

# BroadBand PCS Auction No. 58

## Post-Auction Overview

Erin McGrath  
Assistant Chief  
Mobility Division

# 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 Broadband PCS, rules relating to application and auction procedures, and the procedures, terms and conditions contained in the Auction No. 58 public notices.

# Filing Requirements

- Within 10 business days after the release of the Closing Public Notice:
  - (1) FCC Form 601 (Long-Form Application) must be filed.
  - (2) FCC Form 602, Ownership Form, must be filed or updated, if necessary.

# Form 602 – Ownership Form

- If an applicant already has an FCC Form 602 on file, and it is complete and accurate, it is not necessary to file another FCC Form 602. See 47 C.F.R. § 1.919.
- If necessary, applicants must file the FCC Form 602 electronically at <http://wireless.fcc.gov/licensing/ownership/> or through <http://wireless.fcc.gov/uls> by clicking on the ownership link.

# Form 601 – General Information

- Filed electronically on ULS at <http://wireless.fcc.gov/uls>.
- Applicants can apply for multiple licenses on one Form 601.
- Applicants are responsible for the continuing accuracy and completeness on information. See 47 C.F.R. § 1.65
- Incomplete or defective applications may be returned. See 47 C.F.R. §§ 1.934, 1.933.

# Form 601 – Attachments

- Applicants must file all applicable attachments.
  - Ownership
  - Foreign Ownership
  - Designated Entities
  - Agreements & Other Instruments
  - Confidentiality Requests
  - Waiver Requests
  - Tribal Lands Attachments

# Form 601 – Ownership

- Applicants must disclose the real party-or parties-in-interest. See 47 C.F.R. § 1.2112.
- Ownership information can be provided by:
  - (1) Attaching a separate exhibit, or
  - (2) Scanning and attaching the FCC Form 602 to the Form 601.

# Form 601 – Foreign Ownership

## Section 310(b) of the Communications Act

- Licenses cannot be granted to:
  - (1) Any alien or the representative of any alien;
  - (2) Any corporation organized under the laws of any foreign government;
  - (3) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country.

# Form 601 – Foreign Ownership

## Section 310(b) of the Communications Act

- Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representative, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such licenses. See 47 U.S.C. § 310(b)(4).

# Form 601 – Foreign Ownership

- The applicant must explain the circumstances regarding foreign ownership in the applicant.
- The applicant must provide the following information for each direct and indirect foreign owner:
  - (1) Percentage of Interest
  - (2) Country of Origin and Address
  - (3) Public Interest Statement - Demonstrating how allowing the applicant to hold the requested license is consistent with the Commission's policies pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended.

# Form 601 – Foreign Ownership Petition for Declaratory Ruling

- Applicants must indicate in their Form 601 applications that they either have received a declaratory ruling that grants them permission to exceed the statutory benchmark of Section 310(b)(4) or that they have a request currently pending at the Commission.
- The Commission must approve the indirect foreign ownership that causes them to exceed Section 310(b)(4)'s twenty-five percent benchmark prior to any license being granted.

## Form 601 – Closed Bidding

- An applicant must demonstrate that the applicant, its controlling interests, its affiliates, and the controlling interests of the affiliates have combined total assets of less than \$500 million and have had combined gross revenues of less than \$125 million in each of the last two years. See 47 C.F.R. 24.709(a)(1).

# Form 601 – Designated Entities

- Small and very small businesses, or consortia thereof, which are the high bidders on open licenses are eligible for bidding credits of fifteen and twenty-five percent, respectively.
- An applicant applying for small or very small business status must demonstrate that the applicant, its controlling interests, its affiliates, and the controlling interests of the affiliates have combined average gross revenues of less than \$15 or \$40 million in the last three years.

## Form 601 – Agreements

- All applicants must provide a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint ventures, partnerships or other agreements or arrangements into which the applicant has entered relating to the competitive bidding process prior to the time the bidding was completed. See 47 C.F.R. § 1.2107(d).

# Form 601 – Agreements Designated Entity/Closed Bidding

- Applicants must list and summarize all agreements that support the applicant's designated entity and closed bidding eligibility, including the establishment of *de facto* and *de jure* control. See 47 C.F.R. §§ 24.709(c)(2)(ii), 1.2112(b)(2)(i).

# Form 601 – Agreements Designated Entity/Closed Bidding

- Such agreements and instruments include, but are not limited to:
  - (1) Articles of incorporation and bylaws,
  - (2) Shareholder agreements,
  - (3) Voting or other trust agreements,
  - (4) Partnership or LLC agreements,
  - (5) Management agreements,
  - (6) Joint marketing agreements,
  - (7) Franchise agreements,
  - (8) Lease agreements, and
  - (9) Any other relevant agreements (including letters of intent), oral or written. See 47 C.F.R. § 1.2112(b)(2)(i).

# Form 601 – Agreements Designated Entity/Closed Bidding

- These applicants also must list and summarize any investor protection agreements, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees. See 47 C.F.R. § 1.2112(b)(2)(ii).

# Form 601 – Confidentiality Requests

- Applicants should be aware that all information required by the Commission's Rules in connection with applications to participate in spectrum auctions is necessary to determine the applicants' qualifications and, as such, will be available for public inspection.
- Required proprietary information may be redacted, and confidentiality may be sought pursuant to Section 0.459 of the Commission's Rules. See 47 C.F.R. § 0.459.
- Applicants requesting confidential treatment for any information required as a condition to participate in the auction must follow the procedures set out in Section 0.459 of the Commission's Rules. See 47 C.F.R. § 0.459.

# Form 601 – Waiver Request

- In the event that a winning bidder wishes to file a request for waiver, the request should be filed with the corresponding application. See 47 C.F.R. § 1.925.

# Secondary Market Transactions

- Assignments and Transfers of Control
  - Limitations for licenses with bidding credits or closed eligibility
  - Partition
  - Disaggregation
- Spectrum Leasing

# Assignments and Transfers of Control

- PCS licenses can be assigned or transferred, pursuant to 47 C.F.R. § 1.948.
- Assignments and Transfers of Control are filed via ULS on FCC Form 603.
- PCS licenses can be assigned in full or in part.

# Assignments and Transfers of Control Partial Assignments

- Partition – assigning a specific geographic area of a license.
- Disaggregation – assigning certain frequencies associated with the license.
- Partition and Disaggregation – assigning certain frequencies within a specific geographic area.

# Assignments and Transfers of Control Designated Entities

- During the first five years of the license term, if a license with bidding credits is transferred/assigned to an entity that is ineligible for bidding credits or eligible for a lesser bidding credit, unjust enrichment will be due.
- If a license with bidding credits is assigned/transferred to an entity eligible for bidding credits, the assignee/transferee has to demonstrate that it, along with its controlling interests, its affiliates, and the controlling interests of the affiliates, have combined average gross revenues of less than \$15 or \$40 million in the last three years.

# Assignments and Transfers of Control Designated Entities

- Unjust Enrichment = Amount of the Bidding Credit + Interest
- The amount of Unjust Enrichment due decreases over time:
  - Years 1 & 2 – 100% of bidding credit.
  - Year 3 – 75% of bidding credit.
  - Year 4 – 50% of bidding credit.
  - Year 5 – 25% of bidding credit.

# Assignments and Transfers of Control Closed Bidding Licenses

- A closed bidding license may only be assigned/transferred to an entity meeting the closed bidding requirements unless:
  - (1) The license has been held for more than five years, or
  - (2) The license has been constructed and the construction notification has been filed with the Commission.
- If a closed bidding license is assigned/ transferred to an entity eligible for closed bidding licenses, the assignee/transferee must demonstrate that it, along with its controlling interests, its affiliates, and the controlling interests, meets the \$500 million assets/ \$125 million revenues requirements in each of the last two years

# Leasing – General Information

- The Commission implemented secondary market leasing in:
  - See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd. 20,604 (2003) (“*Report and Order*”).
  - See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd. 17,503 (2004) (“*Second Report and Order*”).

# Leasing – Types

## Spectrum Manager Lease

- See 47 C.F.R. § 1.9020.

## *De Facto* Transfer Leasing

- Long-Term *De Facto* Transfer Leasing.
  - More than 360 days.
  - See 47 C.F.R. § 1.9010.
- Short-Term *De Facto* Transfer Leasing.
  - 360 days or less.
  - See 47 C.F.R. § 1.9035.

# Spectrum Manager Leasing

- Licensees must retain *de jure* control of the license and *de facto* control over the leased spectrum.
- The licensees must:
  - (1) Maintain an active, ongoing oversight role to ensure that the lessee complies with all applicable Commission policies and rules,
  - (2) Retain responsibility for all interactions with the Commission required under the license related to the use of the leased spectrum (including notification requirements), and
  - (3) Remain primarily and directly accountable to the Commission for any lessee violation of these policies and rules.

See 47 C.F.R. § 1.9010(b); see also *Report and Order* at ¶¶ 64-70.

# Spectrum Manager Leasing Designated Entities/Closed Bidding

- May lease as long as the leasing arrangement does not result in the lessee becoming a controlling interest or affiliate of the licensee.
- The Commission has provided guidance as to whether designated entities and licensees holding closed bidding licenses can enter into Spectrum Manager leases. *See Second Report & Order* at ¶¶ 67-82.

## *De Facto* Transfer Leasing

- Licensees retain *de jure* control of the license while *de facto* control over the use of the leased spectrum, and associated rights and responsibilities, are transferred for a defined period to the spectrum lessee.

## *De Facto* Transfer Leasing Designated Entities/Closed Bidding

- Licensees will have to pay unjust enrichment if they lease licenses acquired with bidding credits to entities ineligible for bidding credits during the unjust enrichment period.
- Licensees cannot enter into *De Facto* Transfer leases for closed bidding licenses with entities ineligible for closed bidding licenses until (1) the five year holding period has elapsed or (2) the license has been constructed and the construction notification has been filed with the Commission.