



PUBLIC NOTICE

Federal Communications Commission
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DA 05-2543
September 30, 2005

AUCTION OF LOW POWER TELEVISION CONSTRUCTION PERMITS CLOSES Winning Bidders Announced for Auction No. 81

Down Payments due October 31, 2005
FCC Forms 346 or 301-CA due October 31, 2005

Report No. AUC-05-81-H (Auction No. 81)

On September 26, 2005, the Federal Communications Commission completed the auction of 113 construction permits for certain low power television (LPTV), television translator and Class A television broadcast stations (Auction No. 81), raising (in net bids) a total of \$836,100. In this auction, 39 winning bidders won a total of 90 permits. This public notice provides detailed information concerning winning bidders, down payments, deposits and/or refunds, long-form application (FCC Form 346 or 301-CA) filing requirements, requests for rule waivers, and licensing matters. Key information appears in the following attachments:

- Attachment A:** “Winning Bids” lists winning bidders and both their total gross and net winning bid amounts.
- Attachment B:** “Bidder Payment/Refund” lists any down payments and final payments owed by winning bidders, if any.
- Attachment C:** “Withdrawal Payment Report” lists bid withdrawal payments owed by bidders, if any.

A copy of this public notice will be sent via overnight delivery to each winning bidder.

A. Down Payments

In order to alleviate any undue burden caused by post-auction deadlines on any winning bidder affected by Hurricane Rita and/or Hurricane Katrina, the down payment deadline will be **October 31, 2005**.¹

¹ The Media Bureau and Wireless Telecommunications Bureau previously announced that the deadline for winning bidders to submit their down payments would be ten business days after release of the auction closing notice. See “Auction of Low Power Television Construction Permits Scheduled for September 14, 2005, Notice and Filing

Before **6:00 p.m. Eastern Time (ET) on October 31, 2005**, winning bidders in Auction No. 81 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Mellon Bank in Pittsburgh, Pennsylvania, enough funds to cover 1) down payments on winning bids, and 2) payments for withdrawn bids, if applicable.² If a winning bidder's upfront payment is not sufficient to meet both of these requirements, the winning bidder must deposit additional funds.³

The amount now due from each winning bidder, if any, is set out in the "Additional Amount Due after Upfront Payment Balance Applied Due by October 31, 2005" column of **Attachment B**.⁴ **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 percent of the net amount of its winning bids.

B. Final Payments

Upon resolution, favorable to the winning bidders, of matters raised in petitions to deny and/or any other technical or legal issues raised by the Forms 346 or 301-CA applications,⁵ the Commission will issue a public notice announcing that it is prepared to award the construction permits to the winning bidders.⁶ Within ten business days after the date of that public notice, the winning bidders will be required to make full payment of the balance of their winning bids.⁷ 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).⁸

Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 81," *Public Notice*, DA 05-1337, at 31 (May 20, 2005) ("*Auction No. 81 Procedures Public Notice*").

² See 47 C.F.R. § 1.2107(b).

³ *Id.* 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. See 47 C.F.R. § 1.2104(g)(1).

⁴ On September 19, 2005, Three Angels Broadcasting Network, Inc. (Three Angels) amended its short-form application (FCC Form 175) to report that it no longer claims the 35 percent new entrant bidding credit indicated on its originally-submitted short-form application. Three Angels claims eligibility for a 25 percent new entrant bidding credit. Although the FCC's Integrated Spectrum Auction System ("ISAS") results files after September 19, 2005 continued to show net bid amounts for Three Angels that reflected a 35 percent bidding credit, Three Angels is eligible only for a 25 percent new entrant bidding credit for any construction permit won in Auction No. 81. For this reason, the net bid amounts for Three Angels listed in the attachments to this public notice reflect a 25 percent new entrant bidding credit.

⁵ A winning bidder that is found unqualified to be a Commission licensee will be deemed to have defaulted, its application will be dismissed, and it will be liable for the payment set forth in Sections 1.2104(g)(2) or 1.2104(g)(3) of the Commission's rules, whichever is applicable. See 47 C.F.R. §§ 1.2104(g), 1.2109(c).

⁶ See 47 C.F.R. § 73.5006(d).

⁷ 47 C.F.R. §§ 1.2109 and 73.5003.

⁸ 47 C.F.R. § 1.2109(a).

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).⁹ 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. **Please note, however, that winning bidders are responsible for insuring submission of the correct down payment, timely filing of an accurate and complete FCC Form 159, and obtaining confirmation from their financial institution that Mellon Bank has timely received their down payment and deposited it into 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 down payments must be received by Mellon Bank before 6:00 p.m. ET on October 31, 2005. 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
500 Ross Street
Pittsburgh, PA 15262
BNF: FCC Account Number 911-6106
OBI Field: (Skip one space between each information item) "AUCTIONPAY"
APPLICANT'S FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 21)
PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: "A81D")
FCC CODE 1: (same as FCC Form 159, Block 28A: "81")
PAYOR NAME: (same as FCC Form 159, Block 2)
LOCKBOX NO.: #358850

At least one hour before placing the order for the wire transfer (but on the same business day), winning bidders must send by facsimile the completed FCC Form 159 to Mellon Bank at (412) 209-6045. 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.**

Failure to complete the down payment on or before October 31, 2005, will result in default. See Section D.2., below.

⁹ 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 from the handset of a facsimile machine the Commission's Fax Information System at (202) 418-2830.

D. Withdrawal, Default and Disqualification Payments

The Commission imposes payments on bidders that withdraw provisionally winning bids during the course of an auction, those that default on payments due after an auction closes, and those that are disqualified.¹⁰

1. Bid Withdrawal Payments. A bidder (Bidder X) that withdraws a provisionally winning bid during the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount of the withdrawn bid 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 provisionally winning bid is withdrawn on a construction permit that remains unsold at the close of the auction, Bidder X will be required to make an interim payment equal to three percent of the net amount of the withdrawn bid.¹¹ 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 construction permit 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 percent payment. If, in a subsequent auction, the winning bid amount for that construction permit 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 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 bids withdrawn in Auction No. 81. Any upfront payments or down payments that the withdrawing bidder has deposited with the Commission will first be applied to satisfy the withdrawal payment amount before being applied towards a winning bidder's down payment.¹²

2. Bid Default/Disqualification Payments. If a winning 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 percent of the subsequent winning bid or three 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.¹³ Thus, if the difference between the gross bids is less than the difference

¹⁰ See 47 C.F.R. §§ 1.2104(g), 1.2109.

¹¹ See 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) ("*Part 1 Fifth Report and Order*"); 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).

¹² See 47 C.F.R. § 1.2104(g)(1).

¹³ See 47 C.F.R. § 1.2104(g)(2).

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 business days after the Commission has released this public notice, in this case by October 31, 2005, 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.¹⁴ 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.¹⁵

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 business days after the payment deadline provided that it also pays a late fee equal to five percent of the amount due.¹⁶ When a winning bidder fails to pay the balance of its winning bid plus the 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.¹⁷

Construction permits will be awarded upon completion of the review of each applicant's long-form application, but only after the full and timely payment of winning bids and any applicable late fees.¹⁸ If a winning bidder defaults or is disqualified for any reason after having made the required down payment, it will be deemed to have defaulted and will be liable for the payment set forth in Section 1.2104(g)(2).¹⁹ 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 the amount of their final bids.²⁰

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.²¹

E. Refund of Excess Payments

Upfront monies on deposit that are in excess of any applicable down payment, withdrawal and/or default payment amounts will be refunded to the payer of record as identified on the FCC Form 159 promptly

¹⁴ See 47 C.F.R. §§ 1.2104(g), 1.2109.

¹⁵ See 47 C.F.R. § 1.2109(b).

¹⁶ 47 C.F.R. §§ 1.2109(a), 73.5003.

¹⁷ See 47 C.F.R. §§ 1.2104(g), 1.2109(a), 1.2109(c).

¹⁸ See 47 C.F.R. §§ 1.2109(a), 73.5003.

¹⁹ See 47 C.F.R. §§ 1.2104(g)(2), 1.2109(a), 1.2109(c).

²⁰ See 47 C.F.R. § 1.2109(c).

²¹ See 47 C.F.R. § 1.2109(d).

upon receipt of the necessary wire transfer instructions. Applicants must provide this information by accessing the “See Wire Transfer for Refund Purposes” link under the Post-Auction section of the My Auctions Page or by sending by facsimile such instructions to Gail Glasser of the Office of the Managing Director at (202) 418-2843. Any questions concerning refunds should be referred to Gail Glasser at (202) 418-0578.

F. FCC Forms 346 or 301-CA

Deadline for Filing: Before **6:00 p.m. ET on October 31, 2005**, winning bidders must submit electronically a properly completed long-form application (FCC Form 346 or 301-CA, as appropriate), including required exhibits, covering each construction permit for which they were the winning bidder.²²

Where and How to File: Applicants must file accurate and complete FCC Form 346 or 301-CA applications *electronically* through the Media Bureau’s Consolidated Database System (CDBS) online electronic forms system.²³ In accordance with the Commission’s rules, electronic filing of FCC Form 346 or 301-CA must be accompanied by the appropriate application filing fee,²⁴ and information submitted on the new FCC Form 346 or 301-CA applications by winning bidders must not constitute a major change from any information specified in the winning bidder's previously filed FCC Form 175.²⁵ Instructions for use of the Media Bureau's electronic filing system are available in the CDBS User’s Guide, which can be accessed from the electronic filing web site at:

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

The Guide can be accessed by clicking on the CDBS link at the electronic filing web site, above. 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. When filing FCC Form 346 or 301-CA, applicants must select “Long Form Application for LPTV Auction No. 81” on the Pre-form for Form 346 or 301-CA (Question 2 – Application Purpose). For assistance with electronic filing, call the Video Division Help Desk at (202) 418-2662.

The staff will return applications not submitted in accordance with the procedures described above. An applicant that fails to submit the required long form application before the specified deadline, and fails to establish good cause for any late-filed submission, shall be deemed to have defaulted and shall be subject to the payments set forth in Section 1.2104(g) of the Commission’s rules.²⁶

²² See 47 C.F.R. § 73.5005(a).

²³ For information regarding electronic application filing, refer to “Mass Media Bureau Implements Mandatory Electronic Filing of FCC Forms 301, 314, and 315,” *Public Notice*, 16 FCC Rcd 3989 (MMB 2001).

²⁴ See Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, *First Report and Order*, 13 FCC Rcd 15920, 15984 ¶ 164 (1998).

²⁵ See 47 C.F.R. §§ 73.3522(a), 73.3572.

²⁶ See 47 C.F.R. §§ 1.2104(g), 1.2107(c), 73.5005(c).

Applicants are encouraged to pay the FCC Form 346 or 301-CA application filing fee electronically using CDBS filing system in order to avoid processing delays.²⁷

G. Additional Post-Auction Filing Requirements

Section 73.5005(a) of the Commission's rules²⁸ requires that post-auction long-form applications include the exhibits mandated by: Section 1.2107(d) (providing a detailed explanation of the terms, conditions, and parties involved in any bidding consortium, joint venture, partnership, or other agreement or arrangement the applicant had entered into relating to the competitive bidding process);²⁹ Section 1.2110(j) (requiring an applicant claiming designated entity status to describe how it satisfies the eligibility requirements for such designated entity status, and to list and summarize all agreements that affect designated entity status, such as partnership agreements, shareholder agreements, management agreements, and any other agreements, including oral agreements, that establish that the designated entity will have both *de facto* and *de jure* control of the entity);³⁰ and Section 1.2112(a) (requiring that each long-form application fully disclose ownership information and the real party or parties in interest in the applicant or application).³¹

H. Maintaining Accuracy of Information

After the auction closes, applicants are required to make all changes by filing FCC Forms 346 or 301-CA. Applicants are no longer required to maintain the accuracy and completeness of information furnished on their FCC Form 175 and exhibits.

I. Application Processing and Construction Permit Grant

Pursuant to 47 C.F.R. §§ 1.2108(b) and 73.5006, and the Balanced Budget Act of 1997,³² interested parties will have **fifteen (15) days** to file petitions to deny after the Commission releases a public notice announcing the FCC Forms 346 or 301-CA have been accepted for filing.³³ An applicant may file an opposition to any petition to deny within **fifteen (15) days** of the filing deadline for petitions to deny.³⁴ Replies must be filed within **ten (10) days** of the filing deadline for oppositions.³⁵

²⁷ Applicants also are reminded that the Commission's "red light rule" implementing the Debt Collection Improvement Act has become effective. 47 C.F.R. § 1.1910. 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. *Id.*; see also 47 C.F.R. § 1.2109(c) (post-auction defaults).

²⁸ 47 C.F.R. § 73.5005(a).

²⁹ 47 C.F.R. § 1.2107(d).

³⁰ 47 C.F.R. § 1.2110(j).

³¹ 47 C.F.R. § 1.2112(a).

³² Pub. L. 105-33, 111 Stat. 251 (1997).

³³ 47 C.F.R. § 73.5006(b).

³⁴ 47 C.F.R. § 73.5006(c).

³⁵ *Id.*

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.³⁶ 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 grant the construction permit.

J. Anti-collusion Rules

To ensure the competitiveness of the auction process, the Commission's rules prohibit competing applicants from communicating with each other about bids, bidding strategies, or settlements, unless such applicants have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under section 1.2105(a)(2)(viii).³⁷ As explained more fully in the *Auction No. 81 Qualified Bidders Public Notice*,³⁸ this prohibition began at the short-form application filing deadline and ends at the down payment deadline, which is October 31, 2005.³⁹ The prohibition applies to all applicants in Auction No. 81 regardless of whether an applicant became a qualified bidder or actually participated in the bidding, and the prohibition continues until the down payment deadline regardless of whether a winning bidder needs to make an additional payment by the down payment deadline. 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 for recycling their SecurID cards to the FCC by October 31, 2005. 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 closed. 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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³⁶ See Commission Taking Tough Measures Against Frivolous Pleadings, *Public Notice*, 11 FCC Rcd 3030 (1996).

³⁷ 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1). See also Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15297-98 ¶¶ 7-8.

³⁸ See Auction of Low Power Television Construction Permits, 44 Bidders Qualified to Participate in Auction No. 81, *Public Notice*, DA 05-2359 (September 2, 2005).

³⁹ *Id.*

For further information, contact

News Media:

Chelsea Fallon at (202) 418-7991

Technical Support Hotline:

Technical Support Personnel at
(877) 480-3201, option nine; (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

Media Bureau,
Video Division
(FCC Forms 346 or 301-CA questions)

Shaun Maher, Attorney, at (202) 418-1600
Hossein Hashemzadeh, Associate Chief, at (202) 418-1600

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

Linda Sanderson, Project Manager, at (717) 338-2888
Lynne Milne, Attorney at (202) 418-0660

To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

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