



PUBLIC NOTICE

Federal Communications Commission
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December 14, 2005

AUCTION OF MULTICHANNEL VIDEO DISTRIBUTION AND DATA SERVICE LICENSES CLOSES

Winning Bidders Announced for Auction No. 63

Down Payments due December 29, 2005
FCC Forms 601 and 602 due December 29, 2005
Final Payments due January 13, 2006
Ten-Day Petition to Deny Period

Report No. AUC-05-63-F (Auction No. 63)

On December 7, 2005, the Federal Communications Commission completed the auction for 22 Multichannel Video Distribution and Data Service ("MVDDS") licenses (Auction No. 63), raising (in net bids) a total of \$133,160. In this auction, three winning bidders won a total of 22 licenses. This public notice provides detailed information concerning winning bidders, down 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:** "Winning Bids" lists winning bidders and both their total gross and net winning bid amounts.
- Attachment B:** "Bidder Payment/Refund" lists down payments and final payments owed by winning bidders and refunds due, if any.
- Attachment C:** "Multi-Auction Withdrawal/Payment" lists amount(s) or refund(s) due for bidders in Auction No. 53 based upon reconciliation of final results of Auction No. 63.
- Attachment D:** "Instructions for Completing FCC Form 601 & FCC 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.

A copy of this public notice will be sent via overnight delivery 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. Eastern Time (ET) on December 29, 2005, winning bidders in Auction No. 63 must have on deposit with Mellon Bank in Pittsburgh, Pennsylvania, enough funds to cover down payments on winning bids.¹ In this case all winning bidders' upfront payment amounts are sufficient to meet this requirement.

B. Final Payments

Each winning bidder will be required to submit the balance of the net amount of its winning bids by January 13, 2006,² as set out in the "Final Balance Due By Jan 13, 2006 or (Refund)" column of Attachment B. All winning bidders, including those winning bidders that apply for a tribal land bidding credit, must pay the full amount of the Final Balance Due shown in Attachment B by the 6:00 p.m. ET January 13, 2006, deadline (or no later than 6:00 p.m. ET on January 30, 2006, along with the five percent late fee required by Section 1.2109(a) of the Commission's rules).³ 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 601) review.⁴ If an applicant's request for a tribal land bidding credit is approved, the Commission will deduct the amount of the tribal land bidding credit from the eligible applicant's auction payments on deposit (including the final payment), and that amount will be refunded to the payer of record as identified on FCC Form 159. In this case all winning bidders' upfront payment amounts are sufficient to meet the final payment requirement.

C. 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.⁵

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 license 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.⁶ This payment amount

¹ See 47 C.F.R. § 1.2107(b).

² See 47 C.F.R. § 1.2109(a).

³ *Id.*

⁴ 47 C.F.R. §§ 1.2107(c), 1.2109(a).

⁵ See 47 C.F.R. §§ 1.2104(g), 1.2109.

⁶ 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); 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,

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 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 percent interim payment will be applied toward the withdrawal payment.

Now that Auction No. 63 is complete, we are in a position to calculate and assess final bid withdrawal payments owed as a result of withdrawals on licenses in Auction No. 53. These final bid withdrawal payments are identified in **Attachment C**. 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 towards a winning bidder's down payment.⁷ Forthcoming orders will assess such payments.

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.⁸ Thus, if the difference between the gross bids is less than the 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.

Licenses will be awarded only after the full and timely payment of winning bids and any applicable late fees,⁹ 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).¹⁰ 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.¹¹

Winning Bidders in the Auction of 908 Phase II 220 MHz Service Licenses, *Public Notice*, 14 FCC Rcd 605 (1999).

⁷ See 47 C.F.R. 1.2104(g)(1).

⁸ See 47 C.F.R. § 1.2104(g)(2).

⁹ See 47 C.F.R. § 1.2109(a).

¹⁰ See 47 C.F.R. § 1.2104(g)(2).

¹¹ See 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.¹²

D. Refund of Excess Payments

Upfront monies on deposit that are in excess of the required final payment, withdrawal 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. Applicants can 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.

E. FCC Form 601

By no later than **6:00 p.m. ET on December 29, 2005**, winning bidders must submit electronically properly completed long-form applications covering each license for which they were the winning bidder. **Attachment D** sets out instructions for completing the FCC Form 601. Applications must be filed electronically as instructed in **Attachment D**.

IMPORTANT: Beginning August 1, 2005, the online filing process changed for FCC Main Form 601, Application for Wireless Telecommunications Bureau Radio Service Authorization, including Schedule B for Geographically Licensed Services (the "long form"). Instructions for the new filing process, including information about the prefilling of the long form from FCC Form 175, are contained 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.¹³

F. 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**.

G. FCC Form 602

Pursuant to sections 1.919 and 1.2107(f) 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 reporting the applicant's complete and accurate ownership information.¹⁴ 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**.

¹² See 47 C.F.R. § 1.2109(d).

¹³ See 47 C.F.R. § 1.2107(c).

¹⁴ 47 C.F.R. §§ 1.919, 1.2107(f).

Applicants are reminded that a current FCC Form 602 was automatically filed in ULS upon submission of their FCC Form 175. Thus applicants are not required to submit another FCC Form 602 at this time. However, applicants are encouraged to carefully review their FCC Form 602 in ULS to confirm that it is complete and accurate as of the deadline for filing FCC Form 602. For further information, see instructions in **Attachment D**.

H. 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.

I. Application Processing and License Grant

Pursuant to 47 C.F.R. § 1.2108(b), 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.¹⁵ 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.¹⁶ The petitioner may file a reply to such opposition within **five (5)** business days after the time for filing oppositions has expired.¹⁷ 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.¹⁸

J. 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 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).¹⁹ As explained more fully in the *Auction No. 63 Qualified Bidders Public Notice*,²⁰ this prohibition

¹⁵ 47 C.F.R. § 1.2108(b).

¹⁶ 47 C.F.R. § 1.2108(c).

¹⁷ *Id.*

¹⁸ See Commission Taking Tough Measures Against Frivolous Pleadings, *Public Notice*, 11 FCC Rcd 3030 (1996).

¹⁹ 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.

²⁰ See Auction of Multichannel Video Distribution and Data Service Licenses; Three Bidders Qualified to Participate in Auction No. 63, *Public Notice*, DA 05-2960 (November 22, 2005).

began at the short-form application filing deadline and ends at the down payment deadline, which is December 29, 2005.²¹ The prohibition applies to all applicants in Auction No. 63 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 their SecurID cards to the FCC by December 29, 2005, 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
(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

Wireless Telecommunications Bureau,
Broadband Division
(FCC Form 601 and 602 questions) Beth Fishel, Analyst, at (717) 338-2687
Michael Pollak, Electronics Engineer, at (202) 418-2487
Mindy Littell, Attorney, at (202) 418-2487

Wireless Telecommunications Bureau,
Auctions and Spectrum Access Division
(Auction-related questions) Barbara Sibert, Project Manager, at (717) 338-2888
Brian Carter, Special Counsel 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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²¹ *Id.*