



PUBLIC NOTICE

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CLOSED AUCTION OF LICENSES FOR CELLULAR UNSERVED SERVICE AREAS

Status of Short-Form Applications to Participate in Auction 77

Report No. AUC-08-77-D (Auction 77)

I. STATUS OF APPLICATIONS

1. The Wireless Telecommunications Bureau (“Bureau”) has accepted for filing two short-form applications (FCC Forms 175) to participate in the upcoming closed auction of Cellular Radiotelephone Service licenses (Auction 77), which is scheduled to begin on Tuesday, June 17, 2008.¹ The following applications have been reviewed for completeness and compliance with the Commission’s rules, and have been classified as incomplete or otherwise deficient:

E.N.M.R. Telephone Cooperative
Excomm, LLC²

2. Each applicant will receive overnight correspondence indicating what information is required to make its short-form application complete. These applicants may become qualified bidders only if they complete the following actions: (1) make the required Auction 77 upfront payments **by 6:00 p.m. ET on Monday, June 2, 2008**; and (2) resubmit their applications, having corrected the deficiencies indicated,

¹ See “Closed Auction of Licenses for Cellular Unserviced Service Areas Scheduled for June 17, 2008; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 77,” *Public Notice*, DA 08-926 (2008) (“*Auction 77 Procedures Public Notice*”).

² On April 29, 2008, Chama Wireless, LLC (“Chama”) submitted an amendment to its long-form application (File No. 0002252327), which was filed in 2005, to report that Chama was merged into Excomm, LLC (“Excomm”) in a *pro forma* transaction, effective January 1, 2007, and that Excomm is the surviving entity. The applicant asserts that the amendment qualifies as a minor change pursuant to section 1.929(k) of the Commission’s rules because both Chama and Excomm were wholly-owned subsidiaries of Commnet Wireless, LLC. See 47 C.F.R. § 1.929(k).

prior to 6:00 p.m. ET on Monday, June 2, 2008.³ Applicants also must maintain the accuracy of their short-form applications as required by Section 1.65 of the Commission's rules.⁴

3. The filing window for resubmitting Auction 77 short-form applications is now open. Corrected applications must be filed **prior to 6:00 p.m. ET on Monday, June 2, 2008.** This will be the only opportunity to cure application defects; late resubmissions will not be accepted. If an application is incomplete or otherwise deficient after the resubmission deadline has passed, the application will not be deemed complete and the applicant will not be permitted to participate in Auction 77 bidding.

A. UPFRONT PAYMENTS

4. Upfront payments and accompanying FCC Remittance Advice forms (FCC Form 159) for Auction 77 are due in the proper account at Mellon Bank, Pittsburgh, Pennsylvania, **by 6:00 p.m. ET on Monday, June 2, 2008.**⁵ In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline.⁶ **Payments must be made by wire transfer only in accordance with the instructions provided in the *Auction 77 Procedures Public Notice.***⁷ **No other payment method is acceptable for this auction.**⁸ Applicants are reminded to provide their FCC Registration Number ("FRN") on the FCC Form 159. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must send by facsimile a completed FCC Form 159 (revised February 2003) to Mellon Bank at (412) 209-6045.

5. Because both applicants' applications have been classified as incomplete or otherwise deficient, they must submit timely and sufficient upfront payments before the Commission will review their resubmitted applications. If no upfront payment is made, or the application is incomplete or otherwise deficient following its resubmission, the applicant will not be eligible to bid in Auction 77.

³ See 47 C.F.R. §§ 1.2105(b), 1.2106.

⁴ See 47 C.F.R. § 1.65. Section 1.65 requires applicants to report any changes of decisional significance to their applications "as promptly as possible." With respect to short-form applications or any other auction-related matters, applicants must amend their short-form applications no later than ten business days from the occurrence of a reportable change. The Bureau believes that this requirement is reasonable in the context of an auction where time periods are much shorter than most other Commission proceedings. See also 47 C.F.R. § 1.2105 (c)(6) (any applicant that makes or receives a prohibited communication must report such communication in writing to the Commission no later than five business days after the communication occurs).

⁵ While upfront payments must be submitted to Mellon Bank pursuant to the instructions contained in this Public Notice, applicants are advised that any post-auction payments must be submitted to a different banking institution. Additional information on post-auction payments will be provided in the public notice announcing the close of Auction 77.

⁶ See Letter from Margaret W. Wiener, Chief, Auctions and Industry Analysis Div., to Patrick Shannon, Esq., Counsel for Lynch 3G Communications Corp., 18 FCC Rcd 11,552 (WTB 2003) (finding that an applicant had failed to timely submit its upfront payment when the payment was received by the Commission's bank before the applicable deadline, but not credited to the Commission's account until after the deadline due to an error of the applicant's bank).

⁷ See *Auction 77 Procedures Public Notice*, DA 08-926 ¶¶ 79-88. 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 The Commission will not accept checks, credit cards, or automated clearing house ("ACH") payments.

6. Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account. The Bureau reminds applicants that they should discuss arrangements (including transfer times and bank closing schedules) with their financial institution several days before making the wire transfer so as to avoid untimely upfront payments. Be sure to allow sufficient time for the transfer to be initiated and completed before the deadline. Detailed information regarding upfront payments, including additional requirements for “former defaulters,” can be found in the *Auction 77 Procedures Public Notice* under Section II.E. and Section III.D.⁹

Note: Applicants are reminded to submit the same FRN with all future payments for Auction 77.

B. SHORT-FORM APPLICATION CHANGES AND RESUBMISSION

7. Each of the applicants for Auction 77 must address the defects in their applications during the resubmission window (which is now open and closes at 6:00 p.m. ET on Monday, June 2, 2008).¹⁰ The Bureau is sending a letter to each of the two applicants identifying any deficiencies found during the staff’s initial review of the application. These letters are being sent via overnight delivery to the contact person listed on each of the two applications.

8. During this resubmission window, applicants for Auction 77 may make other minor changes as described below in more detail. We remind applicants that Section 1.65 of the Commission’s rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending Auction 77 short-form application.¹¹ Applicants should amend their short-form applications as promptly as possible, but no later than ten business days from the occurrence of a reportable change. Applicants must modify their short-form application electronically. Applicants seeking to report changes outside of those time periods in which short-form applications are accessible electronically must submit a letter briefly summarizing the changes by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: auction77@fcc.gov. Questions about changes should be directed to Sayuri Rajapakse at (202) 418-0660.

9. The electronic Form 175 will not permit an applicant to make certain modifications to its application (e.g., changes to applicant’s name, legal classification, license selections or certifying official).¹² Administrative and minor changes can be made, including, for example, deletion and addition of authorized bidders (to a maximum of three), revision of addresses and telephone numbers of the applicants and their contact persons, and changes to responsible party. In addition, changes can be made to ownership and agreement information.¹³ We remind applicants that any application changes must

⁹ See *Auction 77 Procedures Public Notice* at ¶¶ 58-63, 79-88.

¹⁰ 47 C.F.R. § 1.2105(b)(2).

¹¹ 47 C.F.R. § 1.65. See also 47 C.F.R. § 1.2105.

¹² 47 C.F.R. § 1.2105(b). The Commission’s electronic Form 175 is designed to prevent inadvertent major changes by applicants. Therefore, applicants are not permitted to make changes to the following data fields at this time: applicant name, legal classification, certifier, and license selection.

¹³ For more information on making administrative changes to an existing application, see “Updating Existing Applications.” See *Auction 77 Procedures Public Notice* at Attachment B. During the resubmission phase, applicants will have electronic access to update the following application fields: jurisdiction of formation/country of citizenship, applicant address, responsible party information, responsible party address, contact information,

comply with the Commission's rules, which prohibit, among other things, changes in ownership that would constitute an assignment or transfer of control, as well as changes in ownership or disclosure of agreements that would constitute violations of the anti-collusion rule.¹⁴ If any application is changed to effect a major amendment, such as a change in control, the applicant will be ineligible to bid in the auction.

II. OTHER IMPORTANT INFORMATION

10. **Qualified Bidders:** Approximately one week after the upfront payment deadline, following Commission review of resubmitted short-form applications, and correlation of payments and applications, a public notice listing all applicants qualified to bid in Auction 77 will be released. The same public notice will also include the start and finish time of the bidding round in Auction 77.

11. **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 Cellular Radiotelephone Service licenses. 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 the beginning of bidding in Auction 77 in order to determine the existence of pending proceedings, pleadings, applications, or authorizations that might affect their decisions regarding participation in the auction. In addition, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific license, they will be able to build and operate facilities that will comply fully with the Commission's technical and legal requirements. For further details regarding due diligence, please refer to the *Auction 77 Procedures Public Notice* under Section I.B.4.¹⁵

12. **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 about bids, bidding strategies, or settlements, which may include communications regarding the post-auction market structure.¹⁶ The anti-collusion rule applies to each of the two applicants that submitted short-form applications for Auction 77. Thus, each applicant must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy, which may include communications regarding the post-auction market structure.¹⁷

contact address, authorized bidder information, bidding option, agreement information, and ownership information. During all phases of the application process, applicants have electronic access to make certain administrative changes including updates to: applicant address, responsible party address, contact information, contact address, and bidding option (telephonic or electronic).

¹⁴ See 47 C.F.R. § 1.2105

¹⁵ See *Auction 77 Procedures Public Notice* at ¶¶ 28-34.

¹⁶ 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) (“*Part 1 Seventh Report and Order*”); *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).

¹⁷ For a more detailed discussion of anti-collusion considerations in the context of Auction 77, see *Auction 77 Procedures Public Notice* at ¶¶ 8-26.

13. For Auction 77, this prohibition became effective at the short-form application filing deadline on May 16, 2008, and will extend until the post-auction down payment deadline.¹⁸ **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**¹⁹ For purposes of this prohibition, Section 1.2105(c)(7)(i) defines “applicant” as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, 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.²⁰

14. Disclosure Obligations & Possible Sanctions: We note that Section 1.65 requires auction applicants to maintain the accuracy and completeness of information furnished in their pending applications and to notify the Commission as promptly as possible and in any event within 30 days of any substantial change that may be of decisional significance to those applications.²¹ Thus, Section 1.65 requires applicants to report to the Commission promptly by amending their pending applications any communications they have made to or received from another applicant after the short-form filing deadline that affect or have the potential to affect bids or bidding strategy unless such communications are made to or received from parties to agreements identified under Section 1.2105(a)(2)(viii).²² 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 1.65.²³

15. Any applicant found to have violated the anti-collusion rule may be subject to sanctions.²⁴ 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.²⁵

¹⁸ 47 C.F.R. § 1.2105(c)(1).

¹⁹ See, e.g., 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); Star Wireless, LLC and Northeast Communications of Wisconsin, Inc., *Order on Review*, FCC 07-80, 22 FCC Rcd 8943 (2007), *aff'd*, Star Wireless, LLC v. FCC, No. 07-1190, slip op. (D.C. Cir. Apr. 22, 2008); Letter to Robert Pettit, Esq., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Div., 16 FCC Rcd 10080 (WTB 2000) (declining to exempt 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).

²⁰ 47 C.F.R. § 1.2105(c)(7)(i).

²¹ 47 C.F.R. § 1.65.

²² See *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51 ¶ 9. 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 substantive change that may be of decisional significance to that application. 47 C.F.R. § 1.65.

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

²⁴ See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

²⁵ 47 C.F.R. § 1.2109(d).

16. **Ex Parte Rule:** Applicants should also be aware that the Commission has generally exempted auction proceedings from the strict requirements of the ex parte rule found in Section 1.1208 of the Commission's rules.²⁶

17. **Mock Auction:** No mock auction will be held for Auction 77. Applicants having questions about conduct of the auction or use of the FCC Auction System are encouraged to contact the appropriate staff listed in paragraph 24 of this Public Notice.

18. **Electronic Bidding:** Applicants are reminded that qualified bidders are eligible to bid either electronically or telephonically. Applicants should specify their bidding preference on the FCC Form 175, if they have not already done so.

19. Bidders can access the FCC Auction System over the Internet. Access to the system via the Internet requires, at a minimum, the following software:

- Web Browser, either of the following:
 - ❖ Microsoft® Internet Explorer 6.0 or higher (recommended). Your browser must have either Microsoft VM or Java Plug-In Version 1.5 installed.
 - ❖ Mozilla® Firefox® 2.0 or higher, with Java Plug-In Version 1.5.

To obtain Java Plug-In Version 1.5, point your browser at http://java.sun.com/javase/downloads/index_jdk5.jsp and click the **Download** button for the *Java Runtime Environment (JRE) 5.0* option.

- PDF Viewer: Adobe Acrobat Reader 5.0 or higher (available at <http://www.adobe.com>)
- Minimum Screen Resolution: 1024 x 768

20. Currently, the Apple® Mac OS® is not supported.

III. CONTACT INFORMATION

21. For questions about payment or instructions for wiring upfront payments, contact Gail Glasser, Auctions Accounting Group, at (202) 418-0578.

22. For specific questions about an applicant's incomplete or otherwise deficient status, the applicant should contact the staff reviewer identified in the correspondence sent to the applicant by overnight mail.

23. For technical assistance with accessing the FCC Auction System, contact the FCC Technical Support Hotline at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY). The FCC Technical Support Hotline is generally available Monday through Friday from 8:00 a.m. to 6:00 p.m. ET. All calls to the FCC Technical Support Hotline are recorded.

²⁶ See 47 C.F.R. § 1.1208. See also "Commission Announces that Mutually Exclusive 'Short-Form' Applications (Form 175) to Participate in Competitive Bidding Process ('Auctions') Are Treated as Exempt for *Ex Parte* Purposes," *Public Notice*, 9 FCC Rcd 6760 (1994). See also 47 C.F.R. § 1.1202(d)(1) Note 1.

24. For further information concerning this auction proceeding, contact:

Auctions and Spectrum Access Division, Wireless Telecommunications Bureau:
For auction legal questions:

Sayuri Rajapakse at (202) 418-0660

For auction procedure, bidding and general information questions:

Roy Knowles or Barbara Sibert at (717) 338-2868

Mobility Division, Wireless Telecommunications Bureau:
For licensing legal and service rule questions:

Erin McGrath (legal) or Gabriel Ubieta (technical) at (202) 418-0620

25. 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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