



PUBLIC NOTICE

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February 2, 2004

MULTICHANNEL VIDEO DISTRIBUTION AND DATA SERVICE SPECTRUM AUCTION CLOSES Winning Bidders Announced

Down Payments Due February 17, 2004
FCC Forms 601 and 602 Due February 17, 2004
Final Payments Due March 2, 2004
Ten-Day Petition to Deny Period

Report No. AUC-04-53-G (Auction No. 53)

On January 27, 2004, the Federal Communications Commission completed the auction of 214 Multichannel Video Distribution and Data Service ("MVDDS") licenses ("Auction No. 53"), raising (in net bids) a total of \$118,721,835. In this auction, 10 winning bidders won a total of 192 licenses. This *Public Notice* provides detailed information concerning winning bidders, down payments, bid withdrawal payments, final payments and/or refunds, 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 the net amounts of the winning bids.
- Attachment B:** "Bidder Payment/Refund Report" lists any down payments, bid withdrawal payments, and final payments owed by winning bidders.
- Attachment C:** "Withdrawal/Payment Report" lists any bid withdrawal payments owed by all bidders.
- Attachment D:** "Instructions for Completing FCC Form 601 & Form 602" provides detailed information about how a winning bidder should complete the required FCC Form 601 and FCC Form 602 for MVDDS license applications.
- Attachment E:** "Instructions for Using ULS to Associate Call Signs with an FRN and File FCC Form 601 Electronically."

Attachment F: “Using Dial Up Networking In Windows 95/98/2000/XP 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 February 17, 2004**, winning bidders in Auction No. 53 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Mellon Bank in Pittsburgh, Pennsylvania, enough funds to cover 1) down payments on winning bids, and 2) payments for withdrawn bids, if applicable.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 “Additional Amount Due for Down Payment after Upfront Payment Balance Applied” 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 total deposits must be a total of any withdrawal payments (if applicable) plus twenty (20) percent of its net winning bid(s).

B. Final Payments

Each winning bidder will be required to submit the balance of the net amount of its winning bids by March 2, 2004², 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)³, and upon completion of the long-form applications (FCC Form 601) review.

C. Method of Payment for Down and 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).⁴

¹ 47 C.F.R. § 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 See Auction of Licenses in the Multichannel Video Distribution and Data Service rescheduled for January 14, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures, *Public Notice*, 18 FCC Rcd 17553 (2003) (“*Auction No. 53 Procedures Public Notice*”).

³ 47 C.F.R. § 1.2109(a).

⁴ 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.

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.

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: A53D)
FCC CODE 1: (same as FCC Form 159, Block 28A: "53")
PAYOR NAME: (same as FCC Form 159, Block 2)
LOCKBOX NO.: #358850

1. Down Payment. 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.**

Wire transfers for down payments must be received by Mellon Bank by 6:00 p.m. ET, on February 17, 2004. 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.**

Winning bidders must fax the 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 FCC Registration Number (FRN) used on their FCC Form 175.**

2. Final Payment. 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. 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 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.**

Wire transfers for final payments must be received by Mellon Bank no later than 6:00 p.m. ET. on March 2, 2004 (or 6:00 p.m. ET on March 16, 2004, along with the five percent late fee). 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.**

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 601.

Withdrawal, 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.⁵

1. Bid Withdrawal Payments. A bidder (Bidder X) that withdraws a high bid during the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount withdrawn and the amount of the subsequent winning bid. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids equals or exceeds that withdrawn bid. If a high bid is withdrawn on a license that remains unsold at the close of the auction, Bidder X will be required to make an interim payment equal to three (3) percent of the net amount of the withdrawn bid.⁶ This payment amount is deducted from any upfront payments or down payments that Bidder X has deposited with the Commission. If, in a subsequent auction, that license receives a valid bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed, and upon appropriate request, the Commission will refund the interim three (3) percent payment. If, in a subsequent auction, the winning bid amount for that license is less than Bidder X's withdrawn bid amount, then Bidder X will be required to make a final bid withdrawal payment equal to either the difference between Bidder X's net withdrawn bid and the subsequent net winning bid, or the difference between Bidder X's gross withdrawn bid and the subsequent gross winning bid, whichever is less. The three (3) percent interim payment will be applied toward the withdrawal payment.

Attachment C identifies bidders that owe withdrawal payments to the Commission as a result of bid withdrawals made in Auction No. 53. Any upfront payments or down payments that the withdrawing bidder has deposited with the Commission will first be applied to satisfy the withdrawal payment(s) amount before being applied toward a winning bidder's down payment.⁷

2. 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 same bid withdrawal payment obligations as described above, plus 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

⁵ See 47 C.F.R. §§ 1.2104(g), 1.2109.

⁶ 47 C.F.R. § 1.2104(g)(1); Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293, 15301-02 (2000); see Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5563 n.51 (1994); see also Phase II 220 MHz Service Auction Closes, Winning Bidders in the Auction of 908 Phase II 220 MHz Service Licenses, *Public Notice*, 14 FCC Rcd 605 (1999).

⁷ 47 C.F.R. § 1.2104(g)(1).

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 February 17, 2004, 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 spectrum 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 March 2, 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. When a winning bidder fails to pay the balance of its winning bid plus the late fee by March 16, 2004, it is considered to be in default on its license(s) and subject to the applicable default payments.⁹

Licenses will be awarded only after the full and timely payment of winning bids and any applicable late fees¹⁰, and upon completion of the long-form applications (FCC Form 601) review. 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).¹¹ In such event, the Commission may either auction the spectrum to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids.¹²

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.¹³

E. Refund of Excess Payments

Monies on deposit that are in excess of the required final payment, withdrawal and/or default payment amounts may be refunded to the payer of record as identified on FCC Form 159 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.

⁸ 47 C.F.R. § 1.2109(b).

⁹ 47 C.F.R. § 1.2104(g) and 1.2109(c).

¹⁰ 47 C.F.R. § 1.2109(a).

¹¹ 47 C.F.R. § 1.2104(g)(2).

¹² 47 C.F.R. § 1.2109(c).

¹³ 47 C.F.R. § 1.2109(d).

F. FCC Form 601

By **6:00 p.m. ET on February 17, 2004**, winning bidders must submit a completed long-form application(s) covering each license for which they were the winning high bidder. **Attachment D** 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 E**.

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.¹⁴

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 D**.

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.¹⁵ 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 D**. 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).¹⁶ For further information, see Instructions in **Attachment D**.

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. § 1.2107(c).

¹⁵ 47 C.F.R. §§ 1.919, 1.2107(f).

¹⁶ 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 1997,¹⁷ 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.¹⁸ The petitioner may file a reply to such opposition within **five (5) business days** after the time for filing oppositions has expired.¹⁹ After the long-form review process, if the Commission determines that additional payments from applicants may be required, the Bureau will provide further instructions in a future Public Notice regarding any such additional payments. If the Commission determines that an applicant is otherwise qualified, that there are no substantial and material issues of fact raised in any petition to deny, and that no additional payments are due, 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.²⁰

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. 53 Qualified Bidders Public Notice*,²¹ this prohibition began with the filing of short-form applications and ends on the down payment due date, or February 17, 2004.²² 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 February 17, 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.

¹⁷ Pub. L. No. 105-33, 111 Stat. 251 (1997).

¹⁸ 47 C.F.R. § 1.2108(c).

¹⁹ *Id.*

²⁰ Commission Taking Tough Measures Against Frivolous Pleadings, *Public Notice*, 11 FCC Rcd 3030 (1996).

²¹ See Multichannel Video Distribution and Data Service Spectrum Auction, 14 Qualified Bidders, *Public Notice*, DA 03-3968 (rel. December 17, 2003) ("*Auction No. 53 Qualified Bidders Public Notice*").

²² *Id.*

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For further information, contact

News Media:

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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
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Gail Glasser at 202-418-0578

Wireless Telecommunications Bureau,
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