



PUBLIC NOTICE

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DA 08-543
March 21, 2008

CLOSED AUCTION OF LICENSES FOR CELLULAR UNSERVED SERVICE AREAS SCHEDULED FOR JUNE 17, 2008

COMMENT SOUGHT ON COMPETITIVE BIDDING PROCEDURES FOR AUCTION 77

AU Docket No. 08-32

Comments Due: April 4, 2008

Reply Comments Due: April 11, 2008

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

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ATTACHMENT A: Licenses to Be Auctioned

I. LICENSES TO BE OFFERED IN AUCTION 77

1. By this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) announces an auction of licenses to provide cellular service in two different unserved areas (“Auction 77”) scheduled to commence on June 17, 2008.

2. The spectrum to be auctioned is the subject of two groups of pending mutually exclusive long-form applications on FCC Form 601 for unserved area licenses in the Cellular Radiotelephone Service. Participation in Auction 77 will be limited to those applicants identified in Attachment A. Licenses will be auctioned for each mutually exclusive applicant group (“MX Group”) identified in Attachment A. The winning bidder in each group will be licensed to serve only the unserved area proposed in its long-form application(s) for that MX Group.

3. In MX Group FGN001, one of the applicants, E.N.M.R. Telephone Cooperative (“ENMR”), has filed two applications that propose different Cellular Geographic Service Areas (“CGSAs”).¹ ENMR was required by the Commission’s rules to file two separate applications for these CGSAs.² Because ENMR’s applications are not mutually exclusive with each other, but each of these applications is mutually exclusive with the competing applicant in the MX Group, if ENMR qualifies to bid in the auction, it will submit one bid for the opportunity to have both of its applications processed in the event that it is the winning bidder in MX Group FGN001.³

II. BUREAU SEEKS COMMENT ON AUCTION PROCEDURES

4. Section 309(j)(3) of the Communications Act of 1934, as amended, requires the Commission to “ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed . . . before issuance of bidding rules, to permit notice and comment on proposed auction procedures . . .”⁴ Consistent with the provisions of Section 309(j)(3) and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction.⁵ The Bureau therefore seeks comment on the following issues relating to Auction 77.

A. Auction Design

1. Single-Round Sealed-Bid Auction Design

5. The Bureau proposes to award the licenses included in Auction 77 using a single-round sealed-bid auction.

6. The Bureau proposes to use the single-round format because the informational advantages of a simultaneous multiple-round auction are not necessary here. Because a bidder can only bid on a single cellular unserved area, bidders do not need the information afforded by a simultaneous

¹ ULS file numbers 0002299670, 0002299667.

² See 47 C.F.R. § 22.949(b)(3) (“Each Phase II application must request authorization for one and only one CGSA.”).

³ See 47 C.F.R. § 22.949(b)(2).

⁴ 47 U.S.C. § 309(j)(3)(E)(i).

⁵ See Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, *Third Report and Order and Second Further Notice of Proposed Rule Making*, FCC 97-413, 13 FCC Rcd 374, 448 ¶¶ 124-25 (1997) (“*Part 1 Third Report and Order*”) (directing the Bureau to seek comment on specific mechanisms related to day-to-day auction conduct including, for example, the structure of bidding rounds and stages, establishment of minimum opening bids or reserve prices, minimum acceptable bids, initial maximum eligibility for each bidder, activity requirements for each stage of the auction, activity rule waivers, criteria for determining reductions in eligibility, information regarding bid withdrawal and bid removal, stopping rules, and information relating to auction delay, suspension or cancellation). See also 47 C.F.R. § 0.131; Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, FCC 97-60, 12 FCC Rcd 5686, 5697-98 ¶ 16 (1997) (“*Part 1 Order*”).

multiple-round auction to consider valuations, alternative business plans, or backup strategies. The Bureau seeks comment on this proposal.

B. Auction Structure

1. Round Structure

7. The Commission will conduct Auction 77 over the Internet, and telephonic bidding will be available as well. The toll-free telephone number for the Auction Bidder Line will be provided to qualified bidders. The start and finish time of the bidding round will be announced in a public notice to be released at least one week before the start of the auction.

8. The single-round sealed-bid format will consist of one bidding round followed by the release of auction results. In the event of tied bids in an MX Group, the Commission will post an announcement in the FCC Auction System to announce an additional round of bidding for that MX Group. The Bureau seeks comment on this proposal.

2. Information Relating to Auction Delay, Suspension, or Cancellation

9. For Auction 77, the Bureau proposes that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.⁶ In such cases, the Bureau, in its sole discretion, may elect to resume the auction or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau. The Bureau seeks comment on this proposal.

C. Bidding Procedures

1. Upfront Payments and Bidding Eligibility

10. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for the cellular unserved area licenses being auctioned.⁷ A bidder's upfront payment is a refundable deposit to establish eligibility to bid in the auction on the cellular unserved area license(s) for which the applicant submitted an application. Upfront payments protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction.⁸

11. For Auction 77, the Bureau proposes to set the upfront payment at \$500 for each applicant. The unserved areas and the proposed upfront payment are listed in Attachment A. The Bureau seeks comment on this proposal.

2. Reserve Price or Minimum Bid

12. Section 309(j) calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid amount when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum bid amount is not in the public

⁶ 47 C.F.R. § 1.2104(i).

⁷ See *Part 1 Order*, 12 FCC Rcd at 5697-98 ¶ 16. See also *Part 1 Third Report and Order*, 13 FCC Rcd at 425 ¶ 86; *Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Second Report and Order*, FCC 94-61, 9 FCC Rcd 2348, 2378-79 ¶¶ 171-75 (1994) (“*Competitive Bidding Second Report and Order*”).

⁸ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2378-79 ¶¶ 171-76.

interest.⁹ Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid amount and/or reserve price prior to the start of each auction.¹⁰

13. In light of Section 309(j)'s requirement to prescribe methods for establishing reasonable minimum opening bid amounts for licenses subject to auction unless such bid amounts are not in the public interest, the Bureau proposes to establish a minimum bid amount for Auction 77.¹¹ Specifically, the Bureau proposes to set the minimum bid at \$500 for each of the two cellular unserved areas in Auction 77. The unserved areas, including the proposed upfront payment and minimum bid amount, are listed in Attachment A. The Bureau seeks comment on this proposal.

14. If commenters believe that the minimum bid amount is not a reasonable amount, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested amounts or formulas. In establishing minimum bid amounts, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, the availability of technology to provide service, the size of the service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the license or licenses being auctioned. The Bureau also seeks comment on whether, consistent with Section 309(j), the public interest would be served by having no minimum bid amount or a higher minimum bid amount.

3. Minimum Acceptable Bids

15. Eligible bidders will be able to place a bid in any whole dollar amount equal to or greater than the minimum bid for each cellular unserved area. Bidders will not be permitted to withdraw a bid. The Bureau seeks comment on this proposal.

4. Provisionally Winning Bids and Tied Bids

16. At the end of the bidding round, the winning bid for each cellular unserved area will be determined based on the highest bid amount received for the area. The result will be announced shortly after the close of the bidding round.

17. In the event of identical high bid amounts being submitted in a cellular unserved area (*i.e.*, tied bids), the Bureau proposes to 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 calculated by rounding the tied bid amount up to the next highest \$100. The license(s) will be assigned 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 assigned to the bidder placing the tied bid in the previous round with the highest random number, a random number having previously been assigned to each bid. If there is a tie for the winning bid in the additional round, the FCC may add another tie-breaking round or rounds, or stop the auction without assigning the license(s).

18. The Commission will announce the schedule for a subsequent round via an announcement in the FCC Auction System, concurrent with the release of round results. The Bureau seeks comment on this proposal.

D. Considerations Relating to Certain Post-Auction Payment Rules

1. Additional Default Payment Percentage

19. Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to make full payment, or is

⁹ 47 U.S.C. § 309(j)(4)(F). *See also* 47 C.F.R. § 1.2104(c) and (d).

¹⁰ *Part 1 Third Report and Order*, 13 FCC Rcd at 455-56 ¶ 141.

¹¹ *See* 47 U.S.C. § 309(j)(4)(F).

otherwise disqualified) is liable for a default payment under Section 1.2104(g)(2) of the Commission's rules.¹² This payment consists of 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 substantially the same spectrum and geographic area is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

20. The percentage of the bid that a defaulting bidder must pay in addition to the deficiency will depend in part on the auction format ultimately chosen for a particular auction, if the license is subsequently reaucted. In non-package auctions, the amount can range from three percent up to a maximum of twenty percent, established in advance of the auction and based on the nature of the service and the inventory of the licenses being offered.¹³

21. For Auction 77, the Bureau proposes to establish an additional default payment of 20 percent. As previously noted by the Commission, defaults weaken the integrity of the auction process and impede the deployment of service to the public, and an additional default payment of more than three percent will be more effective in deterring defaults. The Bureau proposes the maximum 20 percent default payment for Auction 77. Since Auction 77 is being conducted strictly to resolve conflicts between entities in two cellular unserved areas that were unable to resolve their mutually exclusive applications, a default by the winning bidder would suggest that the bidder has not made a good-faith effort to abide by FCC license assignment procedures, thereby weakening the integrity of the auction process. We propose to impose the maximum payment percentage to deter such behavior. The Bureau seeks comment on this proposal.

III. DEADLINES AND FILING PROCEDURES

22. Comments are due on or before April 4, 2008, and reply comments are due on or before April 11, 2008. All filings related to this auction of cellular unserved service area spectrum licenses should refer to AU Docket No. 08-32. Comments may be submitted using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies.¹⁴ The Bureau strongly encourages interested parties to file comments electronically, and requests submission of a copy via the Auction 77 e-mail box (auction77@fcc.gov).

23. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS at <http://www.fcc.gov/cgb/ecfs/>. Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

24. *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Bureau continues to experience delays in

¹² 47 C.F.R. § 1.2104(g)(2).

¹³ See Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Report and Order*, 21 FCC Rcd 891, 903 ¶ 30 (2006) ("CSEA/Part 1 Report and Order"), recons. pending. Before the *CSEA/Part 1 Report and Order*, the Commission's rules specified that this additional payment for non-combinatorial auctions was to be set at three percent of the defaulter's bid or of the subsequent winning bid, whichever is less.

¹⁴ See Electronic Filing of Documents in Rulemaking Proceedings, *Report and Order*, FCC 98-56, 13 FCC Rcd 11322 (1998).

receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. Eastern Time (ET). All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

25. *Auction 77 E-mail Box*: The Bureau also requests that a copy of all comments and reply comments be submitted electronically to the following address: auction77@fcc.gov.

26. Copies of comments and reply comments will be available for public inspection between 8:00 a.m. and 4:30 p.m. ET Monday through Thursday or 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW, Washington, DC 20554, and will also be accessible through the search function on the ECFS web page at <http://www.fcc.gov/cgb/ecfs/>.

27. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁵ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission's rules.

IV. CONTACTS

28. For further information concerning this proceeding, contact the Wireless Telecommunications Bureau, as listed below:

Mobility Division, Wireless Telecommunications Bureau

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

Auctions and Spectrum Access Division, Wireless Telecommunications Bureau

For general auction questions: Roy Knowles or Barbara Sibert at (717) 338-2868

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

29. 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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¹⁵ 47 C.F.R. §§ 1.1200(a), 1.1206.