



PUBLIC NOTICE

Federal Communications Commission
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June 7, 2006

AUCTION OF 800 MHz AIR-GROUND RADIOTELEPHONE SERVICE LICENSES CLOSES

Winning Bidders Announced for Auction No. 65

Down Payments due June 21, 2006
FCC Forms 601 and 602 due June 21, 2006
Final Payments due July 6, 2006
Ten-Day Petition to Deny Period

Report No. AUC-06-65-I (Auction No. 65)

On June 2, 2006, the Federal Communications Commission completed the auction for new nationwide commercial Air-Ground Radiotelephone Service licenses (Auction No. 65), raising a total of \$38,339,000. In this auction, two winning bidders won a total of two 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 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:** “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 800 MHz Air-Ground Radiotelephone Service 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 June 21, 2006**, winning bidders in Auction No. 65 must have on deposit with Mellon Bank in Pittsburgh, Pennsylvania, enough funds to cover down payments on

winning bids.¹ If a winning bidder's upfront payment is not sufficient to meet this requirement, the winning bidder must deposit additional funds.²

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 June 21, 2006" column of **Attachment B**. **Note that a payment and FCC Form 159 are necessary only if a winning bidder's upfront payment does not cover the required total down payment (as reflected in Attachment B)**. Each winning bidder's total deposit must be twenty percent of the net amount of its winning bid.

B. Final Payments

Each winning bidder will be required to submit the balance of the net amount of its winning bid by July 6, 2006,³ as set out in the "Final Balance Due By July 6, 2006 or (Refund)" column of Attachment B. All winning bidders must pay the full amount of the Final Balance Due shown in Attachment B before **6:00 p.m. ET on July 6, 2006**, (or before 6:00 p.m. ET on July 20, 2006, along with the five percent late fee required by Section 1.2109(a) of the Commission's rules).⁴ 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.⁵

C. Method of Payment for Down and Final Payments

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).⁶

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.

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"

¹ See 47 C.F.R. § 1.2107(b).

² *Id.*

³ See 47 C.F.R. § 1.2109(a).

⁴ *Id.*

⁵ 47 C.F.R. §§ 1.2107(c), 1.2109(a).

⁶ Copies of the FCC Form 159 may be obtained by calling the Commission's Forms Distribution Center at (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.

APPLICANT'S FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 21)
PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: "A65D")
PAYOR NAME: (same as FCC Form 159, Block 2)
LOCKBOX NO.: #358850

1. Down Payment. 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. Questions regarding FCC Form 159 should be addressed to Gail Glasser at (202) 418-0578. **Please note, however, that winning bidders are responsible for insuring timely 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.**

Wire transfers for down payments must be received by Mellon Bank before 6:00 p.m. ET on June 21, 2006. 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.**

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 before 6:00 p.m. ET on June 21, 2006, will result in default. See Section D., below.

2. Final Payment. If applicable, a partially completed copy of the FCC Form 159 will be sent to winning bidders to facilitate submission of the correct final payment. Questions regarding FCC Form 159 should be addressed to Gail Glasser at (202) 418-0578. **Please note, however, that winning bidders are responsible for insuring timely submission of the correct final 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 final payment and deposited it in the proper account.**

Wire transfers for final payments must be received by Mellon Bank before 6:00 p.m. ET on July 6, 2006 (or before 6:00 p.m. ET on July 20, 2006, along with the five percent late fee required by Section 1.2109(a) of the Commission's rules).⁷ Applicants 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.**

Payments must be preceded by the completed FCC Remittance Advice Form (FCC Form 159). The applicant must send by facsimile, on the same business day that it pays the balance due to Mellon Bank, a completed FCC Form 159 to Mellon Bank at (412) 209-6045 at least one hour prior to placing the order for the wire transfer. On the FCC Form 159, the applicant must use the same FRN used on its FCC Form 601.

Failure to complete the final payment before 6:00 p.m. ET on July 20, 2006 (along with the five percent late fee, if applicable), will result in default. See Section D., below.

⁷ 47 C.F.R. § 1.2109(a).

D. Default and Disqualification Payments

The Commission imposes payments on bidders that default on payments due after an auction closes, and on those that are disqualified.⁸ In the *CSEA/Part 1 Report and Order*, released on January 24, 2006, the Commission modified Section 1.2104(g)(2) by increasing the limit on the additional default payment for most auctions from 3 percent to 20 percent.⁹ The Commission further indicated that prior to each auction it will establish an additional default payment of 3 to 20 percent for that auction and that the specific level of this payment in each case will be based on the nature of the service and the inventory of the licenses being offered.¹⁰ Based on the particular interdependence among bids in Auction No. 65 and the potential effects of one winning bidder's default on bidders for other licenses, the Commission will apply an additional default payment of 20 percent to any defaults after the close of Auction No. 65.¹¹

If a winning bidder defaults on a down payment or final payment obligation or is disqualified (*e.g.*, fails to submit a timely long-form application) after the close of the auction, the defaulting bidder will be subject to the following payment obligations: 1) the difference between the winning bidder's bid and the amount of the winning bid the next time the license is offered by the Commission, and 2) an additional payment equal to twenty percent of the subsequent winning bid or twenty percent of the defaulted bid, whichever is less.¹² Where a bidding credit applies to the winning bid in either the original or the subsequent auction, the calculation of the twenty 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 between the net bids, the twenty 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 twenty 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 twenty 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 June 21, 2006, 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 license to existing or new applicants, or offer it to the other highest bidders (in descending order) at their final bids.¹⁵

⁸ See 47 C.F.R. §§ 1.2104(g), 1.2109.

⁹ Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, *Report and Order*, 21 FCC Rcd 891, 903-04 ¶¶ 30-32 ("CSEA/Part 1 Report and Order").

¹⁰ *Id.* at ¶ 31. The default payment rule for combinatorial auctions, which is now also included in 47 C.F.R. § 1.2104(g)(2), is not relevant to Auction No. 65.

¹¹ See Auction of 800 MHz Air-Ground Radiotelephone Service Licenses Scheduled for May 10, 2006; Additional Default Payment of 20 Percent Will Apply to Auction No. 65, *Public Notice*, DA 06-588 (rel. March 20, 2006).

¹² See 47 C.F.R. § 1.2104(g)(2).

¹³ See *id.*

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

¹⁵ See 47 C.F.R. § 1.2109(b).

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 license and subject to the applicable default payments.¹⁷

Licenses will be awarded upon completion of the review of each applicant's long-form application (FCC Form 601) and a determination that the application meets Commission requirements for grant, but only after the full and timely payment of winning bids and any applicable late fees.¹⁸ If a winning bidder defaults on any of its required payments or is disqualified for any reason after having made the required down payment, it will be deemed to have defaulted, its application will be dismissed, and it will be liable for the payment set forth in Section 1.2104(g)(2).¹⁹ In such event, the Commission may either auction the license 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 the required final payment and/or default payment amounts will be refunded to the payer of record as identified on FCC Form 159 promptly at the close of the auction, if the necessary refund request and wire transfer instructions have been received. Applicants should provide this information by accessing the "See Wire Transfer for Refund Purposes" link under the Post-Auction section of the My Auctions web page prior to **July 6, 2006**. After this date, applicants must send a request for refund along with the necessary wire transfer instructions and FCC Registration Number (FRN) by facsimile 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 Form 601

Before **6:00 p.m. ET on June 21, 2006**, winning bidders must submit electronically a properly completed long-form application covering the license for which they were the winning bidder. **Attachment C** sets out instructions for completing the FCC Form 601. Applications must be filed electronically as instructed in **Attachment C**.

¹⁶ 47 C.F.R. §§ 1.2109(a).

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

¹⁸ See 47 C.F.R. §§1.2109(a).

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).

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 filing process, including information about the pre-filing of the long form from FCC Form 175, are contained in Attachment C.

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.²²

G. Tribal Lands Bidding Credit

Tribal Lands Bidding Credit is not available in Auction No. 65.

H. 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.²³ 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 C**.

Applicants are reminded that a current FCC Form 602 was automatically filed in the Universal Licensing System (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 C**.

I. Maintaining Accuracy of Information

After the auction closes, applicants are required to make all changes in ULS (Form 601). With the release of this Public Notice, applicants are no longer required to maintain the accuracy and completeness of information furnished on their FCC Form 175 and exhibits.

J. Application Processing and License Grant

Pursuant to 47 C.F.R. § 1.2108(b), interested parties will have ten 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.²⁴ An applicant may file an opposition to any petition to deny within five business days after the time for filing petitions to deny has expired.²⁵ The petitioner may file a reply to such opposition within five business days after the time for filing oppositions has expired.²⁶ After the long-form review process, if the Commission determines that additional payments from applicants may be

²² See 47 C.F.R. §§ 1.2104(g), 1.2107(c).

²³ 47 C.F.R. §§ 1.919, 1.2107(f).

²⁴ 47 C.F.R. § 1.2108(b).

²⁵ 47 C.F.R. § 1.2108(c).

²⁶ *Id.*

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 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.²⁷

K. Anti-collusion Rules

To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for licenses in 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).²⁸ As explained more fully in the *Auction No. 65 Qualified Bidders Public Notice*,²⁹ this prohibition began at the short-form application filing deadline and ends at the down payment deadline, which is 6:00 p.m. ET on June 21, 2006.³⁰ The prohibition applies to all applicants (unless they 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)) in Auction No. 65 regardless of whether an applicant became a qualified bidder or actually participated in the bidding, and the prohibition continues for all applicants 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.

L. Return of SecurID Cards

Bidders are encouraged to return for recycling their SecurID cards to the FCC by June 21, 2006. 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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²⁷ See Commission Taking Tough Measures Against Frivolous Pleadings, *Public Notice*, 11 FCC Rcd 3030 (1996).

²⁸ 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); *id.*, *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).

²⁹ See Auction of 800 MHz Air-Ground Radiotelephone Service Licenses; 9 Bidders Qualified to Participate in Auction No. 65, *Public Notice*, DA 06-907, pp. 6-8, (April 28, 2006) (“*Auction No. 65 Qualified Bidders Public Notice*”).

³⁰ *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

Wireless Telecommunications Bureau,
Mobility Division
(FCC Form 601 and 602 questions)

Bettye Woodward, Analyst, at (202) 418-0620
Jay Jackson, Electronics Engineer, at (202) 418-0620
Richard Arsenault, Attorney, at (202) 418-0620

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

Barbara Sibert, Project Manager, at (717) 338-2868
Howard Davenport, 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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