



PUBLIC NOTICE

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DA 15-1365
Released: November 25, 2015

WIRELESS TELECOMMUNICATIONS BUREAU CLARIFIES PROCEDURE FOR DISBURSING REVERSE AUCTION INCENTIVE PAYMENTS

AU Docket No. 14-252
GN Docket No. 12-268
WT Docket No. 12-269

In response to a number of comments and inquiries, the Wireless Telecommunications Bureau today clarifies the circumstances under which the Commission will accept payment instructions to make incentive payments to an entity other than a winning reverse auction bidder.¹ The Commission has stated that incentive payments will be disbursed “to the licensee that is the reverse auction applicant”² and that, in making such disbursements, it will “follow winning reverse auction bidders’ payment instructions as set forth on their respective standardized incentive payment forms to the extent permitted by law.”³ We clarify that the winning reverse auction bidder need not be the owner of the account to which disbursement is made. Winning bidders may instruct that their payments be disbursed to a third party, such as a “qualified intermediary,” a “qualified trust,” an escrow account, or an account jointly owned by parties to a channel sharing agreement (CSA) who are named as owners of that account.⁴ The flexibility to instruct that payments be disbursed to a third party will facilitate channel sharing and thereby promote voluntary broadcaster participation in the reverse auction.⁵

¹ 47 C.F.R. § 1.2209 (Disbursement of incentive payments). The Department of the Treasury (U.S. Treasury) will make the actual disbursement of the incentive payments subject to all applicable laws and procedures. The Commission will transmit the winning bidder’s payment instructions to the U.S. Treasury.

² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report & Order, 29 FCC Rcd 6567, 6787 para. 538 (2014) (*Incentive Auction R&O*).

³ *Id.* at 6787, para 537 n. 1529; see *Application Procedures for Broadcast Incentive Auction Scheduled to Begin March 29, 2016: Technical Formulas for Competitive Bidding*, AU Docket No. 14-252, GN Docket No. 12-268, WT Docket No. 12-269, Public Notice, DA 15-1183, para. 168 (rel. Oct. 15, 2015).

⁴ Letter from Barry A Friedman, Counsel, Entravision Comms. Corp. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (Nov. 11, 2015) (advocating payments to third parties to effectuate CSAs structured as like-kind exchanges within Section 1031 of the Internal Revenue Code); see Comments of LocusPoint Networks, LLC in GN Docket No. 12-268 at 13-14 (Feb. 20, 2015) (advocating payments to third party accounts to facilitate CSAs).

⁵ See *Incentive Auction R&O*, 29 FCC Rcd at 6570 para. 2 (“We are committed to removing barriers to this voluntary participation.”). See also IRS Guidance on Federal Tax Principles Applicable to Incentive Auction at 4 (July 3, 2014) (to qualify as a like-kind exchange, “safe harbors” are required to prevent actual or constructive receipt of payment by the winning bidder, including “use of ‘qualified escrow accounts’ and ‘qualified intermediaries’”), available at <http://wireless.fcc.gov/incentiveauctions/learn-program/broadcaster.html>.

In addition, we clarify that incentive payments will be disbursed only to a single payee and into a single account. Any division of payments (*e.g.*, among the parties to a CSA or to different accounts) will be the responsibility of the winning reverse auction bidder or the party to which the winning bidder's payment is disbursed, not the Commission. Disbursement will be made to a third party only if the winning bidder has so instructed on its incentive payment form. Finally, winning bidders and third parties to which winning bidders instruct that payments be disbursed will be required (1) to agree to indemnify and to hold harmless the United States from any and all liability arising from the disbursement of incentive payments and (2) to acknowledge and agree that the payments are subject to offset pursuant to applicable law for debts (owed to the Commission or the United States) by either the winning bidder or the third party payee designated by the winning bidder, and (3) to acknowledge and agree that payments will not be made to (or for the benefit of) any winning bidder or other payee appearing on the U.S. Treasury's "Do Not Pay" portal.⁶

By this Public Notice, the Bureau is not providing guidance on how the federal tax laws may apply to incentive payments.⁷ Specific procedures for disbursing payments, including the forms for submitting instructions and the necessary financial information, will be set forth by future public notice.⁸

For further information, contact Mary Margaret Jackson at (202) 418-3641 or MaryMargaret.Jackson@fcc.gov.⁹

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⁶ Information regarding the Treasury's Do Not Pay program may be found at <http://donotpay.treas.gov>.

⁷ We urge broadcasters to conduct their own independent investigation and due diligence and make any decisions regarding disbursement of incentive payments to a third party based on the advice of their own advisors.

⁸ 47 C.F.R. § 1.2209.

⁹ This Public Notice is being issued pursuant to Section 0.131 by the Wireless Telecommunications Bureau, which is a member of the Incentive Auction Task Force. 47 C.F.R. § 0.131.