



PUBLIC NOTICE

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DA 04-2158
July 19, 2004

DIRECT BROADCAST SATELLITE SERVICE LICENSES AUCTION CLOSES Winning Bidders Announced

Down Payments Due August 2, 2004
Final Payments Due August 16, 2004
FCC Form 312 and required exhibits Due August 18, 2004
Thirty-Day Petition to Deny Period

Report No. AUC-04-52-I (Auction No. 52)

On July 14, 2004, the Federal Communications Commission completed the auction of three licenses to use the Direct Broadcast Satellite (“DBS”) service allocation in the 12.2-12.7 GHz band and Associated Feeder Links in the 17.3-17.8 GHz band (“Auction No. 52”), raising (in net bids) a total of \$12,200,000. In this auction, two winning bidders won a total of three licenses.

This *Public Notice* provides detailed information concerning winning bidders, down payments, final payments and/or refunds, FCC Form 312, 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 final 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 2, 2004**, winning bidders in Auction No. 52 must have on deposit with Mellon Bank in Pittsburgh, Pennsylvania, enough funds to cover down payments on winning bids.¹ A winning bidder’s total deposit must be twenty (20) percent of its net winning bid. If a winning

¹ 47 C.F.R. § 1.2107(b).

bidder's upfront payment is not sufficient to meet this requirement, the winning bidder must deposit additional funds.² In this case both winning bidders' upfront payment amounts are sufficient to meet this requirement.

B. Final Payments

Winning bidders will be required to submit the balance of the net amount of their winning bids by August 16, 2004,³ as set out in the "Refund or Final Balance Due" column of Attachment B. 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), and upon completion of the long-form applications (FCC Form 312) review.⁴

C. Method of Payment for Final Payments

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 to winning bidders to facilitate submission of the correct final payment. **Please note, however, that winning bidders are responsible for insuring submission of the correct final payment and obtaining confirmation from their financial institution that Mellon Bank has timely received their final payment and deposited it in the proper account.**

Questions concerning the calculation and submission of down and final payments, the FCC Form 159, and refunds should be directed to Gail Glasser at (202) 418-0578.

Wire transfers for final payments must be received by Mellon Bank no later than 6:00 p.m. ET. on August 16, 2004 (or no later than 6:00 p.m. ET on August 30, 2004, along with the five percent late fee required by Section 1.2109(a) of the Commission's rules).⁶ Applicants 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"

² *Id.*

³ See "Auction of Direct Broadcast Satellite Service Licenses Rescheduled for July 14, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures," *Public Notice*, 19 FCC Rcd 2018 (2004) ("Auction No. 52 Procedures Public Notice"); 47 C.F.R. § 1.2109(a).

⁴ 47 C.F.R. §§ 1.2107(c), 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.

⁶ 47 C.F.R. § 1.2109(a).

FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 11 and/or 21)
PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: A52D)
FCC CODE 1: (same as FCC Form 159, Block 28A: "52")
PAYOR NAME: (same as FCC Form 159, Block 2)
LOCKBOX NO.: #358850

Payments must be preceded by the completed FCC Remittance Advice Form (FCC Form 159). The applicant must fax, on the same business day that it pays the balance due to Mellon Bank, a completed FCC Form 159 to Mellon Bank at (412) 209-6045 at least one hour prior to placing the order for the wire transfer. On the FCC Form 159, the applicant must use the same FRN number used on its FCC Form 175.

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.⁷

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 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.

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 2, 2004, the bidder will be deemed to have defaulted and it will be liable for a default payment as described 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 bidder at their final bid.⁸

If a winning bidder fails to pay the balance of its winning bids in a lump sum by August 16, 2004, 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.⁹ When a winning bidder fails to pay the balance of its winning bid plus late fee by August 30, 2004, it is considered to be in default on its license(s) and subject to the applicable default payments.¹⁰

Licenses will be awarded only after the full and timely payment of winning bids and any applicable late fees,¹¹ and upon completion of the long-form application (FCC Form 312) review.¹² A winning bidder

⁷ 47 C.F.R. §§ 1.2104(g), 1.2109(c).

⁸ 47 C.F.R. § 1.2109(b).

⁹ 47 C.F.R. § 1.2109(a).

¹⁰ *Id.*

¹¹ *Id.*

¹² 47 C.F.R. §§ 25.150 - 25.156 (applications will be granted if the Commission finds that the applicant is legally, technically and otherwise qualified).

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 payments, will be deemed to have defaulted and will be liable for the payment set forth in Section 1.2104(g)(2).¹³ In such event, the Commission may either auction the license to existing or new applicants or offer it to the other highest bidder at their final bid.¹⁴

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.¹⁵

E. Refund of Excess Upfront Payments

Upfront monies on deposit that are in excess of the required final 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.

F. FCC Form 312

Deadline For Filing: By **6:00 p.m. ET on August 18, 2004** winning bidders must submit a properly completed FCC Form 312¹⁶ together with Schedule S¹⁷ and pay the appropriate application fee,¹⁸ for each license for which they were the winning high bidder.¹⁹ Applications may be filed either electronically or manually, although the Commission encourages electronic filing. DBS applicants must provide all information required under Part 25 of the Commission's rules²⁰ including the narrative information required in Section 25.114(d) as revised in the *Third Space Station Reform Order*.²¹

Where and How to File: The completed FCC Form 312 can be filed electronically via the Commission's

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

¹⁴ 47 C.F.R. § 1.2109(c).

¹⁵ 47 C.F.R. § 1.2109(d).

¹⁶ Policies and Rules for the Direct Broadcast Satellite Service, *Report and Order*, 17 FCC Rcd 11331 ¶ 35 (2002).

¹⁷ See Amendment of the Commission's Space Station Licensing Rules and Policies, *Third Report and Order*, 18 FCC Rcd 13486, 13492-93 ¶ 11-15 (2003) ("*Third Space Station Reform Order*").

¹⁸ 47 C.F.R. § 1.1107 (11)(b)(c).

¹⁹ See §§ 25.148(e)(f), 1.2107.

²⁰ See "International Bureau Clarifies Direct Broadcast Satellites Space Station Application Processing Rules," *Public Notice*, 19 FCC Rcd 1346 (2004).

²¹ *Third Space Station Reform Order* 18 FCC Rcd at 13523-24 (Appendix B).

International Bureau Filing System (IBFS).²² Users can access the electronic filing system *via* the Internet from the International Bureau's Web Site at:

<http://svartifoss2.fcc.gov/prod/ib/forms>

Internet access to the IBFS online electronic forms filing system requires, at a minimum:

- ◆ 166 MHz (*450 MHz or higher recommended*)
- ◆ 32 MB of RAM (*128 or higher recommended*)
- ◆ 56K modem
- ◆ Netscape 4.0 or better, Microsoft Internet Explorer 4.0 or better
- ◆ 100 MB of available hard drive space

Detailed instructions for filing applications are available online on the International Bureau's home page at http://svartifoss2.fcc.gov/prod/ib/forms/getting_started.htm. For technical assistance with electronic filing, call the International Bureau Help Desk at (202) 418-2222.

Manual filers can obtain a copy of FCC Form 312, Schedule S, and filing instructions by calling the Commission's Forms Distribution Center at (800) 418-3676 (outside Washington, DC) or (202) 418-3676 (in the Washington Area). Copies can also be obtained via the Internet at <http://www.fcc.gov/formpage.html>.

Failure to timely file FCC Form 312 or sign a manually-filed FCC Form 312 will result in default. Late-filed applications will not be accepted without a showing of good cause.²³

G. Maintaining Accuracy of Information

After the auction closes, applicants are required to make all changes by filing FCC Form 312. As of this date, applicants are no longer required to maintain accuracy and completeness of information furnished on their FCC Form 175 and exhibits.

H. Application Processing and License Grant

If the Commission determines that the application is acceptable for filing, it will place the application on public notice. Interested parties will have **thirty (30) days** to file petitions to deny from the date of the public notice.²⁴ An applicant may file an opposition to any petition to deny within **ten (10) days** after the time for filing petitions to deny has expired.²⁵ The petitioner may file a reply to such opposition within **five (5) days** after the time for filing oppositions has expired.²⁶

²² See Mandatory Electronic Filing For International Telecommunications Services and Other International Filings, *Notice of Proposed Rulemaking*, FCC 04-133 (rel. June 30, 2004).

²³ 47 C.F.R. § 1.2107(c).

²⁴ 47 C.F.R. § 25.154(a)(2).

²⁵ 47 C.F.R. §25.154(c).

²⁶ 47 C.F.R. §25.154(d).

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

I. Anti-collusion Rules

To ensure the competitiveness of the auction process, the Commission’s rules prohibit applicants for any of the same geographic licenses from communicating with each other during the auction about bids, bidding strategies, or settlements. As explained more fully in the *Auction No. 52 Procedures Public Notice*, this prohibition began with the filing of short-form applications and ends on the down payment due date, or August 2, 2004.²⁸ 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.

J. Return of SecurID Cards

Bidders are encouraged to return their SecurID cards to the FCC by **August 2, 2004** 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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²⁷ See “Commission Taking Tough Measures Against Frivolous Pleadings,” *Public Notice*, 11 FCC Rcd 3030 (1996).

²⁸ *Auction No. 52 Procedures Public Notice*, 19 FCC Rcd at 4.

For further information, contact:

News Media:

Lauren Patrich at 202-418-7944

Technical Support Hotline:

Technical Support Personnel at
202-414-1250
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

International Bureau
(FCC Form 312, including Schedule S)

Selina Khan at (202) 418-7282 or Chip Fleming at 202-
418-1247

Wireless Telecommunications Bureau,
Auctions and Spectrum Access Division
(Auction-related questions)

Lisa Stover Project Manager at 717-338-2888
Brian Carter, Special Counsel at 202-418-0660

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