



PUBLIC NOTICE

Federal Communications Commission
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DA 08-1436
June 18, 2008

AUCTION OF CELLULAR UNSERVED SERVICE AREA LICENSE CLOSES

Winning Bidder Announced for Auction 77

Down Payments due July 2, 2008
Final Payments due July 17, 2008

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

I. AUCTION RESULTS

1. On June 17, 2008, the Federal Communications Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling \$25,002.

2. This Public Notice provides detailed information concerning the winning bidder, down payment, final payment and/or refunds, requests for rule waivers, and licensing matters. Key information appears in the following attachments:

Attachment A: "Winning Bids" lists the winning bidder and its total winning bid amount.

Attachment B: "Bidder Payment/Refund" lists the down payment and final payment owed by the winning bidder and refunds due, if any.¹

A copy of this Public Notice will be sent via overnight delivery to both applicants.

II. POST-AUCTION PROCEDURES

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 2, 2008**, the winning bidder in Auction 77 must have on deposit with the Commission enough funds to cover the down payment on its

¹ The amounts listed in Attachment B are based on upfront payments and winning bids.

winning bid.² Specifically, the winning bidder's total deposit must be twenty percent of the net amount of its winning bid. 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.

4. The amount now due from the winning bidder, if any, is set out in the "Additional Amount Due after Upfront Payment Balance Applied Due by **July 2, 2008**" column of Attachment B. Note that a payment and FCC Remittance Advice Form (FCC Form 159) are necessary only if the winning bidder's upfront payment does not cover the required total down payment (as reflected in Attachment B).

B. Final Payments

5. The winning bidder will be required to submit the balance of the net amount of its winning bid by **July 17, 2008**,³ as set out in the "Final Balance Due By **July 17, 2008** or (Refund)" column of Attachment B. The winning bidder must pay the full amount of the Final Balance Due shown in Attachment B by **6:00 p.m. ET on July 17, 2008**, (or by 6:00 p.m. ET on **July 31, 2008**, along with the five percent late fee required by Section 1.2109(a) of the Commission's rules).⁴ Full and timely payment of the winning bid and any applicable late fees must be made in accordance with Section 1.2109(a) of the Commission's rules and must occur before action will be taken upon the winning bidder's long-form application (FCC Form 601).⁵ Specifically, the license will be granted only after the full and timely payment of the winning bid and any applicable late fees, in accordance with Section 1.2109(a).⁶

C. Method of Payment for Down and Final Payments

6. 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.

7. 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.

² 47 C.F.R. § 1.2107(b).

³ 47 C.F.R. § 1.2109(a).

⁴ *Id.*

⁵ 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).

⁶ 47 C.F.R. § 1.2109(a).

⁷ The wire transfer must be initiated by the winning bidder through its bank, authorizing the bank to wire funds from the bidder's account to the Commission's account, which will receive payments for financial obligations resulting from Auction 77. Additional information on wire transfers is available on the Commission's web site at: <http://www.fcc.gov/fees/wiretran.html>.

8. To submit funds by wire transfer, the winning bidder will need the following information:

ABA Routing Number: **021030004**

Receiving Bank: **TREAS NYC**

33 Liberty Street

New York, NY 10045

ACCOUNT NAME: **FCC**

ACCOUNT NUMBER: **27000001**

OBI Field: (Skip one space between each information item) "AUCTIONPAY"

PAYER FRN: (same as FCC Form 159, block 21)

PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: "A77D")

FCC CODE 1: (same as FCC Form 159, Block 28A: "77")

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

LOCKBOX NO.: #979085

1. Down Payment

9. If applicable, a partially completed copy of the FCC Form 159 will be sent to the winning bidder 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 the Commission has timely received the down payment and deposited it into the proper account.

10. Wire transfers for down payments must be received by the Commission by **6:00 p.m. ET on July 2, 2008**. The 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.

11. At least one hour before placing the order for the wire transfer (but on the same business day), the winning bidder must send by fax the completed FCC Form 159 to U.S. Bank, St. Louis Missouri at (314) 418-4232. 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 short-form application (FCC Form 175).

12. Failure to complete this down payment process by **6:00 p.m. ET on July 2, 2008**, will result in default.⁸

2. Final Payment

13. If applicable, a partially completed copy of the FCC Form 159 will be sent to the winning bidder 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 the Commission has timely received the final payment and deposited it into the proper account.

⁸ Section D, below.

14. Wire transfers of final payments must be received by the Commission by **6:00 p.m. ET on July 17, 2008**, (or by 6:00 p.m. ET on July 31, 2008, along with the five percent late fee required by Section 1.2109(a) of the Commission's rules).⁹ 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.

15. Payments must be preceded by the completed FCC Remittance Advice Form (FCC Form 159). The winning bidder must send by fax, 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 the Commission, a completed FCC Form 159 to U.S. Bank, St. Louis Missouri at (314) 418-4232. On the FCC Form 159, the applicant must use the same FRN used on its short-form application (FCC Form 175).

16. Failure to complete the final payment by **6:00 p.m. ET on July 31, 2008** (along with the five percent late fee, if applicable), will result in default.¹⁰

D. Default and Disqualification Payments

17. The Commission imposes payment obligations on bidders that default on payments due after an auction closes, and those that are disqualified.¹¹

1. Bid Default/Disqualification Payments from Auction 77

18. If the 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 make full payment, or is otherwise disqualified), the defaulting bidder will be subject to the payment obligations described in Section 1.2104(g)(2).¹² 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 a percentage of the defaulter's bid or the subsequent winning bid, whichever is less.¹³ The Bureau set the additional default payment for the auction of the cellular unserved area licenses at twenty percent of the applicable bid.¹⁴

19. If the 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 2, 2008**, 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.¹⁵

⁹ 47 C.F.R. § 1.2109(a).

¹⁰ Section D, below.

¹¹ See 47 C.F.R. §§ 1.2104(g), 1.2109.

¹² 47 C.F.R. § 1.2104(g)(2).

¹³ "Closed Auction of Licenses for Cellular Unserved 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 at ¶ 118 (rel. April 25, 2008) ("*Auction 77 Procedures Public Notice*").

¹⁴ *Id.* at ¶ 120.

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

20. If the 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.¹⁶ 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 and subject to applicable default payments.¹⁷

21. The license will be awarded upon completion of the review of the applicant's Form 601 application and a determination that the applicant's Form 601 application meets Commission requirements for grant, but only after the full and timely payment of the winning bid and any applicable late fees.¹⁸ If the 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).¹⁹

22. In the event of a default, the Commission, at its discretion, may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount.²⁰

23. 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.²¹

E. Refund of Excess Payments

24. Upfront monies on deposit that are in excess of an applicant's Auction 77 obligations may be refunded to the payer of record as identified on the FCC Form 159. To be eligible to receive a refund, an applicant must submit a refund request and provide wire transfer instructions. Applicants can 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 **July 2, 2008**. 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

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

¹⁶ 47 C.F.R. § 1.2109(a).

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

¹⁸ 47 C.F.R. § 1.2109(a).

¹⁹ 47 C.F.R. §§ 1.2104(g)(2), 1.2109.

²⁰ 47 C.F.R. § 1.2109(b)-(c).

²¹ 47 C.F.R. § 1.2109(d).

G. FCC Form 602

26. 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.²²

H. Maintaining Accuracy of Information

27. After the auction closes, applicants are required to make all changes in the Commission's Universal Licensing System ("ULS") using FCC Form 601.²³ With the release of this Public Notice, applicants are no longer required to maintain the accuracy and completeness of information furnished on their short-form applications and exhibits.

I. Application Processing and License Grant

28. The license will be awarded upon the completion of the review of the applicant's application and a determination that the applicant's application meets Commission requirements for grant. If the Commission determines that an applicant is otherwise qualified, that there are no substantial and material issues of fact, and that no additional payments are due, it will issue a public notice announcing grant of the license to the applicant.²⁴

29. 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.²⁵

III. OTHER IMPORTANT INFORMATION

A. Anti-Collusion Rules

30. 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 short-form applications as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii).²⁶

31. As explained more fully in the *Auction 77 Qualified Bidders Public Notice*, this prohibition began at the short-form application filing deadline and continues until the down payment deadline after Auction 77.²⁷

²² 47 C.F.R. §§ 1.919, 1.2107(f).

²³ 47 C.F.R. § 1.65.

²⁴ See 47 C.F.R. §§ 1.2108(d), 1.2109(a).

²⁵ See Commission Taking Tough Measures Against Frivolous Pleadings, *Public Notice*, 11 FCC Rcd 3030 (1996).

²⁶ 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).

²⁷ "Closed Auction of Licenses for Cellular Unserved Service Areas; Two Bidders Qualified to Participate in Auction 77," *Public Notice*, DA 08-1329 at ¶¶ 32-33 (rel. June 6, 2008); see also *Auction 77 Procedures Public Notice* at ¶¶ 8-26.

32. The collusion prohibition applies to all applicants in Auction 77 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.²⁸ Applicants certified their compliance with Section 1.2105(c) when their short-form applications were signed.

B. Return of SecurID® Tokens

33. The SecurID® tokens distributed to qualified bidders are tailored to this auction and will not work for future auctions. Bidders should return their SecurID® tokens to the Commission for recycling. The Commission will send bidders, along with the copy of this Public Notice, a pre-addressed, stamped envelope to return the SecurID® tokens. Bidders should return the tokens by **July 17, 2008**.

C. Contact Information

News Media: Chelsea Fallon at (202) 418-7991
Matt Nodine at (202) 418-1646
(Wireless Telecommunications Bureau)

Technical Support Hotline: FCC Auctions Technical Support Hotline at
(hardware/software issues) (877) 480-3201, option nine; (202) 414-1250;
or (202) 414-1255 (TTY)

Office of the Managing Director Gail Glasser at (202) 418-0578
Auctions Accounting Group
(payment, FCC Form 159 and refund
questions)

Wireless Telecommunications Bureau, Erin McGrath, Attorney, at (202) 418-0620
Mobility Division Gabriel Ubieta, Engineer, at (202) 418-0620
(FCC Form 601 and 602 questions) Denise Walter, Licensing, at (202) 418-0620

Wireless Telecommunications Bureau, Barbara Sibert, Project Manager, at (717) 338-2868
Auctions and Spectrum Access Division Roy Knowles, Auctions Analyst, at (717) 338-2868
(auction-related questions) Sayuri Rajapakse, 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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²⁸ *Id.*