



PUBLIC NOTICE

Federal Communications Commission
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Washington, D.C. 20554

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DA 09-2378
November 6, 2009

Auction of Broadband Radio Service Licenses Closes Winning Bidders Announced for Auction 86

Down Payments Due November 23, 2009
FCC Forms 601 and 602 Due November 23, 2009
Final Payments Due December 8, 2009
Ten-Day Petition to Deny Period

I. INTRODUCTION

1. On October 30, 2009, the Federal Communications Commission completed the auction of 78 licenses for unassigned Broadband Radio Service (“BRS”) spectrum. The auction, designated Auction 86, raised (in net bids) a total of \$19,426,600 with 10 winning bidders winning a total of 61 licenses.

II. AUCTION RESULTS

2. This Public Notice provides detailed information concerning winning bidders, down payments, final payments and/or refunds, FCC Forms 601 and 602 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.¹
- Attachment C:** “Withdrawal Payment” lists bid withdrawal payments owed by bidders, if any.
- Attachment D:** “Default Payment Report” contains a default payment based upon reconciliation of final results of Auction 6 and Auction 86.
- Attachment E:** “Instructions for Completing FCC Form 601 & FCC Form 602” provides detailed information about how a winning bidder should complete the

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

required long-form application (FCC Form 601) and ownership disclosure report (FCC Form 602) for BRS licenses for which it was the winning bidder in Auction 86.

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

3. On November 4, 2009, the Commission made available information previously withheld under the limited information procedures for Auction 86. Results files that include the identities of bidders and the net amounts of bids are now available on the web page for Auction 86 (<http://auctions.fcc.gov/auctions/86/>) and in the FCC Auction System (<http://auctions.fcc.gov/>). The limited information results files (without the identities of bidders and the net amounts of bids) remain available on the web page for Auction 86. Additionally, the publicly-available applications to participate in the auction (FCC Forms 175) now display the licenses that were selected by each applicant. The applications are viewable in the FCC Auction System via the Auction Application Search (<https://auctionfiling.fcc.gov/form175/search175/index.htm>).

III. POST-AUCTION PROCEDURES

A. Down Payments

4. 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 November 23, 2009**, winning bidders in Auction 86 must have on deposit with the Commission enough funds to cover the down payments on winning bids.² 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.³

5. 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 **November 23, 2009**" 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

6. Each winning bidder will be required to submit the balance of the net amount of its winning bids by **December 8, 2009**,⁴ as set out in the "Final Balance Due By **December 8, 2009** or (Refund)" column of Attachment B. All winning bidders, including those winning bidders that apply for a tribal lands bidding credit, must pay the full amount of the Final Balance Due shown in Attachment B by **6:00 p.m. ET on December 8, 2009** (or by 6:00 p.m. ET on **December 22, 2009**, along with the five percent late fee required by section 1.2109(a) of the Commission's rules).⁵ Full and timely payment of winning bids and any applicable late fees must be made in accordance with section 1.2109(a) of the

² 47 C.F.R. § 1.2107(b).

³ *Id.* In the event a bidder has withdrawn a bid(s) and is subject to a bid withdrawal payment(s), the bidder's upfront payment will be first applied to satisfy the withdrawal payment(s) before being applied toward its down payment. See 47 C.F.R. § 1.2104(g)(1).

⁴ 47 C.F.R. § 1.2109(a).

⁵ *Id.*

Commission's rules and must occur before action will be taken upon a winning bidder's long-form application (FCC Form 601).⁶ Specifically, licenses 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).⁷

7. An applicant's request for a tribal lands bidding credit has no effect on the applicant's obligations to make any auction payments including down and final payments due before the award of the credit. If a request for a tribal lands bidding credit is approved, the amount will be calculated and awarded prior to license grant.⁸

C. Method of Payment for Down and Final Payments

8. All payments must be in U.S. dollars and made in the form of a wire transfer.⁹ 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 159.¹⁰

9. 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.

10. 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: "A86D")

FCC CODE 1: (same as FCC Form 159, Block 28A: "86")

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

LOCKBOX NO.: **#979085**

⁶ 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).

⁷ 47 C.F.R. § 1.2109(a).

⁸ 47 C.F.R. § 1.2110(f)(3)(vi).

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

¹⁰ 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.

1. Down Payment

11. 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.

12. Wire transfers for down payments must be received by the Commission by **6:00 p.m. ET on November 23, 2009**. 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.

13. 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).

14. Failure to complete this down payment process by **6:00 p.m. ET on November 23, 2009**, will result in default.¹¹

2. Final Payment

15. 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, 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.

16. Wire transfers of final payments must be received by the Commission by **6:00 p.m. ET on December 8, 2009** (or by 6:00 p.m. ET on **December 22, 2009**, along with the five percent late fee required by section 1.2109(a) of the Commission's rules).¹² 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.

17. 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).

18. Failure to complete the final payment by **6:00 p.m. ET on December 22, 2009** (along with the five percent late fee, if applicable) will result in default.¹³

¹¹ Section III. D., "Withdrawal, Default and Disqualification Payment," below.

¹² 47 C.F.R. § 1.2109(a).

¹³ Section III.D., "Withdrawal, Default and Disqualification Payment," below.

D. Withdrawal, Default and Disqualification Payments

19. The Commission imposes payment obligations on bidders that withdraw provisionally winning bids during the course of an auction, on those that default on payments due after an auction closes, and on those that are disqualified.¹⁴

1. Bid Withdrawal Payments

20. A bidder that withdraws a provisionally winning bid during the course of an auction is subject to a bid withdrawal payment obligation equal to the difference between the amount of the withdrawn bid and the amount of the subsequent winning bid. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids equals or exceeds that withdrawn bid.

21. If a provisionally winning bid is withdrawn on a license that remains unsold at the close of the auction, the bidder will be required to make an interim payment equal to fifteen percent (15%) of the net amount of the withdrawn bid.¹⁵ This payment amount is deducted from any upfront payments or down payments that the bidder has deposited with the Commission. If, in a subsequent auction, that license receives a valid bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed and, upon appropriate request, the Commission will refund the interim fifteen percent (15%) payment. If, in a subsequent auction, the winning bid amount for that license is less than the original bidder's withdrawn bid amount, then the withdrawing bidder will be required to make a final bid withdrawal payment equal to either the difference between its net withdrawn bid and the subsequent net winning bid, or the difference between its gross withdrawn bid and the subsequent gross winning bid, whichever difference is smaller. The fifteen percent (15%) interim payment will be applied toward the withdrawal payment.

22. **Attachment C** identifies bidders that owe withdrawal payments to the Commission as a result of bid withdrawals made in Auction 86. Any upfront payments or down payments that the withdrawing bidder has deposited with the Commission will first be applied to satisfy the withdrawal payment(s) amount before being applied toward a winning bidder's down payment.¹⁶

2. Default Payment from Previous Auction

23. Because Auction 86 is now closed, the Commission is in a position to calculate final default payments owed as a result of the default on licenses in Auction 6. Such payment is identified in **Attachment D**. A forthcoming order will specify a due date for payment. In addition, payment obligations of the winning bidder in Auction 6 for licenses for the Hagerstown, MD, York, PA, and

¹⁴ See 47 C.F.R. §§ 1.2104(g), 1.2109.

¹⁵ See 47 C.F.R. § 1.2104(g)(1). See also "Auction of Broadband Radio Service (BRS) Licenses Scheduled for October 27, 2009; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86," *Public Notice*, DA 09-1376, 24 FCC Red 8277, 8322 ¶¶ 206-207 (2009) ("*Auction 86 Procedures Public Notice*").

¹⁶ See 47 C.F.R. § 1.2104(g)(1).

Reading, PA BTAs (BTAs 179, 370, and 483) have been determined pursuant to the terms of a settlement agreement approved by the United States Bankruptcy Court for the Middle District of Pennsylvania.¹⁷

3. Bid Default/Disqualification Payments from Auction 86

24. 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).¹⁸ 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.¹⁹ The additional default payment for Auction 86 licenses was set at fifteen percent of the applicable bid.²⁰

25. 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 **November 23, 2009**, 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.²¹

26. 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.²² If a winning bidder fails to pay (a) the balance of its winning bid by the payment deadline on December 8, 2009, or (b) the balance of its winning bid plus the late fee by the late payment deadline, on December 22, 2009, it will be deemed to have defaulted, and it will be subject to applicable default payments.²³

27. Licenses 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.²⁴ 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).²⁵

¹⁷ See Master Settlement Agreement dated June 3, 2005, *In re Wireless Telecommunications, Inc. et al.*, Case No. 5-02-03994 (Bankr. M.D. Pa; Dec. 6, 2005) (Order Approving Settlement with Federal Communications Commission).

¹⁸ 47 C.F.R. § 1.2104(g)(2).

¹⁹ *Id.* See also *Auction 86 Procedures Public Notice*, 24 FCC Rcd at 8324-25 ¶ 221.

²⁰ *Auction 86 Procedures Public Notice*, 24 FCC Rcd at 8325 ¶ 222.

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

²² 47 C.F.R. § 1.2109(a).

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

²⁴ 47 C.F.R. § 1.2109(a).

²⁵ 47 C.F.R. §§ 1.2104(g)(2), 1.2109.

28. 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.²⁶

E. Refund of Excess Payments

29. Upfront monies on deposit that are in excess of an applicant's Auction 86 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 web page by **December 8, 2009**. 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 Form 601

30. Prior to **6:00 p.m. ET on November 23, 2009**, each winning bidder must submit electronically a properly completed long-form application (FCC Form 601) for all licenses for which it was the winning bidder in Auction 86. Attachment E provides instructions for completing the long-form application and describes how certain information will be automatically transferred from a winning bidder's short-form application (FCC Form 175) to its long-form application (FCC Form 601).

31. 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.²⁷

G. Tribal Lands Bidding Credit

32. The Commission has implemented a tribal lands bidding credit to encourage the growth of wireless services in federally recognized tribal lands. For information relating to the tribal lands bidding credit, see Attachment E.

H. FCC Form 602

33. 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 ownership disclosure information report (FCC Form 602) providing the applicant's complete and accurate ownership information.²⁸ As explained in Attachment E, filing an FCC Form 602 is a separate requirement from, and in addition to, the ownership reporting requirements associated with filing an FCC Form 601, Exhibit A.²⁹ A winning bidder should carefully follow the instructions set forth in Attachment E when filing its ownership disclosure report.

²⁶ 47 C.F.R. § 1.2109(d).

²⁷ 47 C.F.R. §§ 1.2104(g), 1.2107(c).

²⁸ 47 C.F.R. §§ 1.919, 1.2107(f).

²⁹ The FCC Form 601 ownership reporting requirement can be fulfilled by referencing the file number, date, and name of filer of the appropriate FCC Form 602. See discussion in Attachment E.

I. Maintaining Accuracy of Information

34. After the auction closes, applicants are required to make all changes to their information in the Commission's Universal Licensing System ("ULS") using FCC Form 601.³⁰ 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.

J. Application Processing and License Grant

35. After its initial review of the long-form applications, the Commission will issue a public notice listing the applications that are acceptable for filing. Pursuant to section 1.2108(b) of the Commission's rules, interested parties will have ten days from release of that public notice to file petitions to deny any of these applications.³¹ An applicant may file an opposition to any petition to deny within five business days after the time for filing petitions to deny has expired.³² The petitioner may file a reply to such opposition within five business days after the time for filing oppositions has expired.³³ The Commission reminds all parties and their counsel that the Commission intends to use its authority fully to deter the filing of frivolous pleadings.³⁴

36. After the long-form review process, if the Commission determines that additional payments from applicants may be required, the Bureau will provide further instructions in a future public notice regarding any such additional payments. 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.³⁵

IV. OTHER IMPORTANT INFORMATION

A. Maintaining Prohibition on Certain Communications

37. 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).³⁶ For Auction 86 this prohibition began at the short-form application filing deadline of August 18, 2009 at 6:00 p.m. ET and continues until the down payment deadline, which is 6:00 p.m. ET on **November 23, 2009**.³⁷

³⁰ 47 C.F.R. § 1.65.

³¹ 47 C.F.R. § 1.2108(b).

³² 47 C.F.R. § 1.2108(c).

³³ *Id.*

³⁴ See "Commission Taking Tough Measures Against Frivolous Pleadings," *Public Notice*, FCC 96-42, 11 FCC Rcd 3030 (1996).

³⁵ See 47 C.F.R. §§ 1.2108(d), 1.2109(a).

³⁶ 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*, FCC 01-270, 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*, FCC 00-274, 15 FCC Rcd 15,293, 15,297-98 ¶¶ 7-8 (2000).

³⁷ See also *Auction 86 Procedures Public Notice*, 24 FCC Rcd at 8284 ¶ 17.

38. The prohibition on certain communications applies to all applicants in Auction 86 (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.³⁸ Each applicant in this auction certified its compliance with 47 C.F.R. § 1.2105(c) when its short-form application was filed.

B. Ex Parte Rule

39. Applicants should also be aware that the Commission has generally treated mutually exclusive short-form applications as exempt proceedings and, therefore, not subject to the *ex parte* prohibitions that pertain to restricted proceedings.³⁹

C. Return of SecurID® Tokens

40. 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 **November 23, 2009**.

D. Contact Information

41. For further information, contact:

News Media

Wireless Telecommunications Bureau
Matt Nodine at (202) 418-1646

BRS Licensing Information

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

Broadband Division (202) 418-2487

Nancy Zaczek (legal) or Stephen Zak (technical)

Auction Payment Information

Wire Transfers
Refunds

FCC Auctions Accounting Branch

Gail Glasser
(202) 418-0578
(202) 418-2843 (fax)

³⁸ *Id.* at 8282-83 ¶¶ 12-13.

³⁹ See “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*, FCC 94-283, 9 FCC Rcd 6760 (1994). See also 47 C.F.R. § 1.1202(d)(1) Note 1.

Auction 86 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

Lisa Stover, Project Manager, at (717) 338-2868
Jeff Crooks, Auction Analyst, at (202) 418-0660

Sayuri Rajapakse 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://wireless.fcc.gov/uls>

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