



PUBLIC NOTICE

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AUCTION OF 800 MHz AIR-GROUND RADIOTELEPHONE SERVICE LICENSES SCHEDULED FOR MAY 10, 2006

Clarification of Treatment of Bids by Bidders Sharing a Controlling Interest

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

On February 21, 2006, the Wireless Telecommunications Bureau (“Bureau”) announced the procedures for the upcoming auction of new nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band scheduled for May 10, 2006 (Auction No. 65).¹ By this Public Notice, the Bureau clarifies how previously-announced procedures will take into account the Commission’s requirement that no individual or entity may hold, directly or indirectly, a controlling interest in licenses authorizing the use of more than three megahertz of spectrum.²

Two nationwide commercial licenses in the 800 MHz band will be assigned based on the results of Auction No. 65.³ Due to the restriction on any party holding a controlling interest in licenses authorizing the use of more than three megahertz of spectrum, no party may hold a controlling interest in more than one license to be assigned by Auction No. 65. Accordingly, the procedures of Auction No. 65 will not assign both licenses to any single applicant or to multiple applicants that, based on their short-form auction applications (FCC Form 175), share a common controlling interest.⁴

¹ “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,” *Public Notice*, DA 06-299 (rel. February 21, 2006) (71 Fed. Reg. 11645, March 8, 2006) (“*Auction No. 65 Procedures Public Notice*”).

² 47 C.F.R. § 22.853.

³ *See, generally, Auction No. 65 Procedures Public Notice.* Auction No. 65 will offer for bidding six nationwide commercial licenses in the 800 MHz band, comprising three alternative band configurations. Only two licenses in one of these mutually incompatible band configurations will be assigned. The band plan that receives the highest aggregate gross bid in the auction will be implemented, and licenses composing that configuration will be assigned to winning bidders subject to review of their long-form license applications.

⁴ Two applicants that have been found qualified to bid in Auction No. 65, AMTS Consortium, LLC and Intelligent Transportation & Monitoring Wireless LLC, have reported that they share a common controlling interest. *See* FCC Forms 175 for Auction No. 65 filed by AMTS Consortium, LLC and Intelligent Transportation & Monitoring Wireless LLC (filed March 24, 2006). Short-form applications and other information concerning Auction No. 65 may be viewed at <http://wireless.fcc.gov/auctions/65/>.

Provisionally Winning Bids

In the *Auction No. 65 Procedures Public Notice*, we stated that, at the end of each bidding round, the FCC Auction System will determine the provisionally winning bids by determining which combination of licenses comprising a single band plan has the highest aggregate gross bid amount by considering all of the bids that have been placed in the auction subject to the restriction that a single bidder cannot have more than one provisionally winning bid.⁵ Given that the restriction on holding more than one license applies not only to a single bidder but also to multiple bidders sharing a common controlling interest, the following more comprehensively describes how provisionally winning bids will be determined. At the end of each bidding round, the FCC Auction System will determine which combination of licenses comprising a single band plan has the highest aggregate gross bid amount by considering all of the bids that have been placed in the auction subject to the restriction that neither a single bidder nor multiple bidders sharing a common controlling interest, as disclosed on their short-form auction applications, can have more than one provisionally winning bid.

The restrictions used in the process of determining provisionally winning bids will not impose any restriction on bids that otherwise may be placed. That is, a single bidder, or multiple bidders sharing a common controlling interest, may place bids on multiple licenses, including licenses that comprise a single band plan. The process of determining provisionally winning bids will not select two such bids (*i.e.*, two bids on two licenses in a single band plan placed by a single bidder or by multiple bidders sharing a common controlling interest) as the provisionally winning bids on both licenses. Nevertheless, one of the bids placed by a bidder, or by multiple bidders that together may not hold more than one license, may be selected as a provisionally winning bid.

The FCC Auction System's selection of provisionally winning bids does not constitute a Commission determination that winning bidders are eligible to hold a license pursuant to Section 22.853 or any other Commission rule. The restriction against selecting more than one provisionally winning bid from bids by multiple bidders with a shared controlling interest will be implemented based on information the applicants provided in short-form applications to participate in the auction. Each winning bidder remains responsible for compliance with all applicable Commission rules governing applications for a license and licensees, including Section 22.853. Winning bidders that are ineligible to hold a license for any reason are subject to default payments under Section 1.2104(g)(2).⁶

Minimum Acceptable Bids

The Commission's prohibition against assigning more than one license to multiple bidders sharing common controlling interests also will be taken into account in the procedures for determining minimum acceptable bid amounts in Auction No. 65. The *Auction No. 65 Procedures Public Notice* included an explanation of how the process for determining minimum acceptable bid amounts.⁷ This process includes setting a "price" for each license described as follows:

"For licenses with provisionally winning bids, this price will be equal to the amount of the provisionally winning bid. For non-provisionally winning licenses, the price will be equal to the amount of the highest bid placed on the license by any non-provisionally winning bidder."⁸

⁵ See *Auction No. 65 Procedures Public Notice* at ¶ 133.

⁶ See 47 C.F.R. 1.204(g)(2).

⁷ See *Auction No. 65 Procedures Public Notice* at ¶¶ 127-132.

⁸ *Auction No. 65 Procedures Public Notice* at ¶ 127.

A more complete description of the process for determining the minimum acceptable bid for non-provisionally winning licenses reflects the fact that multiple bidders sharing a common controlling interest cannot win more than one license. Thus, for non-provisionally winning licenses, the “price” used to determine the minimum acceptable bid will be equal to the amount of the highest bid placed on the license by any bidder that does not hold a provisionally winning bid and does not share a common controlling interest with another bidder that holds a provisionally winning bid.

The FCC Auction System will not permit a bidder to place a new bid that is equal to or less than a bid the bidder placed previously. As discussed above, a bidder may have placed bids that are not considered in setting the minimum acceptable bid for a license. Those bids may be higher than the minimum acceptable bid amount or one or more of the additional acceptable bid amounts.⁹ That bidder will be limited to bidding only in amounts that exceed the bids that bidder placed previously on the license. As a result, some bidders may have fewer than nine acceptable bid amounts available on each license. The FCC Auction System will list acceptable bid amounts for a given bidder consistent with this limitation and only offer bid amounts greater than the bidder’s previous bid on the license.

For additional information regarding this Public Notice, please contact:

Auctions and Spectrum Access Division, Wireless Telecommunications Bureau:

For bidding and software questions: Jeff Crooks at (202) 418-0660

For bidding, auction procedures, and general filing questions: Barbara Sibert at (717) 338-2868

For legal questions: Howard Davenport at (202) 418-0660

Mobility Division, Wireless Telecommunications Bureau:

For legal and service rule questions: Erin McGrath or Richard Arsenault at (202) 418-0620 (legal); or Jay Jackson or Moslem Sawez at (202) 418-0620 (technical)

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

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⁹ See *Auction No. 65 Procedures Public Notice*, ¶¶ 127-132 (describing how bidders otherwise will be able to make a bid of one of nine acceptable amounts).