

*900 MHz Specialized Mobile Radio
Auction No. 55 Seminar*

Overview of
**Due Diligence
and Post-Auction Process**

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December 3, 2003

Disclaimer

- Nothing herein is intended to supersede any provision of the Commission's rules or public notices. These slides should not be used as a substitute for a prospective applicant's review of the Commission's relevant orders, rules, and public notices. Prospective applicants must familiarize themselves thoroughly and remain current with the Commission's rules relating to 900 MHz Specialized Mobile Radio (“SMR”) Service, rules relating to application and auction procedures, and the procedures, terms and conditions contained in the Auction No. 55 public notices.

Introduction

- Due diligence: What is required before you place your bid.
- Post-auction process: What is required after you win your license.

Due Diligence

- Information to aid potential bidders with their research and evaluation of the radio spectrum, in this instance, 900 MHz SMR
- Presents issues that should be considered by potential bidders when formulating their business strategies
- Due Diligence information contained in the Procedures PN
 - o Auction No. 55 Procedures Public Notice, released October 17, 2003, DA 03-3235
 - o See Auctions web site: <http://wireless.fcc.gov/auctions/55/>

Pending Matters

- Certain matters relating to licenses available at auction may be pending or subject to administrative or judicial review
- Such matters may include, *e.g.*, waiver requests, petitions to deny, petitions for reconsideration, applications for review
- Some matters may not be resolved before the commencement of the auction

Pending Matters, continued

- Resolution of these matters could affect the availability of spectrum purchased at auction and must be considered by potential bidders
- Make periodic, and continuing, inquiries to the Office of the Secretary and other available resources

Pending Matters, continued

- Read the Procedures Public Notice
- The Commission makes no representations or guarantees that listed matters are only pending matters that could affect availability of spectrum

Do your Due Diligence

- Do your homework
- Research prospective markets and spectrum
- Be familiar with the Commission's rules and proceedings relating to Narrowband PCS

It Is Your Responsibility

- As potential bidders, you are solely responsible for identifying associated risks, and investigating and evaluating the degree to which such matters may affect your ability to bid on, otherwise acquire, or make use of licenses available in the auction

Database Research

- Information about 900 MHz SMR Service licenses available through the Wireless Telecommunication Bureau's Universal Licensing System (ULS) database, on the Internet at <http://wireless.fcc.gov/uls>
- Commission makes no representations or guarantees regarding the accuracy or completeness of its database
- Do not rely solely on database searches because the data relies on third party submissions
- Physically inspect any sites located in, or near, the geographic area for which you plan to bid

Due Diligence: Summary

- Information discussed here is in the Procedures Public Notice
- Commission makes no representations or guarantees regarding its due diligence information
- You are solely responsible for identifying the risks involved and for conducting the proper investigation of your prospective markets

Post-Auction Issues: An Overview

- You win your license at auction: What happens next?
- Public Notice released to announce the close of the auction (“Closing PN”)
- Winning bidders file FCC Forms 601 (long form application) and 602 (ownership disclosure form)
- Commission review of long form applications
- Transfer of control and Assignment issues

Closing PN Released After Auction

- Your Closing PN will walk you through the post-auction process
- Winning bidders are announced, and receive the Closing PN via overnight mail
- Down payments, bid withdrawal payments and/or deposits information is contained in PN
- Detailed instructions for filing Forms 601 and 602
- Application processing information (*e.g.*, pleading cycle) provided
- Contact information listed

601 Long Form Application

- Form 601 is due 10 days after release of Closing PN
- 601 long form is the formal application to apply for the licenses won at auction
- Applications must be filed electronically via ULS
- Incomplete or defective applications may be returned
- Failure to timely file will result in default
- Late-filed applications will not be accepted without a showing of good cause

601 Content Highlights

- 601 long form application includes exhibits
- Use Closing PN as a guide to format the exhibits
- Exhibit A: Ownership is required for all applications; identifies real party-in-interest
- Exhibit C: Designated Entities is required for applicants seeking bidding credits; must provide gross revenues information
- Failure to provide these required exhibits may cause you to be disqualified or to lose your bidding credit
- Tribal lands bidding credit applicants (to be discussed later) should use separate 601 for TLBC markets

FCC Form 602 Highlights

- Every licensee must comply with the ownership reporting requirements, as set forth §§ 1.913, 1.919, and 1.2112, by the 601 filing deadline
- A 602 must be current and on file by the 601 filing deadline
- Winning bidders without a current 602 already on file must submit a properly completed 602 at the time they submit their long-form applications
- Electronic filing of 602 now mandatory
- Step saver: You can use your 602 as your 601's Exhibit A by scanning it in as an attachment
- Common mistake: Using the 602 as your 601's Exhibit A does not eliminate the need to separately file a 602

Application Processing

- Initial Review of 601 long forms is usually done within approximately 3-4 weeks of Closing PN
- After long form review, Accepted for Filing PN issued
- Pleading cycle established
- After pleading cycle, Ready to Grant PN issued, starting the clock for making your final payments
- Failure to pay may result in disqualification
- Finally, a Grant PN issued
- Process typically takes 3-4 months, but may take longer

Pleading Cycle

- Pleading cycle set by Accepted for Filing PN
- See § 1.2108 of rules for details
- 10 days for filing petitions to deny (PTDs)
- 5 days after that for filing oppositions to PTDs
- 5 days after that for filing replies to oppositions

Transfer of Control and Assignment Issues

- *Pro forma* transfers (e.g., reorganizations) are discouraged until after 601 is filed
- Substantial transfers prior to filing 601 may cause disqualification of applicant
- Unjust enrichment payments are required for transfers of licenses which received bidding credits to a transferee who is not eligible for the same bidding credit (based on gross revenues) § 1.2111

Due Diligence and Post-auction Process

THE END

Any Questions?

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