



# PUBLIC NOTICE

Federal Communications Commission  
445 12th St., S.W.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
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TTY: 1-888-835-5322

DA 08-2482  
November 14, 2008

## Auction of LPTV and TV Translator Digital Companion Channels Closes

### Winning Bidders Announced for Auction 85

**Down Payments Due December 1, 2008**  
**Final Payments Due December 15, 2008**  
**FCC Forms 301-CA or 346 Due December 15, 2008**  
**Fifteen-Day Petition to Deny Period**

Report No. AUC-08-85-J (Auction 85)

#### I. INTRODUCTION

1. On November 10, 2008, the Federal Communications Commission completed the auction of 43 construction permits for specified Low Power Television (LPTV), including Class A Television (TV), and TV Translator digital companion channels. The auction, designated Auction 85, raised (in net bids) a total of \$134,725, with 19 winning bidders winning a total of 30 construction permits.

#### II. AUCTION RESULTS

2. This Public Notice provides detailed information concerning winning bidders, down payments, final payments and/or refunds, long-form application (FCC Forms 301-CA or 346) 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.<sup>1</sup>
- Attachment C:** Lists case file numbers to be used by winning bidders when filing long-form applications.

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

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

### III. 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 December 1, 2008**, winning bidders in Auction 85 must have on deposit with the Commission enough funds to cover the down payments on winning bids.<sup>2</sup> Specifically, each winning bidder's total deposit must be twenty percent of the net amount of its winning bids. 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.<sup>3</sup>

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 December 1, 2008" 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).

#### B. Final Payments

5. Each winning bidder will be required to submit the balance of the net amount of its winning bids by **6:00 p.m. ET on December 15, 2008**,<sup>4</sup> as set out in the "Final Balance Due By December 15, 2008 or (Refund)" column of Attachment B. All winning bidders must pay the full amount of the Final Balance Due shown in Attachment B by 6:00 p.m. ET on December 15, 2008 (or by 6:00 p.m. ET on December 30, 2008, along with the five percent late fee required by Section 1.2109(a) of the Commission's rules).<sup>5</sup> Full and timely payment of winning bids 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 a winning bidder's long-form applications (FCC Forms 301-CA or 346).<sup>6</sup> Specifically, permits will be granted only after the full and timely payment of winning bids and any applicable late fees, in accordance with Section 1.2109(a).<sup>7</sup>

#### 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.<sup>8</sup> 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.<sup>9</sup>

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<sup>2</sup> 47 C.F.R. § 1.2107(b).

<sup>3</sup> *Id.*

<sup>4</sup> 47 C.F.R. § 1.2109(a).

<sup>5</sup> *Id.*

<sup>6</sup> 47 C.F.R. § 1.2109. A winning bidder that is found unqualified to be a Commission permittee 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).

<sup>7</sup> 47 C.F.R. § 1.2109(a).

<sup>8</sup> 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 85. Additional information on wire transfers is available on the Commission's web site at: <http://www.fcc.gov/fees/wiretran.html>.

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.

8. To submit funds by wire transfer, winning bidders 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"

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

PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: "A85D")

FCC CODE 1: (same as FCC Form 159, Block 28A: "85")

PAYER 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 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, for timely filing of an accurate and complete FCC Form 159, and for 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 December 1, 2008**. 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.

11. At least one hour before placing the order for the wire transfer (but on the same business day), winning bidders must fax the completed FCC Form 159 to U.S. Bank in 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 December 1, 2008, will result in default.<sup>10</sup>

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<sup>9</sup> Copies of the FCC Form 159 may be obtained by calling the Commission's Forms Distribution Center at (800) 418-3676 (outside Washington, DC) 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 fax machine the Commission's Fax Information System at (202) 418-2830.

<sup>10</sup> See Section III. D., "Default and Disqualification Payment," below.

## 2. Final Payment

13. 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, for timely filing of an accurate and complete FCC Form 159, and for obtaining confirmation from its financial institution that the Commission has timely received the final payment and deposited it into the proper account.

14. Wire transfers of final payments must be received by the Commission by **6:00 p.m. ET on December 15, 2008** (or by 6:00 p.m. ET on December 30, 2008, along with the five percent late fee required by Section 1.2109(a) of the Commission's rules).<sup>11</sup> 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 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 in 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 December 15, 2008; or by 6:00 p.m. ET on December 30 2008, along with the five percent late fee, will result in default.<sup>12</sup>

### D. Default and Disqualification Payments

17. The Commission imposes payment obligations on bidders that default on payments due after an auction closes and on those that are disqualified.<sup>13</sup>

#### 1. Bid Default/Disqualification Payments from Auction 85

18. 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 Section 1.2104(g)(2).<sup>14</sup> 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 permit or license covering the same spectrum is won in an auction, plus an additional payment equal to a percent of the defaulter's bid or the subsequent winning bid, whichever

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<sup>11</sup> 47 C.F.R. § 1.2109(a).

<sup>12</sup> Section III.D., "Default and Disqualification Payment," below.

<sup>13</sup> See 47 C.F.R. §§ 1.2104(g), 1.2109.

<sup>14</sup> 47 C.F.R. § 1.2104(g)(2).

is less.<sup>15</sup> The additional default payment for Auction 85 permits was set at twenty percent of the applicable bid.<sup>16</sup>

19. 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 December 1, 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.<sup>17</sup>

20. 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.<sup>18</sup> If a winning bidder fails to pay (a) the balance of its winning bid by the payment deadline on December 15, 2008, or (b) the balance of its winning bid plus the late fee by the late payment deadline, on December 30, 2008, it will be deemed to have defaulted, and it will be subject to applicable default payments.<sup>19</sup>

21. Construction permits 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.<sup>20</sup> 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).<sup>21</sup>

22. 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.<sup>22</sup>

#### **E. Refund of Excess Payments**

23. Upfront monies on deposit that are in excess of an applicant's Auction 85 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 using the Commission's Integrated Spectrum Auction System ("ISAS") and clicking on the "See Wire Transfer for Refund Purposes" link under the Post-Auction section of the My Auctions

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<sup>15</sup> *Id.* See also Auction of LPTV and TV Translator Digital Companion Channels Scheduled for November 5, 2008; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 85, DA 08-1944, *Procedures Public Notice*, 23 FCC Rcd 14,530, 14,554-55 ¶¶ 115-17 (*Auction 85 Procedures Public Notice*).

<sup>16</sup> *Id.*

<sup>17</sup> 47 C.F.R. §§ 1.2104(g)(2), 1.2109(b).

<sup>18</sup> 47 C.F.R. § 1.2109(a).

<sup>19</sup> 47 C.F.R. §§ 1.2104(g)(2), 1.2109(a), 1.2109(c).

<sup>20</sup> 47 C.F.R. § 1.2109(a).

<sup>21</sup> 47 C.F.R. §§ 1.2104(g)(2), 1.2109.

<sup>22</sup> 47 C.F.R. § 1.2109(d).

web page by December 1, 2008. After this date, applicants must send a request for refund along with the necessary wire transfer instructions and FRN by fax 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 Forms 301-CA or 346**

24. Prior to **6:00 p.m. ET on December 15, 2008**, winning bidders must submit electronically a properly completed long-form application (FCC Forms 301-CA or 346, as appropriate), including required exhibits, for each digital companion channel construction permit for which they were the winning bidder in Auction 85.<sup>23</sup>

25. Applicants must file accurate and complete long-form applications (FCC Forms 301-CA or 346) *electronically* through the Media Bureau's Consolidated Database System (CDBS) online electronic filing system.<sup>24</sup> In accordance with the Commission's rules, information submitted on the new FCC Form 301-CA or 346 application by winning bidders must not constitute a major change from any information specified in the winning bidder's previously filed FCC Form 175 or from information on file in connection with the winning bidder's authorized LPTV or TV Translator station.<sup>25</sup> Instructions for use of the Media Bureau's electronic filing system can be accessed from the electronic filing web site at <http://www.fcc.gov/mb/cdbs.html>.

26. When filing FCC Forms 301-CA or 346, applicants must select "Long Form Application for LPTV Auction 85" on the Pre-form and enter the relevant case file number from Attachment C. For assistance with electronic filing, call Hossein Hashemzadeh at 202-418-1600. 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.<sup>26</sup>

#### **G. Additional Post-Auction Filing Requirements**

27. Section 73.5005(a) of the Commission's rules<sup>27</sup> requires that post-auction long-form applications include the exhibits mandated by Section 1.2107(d) (providing a detailed explanation of the terms, conditions, and parties involved in any bidding consortium, joint venture, partnership, or other agreement or arrangement the applicant had entered into relating to the competitive bidding process),<sup>28</sup> Section 1.2110(j) (requiring an applicant claiming bidding credit eligibility to describe how it satisfies the eligibility requirements for such bidding credit, and to list and summarize all agreements that affect such status, such as partnership agreements, shareholder agreements, management agreements, and any other agreements, including oral agreements, that establish that the auction applicant will have both *de*

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<sup>23</sup> See 47 C.F.R. § 73.5005(a).

<sup>24</sup> For information regarding electronic application filing, refer to "Mass Media Bureau Implements Mandatory Electronic Filing of FCC Forms 301, 314, and 315," *Public Notice*, 16 FCC Rcd 3989 (MMB 2001).

<sup>25</sup> See 47 C.F.R. §§ 73.3522, 73.3572.

<sup>26</sup> 47 C.F.R. §§ 1.2104(g), 1.2107(c).

<sup>27</sup> 47 C.F.R. § 73.5005(a). See also Instructions for Form 301, Application for Construction Permit for Commercial Broadcast Station, Instructions for Section II: Legal Information, paragraph G: Item 10: Auction Authorization for auction-related exhibit filing requirements.

<sup>28</sup> 47 C.F.R. § 1.2107(d).

*facto* and *de jure* control of the entity);<sup>29</sup> and Section 1.2112(a) (requiring that each long-form application fully disclose ownership information and the real party or parties in interest in the applicant or application).<sup>30</sup>

28. Applicants also are reminded that the Commission's "red light rule" implementing the Debt Collection Improvement Act will be enforced.<sup>31</sup> Under the red light rule, the Commission will not process applications or other requests for benefits filed by parties that have outstanding debts owed to the Commission.<sup>32</sup>

#### **H. Maintaining Accuracy of Information**

29. After the auction closes, applicants are required to make all changes to their applications by filing FCC Forms 301-CA or 346.<sup>33</sup> 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 Construction Permit Grant**

30. After its initial review of the long-form applications, the Media Bureau will issue a public notice listing the applications that are acceptable for filing. Pursuant to Section 1.2108(b) and 73.5006,<sup>34</sup> of the Commission's rules, interested parties will have fifteen days from release of that public notice to file petitions to deny any of these applications.<sup>35</sup> An applicant may file an opposition to any petition to deny within fifteen days after the filing deadline for petitions to deny.<sup>36</sup> The petitioner may file a reply to such opposition within ten days after the filing deadline for oppositions.<sup>37</sup> The Commission reminds all parties and their counsel that the Commission intends to use its authority fully to deter the filing of frivolous pleadings.<sup>38</sup>

31. After the long-form review process, 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 a construction permit to the applicant.<sup>39</sup>

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<sup>29</sup> 47 C.F.R. § 1.2110(j).

<sup>30</sup> 47 C.F.R. § 1.2112(a).

<sup>31</sup> 47 C.F.R. § 1.1910.

<sup>32</sup> *Id.*; *see also* 47 C.F.R. § 1.2109(c) (post-auction defaults).

<sup>33</sup> *See* 47 C.F.R. § 1.65.

<sup>34</sup> 47 C.F.R. § 73.5006.

<sup>35</sup> 47 C.F.R. § 73.5006.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *See* "Commission Taking Tough Measures Against Frivolous Pleadings," *Public Notice*, 11 FCC Rcd 3030 (1996).

<sup>39</sup> *See* 47 C.F.R. §§ 1.2108(d), 1.2109(a).



#### IV. OTHER IMPORTANT INFORMATION

##### A. Maintaining Prohibition of Collusion

32. 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).<sup>40</sup> For Auction 85, this prohibition began at the short-form application filing deadline of June 30, 2006, at 6:00 p.m. ET and continues until the down payment deadline, which is 6:00 p.m. ET on December 1, 2008.<sup>41</sup>

33. The collusion prohibition applies to all applicants in Auction 85 (unless they 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)), 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.<sup>42</sup> Each applicant in this auction certified its compliance with 47 C.F.R. § 1.2105(c) when its short-form application was filed.

##### B. Return of SecurID® Tokens

34. 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 December 1, 2008.

##### C. Contact Information

35. For further information, contact:

##### News Media

##### Wireless Telecommunications Bureau

Matt Nodine at (202) 418-1646

##### Licensing Information

Service Rules, Policies, Regulations  
Licensing Issues, Engineering Issues  
Due Diligence, Incumbency Issues

##### Media Bureau, Video Division

Shaun Maher (legal) or  
Hossein Hashemzadeh (engineering) at  
(202) 418-1600

##### Auction Payment Information

Wire Transfers  
Refunds

##### FCC Auctions Accounting Branch

Gail Glasser at (202) 418-0578, or  
(202) 418-2843 (fax)

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<sup>40</sup> 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 17,546 (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 15,293, 15,297-98 ¶¶ 7-8 (2000).

<sup>41</sup> *See also Auction 85 Procedures Public Notice*, 23 FCC Rcd at 14,534-38 ¶¶ 8-18.

<sup>42</sup> *Id.*



**Auction 85 Information**

General Auction Information, Process, and Procedures

Auction Rules, Policies, and Regulations

**Accessible Formats**

Braille, large print, electronic files, or audio format for people with disabilities

**FCC Internet Sites**

**Auctions and Spectrum Access Division**

Linda Sanderson, Project Manager, or Roy Knowles, Auction Analyst, at (717) 338-2868 or (202) 418-0660

Howard Davenport at (202) 418-0660

**Consumer and Governmental Affairs Bureau**

(202) 418-0530, or (202) 418-0432 (TTY) fcc504@fcc.gov

<http://www.fcc.gov>

<http://wireless.fcc.gov/auctions>

<http://www.fcc.gov/mb/cdbs.html>

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