



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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DA 00-2614
November 17, 2000

AUCTION OF LICENSES FOR C AND F BLOCK BROADBAND PCS SPECTRUM

Status of FCC Form 175 Applications to Participate in the Auction

Report No. AUC-35-F (Auction No. 35)

The Federal Communications Commission (“FCC”) has received 112 FCC Form 175 applications to participate in Auction No. 35 scheduled to begin on Tuesday, December 12, 2000, for 422 licenses in the C and F block Broadband PCS spectrum. The applications have been reviewed for completeness and compliance with the Commission's rules, and have been classified into the following categories:

ACCEPTED FOR FILING..... 44 Applications

INCOMPLETE..... 66 Applications

REJECTED 2 Applications

Accepted: Applications accepted for filing are listed alphabetically in Attachment A. **These applicants will become qualified bidders upon receipt of the required upfront payment due by 6:00 p.m. ET on Monday, November 27, 2000.**¹ With respect to the FCC Form 175 applications, these applicants need take no further action except as may be necessary to maintain the accuracy of their applications.² Also, applicants are advised that Attachment A includes FCC account numbers that were automatically created by the FCC software system for each applicant, and which are applicable for bidding only.

¹ See 47 C.F.R. § 1.2106.

² See 47 C.F.R. § 1.65.

Incomplete: Applications found to be incomplete are listed alphabetically in Attachment B. Applicants whose FCC Form 175 applications have been deemed incomplete will receive overnight correspondence indicating what information is required to make the applications acceptable for filing. **These applicants may become qualified bidders only if they: (1) make the required upfront payments by 6:00 p.m. ET on Monday, November 27, 2000; and (2) resubmit their applications by 6:00 p.m. ET on Tuesday, November 28, 2000, to correct the minor deficiencies indicated.** Applicants must also maintain the accuracy of their FCC Form 175 applications as required by the Commission's rules.³ In addition, applicants are advised that Attachment B includes FCC account numbers that were automatically created by the FCC software system for each applicant. These account numbers are applicable for bidding purposes only, should the applicant become eligible to participate in Auction No. 35.

The filing window for resubmitting FCC Form 175 applications is now open. Corrected applications must be filed no later than **6:00 p.m. ET on Tuesday, November 28, 2000**. This will be the only opportunity to cure FCC Form 175 defects; late resubmissions will not be accepted. In addition, if an application remains incomplete or otherwise deficient after the resubmission deadline has passed, the application will be rejected.

Rejected: The application(s) classified as rejected are listed in Attachment C. Applicants whose applications have been rejected are disqualified from participation in Auction No. 35.

UPFRONT PAYMENT DEADLINE

Upfront payments and accompanying FCC Remittance Advice (FCC Form 159) for Auction No. 35 are due at Mellon Bank, Pittsburgh, Pennsylvania, **no later than 6:00 p.m. ET on Monday, November 27, 2000**. Payments must be made by wire transfer and applicants must include their Taxpayer Identification Numbers (TIN). No other payment method is acceptable for this auction. **Applicants are reminded to use their TIN and not their FCC Account Numbers on the FCC Remittance Advice (FCC Form 159).**

Applicants that have filed applications deemed to be incomplete, as noted in this public notice, must submit timely and sufficient upfront payments by the November 27, 2000 deadline for such payments, which is prior to the November 28, 2000 deadline for the resubmitted applications. If such an application remains incomplete following its resubmission, the application will be dismissed. If the applicant has provided its Taxpayer Identification Number (TIN) and wire transfer instructions, the upfront payment will be refunded automatically.

We remind applicants that to avoid untimely upfront payments they should discuss arrangements (including bank closing schedules) with their banker several days before making the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Detailed information regarding upfront payments including additional requirements for "former defaulters" can be found in the *Auction No. 35 Procedures Public Notice*⁴ under Section III.D.

³ *Id.*

⁴ See C and F Block Broadband PCS Spectrum Auction Scheduled for December 12, 2000; Auction

OTHER IMPORTANT INFORMATION

Qualified Bidders: Approximately one week after the upfront payment deadline, following Commission review of resubmitted FCC Form 175 applications, and correlation of payments and applications, a public notice listing all applicants qualified to bid in the auction will be released. The same public notice will also include instructions on how to access the auction tracking tool software, a bidding schedule for the Mock Auction, and the bidding schedule for the first day of the auction.

Due Diligence: Potential bidders and interested parties should be aware that various proceedings that may relate to the licenses available in Auction No. 35 may be pending or subject to further administrative review before the Commission, including, for example, waiver requests, petitions for reconsideration, and applications for review. In addition, certain judicial proceedings that may relate to the licenses available in Auction No. 35 are pending or may be subject to further review. Resolution of these matters could have an effect on the availability of spectrum included in Auction No. 35 and the auction is subject to such matters. Some of these matters (whether before the Commission or the courts) may not be resolved by the time of the auction. The Commission will continue to act on matters before it, but it makes no representations as to the resolution of judicial proceedings. **Potential bidders are solely responsible for identifying associated risks, and investigating and evaluating the degree to which such matters may affect their ability to bid on or otherwise acquire licenses in Auction No. 35.** For further information on due diligence refer to the *Auction No. 35 Procedures Public Notice*.⁵

Clarification of Payment Issue Relating to Licenses Subject to Pending Proceedings: Potential bidders should be aware that certain of the licenses included in Auction No. 35 are or may become the subject of Commission or judicial proceedings initiated by parties claiming to have continuing interests in the licenses, despite their failure to meet payment obligations. This public notice clarifies that the Commission will return the payments made by winning bidders of licenses in Auction No. 35 in the event that such bidders are subsequently required to surrender licenses won to prior applicants or license holders as a result of final determinations reached in pending proceedings.⁶ The Commission, however, will not pay interest on the returned payments, as it lacks legal authority to do so.

Notice and Filing Requirements for 422 Licenses in the C and F Block Broadband PCS Spectrum Auction; Minimum Opening Bids and Other *Procedures* Issues For Final Auction Inventory, *Public Notice*, DA 00-2259 (rel. October 5, 2000) (“*Auction No. 35 Procedures Public Notice*”).

⁵ *Id.* at 5-6.

⁶ See Implementation of Section 309(j) of the Communications Act — Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, Reexamination of the Policy Statement on Comparative Broadcast Hearings, GC Docket No. 92-52, Proposals to Reform Comparative Hearing Process to Expedite the Resolution of Cases, GEN Docket No. 90-264, *Order*, FCC 99-157, n.15 (rel. July 2, 1999) (Commission order denying petitions for stay of Auction No. 25 pending judicial review and noting that the Commission will return payments made by winning bidders if licenses bid for are later determined to be unavailable due to a subsequent court action). See also “Auction of C, D, E, and F Block Broadband PCS Licenses; Status of Applications to Participate in the Auction; Clarification of Payment Issue Relating to Licenses Subject to Pending Proceedings,” *Public Notice*, 14 FCC Rcd 5467, 5470-71 (1999).

Including contested licenses in the auction helps to fulfill the Commission's statutory mandate to hasten the development and deployment of new technologies and services and to promote competition for the benefit of the public.⁷ Returning payments to winning bidders if licenses won are later determined to be unavailable due to subsequent resolution of other proceedings furthers these vital public interest goals by reducing uncertainty in the licensing process and encouraging auction participants to bid on licenses regardless of whether they are subject to pending proceedings. Retaining payments under the circumstances could have a chilling effect on participation in Auction No. 35 and would therefore undermine our efforts to encourage more efficient use of the spectrum. We note that winning bidders of licenses subject to pending proceedings are still required to meet the normal payment and construction schedules established by the Commission.⁸

Prohibition of Collusion: Bidders are reminded that Section 1.2105(c) of the Commission's Rules prohibits applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements unless they have identified each other as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii). For Auction No. 35, this prohibition became effective at the filing deadline of short-form applications on Monday, November 6, 2000, and will end on the post-auction down payment deadline. The post-auction down payment deadline will be announced in a future public notice. If parties had agreed in principle on all material terms, those parties must have been identified on the short-form application under Section 1.2105(c), even if the agreement had not been reduced to writing. If parties had not agreed in principle by the filing deadline, an applicant should not have included the names of those parties on its application, and must not have continued negotiations with other applicants for licenses in the same geographic area.⁹ For further details regarding the prohibition against collusion refer to the *Auction No. 35 Procedures Public Notice*.¹⁰

Winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process. Bidders found to have violated the anti-collusion rule may be subject to sanctions.¹¹ In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anti-

⁷ 47 U.S.C. § 309(j)(3).

⁸ See "Auction of C, D, E, and F Block Broadband PCS Licenses; Notice and Filing Requirements for Auction of C, D, E, and F Block Broadband Personal Communications Services Licenses Scheduled for March 23, 1999; Minimum Opening Bids and Other *Procedures* Issues," Public Notice, 13 FCC Rcd 24,540, 24,545 (1998).

⁹ "Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules," *Public Notice*, DA 95-2244 (rel. October 26, 1995), 11 FCC Rcd 9645 (1995).

¹⁰ See C and F Block Broadband PCS Spectrum Auction Scheduled for December 12, 2000; Auction Notice and Filing Requirements for 422 Licenses in the C and F Block Broadband PCS Spectrum Auction; Minimum Opening Bids and Other *Procedures* Issues For Final Auction Inventory, *Public Notice*, DA 00-2259 (rel. October 5, 2000) ("*Auction No. 35 Procedures Public Notice*").

¹¹ See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

competitive behavior in the marketplace. If a bidder is found to have violated the antitrust laws in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions.¹²

Auction Discount Voucher: On June 8, 2000, the Commission awarded Qualcomm, Inc. a transferable Auction Discount Voucher in the amount of \$125,273,878.00.¹³ This Auction Discount Voucher may be used by Qualcomm or its transferee, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003, subject to terms and conditions set forth in the Commission's Order.

Ex Parte Rule: Applicants should also be aware that the Commission has generally exempted auction proceedings from the strict requirements of the *ex parte* rule found in Section 1.1208¹⁴ of the Commission's rules.¹⁵

Mock Auction: All applicants found to be qualified bidders are eligible to participate in a mock electronic auction on **Friday, December 8, 2000**. In the *Qualified Bidders Public Notice*, the Bureau will announce when software for the mock auction will be posted on the World Wide Web.

Remote Bidding Software: Applicants are reminded that qualified bidders are eligible to bid either electronically or telephonically. To bid electronically, applicants must complete the software order form included in the *Auction No. 35 Procedures Public Notice* or contact the Auctions Hotline at (717) 338-2888. To ensure timely delivery of remote bidding software before the auction begins, the Commission requests receipt of software orders by **6:00 p.m. ET on Tuesday, November 28, 2000**. The minimum hardware and software specifications required for the FCC remote bidding system are listed below:

- CPU: Intel ® Pentium or above
- RAM: 16 MB (more recommended if you have multiple applications open)
- Hard Disk: 33 MB available disk space
- 1.44 MB Floppy Drive or CD-ROM Drive (to install the Remote Bidding System)
- Modem: v.32bis 28.8 kbps Hayes© compatible modem (56.6 kbps recommended)
- Monitor: VGA or above
- Mouse or other pointing device
- Microsoft® Windows™ 95™ or 98™

¹² 47 C.F.R. §1.2109 (d).

¹³ See Qualcomm Incorporated Petition for Declaratory Ruling Giving Effect to the Mandate of the District of Columbia Circuit Court of Appeals, *Order*, FCC 00-189 (rel. June 8, 2000).

¹⁴ 47 C.F.R. §1.1208.

¹⁵ See 47 C.F.R. §1.1200(a) note (1); see also "Commission Announces that Mutually Exclusive 'Short-Form' Applications (Form 175) to Participate in Competitive Bidding Process ('Auctions') Are Treated as Exempt for Ex Parte Purposes," *Public Notice*, 9 FCC Rcd 6760 (1994).

- We recommend that you use Netscape® Communicator™ 4.73. However, you can also use Netscape Communicator 4.5, 4.51, 4.61, 4.7 or 4.72.

To download Netscape Communicator 4.73 free of charge, access the Netscape download site at <http://home.netscape.com/download/>

Note: The FCC Remote Bidding System has not been tested in a Macintosh, OS/2, or Windows NT™ environment. Therefore, the FCC will not support operating systems other than Microsoft Windows 95 or 98. This includes any other emulated Windows environment.

Long-Form Applications: All applicants should be aware that at the long-form application stage, they will be subject to the more extensive reporting requirements contained in the Commission's Part 1 ownership disclosure rule.¹⁶

Bidder Alerts: All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

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For questions about payment or instructions for wiring upfront payments, contact Gail Glasser or Tim Dates, Auctions Accounting Group, at (202) 418-1995.

For specific questions about an applicant's incomplete status, the applicant should contact the staff attorney identified in the correspondence sent to the applicant by overnight mail.

For additional information, contact: Rosemary Cabral or David Hu, Auctions Legal Branch (regarding legal questions) or Craig Bomberger, Analyst, Auctions Operations (regarding bidding and auction structure) at (202) 418-0660; Lisa Stover, Auctions Operations (regarding bidding and general filing status) at (717) 338-2888.

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¹⁶

See 47 C.F.R. § 1.2112(b).