



PUBLIC NOTICE

Federal Communications Commission
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DA 02-1491
June 26, 2002

AUCTION No. 44

REVISED SCHEDULE, LICENSE INVENTORY, AND PROCEDURES

Report No. AUC 02-44-G (Auction No. 44)

By this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) revises the schedule, license inventory, and procedures for Auction No. 44 in order to comply with the recently enacted Auction Reform Act of 2002.¹ With the exception of the changes set forth in this Public Notice, the Commission’s competitive bidding rules and the procedures, terms and conditions previously announced in the *Auction No. 44 Procedures Public Notice* will apply in Auction No. 44.²

Pursuant to the Auction Reform Act, the Commission will commence Auction No. 44 on August 27, 2002 with an inventory of 740 licenses in the Lower 700 MHz C and D blocks, or the 710-716/740-746 MHz and 716-722 MHz bands.³ The Auction Reform Act provides that the Commission may not commence Auction No. 44 on June 19, 2002 as previously scheduled.⁴ The Auction Reform Act defines the entities that are eligible to bid in a rescheduled auction of the C and D block licenses.⁵ The Auction Reform Act also directs the Commission to return certain payments to certain bidders within one month of its enactment.⁶

¹ Auction Reform Act of 2002, Pub. L. No. 107-195, 116 Stat. 715 (“Auction Reform Act”).

² See 47 C.F.R. Part 1, Subpart Q (Commission competitive bidding rules); Auction of Licenses in the 698-746 MHz Band Scheduled for June 19, 2002; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Auction Procedures, *Public Notice*, 17 FCC Rcd 4935 (2002) (“*Auction No. 44 Procedures Public Notice*”).

³ See Auction Reform Act, sec. 3 (adding para. 15(C)(iii) to 47 U.S.C. § 309(j)). The original license inventory for Auction No. 44 consisted of licenses for use of the A, B, C, D, and E blocks in the Lower 700 MHz bands, *i.e.*, the bands from 698-746 MHz which are currently used for television channels 52-59. See *Auction No. 44 Procedures Public Notice*.

⁴ Auction Reform Act, sec. 3 (adding para. 15(B) to 47 U.S.C. § 309(j)). See Auction Reform Act, sec. 3 (adding para. 15(C)(iii), which establishes deadlines for auction of the C and D block licenses).

⁵ See Auction Reform Act, sec. 3 (adding para. 15(C)(ii) to 47 U.S.C. § 309(j)); see also Auction of Licenses for 698-746 MHz Band; 128 Qualified Bidders, *Public Notice*, DA 02-1346 (rel. June 7, 2002) (“*Auction No. 44 Qualified Bidders Public Notice*”).

⁶ See Auction Reform Act, sec. 3 (adding para. 15(D) to 47 U.S.C. § 309(j)).

New Auction Start Date

Auction No. 44 will begin on August 27, 2002. A complete list of all relevant dates appears at the end of this Public Notice.

Eligible Bidders

Pursuant to the Auction Reform Act, only those entities that were qualified bidders for Auction No. 44 are eligible to participate in the rescheduled Auction No. 44.⁷ Accordingly, only the 128 qualified bidders identified in the *Auction No. 44 Qualified Bidders Public Notice* are eligible to participate in Auction No. 44.⁸

Continuing Application of Anti-Collusion Rule

All parties that submitted short-form applications to participate in Auction No. 44, including but not limited to qualified bidders, are reminded that they remain subject to the Commission's anti-collusion rule until the post-auction down payment deadline.⁹

Revised Auction No. 44 License Inventory

In compliance with the Auction Reform Act, rescheduled Auction No. 44 will offer 740 C and D block licenses in the Lower 700 MHz bands.¹⁰ The C block is a 12-megahertz spectrum block, consisting of a pair of 6-megahertz segments, which is licensed over 734 Metropolitan Statistical Areas (“MSAs”) and Rural Service Areas (“RSAs”).¹¹ The D block is a 6-megahertz unpaired spectrum block, which is licensed over six 700 MHz Economic Area Groupings (“700 MHz EAGs”). A complete revised list of licenses available in Auction No. 44 and their descriptions is included in Attachment A of this Public Notice.

The following table contains the block/frequency cross-reference for the 710-716 / 740-746 MHz and 716-722 MHz Bands:

<u>Block</u>	<u>Frequencies (MHz)</u>	<u>Bandwidth</u>	<u>Pairing</u>	<u>Geographic Area Type</u>	<u>No. of Licenses</u>
C	710-716, 740-746	12 MHz	2 x 6 MHz	MSA/RSA	734
D	716-722	6 MHz	Unpaired	700 MHz EAG	6

⁷ See *id.*, sec. 3 (adding para. 15(C)(ii) to 47 U.S.C. § 309(j)).

⁸ See *Auction No. 44 Qualified Bidders Public Notice*.

⁹ See 47 C.F.R. § 1.2105(c).

¹⁰ See Auction Reform Act, sec. 3 (adding para. 15(C) to 47 U.S.C. § 309(j)).

¹¹ MSAs and RSAs are sometimes collectively referred to as Cellular Market Areas (CMAs).

Return of Upfront Payments for Qualified Bidders Eligible to Bid on A, B, or E Blocks

In compliance with the Auction Reform Act, the Commission will honor timely requests for the return of upfront payments to payer(s) of record for qualified bidders eligible to bid on A, B or E block licenses, *i.e.*, qualified bidders that selected licenses in the A, B or E blocks and have upfront payments that purchased sufficient eligibility to bid on at least one of the licenses in those blocks (*i.e.*, an upfront payment of at least \$3,069,000).¹² **Qualified bidders are reminded that, pursuant to the *Auction No. 44 Procedures Public Notice*, they only may bid on licenses when they have sufficient bidding units of eligibility. Full or partial return of upfront payments will reduce the qualified bidder's eligibility by one bidding unit for each dollar returned. No qualified bidder will be able to increase its eligibility after 6 p.m. ET, July 26, 2002, the deadline for selecting additional licenses (*see* *Selecting Additional Licenses*, below) and supplementing upfront payments (*see* *Supplementing Upfront Payments*, below). Qualified bidders should take all available precautions to assure that upfront payments held by the Commission provide sufficient eligibility to bid on all the licenses in which they have an interest. As discussed further below, after completing the procedures set forth in this Public Notice, the Bureau will issue a public notice providing a final list of all qualified bidders, their license selections, upfront payments, and bidding eligibility.**

To obtain a full or partial return of upfront payment(s) to payer(s) of record for a qualified bidder eligible to bid on A, B or E block licenses, the qualified bidder's authorized representative or contact person identified on FCC Form 175 must send electronic mail containing the information set forth below to auction44@fcc.gov, following the release of this Public Notice but no later than 6:00 p.m. ET on July 3, 2002:

- A subject line indicating a request for Auction No. 44 upfront payment return;
- The qualified bidder's name;
- The total amount of the upfront payment for the qualified bidder to be returned;
- The name, street address, and telephone number of the party sending the email; and
- For each payer of record to receive a return payment, the following wire transfer information:

Amount of Wire Transfer
Name and Address of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)

¹² Auction Reform Act, sec. 3 (adding para. 15(D) to 47 U.S.C. § 309(j)). The qualified bidders in this category are: Aloha Partners, L.P.; Cavalier Group, LLC; Council Tree Wireless, L.L.C.; DataCom Wireless, L.L.C.; Omega Communications, L.L.C.; and Spectrum Holdings I, LP. *See Auction No. 44 Qualified Bidders Public Notice.*

Taxpayer Identification Number¹³
Correspondent Bank (if applicable)
ABA Number
Account Number

All returns will be made by wire transfer. Absent other sufficient written instructions submitted by the payer(s) of record, upfront payment(s) will be returned to the payer(s) of record as identified on the FCC Form 159 that accompanied the upfront payment(s). Please call Gail Glasser at (202) 418-0578 or Tim Dates at (202) 418-0496 with any questions regarding wire transfer procedures.

The Commission will honor requests for returns of upfront payment from qualified bidders that comply with the above procedures and that are received after the release of this Public Notice but no later than 6:00 p.m. ET July 3, 2002. Qualified bidders intending to make use of the above procedures are urged to do so promptly to avoid last minute errors. UNTIMELY REQUESTS WILL NOT BE HONORED.

Early Departure from Auction No. 44 and Upfront Payment Refunds

Due to the changes made to Auction No. 44 by the Auction Reform Act, the Bureau will permit any qualified bidder not eligible to bid on A, B or E block licenses to forgo further participation and depart from Auction No. 44 following the release of this Public Notice but no later than 6:00 p.m. ET July 3, 2002. The Bureau provides this procedure because qualified bidders could not have anticipated the statutorily mandated changes in Auction No. 44 at the time they submitted their applications to participate. The upfront payments of any qualified bidders departing from Auction No. 44 will be refunded in full to the payer(s) of record. **Qualified bidders not eligible to bid on A, B or E block licenses that depart using this procedure may obtain only full – NOT partial – refunds of upfront payments. Qualified bidders departing from Auction No. 44 may NOT supplement their upfront payments (see Supplementing Upfront Payments, below). Consequently, qualified bidders departing from Auction No. 44 and having upfront payments refunded will have zero bidding units of eligibility and no longer be eligible to bid on any licenses in Auction No. 44. Any qualified bidders departing from Auction No. 44 remain subject to the Commission’s anti-collusion rule until the post-auction down payment deadline.**¹⁴

To forgo further participation and have the upfront payment refunded, a qualified bidder’s authorized representative or contact person identified on FCC Form 175 must send electronic mail containing the information set forth below to auktion44@fcc.gov following the release of this Public Notice but no later than 6:00 p.m. ET on July 3, 2002:

- A subject line indicating departure from Auction No. 44;
- The qualified bidder’s name;

¹³ The Debt Collection Improvement Act of 1996 requires the Commission to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds. *See* 31 U.S.C. §§ 3720B, *et seq.*

¹⁴ *See* 47 C.F.R. § 1.2105(c).

- The name, street address, and telephone number of the party sending the email; and
- For each payer of record, the following wire transfer information:

Name and Address of Bank
 ABA Number
 Contact and Phone Number
 Account Number to Credit
 Name of Account Holder
 FCC Registration Number (FRN)
 Taxpayer Identification Number¹⁵
 Correspondent Bank (if applicable)
 ABA Number
 Account Number

All refunds will be made by wire transfer. Absent sufficient other written instructions submitted by the payer(s) of record, upfront payment(s) will be returned to the payer(s) of record as identified on the FCC Form 159 that accompanied the upfront payment(s). Please call Gail Glasser at (202) 418-0578 or Tim Dates at (202) 418-0496 with any questions regarding wire transfer procedures.

The Commission will honor requests for early departure and will refund full upfront payments that comply with the above procedures and that are received after the release of this Public Notice but no later than 6:00 p.m. ET July 3, 2002. Qualified bidders intending to make use of the above procedures are urged to do so promptly to avoid last minute errors. UNTIMELY REQUESTS WILL NOT BE HONORED.

Selecting Additional Licenses

Due to the changes made to Auction No. 44 by the Auction Reform Act, the Bureau will permit qualified bidders not departing from the auction to select additional licenses. The Bureau provides this procedure because qualified bidders could not have anticipated the statutorily mandated changes in Auction No. 44 at the time they submitted their original license selections. Accordingly, for purposes of allowing qualified bidders to make additional license selections in compliance with this Public Notice, the Bureau waives on its own motion the prohibition against changes in the license service areas identified on the qualified bidder's short-form application as licenses on which the qualified bidder intends to bid.¹⁶ Qualified bidders are **not** authorized to de-select any licenses already selected, but, pursuant to the Commission's usual procedures, need not bid on every license selected. In addition, the Commission's prohibition against any other major amendments, *e.g.*, changes in ownership that would constitute an

¹⁵ The Debt Collection Improvement Act of 1996 requires the Commission to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds. *See* 31 U.S.C. §§ 3720B, *et seq.*

¹⁶ *See* 47 C.F.R. § 1.2105(b)(2).

assignment or transfer of control, also remains in effect.¹⁷ Any application of the Commission's anti-collusion rule will take into account a qualified bidder's selection of any additional licenses.¹⁸

To select additional licenses, the qualified bidder's authorized representative or contact person must send an electronic mail to auction44@fcc.gov no earlier than July 22, 2002 but no later than 6:00 p.m. ET on July 26, 2002 with the following information:

- A subject line indicating Auction No. 44 additional license selection;
- In the text of the message, the bidder must:
 - 1) List the Qualified Bidder's FRN number; and
 - 2) **List the additional licenses** on which it wishes to bid in Auction No. 44. The licenses must be listed one per line and must correspond precisely to the "License Number" column found in Attachment A to this Public Notice. Failure to list valid license numbers as provided in Attachment A will prevent the license from being added to the Form 175. The licenses may be listed in any order, and are not to be preceded by any labels or titles. Only additional licenses should be listed; do not list the licenses previously submitted on the Form 175 that were reported in the *Auction No. 44 Qualified Bidders Public Notice*.

For example, the following message would correctly request the addition of three licenses to the bidder with the specified FRN:

Subject Line: Auction No. 44 Additional License Selection

FRN: 0123456789
WZ-CMA003-C
WZ-EAG706-D
WZ-EAG701-D

To be effective, additional license selections must comply with the above procedures and be received no earlier than July 22, 2002 but no later than 6:00 p.m. ET July 26, 2002. Parties that intend to make use of the above procedures are urged to do so early in the period to avoid last minute errors. UNTIMELY ADDITIONAL LICENSE SELECTIONS WILL NOT BE EFFECTIVE.

Supplementing Upfront Payments

In addition, due to changes made to Auction No. 44 by the Auction Reform Act, the Bureau will permit qualified bidders not departing from Auction No. 44 to supplement their existing upfront payments to purchase additional bidding eligibility. The Bureau provides this procedure because qualified bidders could not have anticipated the statutorily mandated changes in Auction No. 44 at the time they submitted their original upfront payments. Accordingly, for purposes of allowing qualified bidders that do not

¹⁷ See *id.*

¹⁸ See 47 C.F.R. § 1.2105(c).

depart from Auction No. 44 to make supplemental upfront payments in compliance with this Public Notice, the Bureau waives on its own motion the prior deadline for upfront payments. To exercise this option, qualified bidders must submit the additional upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159 (Revised 2/00)). **All supplemental upfront payments must be received at Mellon Bank no earlier than July 22, 2002, but no later than 6:00 p.m. ET on July 26, 2002.** The FCC Form 159 is available on-line via a link from www.fcc.gov/formpage.html. The FCC Form 159 must be filed with Mellon Bank via facsimile at (412) 209-6045. A completed FCC Form 159 must be faxed 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). On the cover sheet of the fax, write “Wire Transfer — Auction Payment for Auction Event No. 44.”

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Supplemental upfront payments for Auction No. 44 will go to the same lockbox number used for the initial Auction No. 44 upfront payment, as listed below.
- Failure to deliver the supplemental upfront payment by the July 26, 2002, deadline will result in the bidder not receiving the corresponding additional eligibility.

Making Supplemental Upfront Payments by Wire Transfer

Wire transfer payments must be received no later than 6:00 p.m. ET on July 26, 2002. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BENEFICIARY: FCC/Account # 910-1182
OBI Field: (Skip one space between each information item)
“AUCTIONPAY”
FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 11 and/or 21)
PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: A44U)
FCC CODE 1: (same as FCC Form 159, block 28A: “44”)
PAYER NAME: (same as FCC Form 159, block 2)
LOCKBOX NO.: # 358415

NOTE: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

Bidders should confirm the receipt and the amount of their upfront payment at Mellon Bank by contacting their sending financial institution. All supplemental upfront payments must be received at Mellon Bank no earlier than July 22, 2002, but no later than 6:00 p.m. ET on July 26, 2002. Parties that intend to make use of the above procedures are urged to do so early in the period to

avoid last minute errors. UNTIMELY SUPPLEMENTAL UPFRONT PAYMENTS WILL NOT INCREASE A QUALIFIED BIDDER'S ELIGIBILITY.

Auction Registration Information

Approximately ten days before the auction, the Commission will issue a public notice providing a final list of all qualified bidders, their license selections, and upfront payments received for this auction.

Qualified bidders planning to participate in Auction No. 44 should retain ALL materials previously sent by overnight delivery in two separate mailings on June 11, 2002. These materials **WILL NOT** be re-sent (e.g., Bidder Identification Numbers, SecurID cards, FCC Auctions Bidding System User Manual).

Bidder Identification Number

Qualified bidders should keep the letter sent by overnight delivery on June 11, 2002 that includes their Bidder Identification Number ("BIN") stored in a safe and secure location. Each qualified bidder's BIN remains the same and will not be changed for the rescheduled Auction No. 44.

SecurID Cards

Qualified bidders should keep the SecurID Card sent by overnight delivery on June 11, 2002 stored in a safe and secure location. These same cards will be used for the rescheduled Auction No. 44. SecurID cards will be re-set to "new PIN" mode prior to the Mock Auction scheduled for August 22, 2002. Qualified bidders should refer to their "FCC Auctions Bidding System User Manual (Auction 44)" for complete details on how to Access the FCC Bidding System.

After participation in Auction No. 44 is completed, qualified bidders are encouraged to return their SecurID cards to the Commission for recycling. Qualified bidders will receive a pre-addressed, stamped envelope for use in returning SecurID cards together with their copy of this Public Notice. Qualified bidders that forgo further participation in Auction No. 44 are encouraged to return their SecurID cards now. Qualified bidders participating in Auction No. 44 may return their SecurID cards after the close of the auction. Please note that each SecurID card is tailored to a specific auction; therefore, the SecurID cards issued for Auction No. 44 will not work for future auctions.

Maintaining the Accuracy of FCC Form 175 Information

Parties are responsible for maintaining the accuracy and completeness of information furnished in their FCC Form 175 and exhibits.¹⁹ Parties should amend their applications within ten business days from the occurrence of a reportable change. Filers should make modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: auction44@fcc.gov. A separate copy of the letter should be faxed to the attention of Kathryn Garland, Chief, Auctions Operations Branch, (717) 338-2850. Questions about other changes should be directed to Howard Davenport at (202) 418-0660.

¹⁹ 47 C.F.R § 1.65.

Any parties that must file amendments are advised that they will be unable to make modifications to their FCC Form 175 electronically from 6 p.m. ET July 22, 2002, until the release of the public notice containing the final list of qualified bidders. **Parties nevertheless must make timely amendments by submitting a letter regarding any changes as described above.**

Revised Auction Schedule

Deadline for requesting return of upfront payments
by qualified bidders eligible to bid on A, B, and E block licenses.....6 p.m. ET July 3, 2002
Deadline for early departure from Auction No. 44.....6 p.m. ET July 3, 2002
Deadline for selecting additional licenses.....6 p.m. ET July 26, 2002
Deadline for supplementing upfront payments.....6 p.m. ET July 26, 2002
Mock Auction.....August 22, 2002
Auction Start.....August 27, 2002

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For further information, contact:

Media Contact: Meribeth McCarrick at (202) 418-0654

Auctions Accounting Group: Gail Glasser at (202) 418-0578 or Tim Dates at (202) 418-0496

Auctions and Industry Analysis Division: Howard Davenport, Legal Branch, or Lyle Ishida, Auctions Operations Branch, at (202) 418-0660; Linda Sanderson, Auctions Operations Branch, at (717) 338-2888.

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