



PUBLIC NOTICE

Federal Communications Commission
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DA 19-1057
October 21, 2019

INCENTIVE AUCTION OF UPPER MICROWAVE, FLEXIBLE USE SERVICE LICENSES IN THE UPPER 37 GHZ, 39 GHZ, AND 47 GHZ BANDS FOR NEXT-GENERATION WIRELESS SERVICES

INFORMATION ON LICENSE AREA SELECTIONS ON SHORT-FORM APPLICATIONS TO PARTICIPATE IN AUCTION 103

AU Docket No. 18-85

1. By this Public Notice, the Office of Economics and Analytics (OEA), in conjunction with the Wireless Telecommunications Bureau (WTB), provide information on the circumstances relating to an inadvertent availability in public search for under three hours on October 7, 2019, of license area selections on the short-form applications submitted for Auction 103. As a result, the license area selections of a small number of applicants were viewed during that period. This Public Notice also describes the circumstances that mitigate any potential harm from the availability of the information and the next steps we will take to further protect competition in the auction.

2. Auction 103, which is scheduled to begin December 10, 2019, will offer Upper Microwave Flexible Use Service (UMFUS) licenses in the Upper 37 GHz (37.6–38.6 GHz), 39 GHz (38.6–40 GHz), and 47 GHz (47.2–48.2 GHz) bands.¹ Thirty-nine short-form applications to participate in Auction 103 (FCC Forms 175) were submitted.² After reviewing those applications for completeness and compliance with the Commission's rules, we released the *Auction 103 Status Public Notice* on October 7, 2019, which classified the applications into two categories: complete and incomplete.³

3. Consistent with our usual practice, we made the applications publicly available that same day concurrent with our release of the *Auction 103 Status Public Notice*.⁴ Consistent with our anonymous bidding procedures, we intended to make available each applicant's entire FCC Form 175 *except for* the Partial Economic Areas (PEAs) selected.⁵ The information on PEAs selected was inadvertently made accessible to the public for a short period, however. When we became aware that the license area

¹ See *Incentive Auction of Upper Microwave Flexible Use Service Licenses in the Upper 37 GHz, 39 GHz, and 47 GHz Bands for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 103; Bidding in Auction 103 Scheduled to Begin December 10, 2019*, Public Notice, 34 FCC Rcd 5532 (2019) (*Auction 103 Procedures Public Notice*).

² See *Incentive Auction of Upper Microwave Flexible Use Service Licenses in the Upper 37 GHz, 39 GHz, and 47 GHz Bands for Next-Generation Wireless Services; Status of Short-Form Applications to Participate in Auction 103*, Public Notice, DA 19-1003, at 2, para. 2 (OEA/WTB Oct. 7, 2019) (*Auction 103 Status Public Notice*).

³ *Id.*

⁴ Short-form applications for Auction 103, as well as previous auctions, can be found using the Form 175 search function at <https://auctionfiling.fcc.gov/form175/search175/index.htm>.

⁵ See *Auction 103 Procedures Public Notice*, 34 FCC Rcd at 5546-47, paras. 35-40.

selections were publicly viewable,⁶ we immediately suppressed this information from public search to prevent any further access to that information.

4. Our internal investigation found that the license area selections of only a small minority of applicants were accessed during this period, and those selections were accessed only a small number of times. We have notified the affected applicants that their license area selections were accessed.

5. As a threshold matter, we do not foresee any adverse impact on competition in Auction 103 as a result of the brief availability of this information. Each PEA whose selection was inadvertently revealed was selected by a minimum of 18 applicants. In addition, there are 34 blocks available in each license area, and the selection by an applicant of any particular PEA does not necessarily convey an intention to place bids on that PEA, nor does it provide any information about the number of blocks being targeted by the applicant. Consequently, it would not be possible to discern with any certainty the particular bidders placing bids on any specific license area. These circumstances together with the very limited scope of the disclosure as determined by our investigation convince us that knowledge of the license selections of the applicants' whose license area selections were viewed will not provide a material—if any—competitive advantage during the bidding.

6. Nonetheless, we are cognizant of the perceived possible impact of this inadvertent disclosure on those applicants. Accordingly, we are providing certain affected applicants with additional flexibility with respect to their license area selections. On our own motion, for those affected applicants that selected fewer than all 416 PEAs, we waive section 1.2105(b)(2) of the Commission's rules, which generally prohibits changes to an auction applicant's license area selection after the short-form application deadline.⁷ This will allow those affected applicants that did not select all PEAs to change their license area selections during the limited period described below.

7. Section 1.925 of the Commission's rules permit a waiver when: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the waiver would be in the public interest, or (2) in view of the unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or there is no reasonable alternative.⁸ Our *sua sponte* waiver addresses an unusual event, which has not previously occurred in any FCC spectrum auction. Preventing applicants that did not select all PEAs and whose license area selections were viewed from adjusting those selections would be both inequitable and contrary to the public interest. Allowing these affected applicants the opportunity to modify their license area selections, whether they choose to do so or not, mitigates any perceived informational advantage. Furthermore, under these unique circumstances, fairness dictates that those applicants that selected fewer than all PEAs and whose license area selections were accessed be granted additional flexibility to select different license areas. This will allow them to implement new bidding strategies and backup bidding strategies.

8. To change its license area selection(s), an applicant must have been advised by Commission staff that it is eligible for this opportunity, and it must submit a written request by email to

⁶ We note that, under the Commission's competitive bidding rules, applicants that come into possession of non-public information to which they are not entitled have an obligation to report that to us and return and/or delete the information.

⁷ 47 CFR § 1.2105(b)(2).

⁸ *See id.* § 1.925(b)(3)(i)-(ii).

auction103@fcc.gov requesting that the Commission manually make the change to the application on the applicant's behalf.⁹ **This request must be received by no later than 6:00 PM ET on October 23, 2019.**

9. We recognize that this due date is subsequent to the 6:00 PM ET deadline on October 22, 2019, for all applicants to submit an upfront payment. **We are not extending the upfront payment deadline for any applicant.** As such, each affected applicant should exercise appropriate diligence and carefully calculate the amount of its upfront payment to ensure that the payment provides sufficient bidding eligibility for the applicant for any planned changes to its license area selections and/or bidding strategy.¹⁰ Applicants are encouraged to contact Commission staff listed below should they have any questions about making their upfront payments.

10. Once Commission staff has informed the applicant that the change to the selected license areas has been made in the Auction Application System, the applicant must then re-certify and re-submit its FCC Form 175 in the Auction Application System to confirm and effect the change(s). **Any such applicant must perform these steps by no later than 6:00 PM ET on October 29, 2019, or its changes will not be effective.**

11. Finally, the limited information procedures in effect for Auction 103 (sometimes also referred to as anonymous bidding) are in no way changed by the limited availability of applicants' license area selections on October 7.¹¹ Accordingly, communication with other applicants or public disclosure of non-public information, including an applicant's initial or modified license area selection(s), may violate the Commission's rule prohibiting certain communications, section 1.2105(c) of the Commission's rules.¹²

12. For further information concerning Auction 103, contact:

General Auction Information

General Auction Questions

FCC Auctions Hotline

(888) 225-5322, option two; or
(717) 338-2868

Auction 103 Process and Procedures

Bidding Procedures
Auction Schedule

Auctions Division, OEA

Auctions Hotline (717) 338-2868

Auction 103 Legal Information

Auction Rules, Policies, Regulations, Including
Reports of Section 1.2105(c) Violations and
Application Modifications

Auctions Division, OEA

(202) 418-0660
Mark Montano
Erik Beith

⁹ The letter summarizing the changes must include a subject or caption referring to Auction 103 and the name of the applicant, for example, "Re: Changes to Auction 103 Application of XYZ Corp." Any attachments to email must be formatted as Adobe® Acrobat® (PDF) or Microsoft® Word documents.

¹⁰ See generally *Auction 103 Procedures Public Notice*, 34 FCC Rcd at 5576-78, paras. 135-41.

¹¹ See *id.* at 5546-47, paras. 35-40.

¹² 47 CFR § 1.2105(c).

Technical Support

Hardware/Software Issues with Electronic Filing

FCC Auctions Technical Support Hotline(877) 480-3201, option nine; or (202) 414-1250
(202) 414-1255 (TTY)Hours of service: 8:00 a.m. – 6:00 p.m. ET,
Monday through Friday**Payment Information**Instructions for Wiring Upfront Payments and
Completing Form 159**FCC Revenue & Receivables Operations
Group/Auctions**Scott Radcliffe at (202) 418-7518,
Theresa Meeks at (202) 418-2945 or
Gail Glasser at (202) 418-0578
(202) 418-2843 (fax) or email to
RROGWireFaxes@fcc.gov**News Media**

For Press Questions

Wireless Telecommunications Bureau

Cecilia Sulhoff at (202) 418-0587

13. To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an email 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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