



PUBLIC NOTICE

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June 6, 2008

CLOSED AUCTION OF LICENSES FOR CELLULAR UNSERVED SERVICE AREAS

Two Bidders Qualified to Participate in Auction 77

AU Docket No. 08-32

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

1. In this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) identifies two applicants found to be qualified to bid in the upcoming closed auction of Cellular Radiotelephone Service licenses (Auction 77).¹ Bidding in Auction 77 is scheduled to begin on Tuesday, June 17, 2008. In addition, this Public Notice reminds Auction 77 applicants of continuing obligations and auction procedures, and contains bidding instructions and other important information regarding Auction 77. The following applicants have been determined to be qualified to bid:

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

2. Designation of an applicant as qualified to bid in the auction indicates that the applicant has provided the certifications and information concerning its qualifications for participation in the auction and timely submitted a sufficient upfront payment as required by the Commission’s competitive bidding rules. However, a determination that a short-form application is complete and complies with the Commission’s competitive bidding rules and policies is not determinative of an applicant’s qualifications to hold a license.²

3. In order to participate effectively in the auction, qualified bidders should again familiarize themselves with the auction rules, procedures, and other information described in the *Auction 77*

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 (rel. April 25, 2008) (“*Auction 77 Procedures Public Notice*”).

² An applicant’s qualifications to hold a license are generally considered after the auction during the long-form application process. In the event that an applicant is found unqualified to be a Commission licensee, it will be liable for any obligations incurred as a result of its participation in the auction. See generally 47 C.F.R. § 1.2109.

Procedures Public Notice and subsequent public notices.³ These public notices and other documents related to Auction 77 are available on the Commission's auctions website at <http://wireless.fcc.gov/auctions/>. The following paragraphs provide additional guidance.

4. **Registration.** Qualified bidders have been automatically registered for the auction. Registration materials will be sent to the bidder's contact person at the contact address identified in the bidder's short-form application. Upon receipt, each bidder should be in possession of the following:

- At least two RSA SecurID® tokens
- Integrated Spectrum Auction System (ISAS) Bidder's Guide
- FCC Auction Bidder Line phone number

5. Qualified bidders are solely responsible for ensuring the security of their computer systems and their registration materials and for ensuring that only authorized bidders place bids on their behalf. The Commission assumes no responsibility or liability for these matters.

WARNING: Any unauthorized entity accessing or tampering with an FCC or other government computer system will be prosecuted to the full extent of the law.

6. Any qualified bidder listed in this Public Notice that has not received the registration mailing **by 12:00 p.m. Eastern Time (ET) on Thursday, June 12, 2008**, must contact the Auctions Hotline directly at (717) 338-2868. Qualified bidders that do not receive this registration mailing will not be able to submit bids. It is the responsibility of each qualified bidder to ensure that all registration information has been received.

7. **Registration Material Replacement.** In the event that a bidder's SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacement registration material. Qualified bidders requiring replacement of these items must call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

8. **Bidding.** The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. The Integrated Spectrum Auction System ("ISAS" or "FCC Auction System") can be accessed at <http://auctions.fcc.gov> or <http://auctions2.fcc.gov>. Bidders are reminded that Apple® Mac OS® is not currently supported.

9. Qualified bidders are permitted to bid telephonically or electronically. In either case, each authorized bidder must have his or her own SecurID® token. Applicants with only one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens and the instructions for using them are only mailed to the contact person at the contact address listed on the applicant's short-form application. Please note that each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 77.

10. Bidders choosing to bid electronically are advised to review the Integrated Spectrum Auction System (ISAS) Bidder's Guide provided in the registration material.

³ *Auction 77 Procedures Public Notice*; see also "Closed Auction of Licenses for Cellular Unserved Service Areas; Status of Short-Form Applications to Participate in Auction 77," *Public Notice*, DA 08-1197 (rel. May 23, 2008).

11. In their registration materials, qualified bidders will be supplied with a telephone number for the Auction Bidder Line. Bidders choosing to bid telephonically are required to use this telephone number to place bids. Bidders choosing to bid electronically may use this telephone number as an alternate method of bidding. Telephonic bidders are reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round.⁴

12. Please note that the SecurID[®] tokens can be recycled, and we strongly encourage bidders to return the tokens to the FCC. We will provide pre-addressed envelopes that bidders may use to return the tokens once the auction is closed.

13. **Bidding Contingency Plan.** Bidders should develop comprehensive contingency plans that can be quickly implemented if bidders experience difficulty participating in the auction. While the FCC will correct any problems within Commission-controlled facilities, bidders are solely responsible for anticipating and overcoming problems such as bidder computer or other technical failures, loss of or problems with data connections, telephone service interruptions, adverse local weather conditions, unavailability of authorized bidders, or the loss or breach of confidential security codes. As referenced above, the Auction Bidder Line telephone number will be supplied with the registration material.

14. **Bid Amounts.** Bidders will be able to place a bid in any whole dollar amount equal to or greater than the minimum bid for the cellular unserved area for which they applied.⁵

15. Bidders are also cautioned that they should type their bid amounts carefully because, even if mistakenly or erroneously made, bidders still assume a binding obligation to pay their full bid amount.⁶

16. **Announcements.** The Commission will use auction announcements to announce items such as the schedule for a subsequent round in the event of tied bids on the license(s). All auction announcements will be available by clicking a link in the FCC Auction System.

17. **Bidding Schedule.** On Tuesday, June 17, 2008, there will be at least one round of bidding as follows:

Bidding Round	10:00 a.m. - 11:00 a.m. ET
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18. **Auction Results.** At the end of the bidding round, the winning bid will be determined based on the highest bid amount received. Bids placed during a round will be made public at the conclusion of that round.⁷ Specifically, after a round closes, the Bureau will compile reports of bids placed and which bidders made them, the random numbers assigned to each bid (for tie-breaking purposes), and the new minimum acceptable bid amount, and the Bureau will post the reports for public access. Round results will be available approximately 10 minutes after the close of the round.

19. In the event of identical high bid amounts being submitted in a cellular unserved area (i.e., tied bids), the Bureau will allow an additional bidding round or rounds, if necessary, for bidders to submit higher bids for the cellular unserved area with tied bids. The minimum bid for the next round will be

⁴ The length of a call to place a telephonic bid may vary; please allow a minimum of 10 minutes.

⁵ *Auction 77 Procedures Public Notice* at ¶¶ 103-104.

⁶ See C.F.R. § 1.2104(g)(2).

⁷ Because this is a closed auction in which two publicly identified applicants applied for each of the licenses, the Bureau did not propose to implement anonymous bidding procedures for this auction.

calculated by rounding the tied bid amount up to the next \$100.⁸ The license(s) will be awarded to the bidder submitting the highest bid in the additional round. If no bids are placed in the additional round, the license(s) will be awarded to the bidder that placed the tied bid that was assigned the higher random number (a random number having previously been assigned to each bid). If tied bids are submitted in the additional round, the FCC may add another tie-breaking round or rounds, or stop the auction without awarding the license(s).

20. If necessary, the Commission will announce the schedule for a subsequent round to be held on June 17, 2008, via an announcement in the FCC Auction System, concurrent with or soon after the release of round results.

21. Two types of reports will be available to bidders: (1) publicly available information, and (2) bidder-specific information available only to that bidder when logged in to the FCC Auction System. The public information will be available on the FCC Auction System results page and in downloadable files. When a bidder is logged in to the FCC Auction system, it will have a selection of “My Bid Reports” available to it on the FCC Auction System’s bidding page. Information in “My Bid Reports” allows only the respective bidder to view all of its actions in the current and previous rounds of the auction.

22. Detailed instructions for reviewing and downloading round results are provided in the Integrated Spectrum Auction System (ISAS) Bidder’s Guide. The bidder’s guide is included with qualified bidders’ registration materials and is available in electronic form through the “HELP” link in the FCC Auction System.

23. **Watchlists.** The FCC Auction System sets up for each qualified bidder a default watchlist, called All Licenses, that contains the licenses selected on the bidder’s short-form application.

24. **Bidder Questions during the Auction.** FCC auction staff and technical support staff will be available during the auction to answer questions from authorized bidders. When appropriate, a bidder should identify itself as a bidder with a time-sensitive auction question when calling. Help can be obtained through the following options:

FCC Auction Bidder Line (telephonic bidding, auction conduct questions)	Use Auction Bidder Line telephone number supplied in registration mailing
FCC Technical Support (all technical questions, software and hardware)	(877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY)
FCC Auctions and Spectrum Access Division (legal questions only)	(202) 418-0660

25. The FCC Auction System includes a function for bidders to submit suggestions to the FCC, but this is **not** an appropriate mechanism for asking time-sensitive questions that may need an immediate response, such as questions about auction procedures or other issues. Those questions should be directed to the appropriate telephone number listed above.

26. **Amendments to FCC Form 175.** Applicants are responsible for maintaining the accuracy and completeness of information furnished in their short-form applications, including their attachments.⁹

⁸ If the amount of the tied bids is a multiple of \$100, the minimum bid for the next round will be calculated by adding \$100 to the tied bid amount.

⁹ See 47 C.F.R. § 1.65.

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 and submit a letter, briefly summarizing the changes, by e-mail to the following address: auction77@fcc.gov. Questions about changes should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

27. As described in the Commission's rules, applicants may make only minor corrections to their short-form applications (e.g., deletion and addition of authorized bidders or fax number).¹⁰ Major modifications (e.g., license selection changes, or changing control of the applicant) will not be accepted.¹¹

28. In addition, when amending short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's anti-collusion rule.

29. **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 the Cellular Radiotelephone Service licenses being offered in the closed auction.¹² 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 the licenses, they will be able to build and operate facilities that will comply fully with the Commission's technical and legal requirements.

30. Each potential bidder is solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect the bidder's ability to bid on, otherwise acquire, or make use of the licenses available in Auction 77. For further details regarding due diligence, qualified bidders should refer to the *Auction 77 Procedures Public Notice* under Section I.B.4.¹³

31. **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 40 of this Public Notice prior to the auction.

32. **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 post-auction market structure, unless they have identified each other on their short-form applications as parties with which they have entered into agreements under Section 1.2105(a)(2)(viii).¹⁴ Thus, applicants must affirmatively avoid all communications with or disclosures to

¹⁰ See 47 C.F.R. § 1.2105(b).

¹¹ *Id.*

¹² *Auction 77 Procedures Public Notice* at ¶¶ 28-34.

¹³ *Id.*

¹⁴ 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"), *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).

each other that affect or have the potential to affect bids or bidding strategy, which may include communications regarding post-auction market structure.¹⁵

33. 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 for Auction 77. The specific down payment deadline will be announced in a future public notice shortly following the close of bidding in the relevant auction.¹⁶ **This prohibition applies to all applicants regardless of whether such applicants actually bid.**¹⁷ 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.¹⁸ The Bureau notes that a violation of the anti-collusion rule could occur when an individual serves as an officer and/or director for two or more competing applicants.¹⁹

34. **Disclosure Obligations & Possible Sanctions.** Applicants that engage in any communications regarding their or other applicants’ bids or bidding strategies that result in a bidding agreement, arrangement, or understanding not already identified on their short-form applications, must promptly disclose any such agreement, arrangement, or understanding to the Commission by amending their pending applications.²⁰ 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 1.65.²¹ Applicants have a continuing obligation to make such reports extending beyond the five business days after the communication occurs, and the Commission has emphasized that it can and will enforce the obligation so long as it remains unfulfilled.²²

¹⁵ For a more detailed discussion of anti-collusion considerations in the context of Auction 77, see *Auction 77 Procedures Public Notice* at ¶¶ 8-26.

¹⁶ See 47 C.F.R. § 1.2107.

¹⁷ 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); 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).

¹⁸ 47 C.F.R. § 1.2105(c)(7)(i).

¹⁹ See Letter to Colby M. May from Barbara A. Kreisman and Margaret W. Wiener, 20 FCC Rcd 14648 (MB/WTB 2005) (finding apparent violation of anti-collusion rule where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported no bidding agreement).

²⁰ 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.

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

²² See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize

35. Any applicant found to have violated the anti-collusion rule may be subject to sanctions.²³ 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.²⁴

36. **Submission of Auction-Related Filings.** As noted above, applicants seeking to amend their short-form applications during the auction must make modifications to their short-form applications electronically and submit a letter, briefly summarizing the changes, by e-mail at the following address: auction77@fcc.gov. The e-mail summarizing the changes must include a subject or caption referring to Auction 77 and the name of the applicant.

37. Parties wishing to submit requests, complaints, or other information concerning Auction 77 also should send a copy by e-mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at auction77@fcc.gov, in addition to following other procedures prescribed by the Commission's rules. The Commission occasionally receives complaints regarding certain bidders and requests to suspend bidding during an auction. While the Commission reserves the right to take appropriate action during an auction to preserve the integrity of the auction process, it is generally our practice to address any such allegations only after the auction when there is greater opportunity for investigation of such allegations, if warranted. The Commission will not investigate any complaints or allegations that are not accompanied by full contact information, including name, address, and telephone number, for the complaining party or parties.

38. Finally, parties wishing to make suggestions concerning Auction 77 or future auctions are encouraged to present such ideas using the suggestion feature of the FCC Auction System. (As mentioned above, this feature is not an appropriate mechanism for posing time-sensitive questions that need an immediate response.) Commission staff considers all suggestions, but may not always provide an individualized response.

39. Within the mutually exclusive application group, the previously-filed long-form application(s) (FCC Form 601) of the unsuccessful bidder will be dismissed following the grant of the winning bidder's license(s).

40. For additional information regarding this Public Notice, please contact:

Auctions and Spectrum Access Division, Wireless Telecommunications Bureau:

For auction procedure, bidding and general information questions:

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

Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, Declaratory Ruling on Reporting Requirement under Commission's Part 1 Anti-Collusion Rule, WT Docket No. 07-166, *Second Report and Order*, 22 FCC Rcd 15,289, 15,395 ¶ 286 (2007), recon. pending.

²³ See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

²⁴ 47 C.F.R. § 1.2109(d).

For auction legal questions:
Sayuri Rajapakse at (202) 418-0660

Mobility Division, Wireless Telecommunications Bureau:

For legal and service rule questions:
Erin McGrath (legal) or Gabriel Ubieta (technical) at (202) 418-0620

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).

41. 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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