



PUBLIC NOTICE

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AUCTION OF ADVANCED WIRELESS SERVICES LICENSES RESCHEDULED FOR AUGUST 9, 2006

Revised Schedule, Filing Requirements and Supplemental Procedures for Auction No. 66

AU Docket No. 06-30

Report No. AUC-06-66-C (Auction No. 66)

By the Commission: Commissioner Adelstein concurring and issuing a statement.

I. INTRODUCTION

1. By this Public Notice, the Federal Communications Commission (“Commission”) announces the revised schedule, filing requirements, and supplemental procedures for the upcoming auction (“Auction No. 66”) of Advanced Wireless Services licenses in the 1710-1755 MHz and 2110-2155 MHz bands (“AWS-1”) to provide applicants additional time for preparation and planning. With the exception of the changes set forth in this Public Notice, the Commission’s procedures, terms and conditions previously announced in the *Auction No. 66 Procedures Public Notice* will apply in Auction No. 66.¹

¹ See Auction of Advanced Wireless Services Licenses Schedule for June 29, 2006, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66, *Public Notice*, FCC 06-47 (rel. April 12, 2006) (“*Auction No. 66 Procedures Public Notice*”). As noted in the *Auction No. 66 Procedures Public Notice*, in January, the Commission adopted a Further Notice of Proposed Rule Making with respect to designated entity benefits and stated that any changes adopted in that proceeding would be applied to Auction No. 66. See *Auction No. 66 Procedures Public Notice* at ¶ 67, Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Further Notice of Proposed Rule Making*, 21 FCC Rcd 1753 (2006) (“*CSEA/Part 1 Designated Entity FNPRM*”). The Commission adopted new rules governing eligibility for designated entity benefits in the subsequent Second Report and Order. Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures, *Second Report and Order and Second Further Notice of Proposed Rule Making*, FCC 06-52 (rel. April 25, 2006) (71 Fed. Reg. 26,245, May 4, 2006) (“*Designated Entity Second Report and Order*”). As stated in the *Designated Entity Second Report and Order*, the new designated entity rules adopted therein will apply to Auction No. 66. *Designated Entity Second Report and Order* at ¶¶ 51-52.

II. RESCHEDULED AUCTION START DATE AND PRE-AUCTION DATES

A. Auction Date

2. Bidding in Auction No. 66 will begin on Wednesday, August 9, 2006. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction.

B. Pre-Auction Dates and Deadlines

3. In light of the new Auction Date, the Commission extends the deadline for participants to file a short-form application (FCC Form 175) to participate in the auction, and revises other pre-auction dates and deadlines as follows.

Short-Form Application (FCC Form 175) Filing Window Opens.....	June 5, 2006; 12:00 p.m. ET
Short-Form Application (FCC Form 175) Filing Window Deadline...	June 19, 2006; 6:00 p.m. ET
Upfront Payments (via wire transfer).....	July 17, 2006; 6:00 p.m. ET
Mock Auction	August 7, 2006
Auction Begins.....	August 9, 2006

C. Requirements for Participation

4. Those wishing to participate in Auction No. 66 must:

- Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. Eastern Time (ET), June 19, 2006, following the electronic filing procedures set forth in Attachment D to the Auction No. 66 Procedures Public Notice and this Public Notice.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) before 6:00 p.m. ET, July 17, 2006.
- Comply with all provisions outlined in the Procedures Public Notice, this Public Notice and applicable Commission rules.

III. SHORT-FORM APPLICATION (FCC FORM 175) FILING REQUIREMENTS

5. Except as set forth in this Public Notice, the short-form application (FCC Form 175) requirements previously announced in the Auction No. 66 Procedures Public Notice will apply in Auction No. 66.²

A. Effect of New Short-Form Application Filing Deadline.

6. Any party, whether it wishes to claim designated entity benefits or not, may submit a short-form application to participate in Auction No. 66 by the June 19, 2006, deadline, regardless of whether that party previously submitted an application pursuant to the prior deadline, once the short-form application filing window opens on June 5, 2006.

7. Any party that previously submitted a short-form application pursuant to the prior deadline may use the application previously submitted, subject to compliance with newly effective Commission rules; may change any or all of the information in a previously submitted short-form

² This Public Notice provides procedures pursuant to which parties may file applications in compliance with the Commission’s new rules governing eligibility for designated entity benefits. *See Designated Entity Second Report and Order* at ¶ 52.

application; may withdraw a previously submitted short-form application; and may create and submit a new short-form application in place of a withdrawn application. Applications may be withdrawn by using the “Withdraw Application” function of the Auction Application Manager. This function withdraws the application and deletes it from the database.

8. All applicants, particularly those that choose to retain their current applications on file, are reminded to review all information contained in their applications, including all information that may have been automatically entered, to confirm that it is complete and accurate as of the new deadline for filing the short-form application.³ If a party that previously submitted a short-form application pursuant to the prior deadline chooses to retain its current application on file and determines that it is still complete and will be accurate as of the new filing deadline for short-form applications, the party does not need to resubmit the application.

9. Since the Commission’s collusion prohibitions set forth in Section 1.2104(c) (the “anti-collusion rule”) are not triggered until “after the short-form application filing deadline,”⁴ the release of this Public Notice extending this deadline has the effect of lifting the prohibitions until the short-form filing period expires on June 19, 2006. (These prohibitions had been in effect since the expiration of the prior short-form filing application period on May 10, 2006.) After the new short-form filing deadline on June 19, 2006, the prohibitions of the anti-collusion rule will again apply. Applicants are urged to review the Commission’s prior guidance on the anti-collusion rule in the context of Auction No. 66.⁵ Although the prohibitions of the Commission’s anti-collusion rule are not triggered until the new short-form filing deadline, applicants have continuing obligations to avoid anti-competitive behavior, including communications about auction plans or applications that might have anti-competitive effects. As noted in the *Auction No. 66 Procedures Public Notice*, regardless of compliance with the Commission’s rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.⁶

B. Short-Form Application Certification of Compliance with Commission Rules

10. Applicants that submit short-form applications to participate in Auction No. 66 by the June 19, 2006, deadline are reminded that their application must be in compliance with Commission rules as of that date, regardless of whether the short-form application was previously submitted on an earlier date and regardless of whether there has been any change in circumstances between the date of submission and the short-form application deadline.

11. Applicants are reminded that they must comply with the various certifications required in the short-form application pursuant to Commission rules. Applicants are required to be in compliance with the certifications, made by a person with authority to bind the applicant, as of the deadline for filing the short-form applications. Applicants must assure the accuracy of these certifications as of the

³ As described in the *Auction No. 66 Procedures Public Notice*, an applicant’s most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an on-line FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant’s short-form application when the applicant first creates the short-form application. See *Auction No. 66 Procedures Public Notice* at ¶ 75. Moreover, if an applicant makes any changes to ownership information in its FCC Form 602 after starting its short-form application for Auction No. 66, those ownership changes are not automatically carried over to the short-form application. The applicant would need to update the ownership information directly in the short-form application.

⁴ See 47 C.F.R. § 1.2105(c)(1).

⁵ See *Auction No. 66 Procedures Public Notice* at ¶¶ 15-23.

⁶ *Auction No. 66 Procedures Public Notice* at ¶ 20.

deadline.⁷ For example, parties submitting short-form applications certify that they are not in default on any Commission license and not delinquent on any non-tax debt owed to any Federal agency as of the deadline for filing the short-form application. Likewise, parties submitting a short-form application are certifying compliance with the foreign ownership provisions of Section 310 of the Communications Act of 1934, as amended, or that a request for waiver or relief from the requirements of Section 310 is pending as of the deadline for filing the short-form application.⁸

12. Applicants are strongly cautioned to avoid any statements or disclosures that may violate the Commission's anti-collusion rule, particularly in light of the Commission's procedures regarding the availability of certain information in Auction No. 66. Applicants should carefully review the *Auction No. 66 Procedures Public Notice* with respect to both the prohibition of collusion and the information available to bidders before and during the auction.⁹ For example, the Commission may not disclose information regarding applicants' license selection until after the auction closes. However, the Commission will disclose other portions of short-form applications, through its on-line database and public notices.¹⁰ Accordingly, applicants should avoid including any information in their short-form applications that might convey information regarding their license selection. For example, applicants should not use names that refer to licenses selected, refer to bidding agreements by reference to relevant licenses, or include information in attachments that may disclose the licenses that they have selected. If an applicant is found to have violated the Commission's rules or antitrust laws in connection with its participation in the competitive bidding process, the applicant may be subject to various sanctions, including forfeiture of its upfront payment, down payment or full bid amount and prohibition from participating in future auctions.¹¹

C. Designated Entity Applicant Certification of Compliance with Rules Effective as of Short-Form Filing Window Deadline

13. The Commission adopted new rules governing eligibility for designated entity benefits in the *Designated Entity Second Report and Order*.¹² In the *Designated Entity Second Report and Order*, the Commission stated that applicants seeking to participate in Auction No. 66 as designated entities would be required to amend their applications for that auction on or after the effective date of the rule changes with a statement declaring, under penalty of perjury, that the applicant is qualified as a designated entity pursuant to section 1.2110 of the Commission's rules effective as of the date of the statement.¹³ The Commission adopted and released the new rules on April 25, 2006, and published the

⁷ The Commission's rules expressly provide that any short-form application that does not contain all of the certifications required is unacceptable for filing and cannot be corrected subsequent to the applicable filing deadline. 47 C.F.R. § 1.2105(b)(1).

⁸ 47 C.F.R. § 1.2105(a)(2)(v) and (vi).

⁹ *Auction No. 66 Procedures Public Notice* at ¶¶ 15-23 and ¶¶ 140-159.

¹⁰ *Auction No. 66 Procedures Public Notice* at ¶ 158.

¹¹ See 47 C.F.R. § 1.2109(d); *Auction No. 66 Procedures Public Notice* at ¶ 20.

¹² See, generally, *Designated Entity Second Report and Order*.

¹³ *Designated Entity Second Report and Order* at ¶ 52.

new rules in the Federal Register on May 4, 2006.¹⁴ The new rules will become effective on June 3, 2006.¹⁵

14. The Commission's rules require, and the short-form application provides, that any applicant applying as a designated entity certify that the applicant is qualified as a designated entity under the Commission's rules.¹⁶ Pursuant to the new schedule for Auction No. 66, applicants to participate in Auction No. 66 must file a short-form application by June 19, 2006, which is after the effective date of the Commission's new rules governing eligibility for designated entity benefits. Applicants may press a button to submit a short-form application at any time after the window for filing opens and before the new deadline for short-form filing. However, applicants may withdraw, or effectively delete, any application that has been submitted until that deadline occurs. It is no longer necessary for entities applying as designated entities to amend their applications as described in the *Designated Entity Second Report and Order*.¹⁷ The certification made as part of the short-form application will constitute a certification by any applicant applying as a designated entity that the applicant will be qualified as a designated entity pursuant to the Commission's rules as of the June 19, 2006, deadline for filing the short-form application, regardless of the date on which the applicant submits the application. Applicants that previously certified their designated entity eligibility must revise their application and resubmit or withdraw by the filing deadline of June 19, 2006 if they will not be qualified pursuant to the Commission's rules as of that deadline.

D. Additional Information Required in Short-Form Application from Designated Entity Applicants Pursuant to Newly Effective Rules

15. The Commission's new rules regarding applicants seeking eligibility for designated entity benefits requires the disclosure of information not previously required on a short-form application. Applicants must submit all information required to be disclosed on the applicant's application to participate in the auction pursuant to Commission rules in effect as of the deadline for submitting the short-form applications in order to qualify as a designated entity. Such information includes disclosures required pursuant to newly effective Section 1.2112 as adopted in the *Designated Entity Second Report and Order*:

- A list of all parties with which the applicant has entered into arrangements for the lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum.¹⁸
- A list, separately and in the aggregate, of the gross revenues of entities with which the applicant has an attributable material relationship, as defined in Section 1.2110(b)(3)(iv)(B).¹⁹

¹⁴ *Designated Entity Second Report and Order*, 71 Fed. Reg. 26,245, May 4, 2006.

¹⁵ *Designated Entity Second Report and Order* at ¶ 103.

¹⁶ 47 C.F.R. § 1.2105(a)(2)(iv).

¹⁷ In the *Designated Entity Second Report and Order*, the Commission stated that applicants seeking to participate in Auction No. 66 as designated entities would be required to amend their applications for that auction on or after the effective date of the rule changes with a statement declaring, under penalty of perjury, that the applicant is qualified as a designated entity pursuant to section 1.2110 of the Commission's rules effective as of the date of the statement. *Designated Entity Second Report and Order* at ¶ 52. Applicants will be subject to the new rules in their initial application, given that the deadline for submitting short-form applications to participate in Auction No. 66 now falls after the effective date of the rule changes, and no subsequent amendments will be necessary.

¹⁸ 47 C.F.R. § 1.2112(b)(1)(iii) (effective June 3, 2006).

Failure to provide any additional information required under the designated entity rules effective as of the deadline for filing a short-form application may result in the applicant being ineligible to qualify as a designated entity.

16. An applicant may provide information not previously required on FCC Form 175 by including the information in an attachment to the application. Instructions for uploading an attachment to an application are provided in Attachment D to the *Auction No. 66 Procedures Public Notice*.²⁰ When uploading an attachment providing information required by the newly effective designated entity rules, applicants should identify the attachment type as “Other.”

IV. INFORMATION REGARDING BIDDERS’ OWN ROUND RESULTS

17. Applicants are reminded that Auction No. 66, may be conducted pursuant to procedures that limit the information available prior to and during the auction. If Auction No. 66 is conducted with limited information released prior to and during the auction,²¹ two types of reports will be available to bidders: (1) publicly-available information and (2) bidder-specific information available only to that bidder when logged in to the FCC Auction System.

18. The public information will be available on the FCC Auction System results page that will list for each license the following information, which will be current as of the conclusion of the most recently completed round: the provisionally winning bid amount, the minimum acceptable bid amount for the next round, the number of bids received in the most recently-completed round, and whether the license has a provisionally winning bid or is held by the FCC. This information will also be available in a downloadable file. The results page will also offer a list of FCC-held licenses (licenses without provisionally winning bids) in viewable and downloadable formats.

19. When a bidder is logged in to the FCC Auction System, it will have a selection of “My Bid Reports” available to it on the FCC Auction System’s bidding page. Information in “My Bid Reports” allows only the respective bidder to view all of its actions in the current and previous rounds of the auction. Samples of the results page downloadable files were made available for the pre-auction seminar held April 24, 2006, and were posted to the web page for the seminar: http://wireless.fcc.gov/auctions/default.htm?job=auCTION_seminar&id=66 (scroll down to the bottom of the page). Samples of the “My Bid Reports” files are now posted to the same location.

V. CONTACTS

A. Media Contact:

For press inquiries: Chelsea Fallon (202) 418-7991

B. Auctions and Spectrum Access Division:

For legal questions: Scott Mackoul at (202) 418-0660

¹⁹ 47 C.F.R. § 1.2112(b)(1)(iv) (effective June 3, 2006). Note that certain otherwise attributable material relationships may not be attributable pursuant to the provisions of 47 C.F.R. § 1.2110(b)(3)(iv)(C)(2) (effective June 3, 2006).

²⁰ *Auction No. 66 Procedures Public Notice*, Attachment D, Electronic Filing and Review of the Short-Form Application (FCC Form 175), at D-13 (Attaching Additional Information).

²¹ See *Auction No. 66 Procedures Public Notice* at ¶¶ 140-143.

For general auction questions: Lisa Stover at (717) 338-2888

C. Broadband Division:

For legal and technical questions: David Hu or John Spencer at (202) 418-0200

For licensing questions: Beth Fishel at (717) 338-2649

To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

Action by the Commission on May 19, 2006.

- FCC -

**CONCURRING STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Auction Of Advanced Wireless Services Licenses Rescheduled For August 9, 2006; Revised Schedule, Filing Requirements And Supplemental Procedures For Auction No. 66; AU Docket No. 06-30

It is disappointing that the Commission has allowed the designated entity (DE) proceeding to affect the timing of the upcoming Advanced Wireless Services (AWS) auction. I concur in this item because I am told that a delay in the auction is necessary to allow parties more time to make necessary preparations in response to the Commission's April 25, 2006, decision adopting various changes to the DE rules – a decision from which I largely dissented. Needless to say, this is not the outcome I hoped for when I first advocated a single, simple, change to the DE rules more than nine months ago.

I am disappointed that we are in this position because I made every effort to conclude the DE proceeding well in advance of our June 29, 2006, auction date, a date to which I had steadfastly been committed. I had tried to move this proceeding forward since August of last year when the Commission first committed to consider a change to the rules to restrict the ability of DEs who have a material relationship with the nation's largest wireless carriers from having access to bidding credits in future auctions. We could have and should have been done with the DE proceeding months ago. In previous statements, I even expressed my concern with the effect of the delay on both interested parties and our own Commission staff in trying to conclude an unnecessarily expansive review of the DE program sufficiently in advance of the June 29 AWS auction date. But as I have said before, this timing has not been of my choosing.

And, ultimately, the simple, and well supported, change to our rules to close the loophole in our rules that allows large wireless companies to invest in DEs was never adopted. We missed a real opportunity to shut down what almost everyone recognizes has the potential for the largest abuse of our DE program. And now it appears that the changes that the Commission did adopt may actually do more harm than good to the DE participation in the upcoming auction, notwithstanding this last-ditch effort to cure this troubled proceeding.