



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

FCC 05-213

Released: December 21, 2005

DIRECT BROADCAST SATELLITE (DBS) SERVICE AUCTION NULLIFIED: Commission Sets Forth Refund Procedures for Auction No. 52 Winning Bidders and Adopts a Freeze on All New DBS Service Applications

The Commission hereby nullifies the results of Auction No. 52, an auction of Direct Broadcast Satellite (“DBS”) licenses conducted on July 14, 2004. Specifically, the Commission sets forth below instructions for payors of record to receive refunds of the winning bids that were paid to the Commission. In addition, as explained below we adopt a freeze on all new DBS applications.

In Auction No. 52, two winning bidders, Rainbow DBS Company LLC (“Rainbow DBS”) and EchoStar Satellite L.L.C. (“EchoStar”), won three DBS licenses. Rainbow DBS won a license to operate on 32 channels at the 175° W.L. orbital location and a license to operate on 32 channels at the 166° W.L. orbital location. EchoStar won a license to operate on 29 channels at the 157° W.L. orbital location.¹ Both winning bidders timely submitted long-form applications and paid their winning bids in full.² On June 21, 2005, the United States Court of Appeals for the D.C. Circuit held in *Northpoint Technology, Ltd. v. FCC* that Auction No. 52 was unauthorized.³ In light of this holding, the Commission adopts a freeze on all applications for new DBS authorizations to use the 12.2-12.7 GHz band and associated feeder links in the 17.3- 17.8 GHz band pending Commission consideration of the appropriate processing rules for applications to provide DBS in the United States, and sets forth refund procedures.

¹ *Public Notice*, Direct Broadcast Satellite Service Licenses Auction Closes; Winning Bidders Announced, Report No. AUC-04-52-I, 19 FCC Rcd 13193 (2004) (“*Auction 52 Closing PN*”); *See also* Auction of Direct Broadcast Satellite Licenses, *Order*, 19 FCC Rcd 820 (2004) (“*DBS Auction Order*”).

² Under 47 C.F.R. § 25.148, DBS auction winners were required to file FCC Form 312, a satellite service application. Rainbow DBS and EchoStar filed their respective applications (FCC Main Form 312 and Schedule B) on September 17, 2004 (IBFS File Nos. SAT-LOA-20040917-00182, SAT-LOA-20040917-00183, and SAT-LOA-20040917-00184). The applications were placed on public notice on December 20, 2004. *See* Satellite Space Applications Accepted for Filing, Policy Branch Information, *Public Notice*, Report No. SAT-00260 (rel. Dec. 20, 2004). No comments were filed on any of the applications. EchoStar filed an amendment to its application on May 13, 2005. Pursuant to the *Closing PN*, winning bidders were required to pay their winning bids in full by August 16, 2004. Information regarding winning bids is contained in Attachment B of the *Auction 52 Closing PN*.

³ *Northpoint Technology, Ltd. v. FCC*, No. 04-1052 (D.C. Cir. June 21, 2005). In its decision, the appellate court vacated and remanded the section of the *DBS Auction Order* that concluded that DBS is not subject to the auction prohibition of the Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, 114 Stat. 48 § 647 (enacted Mar. 12, 2000), codified at 47 U.S.C. § 765f (ORBIT Act).

DBS Freeze. The freeze on DBS applications applies to any application for authority to provide DBS service to the United States using the 12.2-12.7 GHz band and associated feeder links in the 17.3- 17.8 GHz band, including unassigned channels at orbit locations assigned to the United States under the International Telecommunication Union (ITU) Region 2⁴ Broadcasting Satellite Service⁵ and feeder-link Plans,⁶ as well as applications for DBS service from space stations located at orbital locations not assigned to the United States in the ITU Region 2 BSS and feeder-link Plans. This freeze is limited to applications for licenses for new space stations or for new requests for market access by foreign-licensed space stations. The freeze does not apply to applications for replacement satellites, modifications to existing satellite licenses, or requests for special temporary authority, unless such applications seek authority to operate on frequencies and/or orbital locations not previously authorized for operation by that licensee. The freeze also does not apply to amendments to pending DBS license applications unless the amendment would add frequencies or orbital locations that were not in the original license application.

Refund Procedures. Refunds of the winning bids submitted to the Commission will be paid to the payors of record. On September 22, 2005, EchoStar requested a refund of its winning bid of \$5,800,000 plus interest from June 18, 2004, the date it submitted these funds as part of its upfront payment,⁷ to the date of the refund “calculated at the applicable rate for overpayments under Section 6621 of the Internal Revenue Code.”⁸ The Commission, however, does not have the authority to pay interest to license applicants on monies it refunds to them.⁹ Therefore, the winning bids currently on deposit with the Commission in connection with Auction No. 52 will be refunded to the payors of record without interest.

To receive a refund to which it is due, each payor of record must comply with the following procedures:¹⁰

⁴ ITU Region 2 includes North, Central, and South America and Greenland. See Article 5, Section I of the ITU Radio Regulations.

⁵ BSS is the international term used for a radiocommunication service in which signals transmitted or retransmitted by space stations are intended for direct reception by the general public. See 47 C.F.R. § 2.1. DBS is the term used in the United States to describe the domestic implementation of the BSS international service.

⁶ The Regional Administrative Radio Conference in 1983 (RARC-83) developed and adopted the Region 2 BSS and feeder-link Plans. It was not until 1985, at the World Administrative Radio Conference (WARC Orb-85), that the Region 2 Plans were adopted internationally worldwide and became a part of the ITU's Radio Regulations. The ITU Region 2 BSS Plan is comprised of the Plan for BSS in the band 12.2-12.7 GHz in ITU Region 2, as contained in Appendix 30 of the ITU Radio Regulations, and the associated Plan for the feeder-links in the frequency band 17.3-17.8 GHz for the broadcasting-satellite service in Region 2, as contained in Appendix 30A of the ITU Radio Regulations.

⁷ See *supra* note 2.

⁸ Letter from Pantelis Michalopoulos, Counsel for EchoStar Satellite L.L.C., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated September 22, 2005, at 2.

⁹ See, e.g., *Library of Congress v. Shaw*, 478 U.S. 310 (1986) (applying the “no-interest rule,” under which interest cannot be recovered from the U.S. government in the absence of an express congressional authorization of the award of interest). See also 31 U.S.C. § 1341(a)(1)(B) (prohibiting any officer or employee of the United States Government from involving the government in an obligation for the payment of money before an appropriation is made unless authorized by law); 47 U.S.C. § 309(j)(8) (requiring the Commission to deposit any upfront payments by qualified bidders in an interest-bearing account and to transfer the accrued interest to the Telecommunications Development Fund within 45 days of the conclusion of an auction).

¹⁰ In its request of September 22, 2005, EchoStar provided information for the wire transfer of the refund of its winning bid. However, EchoStar did not supply all of the information the Commission needs to make this refund. Winning bidders in Auction No. 52 must comply with all of the procedures described in this Public Notice to receive a refund of their winning bid(s).

- For each payor of record, submit an Automated Clearing House Vendor/Miscellaneous Payment Enrollment Form (“ACH form”) (see attached sample). Additional copies of this form may be accessed at <http://www.fms.treas.gov/pdf/3881.pdf>. Please leave blank the “Agency Information” section. Complete only the “Payee/Company” and “Financial Institution” sections of the form.
- Submit a letter (along with the ACH form) signed by the payor of record, requesting a refund and identifying the applicant and file number of the associated pending application. The Commission will calculate the amount of the applicable refund.
- The ACH form and the letter from the payor of record must be either faxed or mailed to the Commission. The fax number is: (202) 418-2843, Attn: Gail Glasser, Auctions Accounting Group. The mailing address is: Federal Communications Commission, Office of the Managing Director, Attention: Auctions Accounting Group, Room 1-C864, 445 12th St. SW Washington, D.C. 20554. Any questions concerning the completion of this form should be directed to Gail Glasser at (202) 418-0578 or Tim Dates at (202) 418-0496.

Further information

For questions regarding refunds, contact Gail Glasser or Tim Dates, Office of the Managing Director, Financial Operations Center, Auctions Accounting Group, at (202) 418-0578.

For questions regarding legal matters, contact Diane Conley, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, at (202) 418-0786 or Diane.Conley@fcc.gov, or Andrea Kelly, Satellite Division, International Bureau, at (202) 418-7877 or Andrea.Kelly@fcc.gov.

The news media should contact Chelsea Fallon, Wireless Telecommunications Bureau, at (202) 418-7991.

Action by the Commission on December 20, 2005: Chairman Kevin J. Martin, Commissioners Michael J. Copps and Jonathan S. Adelstein.

-FCC-

**ACH VENDOR/MISCELLANEOUS PAYMENT
ENROLLMENT FORM**

OMB No. 1510-0056

This form is used for Automated Clearing House (ACH) payments with an addendum record that contains payment-related information processed through the Vendor Express Program. Recipients of these payments should bring this information to the attention of their financial institution when presenting this form for completion.

PRIVACY ACT STATEMENT

The following information is provided to comply with the Privacy Act of 1974 (P.L. 93-579). All information collected on this form is required under the provisions of 31 U.S.C. 3322 and 31 CFR 210. This information will be used by the Treasury Department to transmit payment data, by electronic means to vendor's financial institution. Failure to provide the requested information may delay or prevent the receipt of payments through the Automated Clearing House Payment System.

AGENCY INFORMATION

FEDERAL PROGRAM AGENCY		
<input type="text"/>		
AGENCY IDENTIFIER:	AGENCY LOCATION CODE (ALC):	ACH FORMAT:
<input type="text"/>	<input type="text"/>	<input type="checkbox"/> CCD+ <input type="checkbox"/> CTX <input type="checkbox"/> CTP
ADDRESS:		
<input type="text"/>		
<input type="text"/>		
CONTACT PERSON NAME:	TELEPHONE NUMBER:	
<input type="text"/>	(<input type="text"/>) <input type="text"/>	
ADDITIONAL INFORMATION:		
<input type="text"/>		

PAYEE/COMPANY INFORMATION

NAME	SSN NO. OR TAXPAYER ID NO.
<input type="text"/>	<input type="text"/>
ADDRESS	
<input type="text"/>	
<input type="text"/>	
CONTACT PERSON NAME:	TELEPHONE NUMBER:
<input type="text"/>	(<input type="text"/>) <input type="text"/>

FINANCIAL INSTITUTION INFORMATION

NAME:	
<input type="text"/>	
ADDRESS:	
<input type="text"/>	
<input type="text"/>	
ACH COORDINATOR NAME:	TELEPHONE NUMBER:
<input type="text"/>	(<input type="text"/>) <input type="text"/>
NINE-DIGIT ROUTING TRANSIT NUMBER:	
<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	
DEPOSITOR ACCOUNT TITLE:	
<input type="text"/>	
DEPOSITOR ACCOUNT NUMBER:	LOCKBOX NUMBER:
<input type="text"/>	<input type="text"/>
TYPE OF ACCOUNT:	
<input type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS <input type="checkbox"/> LOCKBOX	
SIGNATURE AND TITLE OF AUTHORIZED OFFICIAL: (Could be the same as ACH Coordinator)	TELEPHONE NUMBER:
<input type="text"/>	(<input type="text"/>) <input type="text"/>

Instructions for Completing SF 3881 Form

1. Agency Information Section - Federal agency prints or types the name and address of the Federal program agency originating the vendor/miscellaneous payment, agency identifier, agency location code, contact person name and telephone number of the agency. Also, the appropriate box for ACH format is checked.
2. Payee/Company Information Section - Payee prints or types the name of the payee/company and address that will receive ACH vendor/miscellaneous payments, social security or taxpayer ID number, and contact person name and telephone number of the payee/company. Payee also verifies depositor account number, account title, and type of account entered by your financial institution in the Financial Institution Information Section.
3. Financial Institution Information Section - Financial institution prints or types the name and address of the payee/company's financial institution who will receive the ACH payment, ACH coordinator name and telephone number, nine-digit routing transit number, depositor (payee/company) account title and account number. Also, the box for type of account is checked, and the signature, title, and telephone number of the appropriate financial institution official are included.

Burden Estimate Statement

The estimated average burden associated with this collection of information is 15 minutes per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Financial Management Service, Facilities Management Division, Property and Supply Branch, Room B-101, 3700 East West Highway, Hyattsville, MD 20782 and the Office of Management and Budget, Paperwork Reduction Project (1510-0056), Washington, DC 20503.