



# PUBLIC NOTICE

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DA 04-3491  
Released: October 29, 2004

## WIRELESS TELECOMMUNICATIONS BUREAU REMINDS PROSPECTIVE BROADBAND PCS SPECTRUM AUCTION APPLICANTS OF DEFAULT AND DELINQUENCY DISCLOSURE REQUIREMENTS

### Report No. AUC-04-58-E (Auction No. 58)

We remind prospective competitive bidding applicants that each applicant must be able to certify, under penalty of perjury, on its short-form application (FCC Form 175) that the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests<sup>1</sup> are not in default on any Commission license and are not delinquent on any non-tax debt owed to any Federal agency.<sup>2</sup> An applicant is not eligible to participate in competitive bidding if the applicant, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests is in default on any Commission license, as of the filing deadline for applications to participate in a specific auction.<sup>3</sup> An applicant also is not eligible for competitive bidding if the applicant, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests is delinquent on any non-tax debt owed to any Federal agency, as of the filing deadline for applications to participate in a specific auction.<sup>4</sup>

In addition, each applicant must attach to its short-form application a statement, made under penalty of perjury, indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interests, have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency.<sup>5</sup> We note that the pendency of a regulatory request to waive, forgive, alter or settle obligations may not affect an applicant's status as being in default or delinquent for the purposes of the Commission's competitive bidding rules, as it might in other contexts.<sup>6</sup>

<sup>1</sup> Controlling interests and affiliates are defined at 47 C.F.R. § 1.2110.

<sup>2</sup> 47 C.F.R. § 1.2105(a)(2)(x); *see* 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, 15317 ¶ 42 (2000) (modified by Erratum, DA 00-2475 (Auctions Div. Nov. 3, 2000)) (*Part 1 Fifth Report and Order*).

<sup>3</sup> 47 C.F.R. § 1.2105(b)(1).

<sup>4</sup> *Id.*

<sup>5</sup> 47 C.F.R. § 1.2105(a)(2)(xi); *see Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 n.142 ("If any one of an applicant's controlling interests or their affiliates . . . is in default on any Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files it[s] Form 175, the applicant will not be able to make the certification required by Section 1.2105(a)(2)(x) . . . and will not be eligible to participate in Commission auctions."); *see also* Broadcast PCS Spectrum Auction Scheduled for January 12, 2005, *Public Notice*, Report No. AUC-04-58-C (Auction No. 58), DA 04-3005, at 16 (Sept. 16, 2004).

<sup>6</sup> *See* Amendment of Part 0 and 1 of the Commission's Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors, MD Docket No. 02-339, *Report and Order*, 19 FCC Rcd 6540, ¶10 (2004) (footnote omitted) ("We proposed that the 30-day

An applicant, including the applicant's attributable interest holders,<sup>7</sup> that has cured each default on a Commission license and has cured each outstanding non-tax delinquency owed to a Federal agency, including but not limited to the Commission, prior to the deadline for filing a short-form application to participate in a specific auction may be eligible to bid in that auction as a "former defaulter," provided that the applicant is otherwise qualified. To participate in an auction as a former defaulter, applicants are required to pay upfront payments that are fifty percent more than the normal upfront payment amount established for each particular license.<sup>8</sup> It is each applicant's responsibility to certify to its qualifications to participate in an auction under Section 1.2105 of the Commission's rules and to determine its upfront payment obligation under Section 1.2106.

The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. Earlier this year, the Commission adopted rules, including a provision referred to as the "red light rule," that implement the Commission's obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States.<sup>9</sup> Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules "are not affected" by the red light rule.<sup>10</sup> As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of Sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies. Thus, while the red light rule may ultimately prevent the processing of long-form applications by auction winners, an auction applicant's "red light" status is not necessarily determinative of its eligibility to participate in Auction No. 58 or to its upfront payment obligation.

The Commission's Red Light Display System database, which is available to assist in implementing the red light rule, does not reflect delinquencies on any non-tax debt owed to any other federal agency of the

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resolution period would not apply to applications or requests for benefits where more restrictive rules govern treatment of delinquent debtors. For example, under existing rules auction applicants must already certify that they are not delinquent in non-tax debt or their short form application will be dismissed and they will be ineligible to participate in an auction. . . . We adopt this proposal without modification."); Letter to Audrey P. Rasmussen, Counsel to Tracy Broadcasting Corp., from Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Div., Wireless Telecommunications Bur., DA 04-3065 (Sept. 24, 2004) ("In brief, uncertainty regarding pending requests for relief does not alter a debtor's current status, which the Commission may take into account when considering an application to participate in an auction.").

<sup>7</sup> See 47 C.F.R. § 1.2110.

<sup>8</sup> 47 C.F.R. § 1.2106(a). This rule provision has a practical effect. For example, if the normal upfront payment amount established for a specific group of licenses in a particular auction is \$100,000, then a former defaulter must submit an upfront payment of \$150,000 to be eligible to bid on that specific group of licenses ( $\$100,000 \times 1.5 = \$150,000$ ). In these circumstances, if a former defaulter submits an upfront payment amount of \$100,000, instead of \$150,000, the former defaulter's bidding eligibility is reduced to 66,667 bidding units ( $\$100,000$  divided by  $1.5 = 66,667$ ). Such a reduction in bidding eligibility may constrain an applicant's ability to bid on certain licenses. Further, if eligibility is reduced below the number of bidding units of any one of the licenses an applicant has selected on its short-form application, such applicant will be unable to place bids in the auction.

<sup>9</sup> Amendment of Part 0 and 1 of the Commission's Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors, MD Docket No. 02-339, *Report and Order*, 19 FCC Rcd 6540 (2004) (implementing Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996)).

<sup>10</sup> *Id.*, 19 FCC Rcd at 6541 n.11. Footnote 11 specifically mentions 47 C.F.R. §§ 1.2105(a)(2)(x) and (xi).

United States.<sup>11</sup> Moreover, the database does not include historical information regarding former defaults or delinquencies that have since been resolved. Accordingly, at this time, a “green light” does not conclusively demonstrate that a potential applicant for Auction No. 58 can make the certification required under Section 1.2105(a)(2)(x) regarding whether the applicant currently is in default on a Commission license or delinquent on a non-tax debt owed to any federal agency. Similarly, a “green light” does not conclusively demonstrate that a potential applicant for Auction No. 58 can make the statement required under Section 1.2105(a)(2)(xi) regarding whether the applicant has ever been in default on a Commission license or has ever been delinquent on a non-tax debt owed to any federal agency. In addition, the Commission’s Red Light Display System database may include information on Commission debts that may not constitute a default and/or delinquency for purposes of Sections 1.2105 and 1.2106 of the Commission’s competitive bidding rules. For example, a party may have a “red light” because it submitted a payment with an incorrect FCC registration number and, consequently, the payment was not applied to the correct account. Accordingly, at this time, a “red light” does not conclusively demonstrate that a potential applicant for Auction No. 58 is in default or delinquent on non-tax debt to the Commission for purposes of applying to participate in an auction. Similarly, a “red light” at some time in the past does not conclusively demonstrate that a potential applicant for Auction No. 58 cannot make the statement required under Section 1.2105(a)(2)(xi) regarding whether the applicant has ever been in default on a Commission license or has ever been delinquent on a non-tax debt owed to any federal agency.

We recognize that the implementation of the Commission’s Red Light Display System in advance of Auction No. 58 will raise issues of delinquency and default for purposes of certification under Section 1.2105. Consistent with the Commission’s waiver standard of Section 1.925,<sup>12</sup> we will therefore entertain requests for clarification and/or waiver of defaulter or former defaulter status under Sections 1.2105(a)(2)(x) & (xi) and Section 1.2106(a).

Finally, we remind prospective applicants that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.<sup>13</sup>

Action by the Wireless Telecommunications Bureau.

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<sup>11</sup> The Red Light Display System can be accessed at <http://www.fcc.gov/redlight/>.

<sup>12</sup> 47 C.F.R. § 1.925.

<sup>13</sup> See e.g., Auction of Licenses for VHF Public Coast and Location and Monitoring Service Spectrum, *Order*, 17 FCC Rcd 19746, 19752 n.45 (Wireless Telecom. Bur. 2002); see also Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *First Report and Order*, 13 FCC Rcd 15920, 15956 ¶ 99 (1998)(emphasizing that candor is a concern to the Commission in the context of auction application certifications).