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SMALL ENTITY COMPLIANCE GUIDE

Auction of Toll Free Numbers in the 833 Code (833 Auction Procedures)

FCC 19-75

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AU Docket No. 19-101

WC Docket No. 17-192

CC Docket No. 95-155

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities — small businesses, small organizations (non-profits), and small governmental jurisdictions — comply with the procedures adopted in the above-referenced proceeding. This Guide is not intended to replace or supersede Federal Communications Commission (FCC or Commission) rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the auction procedures that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the procedures apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute, any relevant rules, and procedures announced for this auction.

In any civil or administrative action against a small entity for a violation of 833 Auction procedures, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties, or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing an auction procedure, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)

TTY: 1-888-TELL-FCC (1-888-835-5322)

Videophone: 1-844-4-FCC-ASL (1-844-432-2275)

Fax: 1-866-418-0232

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I. OBJECTIVES OF THE PROCEEDING

This Small Entity Compliance Guide (SECG) is designed to help individuals and small businesses understand the requirements and other procedures for the auction of certain toll free numbers in the 833 code (833 Auction), as established in the *833 Auction Procedures Public Notice*.¹ This guide is **not a substitute** for reading and reviewing orders, rules, and public notices applicable for the auction, nor is it a substitute for legal advice on how the competitive bidding rules apply to your circumstances.

The Commission established this auction to provide greater flexibility and to permit alternative approaches to assigning toll free numbers by adding competitive bidding as a method to assign toll free numbers.² The Commission designated Somos, Inc., the Toll Free Numbering Administrator, as the auctioneer.³ The Commission initiated the pre-bidding process by seeking comment on auction procedures to be used in the 833 Auction.⁴ Taking into account the submitted comments, the Commission subsequently released the *833 Auction Procedures Public Notice*, which provides details regarding the procedures, terms, and conditions, as well as dates and deadlines governing participation in the 833 Auction, and an overview of the post-auction procedures and payment processes. Additional materials to assist small entities in complying with the rules and procedures for the 833 Auction can be found on the Somos 833 Auction website at <https://auction.somos.com/>.

II. COMPLIANCE REQUIREMENTS

A. Auction Specifics

Bidding in this auction for 17,638 numbers will occur on December 17, 2019. Interested parties were required to submit an application to participate in the auction (specifically FCC Form 833) and submit an upfront payment. Potential subscribers may participate in the 833 Auction either (1) through a Responsible Organization (“RespOrg”) that will bid on all the numbers on which the subscriber is interested in acquiring, or (2) by submitting its own application and bidding for all the numbers in which it is interested.⁵ Prior to bidding, Somos will release a public notice identifying applicants that are qualified bidders in the *833 Auction Qualified Bidders Public Notice*.⁶

- The complete list of toll free numbers available in the 833 Auction is available on the Somos homepage under the *What Toll Free Numbers Are Available in This Auction?* heading at <https://auction.somos.com/>.

To qualify to bid in 833 Auction, applicants must have complied with the following requirements:

- Timely submission of an auction application by the filing deadline of 6:00 p.m. Eastern Time (ET) on October 18, 2019, that was substantially complete, and

¹ *Auction of Toll Free Numbers in the 833 Code, Notice and Filing Requirements, Upfront Payments, and Other Procedures for the 833 Auction*, Public Notice, 34 FCC Rcd 6560 (2019) (*833 Auction Procedures Public Notice*).

² *Toll Free Assignment Modernization, Toll Free Service Access Codes*, Report and Order, 33 FCC Rcd 9274, 9275-76, paras. 3-9 (2018) (*Toll Free Assignment Modernization Order*).

³ *Toll Free Assignment Modernization Order*, 33 FCC Rcd at 9294-5, paras. 58-64.

⁴ *Auction of Toll Free Numbers in the 833 Code; Comment Sought on Competitive Bidding Procedures*, Public Notice, 34 FCC Rcd 3500 (2019) (*833 Auction Comment Public Notice*).

⁵ *833 Auction Procedures Public Notice*, 34 FCC Rcd at 6565, para. 14.

⁶ *Id.* at 6589, para. 100.

- Timely submission of a sufficient upfront payment for at least one of the toll free numbers offered in the 833 Auction by 6:00 p.m. ET on November 27, 2019.
 - The timely upfront payment must have been submitted following the procedures and instructions set forth in the *833 Auction Procedures Public Notice*.⁷
- An applicant whose auction application contained deficiencies was provided with a limited opportunity to bring its application into compliance with the auction application rules during a resubmission window.⁸
- Parties that timely submitted applications are applicants and are subject to auction rules regarding application requirements and certifications (e.g., restrictions on agreements),⁹ and the rules prohibiting certain communications.
 - For example, the prohibition on certain communications for applicants in the 833 Auction began at the application filing deadline on October 18, 2019, and will end at the deadline for winning bidders to submit their final payments with a late fee (i.e. 15 business days after the winning bidders are announced).¹⁰

B. Auction Procedures

The Commission decided in the *Toll Free Assignment Modernization Order* to model the 833 Auction in conformity with the general competitive bidding rules in Part 1, Subpart Q, of the Commission's rules, 47 CFR §§ 1.2101 *et seq.*¹¹

- Although the 833 Auction of toll free numbers is the first of its kind, procedures for the 833 Auction are generally consistent with the auction procedures in Commission auctions of wireless spectrum licenses, broadcast permits, and universal service support. The *833 Auction Procedures Public Notice* specifies the procedures applicable to the 833 Auction.

C. Bidding Procedures

The Commission adopted a Vickrey single round, sealed-bid auction format for the 833 Auction. This type of auction offers every available number for bidding during the round, with the winning bid for each number determined solely by the bids for that number, independent of the bids for any other number.¹² The amount paid by the winning bidder is determined by the second-highest bid.¹³ Additional procedures adopted for the 833 Auction include:

- a requirement for applicants to submit an upfront payment, the amount of which will determine the maximum number of toll free numbers upon which the bidder will be able to bid (\$100 per toll free number);
- a procedure for breaking ties if identical high bid amounts are submitted for one toll free number;

⁷ *Id.* at 6589-90, paras. 104-107.

⁸ *Id.* at 6579, para. 64.

⁹ *Id.* at 6575-77, paras. 45-53.

¹⁰ *Id.* at 6569, para. 24.

¹¹ *Toll Free Assignment Modernization Order*, 33 FCC Rcd at 9285, para. 28 n.76.

¹² *833 Auction Procedures Public Notice* 34 FCC Rcd at 6592, para. 115.

¹³ *Id.*

- prohibition of bid withdrawals except before the end of the auction;
- establishment of an additional default payment of 35 percent if a winning bidder defaults or is disqualified after the 833 Auction.¹⁴

Bidding in the 833 Auction will occur on December 17, 2019.¹⁵ Qualified bidders will have an opportunity to familiarize themselves with the Somos bidding system and practice submitting bids prior to the auction by participating in a mock auction on December 13, 2019.¹⁶ The bidding system instructions and the bidding tutorial are available in electronic form on the 833 Auction website at <https://auction.somos.com>.

D. Post-Auction Procedures

Shortly after bidding ends in the 833 Auction, Somos will issue the *833 Auction Winning Bidders Public Notice* identifying the winning bidders and set forth the post-auction deadlines, including the deadline for making final payments for winning bids.¹⁷

Compliance Requirements for Winning Bidders

Additional compliance requirements apply to winning bidders. As with other winning bidders, any small entity that is a winning bidder will be required to comply with the following:

- Submit the full payment for its winning bid(s) within 10 business days following release of the public notice announcing the winning bidders, or submit the final payment within five additional business days after the applicable deadline, provided it also pays a late fee of 5% of the winning bid;¹⁸
- Any winning bidder that directly participates in the 833 Auction (i.e. not through a RespOrg) must work with a RespOrg after the auction to reserve the number in the Toll Free Database within 15 business days after the public notice announcing the winning bidders as set forth in section 52.101 of the Commission's rules.¹⁹

III. RECORDKEEPING AND REPORTING REQUIREMENTS

Pursuant to 833 Auction procedures, each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in its pending auction application.²⁰ An applicant for the 833 Auction must furnish additional or corrected information to Somos within five business days after a significant occurrence or amend its FCC Form 833 no more than five business days after the applicant becomes aware of the need for the amendment. The *833 Auction Procedures Public Notice* provides instructions for each 833 Auction applicant to maintain the accuracy of its respective auction application electronically using the Somos Auction System and/or by direct communication with Somos staff via email to auctionhelp@somos.com.²¹

¹⁴ *Id.* at 6595, para. 131.

¹⁵ *Id.* at 6565, para. 11.

¹⁶ *Id.*

¹⁷ *Id.* at 6594, para. 126.

¹⁸ *Id.* at 6595, para. 128.

¹⁹ *Id.* at 6596, para. 132.

²⁰ *Id.* at 6585-86, para. 84.

²¹ *Id.* at 6586, para. 85.

In order to evaluate the operation of the secondary market for numbers won in the 833 Auction, the Commission requires that RespOrgs submit certain information on the parties involved in the secondary market transactions to Somos within 60 days of the actual knowledge of the transaction.²² Specifically, RespOrgs must provide to Somos contact information of both parties to a secondary market transaction: (i) name, (ii) address, (iii) email address, and (iv) phone number.²³

IV. IMPLEMENTATION DATE

The procedures set forth in the *833 Auction Procedures Public Notice* became effective upon publication of a summary of that public notice at 84 Fed. Reg. 50767 on September 26, 2019.

Subsequent implementation dates and deadlines associated with the 833 Auction will be provided in the upcoming notices for this auction.

V. INTERNET LINKS

833 Auction Comment Public Notice, FCC 19-41 (May 10, 2019) is available at:
<https://docs.fcc.gov/public/attachments/FCC-19-41A1.pdf>

833 Auction Procedures Public Notice, FCC 19-75 (Aug. 2, 2019) is available at:
<https://docs.fcc.gov/public/attachments/FCC-19-75A1.pdf>

Federal Register summary of the *833 Auction Procedures Public Notice* is available at:
<https://www.federalregister.gov/documents/2019/09/26/2019-20526/auction-of-toll-free-numbers-in-the-833-code-notice-and-filing-requirements-upfront-payments-and>

833 Auction Status Public Notice is available at:
https://auction.somos.com/sites/default/files/2019-11/833_Auction_Status_PN_with_attachments_FNL.pdf

833 Auction Qualified Bidders Public Notice (to be announced).

833 Auction Winning Bidders Public Notice (to be announced).

²² *Id.* at 6596, paras. 133-134.

²³ *Id.* at 6597-8, para. 136.