



# PUBLIC NOTICE

Federal Communications Commission  
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Washington, D.C. 20554

News Media Information 202 / 418-0500  
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TTY: 1-888-835-5322

DA 08-1953  
August 25, 2008

## Auction of AWS-1 and Broadband PCS Licenses Closes

### Winning Bidders Announced for Auction 78

**Down Payments Due September 9, 2008**  
**FCC Forms 601 and 602 Due September 9, 2008**  
**Final Payments Due September 23, 2008**  
**Ten-Day Petition to Deny Period**

Report No. AUC-08-78-E (Auction 78)

#### I. INTRODUCTION

1. On August 20, 2008, the Federal Communications Commission completed the auction of 55 licenses: 35 licenses in the Advanced Wireless Services (“AWS-1”) and 20 licenses in the broadband Personal Communications Service (“PCS”). The auction, designated Auction 78, raised (in net bids) a total of \$21,276,850 with 16 winning bidders winning a total of 53 licenses. Specifically, 14 bidders won 35 AWS-1 licenses and 8 bidders won 18 broadband PCS licenses.

#### II. AUCTION RESULTS

2. This Public Notice provides detailed information concerning winning bidders, down payments, final payments and/or refunds, FCC Forms 601 and 602 filing requirements, requests for rule waivers, and licensing matters. Key information appears in the following attachments:

**Attachment A:** “Winning Bids” lists winning bidders and both their total gross and net winning bid amounts.

**Attachment B:** “Bidder Payment/Refund” lists down payments and final payments owed by winning bidders and refunds due, if any.<sup>1</sup>

**Attachment C:** “Withdrawal Payment” lists bid withdrawal payments owed by bidders, if any.

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<sup>1</sup> The amounts listed in Attachment B are based on upfront payments and winning bids.

**Attachment D:** “Multi-Auction Withdrawal Payment” lists amount(s) or refunds(s) due for bidders in Auctions 66 and 71 based upon reconciliation of final results of Auctions 66, 71, and 78.

**Attachment E:** “Instructions for Completing FCC Form 601 & FCC Form 602” provides detailed information about how a winning bidder should complete the required long-form application (FCC Form 601) and ownership disclosure report (FCC Form 602) for AWS-1 and broadband PCS licenses for which it was the winning bidder in Auction 78.

A copy of this Public Notice will be sent via overnight delivery to each qualified bidder.

3. Concurrent with the release of this Public Notice, the Commission is making available information previously withheld under the limited information procedures for Auction 78. Results files that include the identities of bidders and the net amounts of bids are now available on the web page for Auction 78 (<http://auctions.fcc.gov/auctions/78/>) and in the FCC Auction System (<http://auctions.fcc.gov/>). The limited information results files (without the identities of bidders and the net amounts of bids) remain available on the web page for Auction 78. Additionally, the publicly-available applications to participate in the auction (FCC Forms 175) now display the licenses selected by each applicant. The applications are viewable in the FCC Auction System via the Auction Application Search (<https://auctionfiling.fcc.gov/form175/search175/index.htm>).

### III. POST-AUCTION PROCEDURES

#### A. Down Payments

4. 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. Eastern Time (ET) on September 9, 2008**, winning bidders in Auction 78 must have on deposit with the Commission enough funds to cover the down payments on winning bids.<sup>2</sup> Specifically, each winning bidder’s total deposit must be twenty percent of the net amount of its winning bids. If a winning bidder’s upfront payment is not sufficient to meet this requirement, the winning bidder must deposit additional funds to meet its required down payment.<sup>3</sup>

5. The amount now due from each winning bidder, if any, is set out in the “Additional Amount Due after Upfront Payment Balance Applied Due by **September 9, 2008**” column of Attachment B. Note that a payment and FCC Remittance Advice Form (FCC Form 159) are necessary only if a winning bidder’s upfront payment does not cover the required total down payment (as reflected in Attachment B).

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<sup>2</sup> 47 C.F.R. § 1.2107(b).

<sup>3</sup> *Id.* 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. *See* 47 C.F.R. § 1.2104(g)(1).

## B. Final Payments

6. Each winning bidder will be required to submit the balance of the net amount of its winning bids by **September 23, 2008**,<sup>4</sup> as set out in the “Final Balance Due By **September 23, 2008** or (Refund)” column of Attachment B. All winning bidders, including those winning bidders that apply for a tribal lands bidding credit, must pay the full amount of the Final Balance Due shown in Attachment B by **6:00 p.m. ET on September 23, 2008** (or by 6:00 p.m. ET on **October 7, 2008**, along with the five percent late fee required by Section 1.2109(a) of the Commission’s rules).<sup>5</sup> Full and timely payment of winning bids and any applicable late fees must be made in accordance with Section 1.2109(a) of the Commission’s rules and must occur before action will be taken upon a winning bidder’s long-form application (FCC Form 601).<sup>6</sup> Specifically, licenses will be granted only after the full and timely payment of winning bids and any applicable late fees, in accordance with Section 1.2109(a).<sup>7</sup>

7. An applicant’s request for a tribal lands bidding credit has no effect on the applicant’s obligations to make any auction payments including down and final payments due before the award of the credit. If a request for a tribal lands bidding credit is approved, the amount will be calculated and awarded prior to license grant.<sup>8</sup>

## C. Method of Payment for Down and Final Payments

8. All payments must be in U.S. dollars and made in the form of a wire transfer.<sup>9</sup> No personal checks, credit card payments, automated clearing house (“ACH”), or other forms of payment will be accepted. All payments must be accompanied by a completed FCC Form 159.<sup>10</sup>

9. Questions concerning the calculation and submission of down and final payments, the FCC Form 159, and refunds should be directed to Gail Glasser at (202) 418-0578.

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<sup>4</sup> 47 C.F.R. § 1.2109(a).

<sup>5</sup> *Id.*

<sup>6</sup> 47 C.F.R. § 1.2109. A winning bidder that is found unqualified to be a Commission licensee will be deemed to have defaulted, its application will be dismissed, and it will be liable for the payment set forth in Section 1.2104(g)(2) of the Commission’s rules. *See* 47 C.F.R. §§ 1.2104(g), 1.2109(c).

<sup>7</sup> 47 C.F.R. § 1.2109(a).

<sup>8</sup> 47 C.F.R. § 1.2110(f)(3)(vi).

<sup>9</sup> The wire transfer must be initiated by the winning bidder through its bank, authorizing the bank to wire funds from the bidder’s account to the Commission’s account, which will receive payments for financial obligations resulting from Auction 78. Additional information on wire transfers is available on the Commission’s web site at: <http://www.fcc.gov/fees/wiretran.html>.

<sup>10</sup> Copies of the FCC Form 159 may be obtained by calling the Commission’s Forms Distribution Center at (800) 418-3676 (outside Washington, DC) or (202) 418-3676. Copies of the FCC Form 159 can also be obtained via the Internet (<http://www.fcc.gov/formpage.html>) or by calling from the handset of a fax machine the Commission’s Fax Information System at (202) 418-2830.

10. To submit funds by wire transfer, winning bidders will need the following information:

ABA Routing Number: **021030004**

Receiving Bank: **TREAS NYC**

33 Liberty Street

New York, NY 10045

ACCOUNT NAME: **FCC**

ACCOUNT NUMBER: **27000001**

OBI Field: (Skip one space between each information item) "AUCTIONPAY"

APPLICANT FRN: (same as FCC Form 159, block 21)

PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: "A78D")

FCC CODE 1: (same as FCC Form 159, Block 28A: "78")

PAYOR NAME: (same as FCC Form 159, Block 2)

LOCKBOX NO.: **#979085**

### **1. Down Payment**

11. If applicable, a partially completed copy of the FCC Form 159 will be sent to winning bidders to facilitate submission of the correct down payment. Please note, however, that a winning bidder is responsible for ensuring timely submission of the correct down payment, timely filing of an accurate and complete FCC Form 159, and obtaining confirmation from its financial institution that the Commission has timely received the down payment and deposited it into the proper account.

12. Wire transfers for down payments must be received by the Commission by **6:00 p.m. ET on September 9, 2008**. A winning bidder should coordinate with its financial institution ahead of time regarding its wire transfer and allow sufficient time for the wire transfer to be initiated and completed prior to the deadline.

13. At least one hour before placing the order for the wire transfer (but on the same business day), winning bidders must send by fax the completed FCC Form 159 to U.S. Bank in St. Louis, Missouri at (314) 418-4232. Proper completion of the FCC Form 159 is critical to ensuring correct credit of bidder deposits. A winning bidder must use the same FCC Registration Number (FRN) used on its short-form application (FCC Form 175).

14. Failure to complete this down payment process by **6:00 p.m. ET on September 9, 2008**, will result in default.<sup>11</sup>

### **2. Final Payment**

15. If applicable, a partially completed copy of the FCC Form 159 will be sent to winning bidders to facilitate submission of the correct final payment. Please note, however, that a winning bidder is responsible for ensuring timely submission of the correct final payment, timely filing of an accurate and complete FCC Form 159, and obtaining confirmation from its financial institution that the Commission has timely received the final payment and deposited it into the proper account.

16. Wire transfers of final payments must be received by the Commission by **6:00 p.m. ET on September 23, 2008** (or by 6:00 p.m. ET on **October 7, 2008**, along with the five percent late fee

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<sup>11</sup> Section III. D., "Withdrawal, Default and Disqualification Payment," below.

required by Section 1.2109(a) of the Commission's rules).<sup>12</sup> A winning bidder should coordinate with its financial institution ahead of time regarding its wire transfer and allow sufficient time for the wire transfer to be initiated and completed prior to the deadline.

17. Payments must be preceded by the completed FCC Remittance Advice Form (FCC Form 159). The winning bidder must send by fax, at least one hour prior to placing the order for the wire transfer, but on the same business day that it pays the balance due to the Commission, a completed FCC Form 159 to U.S. Bank in St. Louis, Missouri at (314) 418-4232. On the FCC Form 159, the applicant must use the same FRN used on its short-form application (FCC Form 175).

18. Failure to complete the final payment by **6:00 p.m. ET on October 7, 2008** (along with the five percent late fee, if applicable) will result in default.<sup>13</sup>

#### **D. Withdrawal, Default and Disqualification Payments**

19. The Commission imposes payment obligations on bidders that withdraw provisionally winning bids during the course of an auction, those that default on payments due after an auction closes, and those that are disqualified.<sup>14</sup>

##### **1. Bid Withdrawal Payments**

20. A bidder that withdraws a provisionally winning bid during the course of an auction is subject to a bid withdrawal payment obligation equal to the difference between the amount of the withdrawn bid and the amount of the subsequent winning bid. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids equals or exceeds that withdrawn bid.

21. If a provisionally winning bid is withdrawn on a license that remains unsold at the close of the auction, the bidder will be required to make an interim payment equal to fifteen percent (15%) of the net amount of the withdrawn bid.<sup>15</sup> This payment amount is deducted from any upfront payments or down payments that the bidder has deposited with the Commission. If, in a subsequent auction, that license receives a valid bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed and, upon appropriate request, the Commission will refund the interim fifteen percent (15%) payment. If, in a subsequent auction, the winning bid amount for that license is less than the original bidder's withdrawn bid amount, then the withdrawing bidder will be required to make a final bid withdrawal payment equal to either the difference between its net withdrawn bid and the subsequent net winning bid, or the difference between its gross withdrawn bid and the subsequent gross winning bid, whichever difference is smaller. The fifteen percent (15%) interim payment will be applied toward the withdrawal payment.

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<sup>12</sup> 47 C.F.R. § 1.2109(a).

<sup>13</sup> Section III.D., "Withdrawal, Default and Disqualification Payment," below.

<sup>14</sup> See 47 C.F.R. §§ 1.2104(g), 1.2109.

<sup>15</sup> See 47 C.F.R. § 1.2104(g)(1). See also "Auction of AWS-1 and Broadband PCS Licenses Rescheduled for August 13, 2008; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and other Procedures for Auction 78," *Public Notice*, DA 08-1090, 23 FCC Rcd 7496, 7548 ¶ 229 (2008) ("*Auction 78 Procedures Public Notice*").

22. **Attachment C** identifies bidders that owe withdrawal payments to the Commission as a result of bid withdrawals made in Auction 78. Any upfront payments or down payments that the withdrawing bidder has deposited with the Commission will first be applied to satisfy the withdrawal payment(s) amount before being applied toward a winning bidder's down payment.<sup>16</sup>

## 2. Bid Withdrawal Payments from Previous Auctions

23. Because Auction 78 is closed and we now have winning bid amounts for licenses that were unsold in Auctions 66 and 71, we have calculated certain final bid withdrawal payments owed as a result of withdrawals of provisional winning bids on licenses in Auctions 66 and 71. These final bid withdrawal payments are identified in **Attachment D**. Forthcoming letter orders will specify due dates for the payment of any such obligations.

## 3. Bid Default/Disqualification Payments from Auction 78

24. If a winning bidder defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified), the defaulting bidder will be subject to the payment obligations described in Section 1.2104(g)(2).<sup>17</sup> These payment obligations include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percent of the defaulter's bid or the subsequent winning bid, whichever is less.<sup>18</sup> The Bureau set the additional default payment for Auction 78 licenses at ten percent of the applicable bid.<sup>19</sup>

25. If a winning bidder fails to remit the required down payment within ten business days after the Commission has released this Public Notice, in this case by **September 9, 2008**, the bidder will be deemed to have defaulted, its long-form application will be dismissed, and it will be liable for a default payment as described above.<sup>20</sup>

26. If a winning bidder fails to pay the balance of its winning bid in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make a late payment within ten business days after the payment deadline, provided that it also pays a late fee equal to five percent of the amount due.<sup>21</sup> When a winning bidder fails to pay the balance of its winning bid plus the late fee by the late payment deadline, it will be deemed to have defaulted on its license(s) and subject to applicable default payments.<sup>22</sup>

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<sup>16</sup> See 47 C.F.R. § 1.2104(g)(1).

<sup>17</sup> 47 C.F.R. § 1.2104(g)(2).

<sup>18</sup> *Id.* See also *Auction 78 Procedures Public Notice*, 23 FCC Rcd at 7551 ¶ 243.

<sup>19</sup> *Id.* at 7551 ¶ 244.

<sup>20</sup> 47 C.F.R. §§ 1.2104(g)(2), 1.2109(h).

<sup>21</sup> 47 C.F.R. § 1.2109(a).

<sup>22</sup> 47 C.F.R. §§ 1.2104(g)(2), 1.2109(a), 1.2109(c).

27. Licenses will be awarded upon completion of the review of each applicant's long-form application and a determination that the applicant's long-form application meets Commission requirements for grant, but only after the full and timely payment of winning bids and any applicable late fees.<sup>23</sup> If a winning bidder defaults on any of its required payments or is disqualified for any reason after having made the required payments, it will be deemed to have defaulted, its application will be dismissed, and it will be liable for the payment set forth in Section 1.2104(g)(2).<sup>24</sup>

28. In the event of a default, the Commission, at its discretion, may either auction the license to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids.<sup>25</sup>

29. Additionally, a bidder that is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of its upfront payment, down payment, or full bid amount, and may be prohibited from participating in future auctions.<sup>26</sup>

#### **E. Refund of Excess Payments**

30. Upfront monies on deposit that are in excess of an applicant's Auction 78 obligations may be refunded to the payer of record as identified on the FCC Form 159. To be eligible to receive a refund, an applicant must submit a refund request and provide wire transfer instructions. Applicants can provide this information by using the Commission's Integrated Spectrum Auction System ("ISAS") and clicking on the "See Wire Transfer for Refund Purposes" link under the Post-Auction section of the My Auctions web page by **September 9, 2008**. After this date, applicants must send a request for refund along with the necessary wire transfer instructions and FRN by fax to Gail Glasser of the Office of the Managing Director at (202) 418-2843. Any questions concerning refunds should be referred to Gail Glasser at (202) 418-0578.

#### **F. FCC Form 601**

31. Prior to **6:00 p.m. ET on September 9, 2008**, each winning bidder must submit electronically a properly completed long-form application (FCC Form 601) for all licenses for which it was the winning bidder in Auction 78. Applicants winning both AWS-1 and broadband PCS licenses in Auction 78 must complete a separate FCC Form 601 for each radio service. Attachment E provides instructions for completing the long-form application and describes how certain information will be automatically transferred from a winning bidder's short-form application (FCC Form 175) to its long-form application (FCC Form 601).

32. An applicant that fails to submit the required long-form application before the specified deadline and fails to establish good cause for any late-filed submission shall be deemed to have defaulted and shall be subject to the payments set forth in Section 1.2104(g) of the Commission's rules.<sup>27</sup>

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<sup>23</sup> 47 C.F.R. § 1.2109(a).

<sup>24</sup> 47 C.F.R. §§ 1.2104(g)(2), 1.2109.

<sup>25</sup> 47 C.F.R. § 1.2109(b)-(c).

<sup>26</sup> 47 C.F.R. § 1.2109(d).

<sup>27</sup> 47 C.F.R. §§ 1.2104(g), 1.2107(c).

### **G. Tribal Lands Bidding Credit**

33. The Commission has implemented a tribal lands bidding credit to encourage the growth of wireless services in federally recognized tribal lands. For information relating to the tribal lands bidding credit, see Attachment E.

### **H. FCC Form 602**

34. Pursuant to Sections 1.919 and 1.2107(f) of the Commission's rules, an applicant for a license in an auctionable service must have on file with the Commission a current ownership disclosure information report (FCC Form 602) providing the applicant's complete and accurate ownership information.<sup>28</sup> As explained in Attachment E, filing an FCC Form 602 is a separate requirement from, and in addition to, the ownership reporting requirements associated with filing an FCC Form 601, Exhibit A.<sup>29</sup> A winning bidder should carefully follow the instructions set forth in Attachment E when filing its ownership disclosure report.

### **I. Maintaining Accuracy of Information**

35. After the auction closes, applicants are required to make all changes to their information in the Commission's Universal Licensing System ("ULS") using FCC Form 601.<sup>30</sup> With the release of this Public Notice, applicants are no longer required to maintain the accuracy and completeness of information furnished on their short-form applications and exhibits.

### **J. Application Processing and License Grant**

36. After its initial review of the long-form applications, the Commission will issue a public notice listing the applications that are acceptable for filing. Pursuant to Section 1.2108(b) of the Commission's rules, interested parties will have ten days from release of that public notice to file petitions to deny any of these applications.<sup>31</sup> An applicant may file an opposition to any petition to deny within five business days after the time for filing petitions to deny has expired.<sup>32</sup> The petitioner may file a reply to such opposition within five business days after the time for filing oppositions has expired.<sup>33</sup> The Commission reminds all parties and their counsel that the Commission intends to use its authority fully to deter the filing of frivolous pleadings.<sup>34</sup>

37. After the long-form review process, if the Commission determines that additional payments from applicants may be required, the Bureau will provide further instructions in a future public notice regarding any such additional payments. If the Commission determines that an applicant is otherwise

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<sup>28</sup> 47 C.F.R. §§ 1.919, 1.2107(f).

<sup>29</sup> The FCC Form 601 ownership reporting requirement can be fulfilled by referencing the file number, date, and name of filer of the appropriate FCC Form 602. See discussion in Attachment E.

<sup>30</sup> 47 C.F.R. § 1.65.

<sup>31</sup> 47 C.F.R. § 1.2108(b).

<sup>32</sup> 47 C.F.R. § 1.2108(c).

<sup>33</sup> *Id.*

<sup>34</sup> See "Commission Taking Tough Measures Against Frivolous Pleadings," *Public Notice*, 11 FCC Rcd 3030 (1996).

qualified, that there are no substantial and material issues of fact, and that no additional payments are due, it will issue a public notice announcing grant of the license to the applicant.<sup>35</sup>

#### IV. OTHER IMPORTANT INFORMATION

##### A. Maintaining Prohibition of Collusion

38. To ensure the competitiveness of the auction process, the Commission's rules prohibit competing applicants from communicating with each other about bids, bidding strategies, or settlements, unless such applicants have identified each other on their short-form applications as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii).<sup>36</sup> For Auction 78 this prohibition began at the short-form application filing deadline of June 19, 2008 at 6:00 p.m. ET and continues until the down payment deadline, which is 6:00 p.m. ET on **September 9, 2008**.<sup>37</sup>

39. The collusion prohibition applies to all applicants in Auction 78 (unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii)) regardless of whether an applicant became a qualified bidder or actually participated in the bidding, and the prohibition continues for all applicants until the down payment deadline regardless of whether a winning bidder needs to make an additional payment by the down payment deadline.<sup>38</sup>

##### B. Return of SecurID® Tokens

40. The SecurID® tokens distributed to qualified bidders are tailored to this auction and will not work for future auctions. Bidders should return their SecurID® tokens to the Commission for recycling. The Commission will send bidders, along with the copy of this Public Notice, a pre-addressed, stamped envelope to return the SecurID® tokens. Bidders should return the tokens by **September 23, 2008**.

##### C. Contact Information

41. For further information, contact:

###### News Media

**Wireless Telecommunications Bureau**  
Matt Nodine at (202) 418-1646

###### Broadband PCS Licensing Information

Service Rules, Policies, Regulations  
Licensing Issues, Engineering Issues  
Due Diligence, Incumbency Issues

###### Mobility Division (202) 418-0620

Michael Connelly (legal)  
Keith Harper (engineering)  
Denise Walter (licensing)

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<sup>35</sup> See 47 C.F.R. §§ 1.2108(d), 1.2109(a).

<sup>36</sup> 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1). See also Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, 16 FCC Rcd 17,546 (2001); *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15,293, 15,297-98 ¶¶ 7-8 (2000).

<sup>37</sup> See also *Auction 78 Procedures Public Notice*, 23 FCC Rcd at 7504-09 ¶¶ 19-36.

<sup>38</sup> *Id.* at 7504-05 ¶¶ 20-21.

**AWS-1 Service Licensing Information**

Service Rules, Policies, Regulations  
Licensing Issues, Engineering Issues  
Due Diligence, Incumbency Issues

**Auction Payment Information**

Wire Transfers  
Refunds

**Auction 78 Information**

General Auction Information, Process, and  
Procedures

Auction Rules, Policies, and Regulations

**Accessible Formats**

Braille, large print, electronic files, or  
audio format for people with disabilities

**FCC Internet Sites**

**Broadband Division (202) 418-2487**

John Spencer

**FCC Auctions Accounting Branch**

Gail Glasser  
(202) 418-0578  
(202) 418-2843 (fax)

**Auctions and Spectrum Access Division**

Lisa Stover, Project Manager, at (717) 338-2868  
Jeff Crooks, Auction Analyst, at (202) 418-0660

Scott Mackoul or Stephen Johnson at  
(202) 418-0660

**Consumer and Governmental Affairs Bureau**

(202) 418-0530 or (202) 418-0432 (TTY)  
[fcc504@fcc.gov](mailto:fcc504@fcc.gov)

<http://www.fcc.gov>  
<http://wireless.fcc.gov/auctions>  
<http://wireless.fcc.gov/uls>

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