



PUBLIC NOTICE

Federal Communications Commission
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July 3, 2007

AUCTION OF PHASE II 220 MHz SERVICE SPECTRUM LICENSES CLOSES

Winning Bidders Announced for Auction No. 72

Down Payments due July 18, 2007
FCC Forms 601 and 602 due July 18, 2007
Final Payments due August 1, 2007
Ten-Day Petition to Deny Period

Report No. AUC-07-72-E (Auction No. 72)

1. On June 26, 2007, the Federal Communications Commission completed the auction of 94 Phase II 220 MHz Service licenses (Auction No. 72), raising (in net bids) a total of \$185,415.50. In this auction, five winning bidders won a total of 76 licenses.

2. 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.¹
- Attachment C:** “Withdrawal Payment” lists bid withdrawal payments owed by bidders, if any.
- 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 Phase II 220 MHz Service license applications.

A copy of this Public Notice will be sent via overnight delivery to each qualified bidder.

¹ The amounts listed in Attachment B are based on upfront payments and winning bids. The amounts have not been adjusted to reflect any upfront payments already refunded.

A. Down Payments

3. The Commission's rules require that within ten business days after the release of this Public Notice, in this case by **6:00 p.m. Eastern Time (ET) on July 18, 2007**, winning bidders in Auction No. 72 must have on deposit with Mellon Bank in Pittsburgh, Pennsylvania, enough funds to cover down payments on winning bids.² If a winning bidder's upfront payment is not sufficient to meet this requirement, the winning bidder must deposit additional funds to meet its required down payment.³

4. 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 July 18, 2007" column of Attachment B. **Note that a payment and FCC Remittance Advice Form (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 bids.**

B. Final Payments

5. Each winning bidder will be required to submit the balance of the net amount of its winning bids by August 1, 2007,⁴ as set out in the "Final Balance Due By August 1, 2007 or (Refund)" column of Attachment B. All winning bidders, including those winning bidders that apply for a tribal lands bidding credit, must pay the full amount of the Final Balance Due shown in Attachment B by **6:00 p.m. ET on August 1, 2007**, (or by 6:00 p.m. ET on August 15, 2007, along with the five percent late fee required by Section 1.2109(a) of the Commission's rules).⁵ Full and timely payment of winning bids and any applicable late fees must be made in accordance with Section 1.2109(a) and must occur before action will be taken upon a winning bidder's long-form application (FCC Form 601).⁶ Specifically, licenses will be granted only after the full and timely payment of winning bids and any applicable late fees, in accordance with 47 C.F.R. § 1.2109(a).

6. If an applicant's request for a tribal lands bidding credit is approved, the Commission will deduct the amount of the tribal lands bidding credit from the eligible applicant's auction payments on deposit (including the final payment), and that amount will later be refunded to the payer of record as identified on the FCC Remittance Advice Form (FCC Form 159).

² 47 C.F.R. § 1.2107(b).

³ *Id.* In the event a bidder has withdrawn a bid(s) and is subject to a bid withdrawal payment(s), the bidder's upfront payment will be first applied to satisfy the withdrawal payment(s) before being applied toward its down payment. *See* 47 C.F.R. § 1.2104(g)(1).

⁴ 47 C.F.R. § 1.2109(a).

⁵ *Id.*

⁶ 47 C.F.R. § 1.2109. A winning bidder that is found unqualified to be a Commission licensee 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) of the Commission's rules. *See* 47 C.F.R. §§ 1.2104(g), 1.2109(c).

C. Method of Payment for Down and Final Payments

7. All payments must be in U.S. dollars and made in the form of a wire transfer.⁷ No personal checks, credit card payments, automated clearing house (“ACH”), or other forms of payment will be accepted. All payments must be accompanied by a completed FCC Form 159.⁸

8. 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.

9. 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”

APPLICANT’S FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 21)

PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: “A72D”)

FCC CODE 1: (same as FCC Form 159, Block 28A: “72”)

PAYOR NAME: (same as FCC Form 159, Block 2)

LOCKBOX NO.: #358850

1. Down Payment.

10. 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. Please note, however, that a winning bidder is responsible for ensuring timely submission of the correct down payment, timely filing of an accurate and complete FCC Form 159, and obtaining confirmation from its financial institution that Mellon Bank has timely received the down payment and deposited it into the proper account.

11. Wire transfers for down payments must be received by Mellon Bank by **6:00 p.m. ET on July 18, 2007**. A winning bidder should coordinate with its financial institution ahead of time regarding its wire transfer and allow sufficient time for the wire transfer to be initiated and completed prior to the deadline.

12. 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. A winning bidder must use the same FCC Registration Number (FRN) used on its FCC Form 175.

⁷ A wire transfer is a transaction that you initiate through your bank. It authorizes your bank to wire funds from your account to our lockbox bank, the Mellon Bank in Pittsburgh, Pennsylvania. Additional information on wire transfers is available on the Commission’s web site at: <http://www.fcc.gov/fees/wiretran.html>.

⁸ 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. 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.

13. Failure to complete this down payment process by **6:00 p.m. ET on July 18, 2007**, will result in default.⁹

2. Final Payment.

14. 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. Please note, however, that a winning bidder is responsible for ensuring timely submission of the correct final payment, timely filing of an accurate and complete FCC Form 159, and obtaining confirmation from its financial institution that Mellon Bank has timely received the final payment and deposited it into the proper account.

15. Wire transfers of final payments must be received by Mellon Bank by **6:00 p.m. ET on August 1, 2007** (or by 6:00 p.m. ET on August 15, 2007, along with the five percent late fee required by Section 1.2109(a) of the Commission's rules).¹⁰ A winning bidder should coordinate with its financial institution ahead of time regarding its wire transfer and allow sufficient time for the wire transfer to be initiated and completed prior to the deadline.

16. Payments must be preceded by the completed FCC Remittance Advice Form (FCC Form 159). The winning bidder must send by facsimile, at least one hour prior to placing the order for the wire transfer, but 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. On the FCC Form 159, the applicant must use the same FRN used on its FCC Form 175.

17. Failure to complete the final payment by **6:00 p.m. ET on August 15, 2007** (along with the five percent late fee, if applicable) will result in default.¹¹

D. Withdrawal, Default and Disqualification Payments

18. The Commission imposes payment obligations 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.¹²

1. Bid Withdrawal Payments.

19. A bidder (Bidder X) that withdraws a provisionally winning bid during the course of an auction is subject to a bid withdrawal payment obligation 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

⁹ Section D, below.

¹⁰ 47 C.F.R. § 1.2109(a).

¹¹ Section D, below.

¹² See 47 C.F.R. §§ 1.2104(g), 1.2109.

payment equal to ten percent of the net amount of the withdrawn bid.¹³ This payment amount 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 ten 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 difference is smaller. The ten percent interim payment will be applied toward the withdrawal payment.

20. **Attachment C** identifies bidders that owe withdrawal payments to the Commission as a result of bid withdrawals made in Auction No. 72. 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 toward a winning bidder's down payment.¹⁴

2. Bid Default/Disqualification Payments from Auction No. 72.

21. If a winning bidder defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified), the defaulting bidder will be subject to the payment obligations described in 47 C.F.R. § 1.2104(g)(2). These payment obligations include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to ten percent of the defaulter's bid or the subsequent winning bid, whichever is less.¹⁵

22. 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 July 18, 2007, the bidder will be deemed to have defaulted, its long-form application will be dismissed, and it will be liable for a default payment as described above.¹⁶

23. If a winning bidder fails to pay the balance of its winning bid in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make a late 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.¹⁷ When a winning bidder fails to pay the balance of its winning bid plus the late fee by the late payment deadline, it will be deemed to have defaulted on its license(s) and subject to the applicable default payments.¹⁸

¹³ See 47 C.F.R. § 1.2104(g)(1); Auction of Phase II 220 MHz Service Spectrum Scheduled for June 20, 2007; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 72, *Public Notice*, 22 FCC Rcd 3404, 3444 ¶¶ 170-72 (WTB 2007) ("*Auction No. 72 Procedures Public Notice*").

¹⁴ See 47 C.F.R. § 1.2104(g)(1).

¹⁵ *Auction No. 72 Procedures Public Notice*, 22 FCC Rcd at 3447 ¶¶ 185-86.

¹⁶ 47 C.F.R. §§ 1.2104(g), 1.2109(g)(2).

¹⁷ 47 C.F.R. § 1.2109(a).

¹⁸ 47 C.F.R. §§ 1.2104(g)(2), 1.2109(a), 1.2109(c).

24. Licenses will be awarded upon completion of the review of each applicant's long-form application and a determination that the applicant's long-form application meets Commission requirements for grant but only after the full and timely payment of winning bids and any applicable late fees.¹⁹ If a winning bidder defaults on any of its required payments or is disqualified for any reason after having made the required payments, 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).²⁰

25. In the event of a default, 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.²¹

26. Additionally, a bidder that is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of its upfront payment, down payment, or full bid amount, and may be prohibited from participating in future auctions.²²

E. Refund of Excess Payments

27. Upfront monies on deposit that are in excess of the required down payment, final payment and/or default payment amounts will be refunded to the payer of record as identified on the 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 by **August 1, 2007**. After this date, applicants must send a request for refund along with the necessary wire transfer instructions and 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

28. Prior to **6:00 p.m. ET on July 18, 2007**, each winning bidder must submit electronically a properly completed long-form application (FCC Form 601) for all licenses for which it was the winning bidder in Auction No. 72. Attachment D sets out instructions for completing the FCC Form 601, including information about the pre-filing of the FCC Form 601 from a winning bidder's FCC Form 175.

29. 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.²³

¹⁹ 47 C.F.R. § 1.2109(a).

²⁰ 47 C.F.R. §§ 1.2104(g)(2), 1.2109.

²¹ 47 C.F.R. § 1.2109(b)-(c).

²² 47 C.F.R. § 1.2109(d).

²³ 47 C.F.R. §§ 1.2104(g), 1.2107(c).

G. Tribal Lands Bidding Credit

30. The Commission has implemented a tribal lands bidding credit to encourage the growth of wireless services in federally recognized tribal lands. For information relating to the tribal lands bidding credit, see Attachment D.

H. FCC Form 602

31. 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.²⁴ 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.²⁵ For further information on filing the FCC Form 602 Ownership Disclosure Information through electronic filing, see instructions in Attachment D.

I. Maintaining Accuracy of Information

32. After the auction closes, applicants are required to make all changes in the Commission's Universal Licensing System ("ULS") using FCC Form 601.²⁶ 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 short-form applications and exhibits.

J. Application Processing and License Grant

33. After its initial review of the FCC Forms 601, the Commission will issue a public notice listing the applications that are acceptable for filing. Pursuant to Section 1.2108(b) of the Commission's rules, interested parties will have ten business days from release of that public notice to file petitions to deny any of these applications.²⁷ 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.²⁸ The petitioner may file a reply to such opposition within five business days after the time for filing oppositions has expired.²⁹ After the long-form review process, if the Commission determines that additional payments from applicants may be required, the Wireless Telecommunications 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.

34. **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.³⁰

²⁴ 47 C.F.R. §§ 1.919, 1.2107(f).

²⁵ We note that the FCC Form 602 ownership reporting requirement can be fulfilled by referencing the file number, date, and name of filer of the appropriate FCC Form 602. See discussion in Attachment D.

²⁶ 47 C.F.R. § 1.65.

²⁷ 47 C.F.R. § 1.2108(b).

²⁸ 47 C.F.R. §§ 1.45(b), 1.2108(c).

²⁹ 47 C.F.R. §§ 1.45(c), 1.2108(c).

³⁰ See Commission Taking Tough Measures Against Frivolous Pleadings, *Public Notice*, 11 FCC Rcd 3030 (1996).

K. Anti-collusion Rules

35. To ensure the competitiveness of the auction process, the Commission's rules prohibit competing applicants from communicating with each other about bids, bidding strategies, or settlements, unless such applicants have identified each other on their FCC Form 175 short-form applications as parties with whom they have entered into agreements under section 1.2105(a)(2)(viii).³¹ As explained more fully in the *Auction No. 72 Qualified Bidders Public Notice*,³² 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 July 18, 2007.³³ The prohibition applies to all applicants in Auction No. 72 (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)) 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.³⁴ Applicants certified their compliance with Section 1.2105(c) when their FCC Form 175 short-form applications were signed.

L. Return of SecurID® Tokens

36. Bidders are encouraged to return their SecurID® tokens to the FCC for recycling by July 18, 2007. 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 tokens now that the auction is closed. Please note that each SecurID® token is tailored to a specific auction. Therefore, the tokens issued for this auction will not work for future auctions.

37. For further information, contact

News Media:	Chelsea Fallon at (202) 418-7991 (Wireless Telecommunications Bureau)
Technical Support Hotline: (Hardware/Software Issues)	FCC Auctions Technical Support Hotline at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephony (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)	Allen Barna, Attorney, at (202) 418-0620 Gary Devlin, Electronics Engineer, at (717) 338-2618 Bettye Woodward, Analyst, at (202) 418-0620

³¹ 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); *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).

³² Auction of Phase II 220 MHz Service Spectrum Licenses, Five Bidders Qualified to Participate in Auction No. 72; Limited Information Disclosure Procedures to Be Used, *Public Notice*, DA 07-2278, at 7-8 (WTB rel. June 5, 2007).

³³ *Id.*

³⁴ *Id.*

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

Barbara Sibert, Project Manager, at (717) 338-2868
Debbie Smith, Auctions Analyst 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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