



PUBLIC NOTICE

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AUCTION OF LICENSES FOR MULTI-RADIO SERVICE SPECTRUM

Status of FCC Form 175 Applications to Participate in the Auction

Report No. AUC-01-43-C (Auction No. 43)

The Federal Communications Commission (“FCC”) has received 13 FCC Form 175 applications to participate in Auction No. 43 scheduled to begin on Thursday, January 10, 2002, for 4 licenses in the Phase II 220 MHz Service, 23 licenses in the 800 MHz SMR Service General Category Frequencies, and 42 multilateration licenses in the Location and Monitoring Service spectrum. However, the auction of the 42 multilateration licenses in the Location and Monitoring Service is postponed until a later date.¹ Attachment C provides a revised list of licenses available in this auction. Accordingly, we will delete from FCC Form 175s any selections that reflect an intent to bid on LMS licenses. As no application reflected an intent to bid exclusively on LMS licenses, all applications have been reviewed for completeness and compliance with the Commission’s rules, and have been classified into the following categories:

ACCEPTED FOR FILING..... 6 Applications

INCOMPLETE..... 7 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 Friday, December 7, 2001.**² 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.³ Attachment A also includes FCC account numbers that were

¹ When the auction for the LMS licenses is rescheduled, applications may be submitted by any interested party in accordance with the Commission’s rules. See 47 CFR § 1.2101 *et seq.*

² See 47 C.F.R. § 1.2106.

³ See 47 C.F.R. § 1.65.

automatically created by the FCC software system for each applicant and indicates the licenses selected by each applicant on their 175 filing.

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 Friday, December 7, 2001; and (2) resubmit their applications by 6:00 p.m. ET on Friday, December 7, 2001, to correct the deficiencies indicated.** Applicants also must maintain the accuracy of their FCC Form 175 applications as required by the Commission's rules.⁴

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 Friday, December 7, 2001**. 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 dismissed.

UPFRONT PAYMENT DEADLINE

Upfront payments and accompanying FCC Remittance Advice (FCC Form 159) for Auction No. 43 are due at Mellon Bank, Pittsburgh, Pennsylvania, **no later than 6:00 p.m. ET on Friday, December 7, 2001. 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 must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209-6045 at least one hour before placing the order for the wire transfer (but on the same business day).

Applicants that have filed applications deemed to be incomplete, as noted in this public notice, must submit timely and sufficient upfront payments before the Commission will review their resubmitted applications. If no upfront payment is made or the 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, any upfront payment made prior to dismissal 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. 43 Procedures Public Notice* under Section III.D.

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

⁴ *Id.*

applications, a public notice listing all applicants qualified to bid in the auction will be released. The same public notice will also include instructions for participating in the mock auction and a bidding schedule for the mock auction and the first day of the auction.

Due Diligence: Potential bidders are reminded that there are a number of incumbent licensees already licensed and operating on frequencies that will be subject to the upcoming auction.⁵ Geographic area licensees must protect such incumbents from harmful interference.⁶ Potential bidders may obtain information about incumbent licensees through the Commission's licensing databases on the Internet at <http://wireless.fcc.gov/uls>.⁷ The Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the databases. Potential bidders are strongly encouraged to physically inspect any sites located in, or near, the geographic area for which they plan to bid.

Potential bidders should also be aware that certain applications (including those for modification), waiver requests, petitions to deny, petitions for reconsideration, and applications for review are pending before the Commission that relate to particular applicants or incumbent licensees.⁸ The Commission has provided information on due diligence issues to potential bidders in Auction No. 43.⁹ Potential bidders are reminded that the Commission makes no representation that the proceedings it has cited include every pending proceeding relevant to the spectrum included in Auction No. 43. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 43 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 43 are strongly encouraged to continue such research during the auction. In addition, potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican border should be aware that the use of some or all of the channels they acquire in the auction could be restricted as a result of current or future agreements with Canada or Mexico.¹⁰

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, otherwise acquire, or make use of the licenses available in Auction No. 43.

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

⁵ See Auction No. 43 Multi-Radio Service Auction Scheduled for January 10, 2002, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedural Issues, *Public Notice*, DA 01-2315, at 6-9 (rel. October 10, 2001), 66 Fed. Reg. 55180 (“*Auction No. 43 Procedures Public Notice*”).

⁶ *Id.*

⁷ For further information regarding obtaining such information, see *Auction No. 43 Procedures Public Notice* at 9.

⁸ *Id.*, Attachment B.

⁹ *Id.*

¹⁰ For reference to relevant agreements, see *id.*, at 7, nn. 31-33.

each other as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii). For Auction No. 43, this prohibition became effective at the short-form application filing deadline on Friday, November 16, 2001, and will end on the post-auction down payment deadline, which will be announced in a future public notice.¹¹ 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.¹²

In addition, Section 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional importance to that application.¹³ Thus, Section 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.¹⁴ For further details regarding the prohibition against collusion refer to the *Auction No. 43 Procedures Public Notice* under Section I.B.

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.¹⁵ In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anti-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.¹⁶

Auction Discount Voucher: On June 8, 2000, the Commission awarded Qualcomm, Inc. a transferable Auction Discount Voucher ("ADV") in the amount of \$125,273,878.00.¹⁷ This

¹¹ 47 C.F.R. § 1.2105(c)(1).

¹² "Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules," *Public Notice*, 11 FCC Rcd 9645 (1995).

¹³ *See* 47 C.F.R. § 1.65.

¹⁴ The Commission recently amended Section 1.2105 to require auction applicants to report prohibited communications in writing to the Commission immediately, but in no case later than five business days after the communication occurs. Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Seventh Report and Order*, FCC 00-1270, at 10 (rel. Sept. 27, 2001).

¹⁵ *See* 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

¹⁶ 47 C.F.R. § 1.2109 (d).

¹⁷ *See* Qualcomm Incorporated Petition for Declaratory Ruling Giving Effect to the Mandate of the District of Columbia Circuit Court of Appeals, *Order*, 16 FCC Rcd 4042 (2000).

ADV 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. The Commission has received notice from Qualcomm that it has transferred part of the ADV to a winning bidder in FCC Auction No. 35.¹⁸ The Commission has also received notice from Qualcomm's transferee that it intends to use the portion of the ADV transferred to it to adjust one of its winning bids in Auction No. 35.¹⁹ The remaining portion of Qualcomm's ADV could be used to adjust winning bids in another FCC auction, including Auction No. 43.

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 1.1208²⁰ of the Commission's rules.²¹

Mock Auction: All applicants found to be qualified bidders will be eligible to participate in a mock auction on Monday, January 7, 2002. Internet bidding is a new concept in our auctions program, and we encourage all qualified bidders to take advantage of this mock auction. In the *Qualified Bidders Public Notice*, the Bureau will announce the bidding schedule for the mock auction and give details about participation. The mock auction will be conducted over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well.

Electronic Bidding: Applicants are reminded that qualified bidders are eligible to bid either electronically or telephonically. Applicants should specify their bidding preference on the FCC Form 175 by **6:00 p.m. ET on Friday, December 7, 2001.**

Bidders can access the FCC Bidding System over the Internet. As a contingency, bidders can also access the FCC Bidding System over the FCC's Wide Area Network. Access to the Bidding System via the Internet requires, at a minimum, the following hardware and software:

- CPU: Pentium 133 or above
- RAM: 32 MB (64 MB recommended)
- Monitor: VGA or above
- Mouse or other pointing device
- Operating System: Microsoft® Windows™ 95™, 98™, 2000™, ME™, NT™

¹⁸ See Supplement to Public Notice Released August 22, 2001 By Wireless Telecommunications Bureau Announcing It Is Prepared to Grant Four C and F Block Broadband Personal Communications Services (PCS) Licenses Upon Full and Timely Payment, Auction Event No. 35, *Public Notice*, DA 01-2071, (rel. August 31, 2001).

¹⁹ *Id.* All of the terms and conditions applicable to Qualcomm's use of the ADV shall apply to its use by a transferee, except that a transferee may not transfer the ADV to an entity other than back to Qualcomm. See In the Matter of Qualcomm Incorporated, *Order*, 16 FCC Rcd 4042 (2000); see also Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Veronica M. Ahern, Attorney for Qualcomm Incorporated (December 22, 2000).

²⁰ 47 C.F.R. §1.1208.

²¹ See "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).

- Web Browser, either of the following:
 - ◆ Microsoft Internet Explorer 4.0 or higher (recommended)
 - ◆ Netscape® Communicator™ 4.0 or higher, with Java Plug-In Version 1.3.1 (available for downloading at <http://java.sun.com/products/plugin/>)

In addition, users accessing the Bidding System via the FCC's Wide Area Network will need:

- Modem: 28.8 Kbps Hayes© compatible modem or faster (56.6 Kbps recommended)
- Point-to-Point Protocol (PPP) Dialer: Use the Dial-Up Networking feature included with the operating system

Access to the FCC Bidding System via the Wide Area Network requires access to a 900 service telephone line. The first minute of connection time to the 900 number service is at no charge; however, \$2.30 will be charged for each additional minute.

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.²²

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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²² See 47 C.F.R. § 1.2112(b)(2).

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 reviewer identified in the correspondence sent to the applicant by overnight mail.

For additional information, contact: Howard Davenport, Auctions Legal Branch (regarding legal questions); Lyle Ishida, Analyst, Auctions Operations (regarding bidding and auction structure) at (202) 418-0660; or Barbara Sibert, Auctions Operations (regarding bidding and general filing status) at (717) 338-2888.

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