing pleading cycle,² the Commission will issue a public notice announcing that it is prepared to grant the license. Within ten business days after the date of that public notice, the winning bidder will be required to make full payment of the balance of its winning bid.³ The license will be granted only after the full and timely payment of the winning bid 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 Because the winning bidder's upfront payment is sufficient to meet its down payment requirement, an FCC Form 159 need not be filed at this time. A future public notice will provide instructions for making final payment.

D. Default and Disqualification Payments

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

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

¹ 47 C.F.R. § 1.2107(b).

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.

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 the 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 May 16, 2003, 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 re-auction the spectrum to existing or new applicants.⁶

If the winning bidder fails to pay the balance of its winning bid 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. If the 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 and subject to the applicable default payments.

The license will be awarded upon the full and timely payment of the winning bid and any applicable late fees.⁷ 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).⁸ In such event, the Commission may re-auction the spectrum to existing or new applicants.⁹

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.¹⁰

E. Refund of Excess Upfront Payments

Upfront monies on deposit that are in excess of the required down payment or default payment amount 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.

⁶ 47 C.F.R. § 1.2109(b).

⁷ 47 C.F.R. § 1.2109(a).

⁸ 47 C.F.R. § 1.2104(g)(2).

⁹ 47 C.F.R. § 1.2109(c).

¹⁰ 47 C.F.R. § 1.2109(d).

F. FCC Form 601

By **6:00 p.m. ET on May 16, 2003**, the winning bidder must submit a completed long-form license application. **Attachment C** sets out instructions for completing the FCC Form 601. The application **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. A late-filed application will not be accepted without a showing of good cause.¹¹

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.¹² 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.

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 FCC Form 602 still must be filed electronically via the Universal Licensing System (ULS)¹³. 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.

¹¹ 47 C.F.R. § 1.2107(c).

¹² 47 C.F.R. §§ 1.919, 1.2107(f).

¹³ Beginning December 10, 2002, electronic filing of FCC Form 602 via the ULS became mandatory. *See* "Wireless Telecommunications Bureau Reminds Filers of Effective Date for Mandatory Electronic Filing of FCC Form 602," *Public Notice*, 17 FCC Rcd 22934 (2002). For more information on FCC Form 602, *see also* "Wireless Telecommunications Bureau Announces Revised Version of FCC Form 602 is Now Available," *Public Notice*, 17 FCC Rcd 16197 (2002); "Wireless Telecommunications Bureau Answers Frequently Asked Questions Concerning Reporting of Ownership Information on FCC Form 602," *Public Notice*, 14 FCC Rcd 8261 (1999).

J. Application Processing and License Grant

Pursuant to 47 C.F.R. § 1.2108(b) and the Balanced Budget Act of 1997,¹⁴ interested parties will have **ten (10) days** to file petitions to deny after the Commission releases a public notice announcing that the FCC Form 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.¹⁵ The petitioner may file a reply to such opposition within **five (5) business days** after the time for filing oppositions has expired.¹⁶ 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 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.¹⁷

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. 46 Procedures Public Notice*,¹⁸ this prohibition began with the filing of short-form applications and ends on the down payment due date, or May 16, 2003.¹⁹ The prohibition ends on the down payment due date regardless of whether 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 **May 16, 2003** 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 SecurID card is tailored to a specific auction, therefore, the cards issued for this auction will not work for future auctions.

¹⁴ Pub. L. No. 105-33, 111 Stat. 251 (1997).

¹⁵ 47 C.F.R. § 1.2108(c).

¹⁶ *Id.*

¹⁷ Commission Taking Tough Measures Against Frivolous Pleadings, *Public Notice*, 11 FCC Rcd 3030 (1996).

¹⁸ 1670-1675 MHz Band Auction Scheduled for October 30, 2002; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures, *Public Notice*, DA 02-1871 (rel. Aug. 5, 2002), 67 Fed. Reg. 72174 (“*Auction No. 46 Procedures Public Notice*”).

¹⁹ *Auction No. 46 Procedures Public Notice*.

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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,
Public Safety & Private Wireless Division
(FCC Form 601 and 602 questions) Cheryl Black, Analyst, at 717-338-2617
Brian Marengo, Electronics Engineer, at 202-418-0838
Keith Fickner, Attorney, at 202-418-7308

Wireless Telecommunications Bureau,
Auctions and Industry Analysis Division
(Auction-related questions) Lisa Stover, Project Manager at 717-338-2888
Francis Gutierrez, Attorney, at 202-418-0660

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