



# PUBLIC NOTICE

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## BROADBAND PCS SPECTRUM AUCTION

### 35 Bidders Qualified to Participate in Auction No. 58

#### Report No. AUC-05-58-G (Auction No. 58)

In this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) identifies 35 applicants found to be qualified to bid in the upcoming auction for 242 broadband Personal Communication Service (PCS) licenses (“Auction No. 58”). Auction No. 58 is scheduled to begin on Wednesday, January 26, 2005. In addition, this Public Notice contains bidding instructions and other important information regarding Auction No. 58.

**Attachment A** lists each of the 35 qualified bidders, their upfront payments, and their maximum eligibility in bidding units.

**Attachment B** lists the licenses selected on each qualified bidder’s FCC Form 175 (short-form) application.

**Attachment C** lists those entities that submitted a short-form application but did not qualify to bid in this auction. Such entities are reminded that they remain subject to the Commission’s rules prohibiting collusion in Commission auctions notwithstanding that they did not qualify to bid in this auction.<sup>1</sup>

**Attachment D** describes how to participate in the mock auction.

**Attachment E** provides information on how to monitor the auction online and instructions for reviewing and downloading round results, as well as other material related to Auction No. 58, that will be released by the Commission during the course of the auction.

In order to participate effectively in the auction, qualified bidders should again familiarize themselves with the auction rules, procedures, and other information contained in the *Auction No. 58 Procedures Public Notice*<sup>2</sup> and subsequent public notices. These public notices and other documents related to Auction No. 58 are available on the Commission’s auctions website at <http://wireless.fcc.gov/auctions/>. The following information provides additional guidance.

<sup>1</sup> See 47 C.F.R. § 1.2105(c); *infra*, pp. 5-7.

<sup>2</sup> “Broadband PCS Spectrum Auction Scheduled for January 12, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Auction Procedures for Auction No. 58,” *Public Notice*, 19 FCC Rcd. 18190 (WTB 2004) (“*Auction No. 58 Procedures Public Notice*”).

**Registration.** Qualified bidders have been automatically registered for the auction. For security reasons, the Commission will confirm registration through two separate mailings of registration materials. Both mailings will be sent to the bidder's contact person at the contact address identified in the bidder's short-form application. Upon receipt of both mailings, each bidder should be in possession of the following:

- Bidder Identification Number
- At least two SecurID cards
- Automated Auction System Bidder's Guide
- FCC Telephonic Bidding phone number

**Qualified bidders are solely responsible for ensuring the security of their computer systems and their registration materials and for ensuring that only authorized bidders place bids on their behalf. The Commission assumes no responsibility or liability for these matters.**

**WARNING: Any unauthorized entity accessing or tampering with an FCC or other government computer will be prosecuted to the full extent of the law.**

Any qualified bidder listed in Attachment A of this Public Notice that has not received both registration mailings **by noon on Wednesday, January 19, 2005**, must contact the Auctions Hotline directly at (717) 338-2888. Receipt of both registration mailings is critical to participating in both the mock auction and the actual auction event, and it is the responsibility of each qualified bidder to ensure that all registration information has been received.

**Registration Material Replacement.** In the event that a bidder's identification numbers or SecurID cards are lost, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacement registration material. Qualified bidders requiring the replacement of these items must first call Technical Support at 1-877-480-3201 option 9, (202) 414-1250, or (202) 414-1255 (TTY). After the qualified bidder has notified Technical Support, the designated official of the qualified bidder must appear **in person** at the FCC headquarters (445 12<sup>th</sup> Street, SW, Washington, DC) with two forms of identification, one of which must be a photo identification, to receive replacement materials.

If a bidder receives a damaged card, the bidder's contact person should call Technical Support to request a replacement. Technical Support will verify that the card is unusable, and a new card will be sent by Federal Express along with a self-addressed stamped envelope for returning the damaged card(s).

**Bidding.** The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network.

Qualified bidders are permitted to bid telephonically or electronically. In either case, **each authorized bidder** must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Applicants with only one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the instructions for using them are only mailed to the contact person at the contact address listed on the applicant's short-form application. Please note that each SecurID card is tailored to a specific auction. SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 58. The telephonic bidding phone number will be supplied in the first mailing along with the confidential bidder identification number.

Please note that the SecurID cards can be recycled, and we strongly encourage bidders to return the cards to the FCC. We will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

**Bidding Contingency Plan.** Bidders should develop comprehensive contingency plans that can be quickly implemented if bidders experience difficulty participating in the auction. While the FCC will correct any problems within Commission-controlled facilities, bidders are solely responsible for anticipating and overcoming problems such as bidder technical failures, telephone service interruptions, adverse local weather conditions, unavailability of authorized bidders, or the loss or breach of confidential security codes.

In their registration materials, all qualified bidders will be supplied with a telephone number for telephonic bidding. Bidders choosing to bid telephonically are required to use this telephone number to place bids. Electronic bidders may use this telephone number as an alternate method of bidding in the event they are unable to submit their bids electronically. **Telephonic bidders are reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round.**<sup>3</sup>

**Minimum Opening Bids.** There will be a minimum opening bid for each license in Auction No. 58, calculated in accordance with the formulas previously announced.<sup>4</sup> The minimum opening bid amount is subject to reduction at the discretion of the Commission. The Commission will not entertain requests to lower minimum opening bids. The agency will exercise its discretion, if at all, independent of any communications from bidders.

**Messages and Announcements.** The Commission will post pertinent auction information as messages and announcements in the FCC Automated Auction System. Bidders should routinely check for messages and announcements each time they enter the FCC Automated Auction System and should read this information carefully.

**Bidding Schedule.** The bidding schedule for Wednesday, January 26, 2005, and continuing until further notice, will be:

Bidding Period	9:00 a.m.	-	10:00 a.m. ET
Bidding Period	11:00 a.m.	-	12:00 p.m. ET
Bidding Period	1:30 p.m.	-	2:30 p.m. ET
Bidding Period	3:30 p.m.	-	4:30 p.m. ET

Round results will be provided approximately 10 minutes after the close of each round. The Commission will set the pace of the auction based upon its monitoring of the bidding and its assessment of the auction's progress. All subsequent schedule changes will be made by announcement via the FCC Automated Auction System during the course of the auction.

**Bidder Questions during the Auction.** FCC auction staff and technical support staff will be available during the course of the auction to answer questions from authorized bidders. Bidders should identify themselves as a bidder with a time sensitive auction question(s) when calling. Help can be obtained through the following options:

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<sup>3</sup> The length of a call to place a telephonic bid may vary; please allow a minimum of 10 minutes.

<sup>4</sup> *Auction No. 58 Procedures Public Notice*, 19 FCC Rcd at 18220-22. Attachment A of the *Auction No. 58 Public Notice* sets forth the minimum opening bids for each license offered in Auction No. 58.

FCC Bidder Line (telephonic bidding, auction conduct questions)	Use telephonic bid number supplied in registration mailing
FCC Technical Support Hotline (all technical questions, software and hardware)	(202) 414-1250
FCC Auctions and Spectrum Access Division (legal questions only)	(202) 418-0660

The FCC Automated Auction System includes a function for bidders to submit suggestions to the FCC, but this is **not** an appropriate mechanism for asking questions that may need a timely response, such as questions about auction procedures or other issues. **Such questions should be asked via one of the above telephone options.**

**Monitoring Round Results.** Attachment E of this Public Notice (“How to Monitor the FCC Auctions On-Line”) provides instructions for reviewing and downloading round results, as well as other material related to Auction No. 58, that will be released by the Commission during the course of the auction.

**Auction Tracking Tool (ATT).** The Commission has developed a tool for tracking the results of its auctions. The ATT is a stand-alone application that runs on Windows 95, 98, 2000, ME, NT, and XP operating systems. It does not require any other software, although some advanced features require Microsoft Excel. The tool will allow users to import round result files and analyze bidding results after each round of the auction. For installation and user instructions, see the README file, the ATT User Manual, or the online help system that accompanies the ATT.

The ATT version specifically designed for Auction No. 58 is available for downloading and should be used for both the mock auction and the actual auction. The ATT is located at the auctions web site, <http://wireless.fcc.gov/auctions/>. From the options on the left, select **Tracking Tools**.

The ATT is provided to bidders free of charge and is one means of analyzing the auction round results. Bidders should have a back up strategy in place, which may be quickly implemented, should they experience technical difficulties with the ATT.

**User Requirements for the ATT.** This software is designed to be used by a wide range of users. For most effective use of the tool, users should be familiar with:

- Microsoft Windows 95, 98, NT, 2000, ME or XP
- Microsoft Excel 97 or higher
- The FCC simultaneous multiple-round auction format

**Amendments to FCC Form 175.** Applicants are responsible for maintaining the accuracy and completeness of information furnished in their short-form applications, including their exhibits.<sup>5</sup> Applicants should amend their short-form applications within ten business days from the occurrence of a reportable change. Applicants should make modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by email to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction58@fcc.gov](mailto:auction58@fcc.gov). Questions about changes should be directed to Audrey Bashkin or Scott Mackoul at (202) 418-0660.

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<sup>5</sup> See 47 C.F.R § 1.65.

As described in the Commission's rules, applicants may make only minor corrections to their FCC Form 175 applications (e.g., changing an authorized bidder or a fax number).<sup>6</sup> Major modifications (e.g., changing the licenses applied for or changing control of the applicant) will not be accepted.<sup>7</sup>

**Due Diligence.** Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses being offered in this auction. The Commission makes no representations or warranties about the use of this spectrum for particular services. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 58 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 58 are strongly encouraged to continue such research during the auction. For further details regarding due diligence, qualified bidders should refer to the *Auction No. 58 Procedures Public Notice* under Section I.B.3.<sup>8</sup>

**Mock Auction.** On Friday, January 21, 2005, the Bureau will conduct a mock auction which will allow qualified bidders to familiarize themselves with the FCC Automated Auction System. Only qualified bidders will be permitted to participate in the mock auction. The Bureau will conduct this auction over the Internet, but telephonic bidding will also be available. As a contingency plan, bidders may dial in to the FCC Wide Area Network. Qualified bidders that wish to place bids telephonically should use the telephone number supplied in the Auction No. 58 registration materials.

**The mock auction will be identified as "Auction No. 74"** and will follow the rules governing the actual auction, **except for licenses available and bidders' initial bidding eligibility.** The mock auction will include **only the first 50 licenses** shown on Attachment A of the *Auction No. 58 Procedures Public Notice*. Bidders with entrepreneur status will be permitted to place bids on any of the 50 licenses,<sup>9</sup> while bidders without entrepreneur status will not be able to place bids on those of the 50 licenses that are available only to entrepreneurs in closed bidding.<sup>10</sup> **The program will also reflect that each bidder submitted an upfront payment of \$10,904,000.00, which will determine each bidder's initial (maximum) bidding eligibility of 10,904,000 bidding units.** The mock auction will simulate the start of the auction, and each bidder will be required to be active on 80 percent of its current bidding eligibility. If a bidder does not meet this requirement, it will have a waiver automatically applied (if the bidder has any waivers available), or its current eligibility will be permanently reduced (if the bidder has no waivers remaining), possibly eliminating the bidder from further bidding in the auction.

Electronic bidders participating in the mock auction are advised to review the Bidding System User Manual provided in the second mailing. Attachment D to this Public Notice provides instructions for accessing the FCC Mock Auction site.

The mock auction bidding schedule for Friday, January 21, 2005, will be:

Round 1 Bidding Period	9:00 a.m.	-	10:00 a.m. ET
Round 2 Bidding Period	11:00 a.m.	-	12:00 p.m. ET
Round 3 Bidding Period	1:00 p.m.	-	1:30 p.m. ET

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<sup>6</sup> See 47 C.F.R. § 1.2105(b).

<sup>7</sup> *Id.*

<sup>8</sup> *Auction No. 58 Public Notice*, 19 FCC Rcd at 18199-200.

<sup>9</sup> Bidders must have sufficient bidding eligibility to place a bid on a given license.

<sup>10</sup> Attachment A of the *Auction No. 58 Procedures Public Notice* lists the licenses that are available only to entrepreneurs in closed bidding as "Closed." The other licenses are listed as "Open" or "n/a."

Round 4 Bidding Period	2:00 p.m.	-	2:30 p.m. ET
Round 5 Bidding Period	3:00 p.m.	-	3:15 p.m. ET
Round 6 Bidding Period	4:00 p.m.	-	4:15 p.m. ET

**Prohibition of Collusion.** Applicants are reminded that Section 1.2105(c) of the Commission’s rules prohibits applicants for licenses in any of the same geographic areas from communicating with each other during the auction about bids, bidding strategies, or settlements unless they have identified each other as parties with which they have entered into agreements under Section 1.2105(a)(2)(viii).<sup>11</sup> For Auction No. 58, this prohibition became effective at the short-form application filing deadline on Tuesday, November 30, 2004, and will end on the post-auction down payment deadline, which will be announced in a future public notice.<sup>12</sup> **This prohibition applies to all applicants regardless of whether such applicants became qualified bidders or actually bid.**<sup>13</sup> For purposes of this prohibition, Section 1.2105(c)(7)(i) defines “applicant” to include all controlling interests in the entity submitting a short-form application to participate in the auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity.<sup>14</sup> If parties had agreed in principle on all material terms of a bidding agreement(s), those parties must have been identified on the short-form application under Section 1.2105(c), even if the agreement had not been reduced to writing. If parties had not agreed in principle by the filing deadline, an applicant should not have included the names of those parties on its application and must not have continued negotiations.<sup>15</sup>

The Bureau has encouraged applicants competing for licenses in any of the same geographic license areas not to use the same individual as an authorized bidder.<sup>16</sup> A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm). In such a

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<sup>11</sup> 47 C.F.R. § 1.2105(a)(2)(viii); 47 C.F.R. § 1.2105(c)(1). *See also* Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001) (“*Part 1 Seventh Report and Order*”); Amendment of Part of the Commission’s – Competitive Bidding Procedures, *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, 15297-98 ¶¶ 7-8 (2000).

<sup>12</sup> 47 C.F.R. § 1.2105(c)(1).

<sup>13</sup> *See, e.g.*, Letter to Robert Pettit, Esquire, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 16 FCC Rcd 10080 (WTB 2000) (declining to except an applicant’s controlling interest from coverage by the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder); *Star Wireless, LLC, Forfeiture Order*, 19 FCC Rcd 18626 (EB 2004) (imposing forfeiture in the amount of \$100,000 for violation of the anti-collusion rule); *Northeast Communications of Wisconsin, LLC, Forfeiture Order*, 19 FCC Rcd 18635 (EB 2004) (imposing forfeiture in the amount of \$100,000 for violation of the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

<sup>14</sup> 47 C.F.R. § 1.2105(c)(7)(i).

<sup>15</sup> *See* “Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules,” *Public Notice*, 11 FCC Rcd 9645 (WTB 1995).

<sup>16</sup> *See Auction No. 58 Procedures Public Notice*, 19 FCC Rcd. at 18197-99.

case, at a minimum, applicants should take precautionary steps to prevent communication between authorized bidders.<sup>17</sup>

In addition, Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.<sup>18</sup> Thus, Section 1.65 requires auction applicants that engage in communications of bids or bidding strategies that result in a bidding agreement, arrangement, or understanding not already identified on their short-form applications to promptly disclose any such agreement, arrangement or understanding to the Commission by amending their pending applications. In addition, Section 1.2105(c)(6) requires all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under Section 1.65.<sup>19</sup>

Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.<sup>20</sup> Any applicant found to have violated the anti-collusion rule may be subject to sanctions.<sup>21</sup> In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions.<sup>22</sup>

**Submission of Auction No. 58-related Filings:** As noted above, applicants seeking to amend their short-form applications during the auction should make modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by email to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction58@fcc.gov](mailto:auction58@fcc.gov).

Parties wishing to submit requests, complaints, or other information concerning Auction No. 58 should also send a copy by email to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction58@fcc.gov](mailto:auction58@fcc.gov), in addition to following other procedures prescribed by the Commission's rules. The Commission occasionally receives complaints regarding certain bidders and requests to suspend bidding during an auction. While the Commission reserves the right to take appropriate action during an auction, to preserve the integrity of the auction process, it is generally our practice to address any such allegations only after the winning bidders have submitted their long-form applications, when there is greater opportunity for investigation of such allegations, if warranted.

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<sup>17</sup> See *In re Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A*, *Memorandum Opinion and Order*, 13 FCC Rcd. 11973, 11977 ¶ 11 (1998).

<sup>18</sup> 47 C.F.R. § 1.65.

<sup>19</sup> 47 C.F.R. §§ 1.65, 1.2105(c)(6); *see also Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17.

<sup>20</sup> See 47 C.F.R. § 1.2107(d).

<sup>21</sup> See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

<sup>22</sup> See 47 C.F.R. § 1.2109(d).

Finally, parties wishing to make suggestions concerning Auction No. 58 or future auctions are encouraged to present such ideas using the suggestion feature of the FCC Automated Auction System. (As mentioned above, this feature is not an appropriate mechanism for posing questions that need a timely response.) Commission staff always takes suggestions into consideration, but may not provide an individualized response.

**Long-Form Applications.** Applicants that claim entrepreneur eligibility or eligibility to receive a small or very small business bidding credit should be aware that, following the auction, they will be subject to more extensive reporting requirements contained in the Commission's Part 1 ownership disclosure rule.<sup>23</sup> In addition, applicants with foreign ownership interests will be required to comply with 47 U.S.C. § 310(b) at the long-form application stage.

For additional information regarding this Public Notice, please contact the following staff in the Auctions and Spectrum Access Division:

For general auction questions: Jeff Crooks at (202) 418-0660 or Lisa Stover at (717) 338-2888

For legal questions: Audrey Bashkin or Scott Mackoul at (202) 418-0660

For technical questions about software or hardware, please contact FCC Technical Support at 1-877-480-3201 option 9, (202) 414-1250, or (202) 414-1255 (TTY).

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<sup>23</sup> See 47 C.F.R. § 1.2112(b)(2).