



Federal Communications Commission
Washington, D.C. 20554

May 25, 2006

Small Entity Compliance Guide

**Air-Ground Telecommunications Services—
Commercial and General Aviation Air-Ground Radiotelephone Services—**

DA 06-1096

WT Docket Nos. 03-103, 05-42

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—to comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. As a result, in any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered only as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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I. OBJECTIVES OF THE PROCEEDING

In the *Report and Order*.¹, the FCC adopted competitive bidding rules for the 800 MHz commercial Air-Ground Radiotelephone Service and the 400 MHz general aviation Air-Ground Radiotelephone Service. In the *Air-Ground Order*, the Commission revised its rules governing the four megahertz of dedicated spectrum in the 800 MHz commercial Air-Ground Radiotelephone Service and decided to make new licenses available in this service. Under the adopted approach, if mutually exclusive applications are filed for these licenses, the Commission is required, pursuant to Section 309(j) of the Communications Act, 47 U.S.C. § 309(j), to resolve such applications by competitive bidding. In addition, the FCC adopted bidding credits for small businesses in the 800 MHz commercial air-ground service in an effort to help small entities attract capital. At the time of the *Air-Ground Order*, the Commission also had pending nine groups of mutually exclusive applications for licenses in the 400 MHz general aviation Air-Ground Radiotelephone Service, which it also was required to resolve by competitive bidding. In the *Order on Reconsideration*², the FCC addressed petitions for reconsideration of the *Air-Ground Order*.

II. REGULATIONS AND POLICIES THAT THE COMMISSION ADOPTED OR MODIFIED, INCLUDING COMPLIANCE REQUIREMENTS

A. Report and Order

In the *Report and Order*, the Commission:

- Adopted competitive bidding rules for the 800 MHz commercial Air-Ground Radiotelephone Service and the 400 MHz general aviation Air-Ground Radiotelephone Service.
- Determined it will conduct auctions of both commercial and general aviation air-ground licenses in conformity with the general competitive bidding rules set forth in Part 1, Subpart Q, of the Commission's Rules, and substantially consistent with the bidding procedures that have been employed in previous Commission auctions. (*See* 47 C.F.R. §§ 1.2101-1.2113.)
- Defined for the 800 MHz air-ground service a small business as an entity with average annual gross revenues for the three preceding years not exceeding \$40 million, and a very small business as an entity with average annual gross revenues for the three preceding years not exceeding \$15 million.
- Adopted a 15 percent bidding credit in the 800 MHz commercial air ground service for small businesses and a 25 percent bidding credit for very small businesses, as set forth in the standardized schedule of bidding credits at 47 C.F.R. § 1.2110(f)(2).
- Concluded that bidding credits are unnecessary for the 400 MHz air-ground service.

¹ *See* Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission's Rules, *Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 4403 (2005) (*Air-Ground Order*).

² *See* Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission's Rules, Amendment of Parts 1 and 22 of the Commission's Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service, WT Docket Nos. 03-103 and 05-42, *Order on Reconsideration and Report and Order*, FCC 05-202, ¶¶ 20-12 (rel. Dec. 9, 2005)

1. Incorporation by Reference of the Part 1 Standardized Auction Rules

As noted above, the Commission decided in the *Report and Order* to conduct auctions of both commercial and general aviation air-ground licenses in conformity with the general competitive bidding rules in Part 1, Subpart Q, of the Commission's Rules, and substantially consistent with the bidding procedures that have been employed in previous Commission auctions. Because alternative band plans are being made available in the 800 MHz air-ground service, with the selection of the final band configuration to be determined by applicants' bids in the auction, the Commission also explained that for the 800 MHz air-ground auction the determination of whether individual applications are mutually exclusive for purposes of Section 309(j)(1) of the Communications Act, 47 U.S.C. § 309(j)(1), will be based on whether different applicants have applied for licenses in different band configurations as well as on whether different applicants have applied for the same licenses. The Commission concluded, however, that there is no need for it to make any changes to its Part 1 competitive bidding rules.

2. Provisions for Designated Entities

The Commission determined that bidding credits should be made available to small businesses in the 800 MHz commercial air-ground service to assist them with attracting capital. Thus, for this service a **small business** is defined as an entity with average annual gross revenues for the three preceding years not exceeding \$40 million, and a **very small business** is defined as an entity with average annual gross revenues for the three preceding years not exceeding \$15 million. The Commission will make available bidding credits of 15 percent for small businesses and 25 percent for very small businesses. These bidding credits are consistent with the Commission's standardized schedule of bidding credits at 47 C.F.R. § 1.2110(f)(2).

The Commission concluded that, because 400 MHz general aviation air-ground licenses are generally held by relatively small businesses, larger telecommunications providers do not routinely apply for them, and the initial auction of nine general aviation licenses would be limited to those parties with applications already on file, bidding credits would be unnecessary in the auction of these licenses.

B. Order on Reconsideration

In the *Order on Reconsideration*, the Commission took two actions. First, it clarified that stratospheric platforms, such as high-altitude balloons, may be used to provide service in the 800 MHz air-ground band so long as licensees comply with the rules adopted in the *Air-Ground Order* and other applicable rules. See 47 C.F.R. §2.106 note 5.318 (specifying that "use of the band 849-851 MHz is limited to transmission from aeronautical stations and the use of the band 894-896 MHz is limited to transmissions from aircraft stations"). The air-ground rules provide "licensees flexibility to deploy any type of transmission technology, provided that the radio emissions produced fit within a licensee's assigned spectrum." This requirement is codified in revised Section 22.861(a), which provides that "[t]he power of any emission outside of the authorized operating frequency ranges must be attenuated below the transmitting power (P) by a factor of at least $43 + 10 \log (P)$ dB" (47 C.F.R. § 22.861(a)). The Commission, moreover, reserved the right to require greater attenuation in the event that any emission from a transmitter operating in the service results in interference to users of another radio service (47 C.F.R. § 22.861(d)). The Commission clarified that, if a licensee were to deploy stratospheric platforms in the band, those operations would be subject to the 12 watt peak effective radiated power limit for airborne mobile station transmitters set forth in new Section 22.867(a) of the Commission's rules (47 C.F.R. § 22.867(a)). Together, these rules should ensure that any stratospheric operations in the band would not cause harmful interference to operations in adjacent spectrum bands.

Second, the Commission directed Verizon Airfone (the only incumbent operator in the 800 MHz air-ground band) to file regular status reports regarding the transition of its incumbent system from four to one megahertz of the band. The Commission found that such reports would serve the public interest by enabling FCC staff to closely monitor the transition of Verizon Airfone's narrowband system and to

ensure that the transition is timely effected. The Wireless Telecommunications Bureau released a Public Notice on February 6, 2006, DA No. 06-294, enumerating the specific reporting requirements. In addition, the Wireless Telecommunications Bureau released a Public Notice on May 1, 2006, DA 06-959, specifying that in the event that Verizon Airfone, or an affiliate of Verizon Airfone, wins an exclusive 3 MHz license it will be subject to certain reporting requirements to enable the Commission to monitor Verizon Airfone's migration of its narrowband subscribers to a new broadband system.

C. Recordkeeping and Other Compliance Requirements

The *Report and Order* does not establish new reporting, recordkeeping, or other compliance requirements but extends the Commission's existing Part 1 competitive bidding rules to the Air-Ground Radiotelephone Service. See 47 C.F.R. §§ 1.2105 (short-form applications), 1.2107 (long-form applications).

While these application requirements are new with respect to applicants in the air-ground services, they are the same application requirements the Commission has applied to other auctionable services for a number of years.

The requirement of filing applications on appropriate forms is necessary in order to ensure that applicants are qualified to participate in auctions and hold licenses. Certain information required on FCC Form 175 is also necessary to ensure that only applicants that qualify as small businesses or very small businesses receive the bidding credits offered to such entities.

Details regarding filing procedures and requirements, as well as application deadlines, are presented in public notices issued by the Wireless Telecommunications Bureau. These public notices are set forth on the Bureau's Auctions website. Interested parties can familiarize themselves with these public notices as well as the general competitive bidding rules at 47 C.F.R. §§ 1.2101-1.2113.

As described above, the *Order on Reconsideration* does establish new reporting requirements, but these requirements are limited to Verizon Airfone (the only incumbent operator in the 800 MHz air-ground band). The Commission found that such reports would serve the public interest by enabling FCC staff to closely monitor the transition of Verizon Airfone's narrowband system and to ensure that the transition is timely effected.

D. 800 MHz Auction Commencement and 400 MHz Air-Ground Radiotelephone Service Auction Cancellation

On February 21, 2006, the Wireless Telecommunications Bureau released a public notice announcing the procedures and minimum opening bids amounts for the auction of 800 MHz commercial Air-Ground Service licenses (Auction No. 65). *Public Notice*, Auction of 800 MHz Air-Ground Radiotelephone Service Licenses Scheduled for May 10, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 65, DA 06-299 (rel. Feb. 21, 2006). That auction commenced on schedule on May 10, 2006.

On April 20, 2006, the Wireless Telecommunications Bureau release a Public Notice (DA-06-871) announcing the cancellation of the auction of nine site-based licenses in the 400 MHz general aviation Air-Ground Radiotelephone Service to operate in the 454.675-454.975 and 459.675-459.975 MHz bands ("Auction No. 67"), which had been scheduled to begin on August 23, 2006. Participation in Auction No. 67 was to be limited to certain identified parties that had previously filed mutually exclusive applications for the nine 400 MHz Air-Ground licenses. Because none of the applicants filed supplemental information by April 5, 2006, as requested, the previously filed FCC Form 601 applications were dismissed, thus eliminating the need to conduct this auction.

III. WEBLINK

Order on Reconsideration and Report and Order, FCC 05-202, released December 9, 2005.

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-202A1.doc

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-202A2.doc

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-202A3.doc

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http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-202A2.txt

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-202A3.txt

Public Notice, WIRELESS TELECOMMUNICATIONS BUREAU ADOPTS REPORTING REQUIREMENTS REGARDING VERIZON AIRFONE INC., CALL SIGN KNKG804, DA 06-294, February 6, 2006.

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-294A1.doc

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-294A1.pdf

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-294A1.txt

Public Notice, Auction of 800 MHz Air-Ground Radiotelephone Service Licenses Scheduled for May 10, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 65, DA 06-299 (rel. Feb. 21, 2006).

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-299A1.pdf

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-299A1.doc

Public Notice, CLOSED AUCTION OF 400 MHz AIR-GROUND RADIOTELEPHONE SERVICE LICENSES (AUCTION No. 67) IS CANCELLED, DA 06-871, April 20, 2006.

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-871A1.pdf

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-871A1.doc