



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 03-2551
July 31, 2003

CLOSED BROADCAST STATIONS AUCTION CLOSES Winning Bidders Announced

Down Payments Due August 14, 2003
Long-Form Application Amendments Due August 30, 2003
Ten-Day Petition to Deny Period

Report No. AUC-03-54-E (Auction No. 54)

On July 29, 2003, the Federal Communications Commission completed the auction of construction permits for one new full power television (TV) and three FM broadcast stations ("Auction No. 54"), raising (in net high bids) a total of \$4,657,600 for the U.S. Treasury. In this auction, two winning bidders won a total of four construction permits.

This Public Notice provides detailed information concerning winning bidders, down payments, deposits, amendment filing requirements for FCC Forms 301 ("long-form applications"), and licensing matters. Key information appears in the following attachments:

- Attachment A:** "Round Results, High Bids" lists winning bidders, the gross winning bids, and the net amounts of the winning bid.
- Attachment B:** "Bidder Payment/Refund Report" lists down payments owed by winning bidders, if any.

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 August 14, 2003**, winning bidders in Auction No. 54 must have on deposit with Mellon Bank in Pittsburgh, Pennsylvania, enough funds to cover down payments on winning bids. If a winning bidder's upfront payment is not sufficient to meet this requirement, the winning bidder must deposit additional funds.¹

¹ See 47 C.F.R. §§ 1.2107(b) and 73.5003(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 twenty (20) percent of its net winning bid(s).

B. Long-Form Applications

Winning bidders must submit minor amendments to previously filed long-form applications within 30 days, by August 30, 2003. Winning bidders' long form applications, as amended, will be placed on public notice, triggering the appropriate period for the filing of petitions to deny.²

C. Final Payments

After the termination of the pleading cycle for petitions to deny,³ the Commission will issue a public notice announcing that it is prepared to award the construction permits to the winning bidders, if the applications are uncontested.⁴ Within ten business days after the date of that public notice, the uncontested winning bidders will be required to make full payment of the balance of their winning bids.⁵ Broadcast construction permits 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).⁶ The previously filed long-form applications of the unsuccessful competing bidders will be dismissed following the grant of the winning bidder's construction permit.

D. 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).⁷ If applicable, a partially completed copy of the FCC Form 159 will be sent to winning bidders to facilitate submission of the correct down payment. Questions regarding FCC Form 159 should be addressed to Gail Glasser at 202-418-0578. **Please note, however, that winning bidders are responsible for insuring submission of the correct down payment and obtaining confirmation from their financial institution that Mellon Bank has timely received their down payment and deposited it in the proper account.**

² See further discussion at 5-6, *infra*.

³ See 47 C.F.R. § 73.5006.

⁴ In cases where petitions to deny are filed, final payment public notices shall be promptly issued for the associated construction permits after the Media Bureau disposes of petitions to deny and is otherwise satisfied that an applicant is qualified to hold the construction permit. See 47 C.F.R. § 73.5006(d).

⁵ 47 C.F.R. § 1.2109.

⁶ 47 C.F.R. § 1.2109(a).

⁷ 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.

Wire transfers for down payments must be received by Mellon Bank by 6:00 p.m. ET, on August 14, 2003. 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 911-6106
OBI Field: (Skip one space between each information item) "AUCTIONPAY"
FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 11 and/or 21)
PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: A54D)
FCC CODE 1: (same as FCC Form 159, block 28A: "54")
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.**⁸ Questions concerning the calculation and submission of down payments should be directed to Gail Glasser at 202-418-0578.

E. Default and Disqualification Payments

The Commission imposes payments on bidders that default on payments due after an auction closes or those that are disqualified.⁹

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 following payment obligations: 1) the difference between the high bid and the amount of the winning bid the next time the construction permit 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.¹⁰ 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.¹¹ However, if both the

⁸ 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.

⁹ 47 C.F.R. §§ 1.2104(g), 1.2109(c).

¹⁰ See 47 C.F.R. § 1.2104(g)(1).

¹¹ 47 C.F.R. § 1.2104(g).

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 August 14, 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 either auction the construction permit(s) to existing or new applicants, or offer it to the other highest bidders (in descending order) at their final bids.¹²

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.¹³ 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 construction permit(s) and subject to the applicable default payments.¹⁴

Construction permits will be awarded upon the full and timely payment of winning bids and any applicable late fees.¹⁵ 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).¹⁶ In such event, the Commission may either auction the construction permit to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids.¹⁷

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.¹⁸

F. Refund of Excess Upfront Payments

Upfront monies on deposit that are in excess of the required down payment, 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.

¹² 47 C.F.R. § 1.2109(b).

¹³ 47 C.F.R. §§ 1.2109(a), 73.5003.

¹⁴ 47 C.F.R. § 1.2109(a).

¹⁵ 47 C.F.R. §§ 1.2109(a), 73.5003.

¹⁶ 47 C.F.R. §§ 1.2104(g)(2), 1.2109(c).

¹⁷ 47 C.F.R. § 1.2109(c).

¹⁸ 47 C.F.R. § 1.2109(d).

G. Amendment to Long-Form Application

Deadline For Filing: By **6:00 p.m. ET on August 30, 2003** winning bidders must submit all necessary amendments to their previously filed long-form application(s) covering the construction permit for which they were the winning high bidder.¹⁹

Where and How to File: The completed amendment to the previously filed FCC Form 301 may be electronically or paper-filed. In accordance with the Commission rules, amendment data submitted by winning bidders must not constitute a major change from either the technical or other data specified in the previously filed FCC Form 301.²⁰

Electronically filed amendments must be submitted via the Commission's Consolidated Database System (CDBS).²¹ Users can access the CDBS electronic filing system *via* the Internet from the Media Bureau's Web Site at:

<http://www.fcc.gov/mb/elecfile.html>

Electronic filing instructions are available in the CDBS User's Guide. The Guide can be accessed from the electronic filing web site, above, by clicking on the CDBS link. This action will take the user to the Media Bureau's CDBS Electronic Filing System site. The user should then click on the "Go to CDBS User's Guide" link. Internet access to the CDBS online electronic forms filing system requires, at a minimum, a browser such as Netscape version 3.04 or Internet Explorer version 3.51, or later. After selecting Form 301, applicants should indicate that they are submitting a minor amendment to a pending application. Applicants should also provide the file number of the previously filed Form 301. For technical assistance with electronic filing, call the Media Bureau Help Desk at (202) 418-2MMB.

Paper-filed amendments may be submitted in triplicate to the Office of the Secretary. Such amendments must indicate the applicant name, application file number, and the facility identification number. Additionally, filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. Applicants are cautioned, however, that the Commission continues to experience delays in receiving U.S. Postal Service mail. All filings must be addressed to The Secretary, Office of the Secretary, Federal Communications Commission. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. Commercial overnight mail (other than U.S. Postal Service, Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. Winning bidders filing amendments to the FM Form 301 applications may also send a courtesy copy of the amendment to Liz Robinson, Audio Division, Room 2-B450, 445 12th Street SW, Washington, DC 20554. Winning bidders filing amendments to the TV Form 301 application may also send a courtesy copy of the amendment to Shaun Maher, Video Division, Room 2-A820, 445 12th Street SW, Washington, DC 20554.

¹⁹ 47 C.F.R. § 73.5005(a).

²⁰ See 47 C.F.R. §§ 73.3573(a)(1), 73.3573(f)(5)(iii), 73.3522(a)(3).

²¹ See "Mass Media Bureau Implements Mandatory Electronic Filing of FCC Forms 301, 314, and 315," *Public Notice*, 16 FCC Rcd 3989 (MMB 2001).

The Commission's contractor, Vistrionix, Inc., will receive hand-delivered and messenger-delivered paper filings for the Office of the Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m.

Additional Post-Auction Filing Requirements. Section 73.5005(a) of the Commission's rules requires that post-auction filings include the exhibits mandated by 47 C.F.R. § 1.2107(d) (concerning any bidding consortia, or joint bidding arrangements, if applicable); 47 C.F.R. § 1.2110(j) (concerning designated entity status, if applicable); and 47 C.F.R. § 1.2112(a) and (b) (concerning ownership and real party in interest information).²² Where applicable, such exhibits must be filed with the amendment to the previously filed Form 301 application and must be filed no later than August 30, 2003.

Late-filed amendments will not be accepted.²³

H. Maintaining Accuracy of Information

After the auction closes, applicants are required to make all changes by filing amendments to FCC Form 301. Applicants are no longer required to maintain accuracy and completeness of information furnished on their FCC Form 175 and exhibits.

I. Application Processing and License Grant

Pursuant to 47 C.F.R. §§ 1.2108(b) and 73.5006, and the Balanced Budget Act of 1997,²⁴ interested parties will have **ten (10) days** to file petitions to deny after the Commission releases a public notice announcing the FCC Form 301 is acceptable for filing. The Media Bureau will use public notices generated by CDBS to start the ten-day period for filing petitions to deny these applications. The public notice entitled "Broadcast Applications" will list such applications as "Accepted 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.²⁵ The petitioner may file a reply to such opposition within **five (5) business days** after the time for filing oppositions has expired.²⁶ 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 construction permit 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.²⁷

²² See also 47 C.F.R. § 73.3573(f)(5)(i).

²³ 47 C.F.R. § 1.2107(c).

²⁴ Pub. L. 105-33, 111 Stat. 251 (1997).

²⁵ 47 C.F.R. § 1.2108(c).

²⁶ *Id.*

²⁷ See Commission Taking Tough Measures Against Frivolous Pleadings, *Public Notice*, 11 FCC Rcd 3030 (1996).

J. Anti-collusion Rules

To ensure the competitiveness of the auction process, the Commission's rules prohibit competing applicants from communicating with each other during the auction about bids, bidding strategies, or settlements. As explained more fully in the *Auction No. 54 Procedures Public Notice*,²⁸ this prohibition began with the filing of short-form applications and ends on the down payment due date, or August 14, 2003.²⁹ 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.

K. Return of SecurID Cards

Bidders are encouraged to return their SecurID cards to the FCC by **August 14, 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.

* * * * *

²⁸ See Closed Broadcast Auction No. 54 Construction Permits for New Broadcast Stations Scheduled for July 23, 2003; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures, *Public Notice*, DA 03-1547 (rel. May 12, 2003), 68 Fed. Reg. 35216 (June 12, 2003) ("*Auction No. 54 Procedures Public Notice*").

²⁹ *Auction No. 54 Procedures Public Notice* at 6.

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 at 202-418-0578

Media Bureau, (FCC Form 301)
Audio Division

Lisa Scanlan at 202-418-2700

Video Division

Shaun Maher at 202-418-1600

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

Linda Sanderson, Project Manager at 717-338-2888
Kenneth Burnley, Attorney at 202-418-0660

- FCC -