

PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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DA 99-405
March 8, 1999

Location and Monitoring Service Auction Closes

Winning Bidders in the Auction of 528 Multilateration Licenses in the Location and Monitoring Service

Down Payments Due March 22, 1999
FCC Form 601s Due March 22, 1999

Ten-Day Petition to Deny Period

Report No. AUC-21-I (Auction No. 21)

On March 5, 1999, the Federal Communications Commission completed the auction of 528 multilateration Location and Monitoring Service (LMS) licenses, raising (in net high bids) a total of \$3,438,294.00 for the U.S. Treasury. 4 winning bidders won a total of 289 LMS licenses.

This public notice provides detailed information concerning winning bidders, down payments, bid withdrawal payments and/or deposits, FCC Form 601 filing requirements, requests for rule waivers, and licensing matters. Key information appears in the following attachments:

- Attachment A:** Lists the winning bidders, the licenses won by each winning bidder, and both the gross and net high winning bid amounts.
- Attachment B:** Lists the down payments and any withdrawn bid payments owed by winning bidders.

- Attachment C:** Lists withdrawn bid payments owed by all bidders.
- Attachment D:** Provides detailed information about how winning bidders should complete their required FCC Form 601 for LMS license applications.
- Attachment E:** Provides instructions for registering and filing the FCC Form 601 electronically.
- Attachment F:** Provides instructions for accessing the FCC Network using Windows 95/98.

A copy of this public notice will be sent via overnight mail to each winning bidder.

Down payments. 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. ET on March 22, 1999**, winning bidders in the LMS auction must have on deposit with Mellon Bank in Pittsburgh, Pennsylvania, enough funds to cover all required: (1) down payments on winning bids, and (2) payments for withdrawn bids. If a bidder's upfront payment is not sufficient to meet both of these requirements, the bidder must deposit additional funds. *See* 47 C.F.R. § 1.2107(b).¹

The amount now due from each bidder, if any, is set out in the last column of **Attachment B**. *Note that only if a bidder's upfront payment covers the required total of down payments and withdrawn bid payments (as reflected in Attachment B) is no payment or FCC Form 159 necessary at this time.* Each bidder's down payment must be a total of twenty (20) percent of its net winning bid(s) plus any withdrawal payments.

Final payments. After the termination of the licensing pleading cycle (*see* 47 C.F.R. § 1.2108), the Commission will issue a public notice announcing that it is prepared to grant the licenses. Within ten business days after the date of that public notice, winning bidders will be required to make full payment of the balance of their winning bids. *See* 47 C.F.R. §§ 1.2109 and 1.2107(b). Licenses will be granted only after final payment is made.

Method of payment. All payments must be in U.S. dollars and made in the form of a wire transfer. No personal checks, credit card payments, or other forms of payment will be accepted. All payments must be accompanied by a completed FCC Remittance Advice Form (FCC Form 159).² A partially completed copy of the FCC Form 159 will be sent to each

¹ 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.

² Copies of the FCC Form 159 may be obtained by calling the Commission's Forms Distribution Center at 1-800-418-3676 (outside Washington, D.C.) or 202-418-3676 (in the Washington area). Copies of the FCC Form 159 can also be obtained via the Internet (<http://www.fcc.gov/formpage.html>) or by Fax-On-Demand (202-418-2830).

winning bidder within three (3) business days following release of this public notice to facilitate submission of the correct down payment. Winning bidders that have not received the partially completed FCC Form 159 by that date should contact Geoffrey Idika at 202-418-1995. **However, winning bidders are ultimately responsible for the verification and submission of the correct down payment.**

Wire transfer payments must be received by Mellon Bank by 6:00 p.m. ET, on March 22, 1999. Bidders should coordinate with their bankers ahead of time regarding their wire transfers, and allow sufficient time for the wire transfer to be **initiated and completed prior to the deadline.** To submit funds by wire transfer, bidders will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: 911-6106
OBI Field: (Skip one space between each information item)
"AUCTIONPAY"
TAXPAYER IDENTIFICATION NO. (same as FCC Form 159, Block 25)
PAYMENT TYPE CODE (same as FCC Form 159, Block 20A: "ALMU")
FCC CODE 1 (same as FCC Form 159, Block 23A: "21")
PAYOR NAME (same as FCC Form 159, Block 2)
LOCKBOX NO. 358850

Bidders must fax a completed FCC Form 159 to Mellon Bank at 412-236-5702 at least one hour before placing the order for the wire transfer (but on the same business day).

Proper completion of the **FCC Form 159** is critical to ensuring correct credit of bidder deposits. **Bidders must use the same Taxpayer Identification Number used on their FCC Form 175.** Questions concerning the calculation and submission of down payments should be directed to Gail Glasser at 202-418-1995.

Withdrawal, default and disqualification payments. The Commission will impose payments on bidders that withdraw high bids during the course of an auction, or that default on payments due after an auction closes, or that are disqualified. A bidder that withdraws a high bid during the course of an auction is subject to a payment equal to the difference between the amount withdrawn and the amount of the subsequent winning bid. In the case of a license not selling in the same auction, the withdrawal payment is based on the selling price the next time the license is offered by the Commission. If the withdrawn bid amount was subject to a bidding credit, the bid withdrawal payment would be either the difference between the net withdrawn bid and the subsequent net winning bid, or the difference between the gross withdrawn bid and the subsequent gross winning bid, whichever is less. No withdrawal payment is assessed if the subsequent winning bid exceeds the withdrawn bid. This payment amount is deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission. *See* 47 C.F.R. 1.2104(g)(1). In those cases where the amount of the withdrawal payment cannot yet be determined because

there was no subsequent winning bid, the withdrawing bidder is required to make a three (3) percent deposit on the net amount of the withdrawn bid on the license(s). Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5563 at n. 51 (1994); C.H. PCS, Inc., Order, 11 FCC Rcd 22430 (Wireless Tel. Bur., 1996) (requiring a three percent deposit for default payments). When it becomes possible to calculate and assess the payment, we will notify these bidders. As discussed above, a bidder's upfront payment will first be applied toward its withdrawn bid payment.

If a high bidder defaults or is disqualified after the close of the auction, the defaulting bidder will be subject to the same payment obligations as described above, plus an additional payment equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the three (3) percent payment is calculated based on the defaulting bidder's bid amount. If either bid amount was subject to a bidding credit, the three (3) percent credit will be calculated using the same bid amounts and basis (net or gross bids) as in the calculation of the payment for withdrawn bids prior to the close of the auction. *See* 47 C.F.R. 1.2104(g)(2). Results of the auction indicate certain bidders may be in violation of the Commission's Rules for this service, and disqualified from holding one or more licenses. *See* 47 C.F.R. § 90.353.

If a winning bidder fails to remit the required down payment within ten (10) business days after the Commission has declared competitive bidding closed, in this case, March 22, 1999, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for a default payment as described above. In such event, the Commission, at its discretion, may either auction the spectrum to existing or new applicants, or offer it to the other highest bidders (in descending order) at their final bids. *See* 47 C.F.R. 1.2109(b).

If a winning bidder fails to pay the balance of its winning bids in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment within ten (10) business days after the payment deadline provided that it also pays a late fee equal to five (5) percent of the amount due. When a winning bidder fails to pay the balance of its winning bid plus late fee by the late payment deadline, it is considered to be in default on its license(s) and subject to the applicable default payments. Licenses will be awarded upon the full and timely payment of winning bids and any applicable late fees. *See* 47 C.F.R. § 1.2109(a). A winning bidder that is found unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults, or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted and will be liable for the payment set forth in § 1.2104(g)(2). In such event, the Commission may either auction the spectrum to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. *See* 47 C.F.R. § 1.2109(c).

Finally, bidders that are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of their upfront payment, down payment, or full bid amount, and may be prohibited from participating in future auctions. *See*

47 C.F.R. 1.2109(d).

Attachment B identifies bidders that owe withdrawal payments to the Commission.

Refund of excess upfront payments (for winning bidders). Upfront monies on deposit which are in excess of the required down payment, withdrawal and/or default payment amounts will be refunded to the payor of record promptly upon receipt of the necessary wire transfer instructions. Winning bidders must fax the necessary wire transfer instructions to Geoffrey Idika at 202-418-2843. Any questions concerning refunds should be referred to Geoffrey Idika at 202-418-1995.

Refund of upfront payments (for non-winning bidders). Non-winning bidders must fax the necessary wire transfer instructions to Geoffrey Idika at 202-418-2843. Any questions concerning refunds for non-winning bidders should be referred to Geoffrey Idika at 202-418-1995.

FCC FORM 601

By **5:30 p.m. ET on March 22, 1999**, winning bidders must submit completed long-form license application(s) covering each license for which they were the winning high bidder. Applications must be filed electronically. **Attachment D** sets out instructions for completing the FCC Form 601. This form replaces FCC Form 600 in conjunction with our development of the new universal licensing system for filing and processing of applications in wireless services.

Electronic filing. Detailed instructions for registering and filing the Form 601 electronically are set out in **Attachment E**.

Failure to timely file FCC Form 601 will result in dismissal of the application.

Applications for multiple licenses. Filers applying for multiple licenses are not required to submit a separate Form 601 application for each market if **all** filing requirements associated with the application (name and address information, all ownership and eligibility attachments, and waiver requests) are identical **except** for the market designator, channel block and market name (for the LMS auction, this would be the LMS geographic area license designator; for example, BEA001--Bangor, ME). Under these circumstances, applicants may submit *one* FCC Form 601 Main Form and Schedule B.

Filers whose name and address, ownership, eligibility, and waiver requests are identical for some licenses but different for others may utilize this streamlined filing procedure only for those licenses that have identical filing information. For those licenses with unique information, a separate application must be submitted.

Application processing and license grant. Pursuant to 47 C.F.R. § 1.2108(b) and the Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat. 251 (1997), interested parties will

have **ten (10) days** after the Commission gives public notice that the FCC Form 601s are acceptable for filing to file petitions to deny. An applicant may file an opposition to any petition to deny within **five (5) days** after the time for filing petitions to deny has expired. 47 C.F.R. § 1.2108(c). The petitioner may file a reply to such opposition within **five (5) days** after the time for filing oppositions has expired. 47 C.F.R. § 1.2108(c). If the Commission determines that an applicant is qualified and there is no substantial and material issue of fact concerning that determination, it will grant the application.

Anti-collusion rules. To ensure the competitiveness of the auction process, the Commission's Rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins with the filing of short-form applications, and ends on the down payment due date. To comply with this rule, bidders competing for the same license(s) are encouraged not to use the same individual authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm), a violation could similarly occur. In such instances, the Bureau **strongly encourages** applicants to certify on their applications that precautionary steps (e.g., establishing a "Chinese wall") have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.³ The Bureau, however, cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred nor will it preclude the initiation of an investigation when warranted.⁴ In the LMS auction, for example, the rule would apply to applicants bidding for the same Economic Area. Therefore, applicants that apply to bid for "all markets" would be precluded from communicating with all other applicants after filing the FCC Form 175. However, applicants may enter into bidding agreements *before* filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their Form 175 short-form applications.⁵ By signing their FCC Form 175 short form applications, applicants are certifying their compliance with Section 1.2105(c). In addition, Section 1.65 of the Commission's Rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of

³ See, e.g., "Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction," *Public Notice*, 13 FCC Rcd 341 (1998); In re Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A, *Memorandum Opinion and Order*, 13 FCC Rcd 11973, 11977, ¶ 11 (1998) ("*Nevada Wireless*").

⁴ See *Nevada Wireless*, 13 FCC Rcd at 11978, ¶ 13 (1998).

⁵ See 47 C.F.R. § 1.2105(c).

decisional significance to that application.⁶ Thus, Section 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

Post-Auction Forum. The Wireless Telecommunications Bureau will sponsor a joint post-auction forum for bidders that participated in the LMS auction, as well as bidders in the concluded VHF Public Coast and Phase II 220 MHz Service auctions. This forum will be announced by a forthcoming public notice. The purpose of this forum is to receive feedback from bidders on the auctions process and their experience. In addition, bidders are encouraged to use this forum to present specific recommendations for improving the operational components of the auctions process. Among the general topics to be discussed are information dissemination, application processing and payment, and the overall conduct of the auction. Key FCC staff will be available to answer questions.

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⁶ See 47 C.F.R. § 1.65.

For further information, contact:

News Media:

Meribeth McCarrick at 202-418-0654

Technical Support Hotline:

Technical Support Personnel
at 202-414-1250 (V)
or 202-414-1255 (text telephone (TTY))

Office of the Managing Director
(Payment, FCC Form 159 and refund questions)

Regina Dorsey, Gail Glasser or
Linwood Jenkins at 202-418-1995

Wireless Telecommunications Bureau,
Commercial Wireless Division
(FCC Form 601 questions)

Linda Chang at 202-418-7240

Wireless Telecommunications Bureau,
Auctions and Industry Analysis Division
(Auction-related questions)

Kathy Garland at 717-338-2801,
Bob Reagle or Ken Burnley at 202-
418-0660.

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