



# PUBLIC NOTICE

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DA 03-3006  
October 1, 2003

## REGIONAL NARROWBAND PCS SPECTRUM AUCTION CLOSES Winning Bidder Announced

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

### Report No. AUC-03-51-F (Auction No. 51)

On September 25, 2003, the Federal Communications Commission completed the auction of six regional narrowband Personal Communications Services (“narrowband PCS”) licenses in the 900 MHz band (“Auction No. 51”), raising (in net bids) a total of \$134,250. In this auction, one winning bidder won a total of five licenses.

This *Public Notice* provides detailed information concerning the winning bidder, down payments, 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, Winning Bids” lists the winning bidder, and both the gross winning bid and net amount of the winning bid.
- Attachment B:** “Bidder Payment/Refund Report” lists down payments owed by the winning bidder, if any.
- Attachment C:** “Instructions for Completing FCC Form 601 & 602” provides detailed information about how a winning bidder should complete the required FCC Form 601 and FCC Form 602 for 900 MHz band 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 95/98/2000/XP for ULS Filing.”

A copy of this *Public Notice* will be sent via overnight mail to each 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 October 16, 2003**, the winning bidder in Auction No. 51 must have on deposit with Mellon Bank in Pittsburgh, Pennsylvania, enough funds to cover the down payment on its winning bids. 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.<sup>1</sup> 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,<sup>2</sup> 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, the winning bidder will be required to make full payment of the balance of its winning bid.<sup>3</sup> The licenses 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).<sup>4</sup>

**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).<sup>5</sup> 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.<sup>6</sup> The Commission recently adopted a special rule for calculating default payments in connection with package bidding.<sup>7</sup> In the event a winning bidder defaults on payments due

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<sup>1</sup> 47 C.F.R. § 1.2107(b).

<sup>2</sup> 47 C.F.R. § 1.2108.

<sup>3</sup> 47 C.F.R. §§ 1.2107(b), 1.2109.

<sup>4</sup> 47 C.F.R. § 1.2109(a).

<sup>5</sup> 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.

<sup>6</sup> See 47 C.F.R. §§ 1.2104(g), 1.2109.

<sup>7</sup> See Amendment of Part 1 of the Commission's Rules-Competitive Bidding Procedures, *Second Order on*

after an auction closes or is disqualified after the auction, a default payment will be assessed. The default payment will consist of a deficiency portion and an additional payment of twenty-five percent (25%) of the lesser of the subsequent winning bid and the defaulted bid.<sup>8</sup>

The deficiency portion will make up any loss to the Commission that results when defaulted bid(s) are replaced by subsequent winning bid(s). If the subsequent winning bid(s) exceed the defaulted bid(s), no deficiency portion will be assessed. Even in the absence of a deficiency portion, however, an additional 25% payment will be due.

Where a defaulting bidder won licenses in package(s), and in a subsequent auction the licenses are won either (a) in the same package(s), or (b) in smaller packages or as individual licenses that correlate to the defaulted package(s), the deficiency portion will be determined on a package-by-package basis. In the event a defaulting bidder defaults on more than one such bid, the differences between the amount originally bid and the amount(s) subsequently bid will not be aggregated to determine a net amount owed.<sup>9</sup> Thus, in this situation, the deficiency portion will be calculated in a manner analogous to where the licenses are sold individually. However, with regard to each individual package, where the licenses are subsequently sold individually or as part of smaller packages, the amounts received in the subsequent auction will be aggregated in order to determine any deficiency.

Where a defaulting bidder or bidders won licenses either individually or as part of packages, and in a subsequent auction the licenses are won as larger packages or different packages (not including the situation described in the preceding paragraph), the deficiency portion will be calculated by subtracting the aggregate amount originally bid for the licenses from the aggregate amount bid in the subsequent auction for the licenses.<sup>10</sup> Thus, in this situation, the deficiency portion will not be calculated on a bid-by-bid basis.

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*Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*, FCC 03-98, ¶¶ 25-31, 55 (rel. May 8, 2003) ("*Order on Reconsideration of the Part 1 Fifth Report and Order*"); Auction of Regional Narrowband PCS Licenses Scheduled for September 24, 2003, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, Package Bidding and Other Auction Procedures, *Public Notice*, 18 FCC Rcd 11974, 12008-10 (2003) ("*Auction No. 51 Procedures Public Notice*")

<sup>8</sup> *Order on Reconsideration of the Part 1 Fifth Report and Order* at ¶ 29; See 47 C.F.R. § 1.2104(g)(3); *Auction No. 51 Procedures Public Notice*, 18 FCC Rcd at 12008.

<sup>9</sup> *Id.* For example, if a bidder defaults on Package ABC (*i.e.*, a package consisting of Licenses A, B and C) with a bid of \$900 and Package DE with a bid of \$600, and in a subsequent auction, the licenses are won as License A for \$200, Package BC for \$600, and Package DE for \$700, the default payment would be calculated separately for Package ABC (by comparing the original bid (\$900) to the amounts subsequently bid for License A and Package BC (\$200 and \$600, which equals \$800, yielding a \$100 deficiency plus the additional 25% payment)) and Package DE (by comparing the original bid (\$600) to the amount subsequently bid for Package DE (\$700, yielding no deficiency, but an additional 25% payment)).

<sup>10</sup> *Id.* For example, if a bidder defaults on Package AB with a bid of \$200 and Package CD with a bid of \$300, and in a subsequent auction the licenses are sold as Package AC for \$250 and Package BD for \$250, the default payment would be calculated by aggregating the amounts originally bid (\$200 plus \$300 equals \$500) and comparing the aggregate to the amounts subsequently bid (\$250 plus \$250 equals \$500) to determine the deficiency amount (\$500 less \$500 equals \$0); the additional 25% payment would be based on either the original aggregate amount or the subsequent aggregate amount, whichever is less (in this case, they are the same, \$500).

In the event that a bidding credit applies to any applicable bid(s), the Bureau will assess the deficiency portion of the default payment using the lesser of the difference between gross bids and the difference between net bids. (In the event that a bidder does not have a bidding credit, the bidder's gross bid and net bid are the same.) In other words, the Bureau will compare (i) the sum of the gross defaulted Auction No. 51 bid(s) minus the gross subsequent winning bid(s) and (ii) the sum of the net defaulted Auction No. 51 bid(s) minus the net subsequent winning bid(s). The Bureau will impose the lesser of (i) and (ii) as the deficiency portion.<sup>11</sup>

As noted at the outset, the default payment consists of the deficiency portion **and** an additional 25% payment. The additional payment will be 25% of the lesser of the subsequent winning bid(s) and the defaulted bid(s).<sup>12</sup> The Bureau will use the same gross or net bid(s) that it used to calculate the deficiency portion when assessing the additional 25% payment. That is, the Bureau will compare the defaulted and subsequent bid(s) according to the methods described above for calculation of the deficiency portion of the default payment when determining whether the defaulted bid(s) or the subsequent winning bid(s) is the lesser amount. Should there be no difference between the gross or net bid(s) for purposes of assessing the deficiency portion, the Bureau will assess the additional 25% payment using the lesser of the gross or net bid(s).

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 October 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.<sup>13</sup>

If the 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. 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(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.<sup>14</sup> 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).<sup>15</sup> In such event, the Commission may re-auction the spectrum to existing or new applicants.<sup>16</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> 47 C.F.R. § 1.2109(b).

<sup>14</sup> 47 C.F.R. § 1.2109(a).

<sup>15</sup> 47 C.F.R. § 1.2104(g)(2).

<sup>16</sup> 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.<sup>17</sup>

#### **E. 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 or Tim Dates at 202-418-0496.

#### **F. FCC Form 601**

By **6:00 p.m. ET on October 16, 2003**, the winning bidder must submit a completed long-form application(s) covering each license for which they were the winning 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 the required FCC Form 601 application(s) will result in default. Late-filed applications will not be accepted without a showing of good cause.**<sup>18</sup>

#### **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.<sup>19</sup> 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, applicant may provide certain information required in Exhibit A by attaching a copy of its FCC Form 602 (in Adobe PDF Format) to their FCC Form 601 submission. Applicant is reminded,

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<sup>17</sup> 47 C.F.R. § 1.2109(d).

<sup>18</sup> 47 C.F.R. § 1.2107(c).

<sup>19</sup> 47 C.F.R. §§ 1.919, 1.2107(f).

however, that an FCC Form 602 still must be filed electronically via the Universal Licensing System (ULS).<sup>20</sup> 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.

### **J. Application Processing and License Grant**

Pursuant to 47 C.F.R. § 1.2108(b) and the Balanced Budget Act of 1997,<sup>21</sup> interested parties will have **ten (10) days** to file petitions to deny after the Commission releases a public notice announcing the long-form (FCC Form 601) applications 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.<sup>22</sup> The petitioner may file a reply to such opposition within **five (5) business days** after the time for filing oppositions has expired.<sup>23</sup> 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.<sup>24</sup>

### **K. Anti-collusion Rules**

To ensure the competitiveness of the auction process, the Commission's rules prohibit competing applicants for any of the same geographic license areas from communicating with each other during the auction about bids, bidding strategies, or settlements. As explained more fully in the *Auction No. 51 Procedures Public Notice*,<sup>25</sup> this prohibition began with the filing of short-form applications and ends on

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<sup>20</sup> 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).

<sup>21</sup> Pub. L. No. 105-33, 111 Stat. 251 (1997).

<sup>22</sup> 47 C.F.R. § 1.2108(c).

<sup>23</sup> *Id.*

<sup>24</sup> Commission Taking Tough Measures Against Frivolous Pleadings, *Public Notice*, 11 FCC Rcd 3030 (1996).

<sup>25</sup> See *Auction No. 51 Procedures Public Notice*, 18 FCC Rcd 11974, 11980-81.

the down payment due date, or October 16, 2003.<sup>26</sup> The prohibition ends on the down payment due date regardless of whether a winning 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 October 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.

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**For further information, contact**

News Media: Chelsea Fallon at 202-418-7991

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

Wireless Telecommunications Bureau,  
Commercial Wireless Division  
(FCC Form 601 and 602 questions) Joanne Epps, Analyst, at 202-418-1342  
Dwain Livingston, Electronics Engineer, at 202-418-1338  
Evan Baranoff, Attorney, 202-418-7142  
Nicole Dumangane, Attorney, 202-418-7531

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

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<sup>26</sup> *Id.*