



PUBLIC NOTICE

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DA 02-1933
August 7, 2002

AUCTION No. 44

Revised Qualified Bidder Notification

125 Qualified Bidders

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

In this Public Notice, the Federal Communications Commission (“FCC” or “Commission”) provides the revised list of qualified bidders, their license selections and their upfront payments received for the auction of licenses in the Lower 700 MHz C and D blocks, or the 710-716/740-746 MHz and 716-722 MHz bands (“Auction No. 44”). This Public Notice also identifies the qualified bidders that have elected early departure from Auction No. 44. In addition, this Public Notice contains bidding instructions and other important information regarding Auction No. 44. Auction No. 44 is scheduled to begin on Tuesday, August 27, 2002.

On June 7, 2002, the Wireless Telecommunications Bureau (“Bureau”) issued the *Auction No. 44 Qualified Bidders Public Notice*, which identified 128 applicants found to be qualified to bid in Auction No. 44.¹ The *Auction No. 44 Qualified Bidders Public Notice* listed each qualified bidder’s upfront payment and maximum bidding eligibility in bidding units, and the licenses selected on each qualified bidder’s FCC Form 175.

On June 19, 2002, the Auction Reform Act of 2002 was signed into law.² Among other things, the Auction Reform Act prohibited the Commission from commencing Auction No. 44 on June 19, 2002 as provided in the *Auction No. 44 Comment Public Notice*.³ The Auction Reform Act defined the entities that are eligible to bid in a rescheduled auction of the Lower 700 MHz band C and D block licenses.⁴ The

¹ Auction of Licenses for 698-746 MHz Band, *Public Notice*, DA 02-1346, (rel. June 7, 2002) (“*Auction No. 44 Qualified Bidders Public Notice*”).

² Auction Reform Act of 2002, Pub. L. No. 107-195, 116 Stat. 715 (“Auction Reform Act”).

³ Auction Reform Act, sec. 3 (adding para. 15(B) to 47 U.S.C. § 309(j)); *see also* Auction of Licenses in the 698-746 MHz Band Scheduled for June 19, 2002; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues, Public Notice, 17 FCC Rcd 1617 (2002) (“*Auction No. 44 Comment Public Notice*”).

⁴ Auction Reform Act, sec. 3 (adding para. 15(C)(ii)(Auction No. 44 timetable) and (iii)(Auction No. 44 qualified bidders) to 47 U.S.C. § 309(j)).

Auction Reform Act also directed the Commission to return to bidders for licenses in the A, B, and E blocks in Auction No. 44 the full amount of all upfront payments made by such bidders for such licenses.⁵

Following enactment of the Auction Reform Act, the Bureau issued the *Auction No. 44 Revised Schedule Public Notice*.⁶ In the *Auction No. 44 Revised Schedule Public Notice*, the Bureau announced that, pursuant to the Auction Reform Act: Auction No. 44 will start on August 27, 2002; only those parties that had been identified as qualified bidders will be eligible to participate in the rescheduled Auction No. 44; the rescheduled Auction No. 44 will offer only licenses for the C and D block of the Lower 700 MHz bands; and that qualified bidders that had been eligible to bid on the A, B, and E block licenses could request partial or full refunds of their upfront payment by providing necessary information no later than 6:00 P.M. ET July 3, 2002.⁷ In addition, because qualified bidders could not have anticipated the changes in Auction No. 44 mandated by adoption of the Auction Reform Act, the Bureau permitted qualified bidders to elect, no later than 6:00 P.M. ET July 3, 2002, to terminate participation in, *i.e.*, depart from, Auction No. 44, and receive a full refund of their upfront payments.⁸ Finally, the Bureau permitted all qualified bidders not departing from Auction No. 44 to select additional licenses and supplement their upfront payments pursuant to specified procedures beginning July 22, but no later than 6:00 P.M. ET July 26, 2002.⁹

This Public Notice provides the final list of all qualified bidders, their license selections, and upfront payments received for Auction No. 44.

Attachment A lists each of the 125 qualified bidders, their upfront payments, and maximum eligibility in bidding units.

Attachment B lists the licenses selected on each qualified bidder's FCC Form 175.

Attachment C lists the applicants that submitted FCC Form 175 applications, but did not qualify to bid in this auction.¹⁰ In addition, Attachment C lists those applicants identified as qualified bidders in the *Auction No. 44 Qualified Bidders Public Notice* that have elected early departure from Auction No. 44.¹¹

Waiver Requests: In Attachments B and C, applications denoted with an asterisk (*) have pending waiver request(s). In no event does acceptance of such applications indicate that the waiver requests have been,

⁵ Auction Reform Act, sec. 3 (adding para. 15(D) to 47 U.S.C. § 309(j)).

⁶ Auction No. 44 Revised Schedule, License Inventory, and Procedures, Public Notice, DA 02-1491 (rel. June 26, 2002) ("*Auction No. 44 Revised Schedule Public Notice*").

⁷ *Auction No 44 Revised Schedule Public Notice* at 2-4.

⁸ *Auction No 44 Revised Schedule Public Notice* at 4-5.

⁹ *Auction No 44 Revised Schedule Public Notice* at 5-8.

¹⁰ The licenses selected on the applications filed by Central Wyoming College and State Board of Education, State of Idaho are subject to resolution of the pending issues raised by their applications, which include determination of whether applicants for Part 27 licenses are noncommercial educational broadcast stations ("NCE") for purposes of Section 397(6) of the Communications Act of 1934, as amended. The licenses selected on the FCC Form 175 submitted by Central Wyoming College are: CMA299-C; CMA718-C; CMA719-C; CMA720-C; CMA721-C; and CMA722-C. The licenses selected on the FCC Form 175 submitted by State Board of Education, State of Idaho are: CMA388-C; CMA389-C; CMA390-C; CMA391-C; CMA392-C; and CMA393-C.

¹¹ The applicants that elected early departure from Auction No. 44 are Fireant, LLC, Highland Cellular Inc., and Sinclair Broadcast Group, Inc.

or will be, granted. Similarly, the inclusion of an application on the list of non-qualified bidders does not indicate that the waiver request has been or will be denied. Final resolution of such waiver requests will be released separately and may affect an applicant's qualifications to participate in Auction No. 44 with respect to particular licenses or eligibility for a bidding credit.¹²

Attachment D describes how to participate in the mock auction.

Attachment E provides information on "How to Monitor the FCC Auctions On-line," and round results file formats for use during the auction.

In order to participate effectively in the auction, qualified bidders should familiarize themselves with the auction rules and other information contained in the *Auction No. 44 Procedures Public Notice* and subsequent public notices.¹³ This *Public Notice* and other documents related to Auction No. 44 are available on the Commission's auctions website, <http://wireless.fcc.gov/auctions/>. The following information provides additional guidance.

Registration. Qualified bidders planning to participate in Auction No. 44 were instructed to retain ALL materials previously sent by overnight delivery.¹⁴ Therefore, each qualified bidder should be in possession of a Bidder Identification Number, at least two SecurID cards, a Bidding System User Manual, and the FCC Telephonic Bidding phone number. Registration materials are critical to participating in both the mock auction and the actual auction event, and it is the responsibility of each qualified bidder to ensure that they have retained all the required registration information.

NOTE: The screens shown in the Bidding System User Manual are intended to serve as examples. License names listed on these screens do not necessarily represent actual licenses being offered in Auction No. 44.

Qualified bidders are solely responsible for ensuring the security of their computer systems, security of their registration materials, and that only authorized bidders place bids on their behalf. The FCC assumes no responsibility or liability for these matters.

WARNING: Any unauthorized entity accessing or tampering with an FCC or other government computer will be prosecuted to the full extent of the law.

¹² The following qualified bidders have pending waiver requests that when finally resolved may affect those bidders' eligibility for a bidding credit or affect the amount of the bidding credit those bidders receive: (i) Cable & Communications Corporation; (ii) Northeast Nebraska Telephone Company; (iii) Poka Lambro Telecommunications, Ltd.; and (iv) Corr Wireless Communications, LLC. See Auction of Licenses for 698-746 MHz Band, Status of FCC Form 175 Applications to Participate in the Auction, Extension of Upfront Payment Deadline, *Public Notice*, DA 02-1213, at p. 2, (rel. May 24, 2002). In addition, Panhandle Telecommunication Systems, Inc. ("Panhandle"), another qualified bidder, has withdrawn its waiver request. Based on Panhandle's resubmitted attachments, the Commission determined that Panhandle's application lacked sufficient information to support the bidding credit it requested. Accordingly, Panhandle will participate in Auction No. 44 without a bidding credit.

¹³ See 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*, DA 02-563 (rel. March 20, 2002), 67 Fed. Reg. 20773 ("*Auction No. 44 Procedures Public Notice*").

¹⁴ See Auction No. 44 Revised Schedule, License Inventory, and Procedures, *Public Notice*, DA 02-1491 (rel. June 26, 2002) at 8.

Registration Material Replacement. Lost bidder identification numbers or SecurID cards can be replaced only by appearing in person at the FCC Headquarters, located at 445 12th Street, SW, Washington, DC. Only an authorized bidder, the contact person or the certifying official, as designated on the applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

If a bidder receives a damaged card(s), the bidder's contact person should call Technical Support to request a replacement. Technical Support will verify that the card is unusable, and a new card will be sent by Federal Express along with a self-addressed stamped envelope for returning the damaged card(s).

Bidding. The Commission will conduct this auction 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. Qualified bidders are permitted to bid telephonically or electronically. In either case, **each authorized bidder** must have its own Remote Security Access SecurID card, which the FCC provided by overnight mail on June 11, 2002.

Please note that the SecurID cards can be recycled, and we encourage bidders to return the cards to the FCC. Please use the previously provided pre-addressed, stamped envelopes to return the cards once the auction is over.

Bidding Contingency Plan. Bidders should develop comprehensive contingency plans that can be quickly implemented if bidders experience difficulty participating in the auction. While the FCC will correct any problems within Commission-controlled facilities, bidders are solely responsible for anticipating and overcoming problems such as bidder technical failures, local telephone service interruptions, adverse local weather conditions, unavailability of authorized bidders, or the loss or breach of confidential security codes.

In their registration materials, all qualified bidders were supplied with a telephone number for telephonic bidding. Bidders choosing to bid telephonically are required to use this telephone number to place bids. Electronic bidders may use this telephone number as an alternate method of bidding in the event they are unable to submit their bids electronically. **Telephonic bidders are reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round.**

Minimum Opening Bids. There will be a minimum opening bid for each license in Auction No. 44, calculated in accordance with the formulas previously announced.¹⁵ The minimum opening bid amount is subject to reduction at the discretion of the Commission. However, bidders should be aware that the Commission will not entertain requests to lower minimum opening bids. The agency will exercise its discretion, if at all, independent of any communications from bidders.

Messages and Announcements. The FCC will post pertinent auction information as messages and announcements. Bidders should routinely check for messages and announcements each time they enter the Automated Auction System, and should read this information carefully.

¹⁵ *Auction No. 44 Procedures Public Notice* at 33-34. Attachment A of the *Auction No. 44 Procedures Public Notice* sets forth the minimum opening bids for each license offered in Auction No. 44.

Bidding Schedule. The bidding schedule for Tuesday, August 27, 2002, will be:

Bidding Period	9:00 a.m.	-	11:00 a.m. ET
Bidding Period	2:00 p.m.	-	4:00 p.m. ET

The bidding schedule for Wednesday, August 28, 2002, and continuing until further notice, will be:

Bidding Period	9:00 a.m.	-	10:00 a.m. ET
Bidding Period	11:00 a.m.	-	12:00 p.m. ET
Bidding Period	1:30 p.m.	-	2:30 p.m. ET
Bidding Period	3:30 p.m.	-	4:30 p.m. ET

Round results will be provided approximately 10 to 15 minutes after the close of each round. The FCC will set the pace of the auction based upon its monitoring of the bidding and its assessment of the auction's progress. All subsequent schedule changes will be made by announcement during the course of the auction.

The Commission announces that bidding for Auction No. 44 will be temporarily suspended for the Labor Day holiday on Monday, September 2, 2002. Bidding will resume on Tuesday, September 3, 2002.

Bidder Questions during the Auction. FCC auction officials and technical support staff will be available during the course of the auction to answer questions from authorized bidders. Bidders should identify themselves as a bidder with time sensitive auction questions when calling any number. Help can be obtained through the following telephone numbers:

FCC Bidder Line (telephonic bidding, auction conduct questions)	Use telephonic bid number supplied in registration mailing
FCC Technical Support Hotline (all technical questions, software and hardware)	(202) 414-1250
FCC Auctions Division (legal questions)	(202) 418-0660

Monitoring Round Results. Attachment E (How to Monitor the FCC Auctions On-Line) of this *Public Notice* provides instructions for reviewing and downloading round results, as well as other material related to Auction No. 44, that will be released by the Commission during the course of the auction.

Auction Tracking Tool (ATT). The FCC has developed a tool for tracking the results of its auctions. The ATT is a stand-alone application, which runs on Windows 95-98 and NT operating systems and does not require any other software, although some advanced features require Microsoft Excel 97. The tool will allow users to import round result files and analyze bidding results after each round of the auction. For installation and user instructions, see the README file, the ATT User Manual, or the on-line help system that accompanies the ATT.

The ATT version specifically designed for Auction No. 44 is available for downloading and should be used for both the mock auction and the actual auction. The ATT is located at the auctions web site, <http://wireless.fcc.gov/auctions/>. From the options on the left, select **Tracking Tools**.

The ATT, provided to bidders free of charge, is an additional means of analyzing the auction round results. Bidders should have a back up strategy in place, which may be quickly implemented, should they experience technical difficulties with the ATT.

User Requirements. This software is designed to be used by a wide range of users. For most effective use of the tool, users should be familiar with:

- Microsoft Windows 95/98 or NT
- Microsoft Excel 97
- The FCC simultaneous multiple-round auction format

Amendments to FCC Form 175s. Applicants are responsible for maintaining the accuracy and completeness of information furnished in their FCC Form 175 and exhibits.¹⁶ Applicants 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 Howard Davenport, Auctions and Industry Analysis Division, (202) 418-2923. Questions about other changes should be directed to Howard Davenport at (202) 418-0660.

As described in the Commission's rules, applicants may make only minor corrections to their FCC Form 175 applications (e.g., authorized bidder, fax number).¹⁷ Major modifications (e.g., changing the markets applied for, changing control of the applicant, changing the certifying official) will not be accepted.

Due Diligence. Bidders are reminded that they should continue to conduct due diligence examinations regarding incumbents and other legal developments with respect to the licenses for which they may bid during the course of the auction.¹⁸ Bidders should be aware that certain applications (including those for modification), petitions for rulemaking, requests for special temporary authority ("STA), waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or incumbent licensees. In addition, certain judicial proceedings that may relate to particular applicants or the licenses available in Auction No. 44 may be commenced or may be pending or subject to further review. We note that resolution of these matters could have an impact on the availability of spectrum in Auction No. 44. Some of these matters (whether before the Commission or the courts) may not be resolved by the time of the auction. In the event that a final determination reached in a pending proceeding requires a winning bidder to surrender a license(s) won in Auction No. 44, the Commission will return payments relating to such license(s) to the payer of record. The Commission, however, will not pay interest on the returned payment(s) as it lacks legal authority to do so.

¹⁶ 47 C.F.R § 1.65.

¹⁷ See Due Diligence Announcement for the Upcoming Auction of Licenses in the 698-746 MHz Band Scheduled for June 19, 2002, *Public Notice*, DA 02-904 (rel. April 18, 2002). See also *Auction No. 44 Procedures Public Notice* at 11-12.

¹⁸ *Id.*

Bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 44.

Mock Auction. The FCC will conduct another mock auction on Thursday, August 22, 2002, which will again allow qualified bidders to familiarize themselves with the Internet bidding system. Only the qualified bidders listed on Attachment A of this public notice will be permitted to participate in the mock auction. 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. Qualified bidders that wish to place bids telephonically, should use the telephone number supplied in the Auction No. 44 registration materials.

The mock auction will include all 740 licenses, and will follow the rules governing the actual auction. **The mock auction will be identified as Auction No. 74. The program will assume that each bidder applied for all EAG and CMA licenses. The program will also assume that each bidder submitted upfront payments of \$4,000,000, which corresponds to 4,000,000 bidding units.** The mock auction will simulate the start of the auction and all bidders will be required to be active on 80 percent of their bidding units, or risk having a waiver automatically applied. If there are no waivers remaining, the current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

Electronic bidders participating in the mock auction are advised to review the Bidding System User Manual provided in the June 11, 2002 overnight mailing. Attachment D of this *Public Notice* provides instructions for accessing the FCC Mock Auction site.

NOTE: All SecurID cards will be reset to New PIN Mode. Please follow "First-Time Logon Procedure" as described in Attachment D of this *Public Notice*.

The mock auction bidding schedule for Thursday, August 22, 2002, will be:

<u>Round 1 Bidding Period</u>	9:00 a.m. - 10:00 a.m. ET
<u>Round 2 Bidding Period</u>	11:00 a.m. - 12:00 p.m. ET
<u>Round 3 Bidding Period</u>	1:00 p.m. - 1:30 p.m. ET
<u>Round 4 Bidding Period</u>	2:00 p.m. - 2:30 p.m. ET
<u>Round 5 Bidding Period</u>	3:00 p.m. - 3:15 p.m. ET
<u>Round 6 Bidding Period</u>	4:00 p.m. - 4:15 p.m. ET

OTHER IMPORTANT INFORMATION

Prohibition of Collusion. All parties that submitted short-form applications to participate in Auction No. 44, including but not limited to qualified bidders (regardless of whether they elected to depart from the auction) are reminded that they remain subject to the Commission's anti-collusion rule until the post-auction down payment deadline.¹⁹

¹⁹ See 47 C.F.R. § 1.2105(c).

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 each other as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii). For Auction No. 44, this prohibition became effective at the filing deadline of short-form applications on Wednesday, May 8, 2002, and will end on the post-auction down payment deadline. The post-auction down payment deadline will be announced in a future public notice. 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.²⁰

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 the application.²¹ 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.²² For further details regarding the prohibition against collusion refer to the *Auction No. 44 Procedures Public Notice*.²³

Winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint venture, 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.²⁴ 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.²⁵

Long-Form Applications. Applicants that claim status as a small business, very small business, or entrepreneur should be aware that at the long-form application stage, they will be subject to more extensive reporting requirements contained in the Commission's Part 1 ownership disclosure rule.²⁶ In addition, applicants with foreign ownership interests will be required to comply with 47 U.S.C. Section 310(b) at the long-form application stage.

²⁰ Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd. 9645 (1995).

²¹ 47 C.F.R. § 1.65.

²² The Commission 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*, 16 FCC Rcd 17546, 17555, ¶ 17 (2001).

²³ *Auction No. 44 Procedures Public Notice* at 7-8 and Attachment G.

²⁴ 47 C.F.R. § 1.211(5)(c), 1.2107(d), and 1.2109(d).

²⁵ 47 C.F.R. § 1.2109(d).

²⁶ 47 C.F.R. § 1.2112(b)(2).

For additional information regarding this *Public Notice*, please contact Linda Sanderson, Auctions Project Manager at (717) 338-2888, Lyle Ishida, Auctions Analyst, or Howard Davenport, Auctions Attorney, at (202) 418-0660.

Technical questions about software or hardware should be directed to Technical Support at (202) 414-1250 (V) or (202) 414-1255 (TTY).

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