



PUBLIC NOTICE

Federal Communications Commission
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DA 10-1463
August 12, 2010

AUCTION OF LOWER AND UPPER PAGING BANDS LICENSES CLOSES

WINNING BIDDERS ANNOUNCED FOR AUCTION 87

Down Payments and FCC Forms 601 and 602 Due August 26, 2010
Final Payments Due September 10, 2010
Ten-Day Petition to Deny Period

I. INTRODUCTION

1. On August 6, 2010, the Federal Communications Commission completed the auction of 9,603 licenses for lower and upper paging bands spectrum. The auction, designated Auction 87, raised (in net bids) a total of \$5,399,809 with 59 winning bidders winning a total of 4,714 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” lists default payments based upon reconciliation of final results of Auctions 26, 40, 48 and 87.
- Attachment E:** “Multi-auction Withdrawal Payment” lists amount(s) or refund(s) due for bidders in Auctions 26, 40 and 48 based upon reconciliation of final results of Auctions 26, 40, 48 and 87.

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

Attachment F: “Instructions for Completing FCC Form 601 & FCC Form 602” provides detailed information about how a winning bidder should complete the required long-form application (FCC Form 601) and ownership disclosure report (FCC Form 602) for paging licenses won in Auction 87.

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

3. Concurrent with the release of this Public Notice, the Commission is making available information previously withheld under the limited information procedures for Auction 87. Results files that include the identities of bidders and the net amounts of bids are now available on the web page for Auction 87 (<http://wireless.fcc.gov/auctions/87>) 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 87. 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 August 26, 2010**, each winning bidder in Auction 87 must have on deposit with the Commission enough funds to cover the down payment(s) on its winning bid(s).² Specifically, each winning bidder’s total deposit must be twenty percent of the net amount of its winning bid(s). 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 Aug 26, 2010” 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).

6. Wire transfers for down payments must be received by the Commission by **6:00 p.m. ET on August 26, 2010**. Failure to complete this down payment process, consistent with the payment method described in this Public Notice, by 6:00 p.m. ET on August 26, 2010, will result in default.⁴

B. Final Payments

7. Each winning bidder will be required to submit the balance of the net amount of its winning bid(s) by **September 10, 2010**,⁵ as set out in the “Final Balance Due by Sep 10, 2010 or

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(s). See 47 C.F.R. § 1.2104(g)(1).

⁴ See Section III. D., “Withdrawal, Default and Disqualification Payments,” below.

⁵ 47 C.F.R. § 1.2109(a).

(Refund)” column of Attachment B. Each winning bidder must pay the full amount of the final balance due shown in Attachment B by **6:00 p.m. ET on September 10, 2010** (or by 6:00 p.m. ET on September 24, 2010, along with the five percent late fee required by section 1.2109(a) of the Commission’s rules), even if the winning bidder plans to apply for a tribal lands bidding credit.⁶ 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 application (FCC Form 601).⁷ 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).⁸

8. Wire transfers of final payments must be received by the Commission by **6:00 p.m. ET on September 10, 2010** (or by 6:00 p.m. ET on September 24, 2010, along with the five percent late fee required by section 1.2109(a) of the Commission’s rules).⁹ Failure to complete the final payment, consistent with the payment method described in this Public Notice, by 6:00 p.m. ET on September 10, 2010 (or by 6:00 p.m. ET on September 24, 2010, along with the five percent late fee) will result in default.¹⁰

9. 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.¹¹ If a request for a tribal lands bidding credit is approved, the amount will be calculated and awarded prior to license grant.¹²

C. Method of Payment for Down and Final Payments

10. All payments must be in U.S. dollars and made in the form of a wire transfer.¹³ No 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 159.¹⁴ If applicable, a partially-completed copy of the FCC Form 159 will be sent to each winning bidder to facilitate submission of the correct down payment and the correct final payment.

11. Each winning bidder is responsible for ensuring timely submission of its payment and for

⁶ *Id.*

⁷ *Id.* 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).

⁸ 47 C.F.R. § 1.2109(a).

⁹ *Id.*

¹⁰ See Section III.D., “Withdrawal, Default and Disqualification Payments,” below.

¹¹ 47 C.F.R. § 1.2110(f)(3)(vi).

¹² *Id.*

¹³ 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 87.

¹⁴ 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.

timely filing of an accurate and complete FCC Remittance Advice Form (FCC Form 159). A winning bidder should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the wire transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer.¹⁵ Each winning bidder should obtain confirmation from its financial institution that its wire transfer was successful and from Commission staff that the Commission has timely received the winning bidder's payment and deposited it into the proper account. For confirmation that the Commission has timely received the winning bidder's down payment or final payment and deposited it into the proper account, a winning bidder may contact Gail Glasser of the Office of Managing Director's Auctions Accounting Group at (202) 418-0578, or Theresa Meeks at (202) 418-2945.

12. Down payments and final payments must be preceded by an accurate and complete FCC Remittance Advice Form (FCC Form 159). At least one hour before placing the order for the wire transfer (but on the same business day), a winning bidder 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 a winning bidder's deposits. A winning bidder must use in its FCC Form 159 the same FCC Registration Number (FRN) used with the applicant's short-form application (FCC Form 175).

13. 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: "A87D")

FCC CODE 1: (same as FCC Form 159, Block 28A: "87")

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

LOCKBOX NO.: **#979085**

14. Questions concerning the calculation and submission of down payments, final payments, the FCC Form 159, and refunds should be directed to Gail Glasser at (202) 418-0578.

D. Withdrawal, Default and Disqualification Payments

15. 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.¹⁶

¹⁵ See, e.g., Letter to Lee G. Petro, Esq., from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 10-1270 (Auc. Div. July 8, 2010); Letter to David G. O'Neil, Esq. from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 08-622, 23 FCC Rcd 4765 (WTB/Auc. Div. 2008).

¹⁶ See 47 C.F.R. §§ 1.2104(g), 1.2109.

1. Bid Withdrawal Payments

16. 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.

17. 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 ten percent (10%) of the net amount of the withdrawn bid.¹⁷ 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 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 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 interim payment will be applied toward the final bid withdrawal payment.

18. **Attachment C** identifies bidders that owe withdrawal payments to the Commission as a result of bid withdrawals made in Auction 87. 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.¹⁸

2. Default Payments from Previous Auctions

19. Because Auction 87 is now closed, the Commission is in a position to calculate final default payments owed as a result of the default on licenses in Auctions 26, 40 and 48. Such payments are identified in **Attachment D**. Forthcoming orders will specify due dates for such payments.

3. Bid Withdrawal Payments from Previous Auctions

20. Because Auction 87 is closed and the Commission now has winning bid amounts for licenses that were unsold in Auctions 26, 40 and 48, we have calculated certain final bid withdrawal payments owed as a result of withdrawals of provisional winning bids on licenses in Auctions 26, 40 and 48. Such payments are identified in **Attachment E**. Forthcoming orders will specify due dates for such payments.

4. Bid Default/Disqualification Payments from Auction 87

¹⁷ See 47 C.F.R. § 1.2104(g)(1). See also "Auction of Lower and Upper Paging Bands Licenses Scheduled for May 25, 2010; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 87," *Public Notice*, DA 10-18, 25 FCC Rcd 6333, 6674-75 ¶¶ 195-197 (WTB 2010) ("*Auction 87 Procedures Public Notice*").

¹⁸ See 47 C.F.R. § 1.2104(g)(1).

21. 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).¹⁹ 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.²⁰ The additional default payment for Auction 87 licenses was set at ten percent of the applicable bid.²¹

22. 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 August 26, 2010, 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.²²

23. 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.²³ If a winning bidder fails to pay (a) the balance of its winning bid by the payment deadline on September 10, 2010, or (b) the balance of its winning bid plus the late fee by the late payment deadline on September 24, 2010, it will be deemed to have defaulted, and it will be subject to applicable default payments.²⁴

24. 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.²⁵ 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).²⁶

25. 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.²⁷

¹⁹ 47 C.F.R. § 1.2104(g)(2).

²⁰ *Id.* See also *Auction 87 Procedures Public Notice*, 25 FCC Rcd at 6377 ¶ 211.

²¹ *Auction 87 Procedures Public Notice*, 25 FCC Rcd at 6377-78 ¶ 212.

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

²³ 47 C.F.R. § 1.2109(a).

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

²⁵ 47 C.F.R. § 1.2109(a).

²⁶ 47 C.F.R. §§ 1.2104(g)(2), 1.2109.

²⁷ 47 C.F.R. § 1.2109(d).

E. Refund of Excess Payments

26. Upfront monies on deposit that are in excess of an applicant's Auction 87 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. Each applicant 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 **September 10, 2010**. 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

27. Prior to **6:00 p.m. ET on August 26, 2010**, each winning bidder must electronically submit a properly completed long-form application (FCC Form 601) for all licenses for which it was the winning bidder in Auction 87. Attachment F 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).

28. 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.²⁸

G. Tribal Lands Bidding Credit

29. The Commission has implemented a tribal lands bidding credit to encourage the growth of wireless services on the lands of federally-recognized tribes. For information relating to the tribal lands bidding credit, see Attachment F.

H. FCC Form 602

30. Pursuant to sections 1.919 and 1.2107(f) of the Commission's rules, an applicant for a license in an auctionable service must, at the time of submitting its FCC Form 601, have on file with the Commission a current ownership disclosure information report (FCC Form 602) providing the applicant's complete and accurate ownership information.²⁹ As explained in Attachment F, filing an ownership disclosure information report (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.³⁰ A winning bidder should carefully follow the instructions set forth in Attachment F when filing its ownership disclosure report.

I. Maintaining Accuracy of Information

31. After the auction closes, each applicant must make all changes to its information in the Commission's Universal Licensing System ("ULS") using FCC Form 601.³¹ With the release of this

²⁸ 47 C.F.R. §§ 1.2104(g), 1.2107(c).

²⁹ 47 C.F.R. §§ 1.919, 1.2107(f).

³⁰ 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 F.

³¹ 47 C.F.R. § 1.65.

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, Petitions to Deny, and License Grant

32. 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.³² 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.³³ The petitioner may file a reply to such opposition within five business days after the time for filing oppositions has expired.³⁴ The Commission reminds all parties and their counsel that the Commission intends to use its authority fully to deter the filing of frivolous pleadings.³⁵

33. 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.³⁶

IV. OTHER IMPORTANT INFORMATION

A. Maintaining Prohibition on Certain Communications

34. 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).³⁷ For Auction 87, this prohibition began at the short-form application filing deadline of March 16, 2010, at 6:00 p.m. ET and continues until the down payment deadline, which is **6:00 p.m. ET on August 26, 2010**.³⁸

35. The prohibition on certain communications applies to all applicants in Auction 87 (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 an applicant is a winning bidder or needs to make

³² 47 C.F.R. § 1.2108(b).

³³ 47 C.F.R. § 1.2108(c).

³⁴ *Id.*

³⁵ See "Commission Taking Tough Measures Against Frivolous Pleadings," *Public Notice*, FCC 96-42, 11 FCC Rcd 3030 (1996).

³⁶ See 47 C.F.R. §§ 1.2108(d), 1.2109(a).

³⁷ 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).

³⁸ See *Auction 87 Procedures Public Notice*, 25 FCC Rcd at 6338 ¶ 16.

an additional payment by the down payment deadline.³⁹ Each applicant in this auction certified its compliance with section 1.2105(c) when its short-form application was filed.⁴⁰

B. Ex Parte Rule

36. 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.⁴¹

C. Return of SecurID® Tokens

37. The SecurID® tokens distributed to qualified bidders are tailored to this auction and will not work for future auctions. Each bidder should return its SecurID® tokens to the Commission for recycling. The Commission will send each bidder, along with the copy of this Public Notice, a pre-addressed, stamped envelope to return its SecurID® tokens. Each bidder should return the tokens by **August 26, 2010**.

D. Contact Information

38. For further information, contact:

News Media

Wireless Telecommunications Bureau

Matt Nodine at (202) 418-1646

Paging Licensing Information

Service Rules, Policies, Regulations
Licensing Issues (including filing of Forms 601 and 602), Engineering Issues
Due Diligence, Incumbency Issues

Mobility Division

Michael Connelly (legal) or Melvin Spann (technical) at (202) 418-0620

Auction Payment Information

Wire Transfers
Refunds

FCC Auctions Accounting Branch

Gail Glasser at (202) 418-0578, or
Theresa Meeks at (202) 418-2945, or (202) 418-2843 (fax)

Auction 87 Information

General Auction Information, Process, and Procedures

Auctions and Spectrum Access Division

Barbara Sibert, Project Manager, or Roy Knowles, Auction Analyst, at (717) 338-2868

Auction Rules, Policies, and Regulations

Scott Mackoul at (202) 418-0660

³⁹ *Id.* at 6337 ¶¶ 10-12.

⁴⁰ 47 C.F.R. § 1.2105(c).

⁴¹ 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.

Accessible Formats

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

FCC Internet Sites

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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