



# PUBLIC NOTICE

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DA 03-1049  
April 2, 2003

## 1670-1675 MHz BAND AUCTION SCHEDULED FOR APRIL 30, 2003

### Status of FCC Form 175 Applications to Participate in the Auction

#### Report No. AUC-03-46-F (Auction No. 46)

The Federal Communications Commission (“Commission”) has received 3 FCC Form 175 applications to participate in Auction No. 46 scheduled to begin on Wednesday, April 30, 2003, for one nationwide license in the 1670-1675 MHz band. The applications have been reviewed for completeness and compliance with the Commission’s rules, and have been classified into the following categories:

#### ACCEPTED FOR FILING..... 3 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, April 11, 2003.**<sup>1</sup> 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.<sup>2</sup> Attachment A also includes FCC account numbers that were automatically created by the FCC software system for each applicant.

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<sup>1</sup> See 47 C.F.R. § 1.2106.

<sup>2</sup> 47 C.F.R. § 1.65. The FCC Form 175 application filing window is open now and will remain open until 6:00 p.m. ET on Friday, April 11, 2003.

## UPFRONT PAYMENT DEADLINE

Upfront payments and accompanying FCC Remittance Advice (FCC Form 159) for Auction No. 46 are due at Mellon Bank, Pittsburgh, Pennsylvania, **no later than 6:00 p.m. ET on Friday, April 11, 2003. Payments must be made by wire transfer and applicants must include their FCC Registration Number (FRN).** No other payment method is acceptable for this auction. Applicants are reminded to use their FRN and Taxpayer Identification Number (TIN), not their FCC Account Numbers on the FCC Form 159. Applicants must fax a completed FCC Form 159 (Revised February 2000) 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).

**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. 46 Procedures Public Notice* under Section III.D.<sup>3</sup>

**Note: Applicants are reminded to submit the same FRN with all future payments.**

## 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 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 the 1670-1675 MHz band has been reallocated for non-Government use. The Commission made clear that a geographic area licensee operating in the reallocated band must protect Federal Government operations, either indefinitely or for a given period of time.<sup>4</sup> These requirements may effect the ability of the geographic licensee to use certain portions of the electromagnetic spectrum or provide service to certain regions in their geographic license area.

Potential bidders should also be aware that certain applications, petitions for rulemaking,<sup>5</sup> requests for special temporary authority (“STA”), waiver requests, petitions for reconsideration,<sup>5</sup>

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<sup>3</sup> See 1670-1675 MHz Band Auction Scheduled for October 30, 2002, *Public Notice*, 17 FCC Red 15212, 15229-30 (2002), 67 Fed. Reg. 72174 (“*Auction No. 46 Procedures Public Notice*”).

<sup>4</sup> *Id.*, at 15218-19.

<sup>5</sup> The Commission received the following petitions for reconsideration of the *Service Rules Report and Order*: Petition for Partial Reconsideration, filed by the Aerospace and Flight Test Radio Coordinating Council on July 22, 2002; Petition for Partial Reconsideration, filed by Celtronix Telemetry, Inc on July 22, 2002; Petition for Partial Reconsideration of XM Radio, Inc., filed by XM Radio, Inc. on July 22, 2002; Petition for Clarification, filed by

and applications for review may be pending before the Commission and relate to particular applicants or incumbent Federal entities. 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. 46. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 46 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 46 are strongly encouraged to continue such research during the auction. In addition, potential bidders seeking to operate “near the border” may be subject to future agreements with Canada and Mexico and therefore may be subject to further modification.

**Potential 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. 46.**

**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 each other as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii). For Auction No. 46, this prohibition became effective at the short-form application filing deadline on Tuesday, March 25, 2003, and will end on the post-auction down payment deadline, which will be announced in a future public notice.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> For further

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Final Analysis Communication Services, Inc. on July 22, 2002; Petition for Reconsideration of Itron, Inc., filed on July 22, 2002; Petition for Reconsideration of the American Society for Health Care Engineering of the American Hospital Association, filed on July 22, 2002. Electronic copies of these petitions are available through the Commission’s Electronic Comment Filing System website at [http://gullfoss2.fcc.gov/prod/ecfs/comsrch\\_v2.cgi](http://gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi).

<sup>6</sup> 47 C.F.R. § 1.2105(c)(1).

<sup>7</sup> See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (1995).

<sup>8</sup> 47 C.F.R. § 1.65.

<sup>9</sup> 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.

details regarding the prohibition against collusion refer to the *Auction No. 46 Procedures Public Notice* under Section I.B.2.

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.<sup>10</sup> 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.<sup>11</sup>

**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.<sup>12</sup> This 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. Qualcomm transferred \$10,848,000.00 of the ADV to a winning bidder in FCC Auction No. 35 and the transferee used its portion of the ADV to adjust one of its winning bids in Auction No. 35.<sup>13</sup> The remaining portion of Qualcomm’s ADV could be used to adjust winning bids in another FCC auction, including Auction No. 46.

**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 1.1208<sup>14</sup> of the Commission’s rules.<sup>15</sup>

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Amendment of Part 1 of the Commission’s Rules--Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546, 17555, ¶ 17 (2001).

<sup>10</sup> See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

<sup>11</sup> 47 C.F.R. § 1.2109(d).

<sup>12</sup> Qualcomm Inc. Petition for Declaratory Ruling Giving Effect to the Mandate of the District of Columbia Circuit Court of Appeals, *Order*, 16 FCC Rcd 4042 (2000) (“*Qualcomm Order*”).

<sup>13</sup> 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*, 16 FCC Rcd 16025 (2001). 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 *Qualcomm 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).

<sup>14</sup> 47 C.F.R. § 1.1208.

<sup>15</sup> 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).

**Mock Auction:** All applicants found to be qualified bidders will be eligible to participate in a mock auction on Friday, April 25, 2003. We encourage all qualified bidders to take advantage of this mock auction to become familiar with the FCC Automated Auction System. 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, will also be available, using Dial-Up Networking.

**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, April 11, 2003.**

Bidders can access the FCC Automated Auction System over the Internet. As a contingency, bidders can also access the FCC Automated Auction System over the FCC's Wide Area Network. Access to the 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™
- Web Browser, either of the following:
  - ◆ Microsoft® Internet Explorer 4.0 or higher (recommended). If you have Internet Explorer 5.0 or higher, your browser must have either Microsoft VM or Java Plug-In Version 1.3.1 installed.
  - ◆ Netscape® Communicator™ 4.0 or higher, with Java Plug-In Version 1.3.1.

Java Plug-In Version 1.3.1 is available for downloading at  
<http://java.sun.com/products/archive>.

In addition, users accessing the FCC Automated Auction 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

**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.<sup>16</sup>

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<sup>16</sup> See 47 C.F.R. § 1.2112(b)(2).

**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).

## **CONTACT INFORMATION**

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 technical assistance with using the FCC Automated Auction System, contact the FCC Technical Support Hotline at (202) 414-1250 (V) or (202) 414-1255 (TTY). The FCC Technical Support Hotline is generally available Monday through Friday from 8 a.m. to 6 p.m. ET. *All calls to the FCC Technical Support Hotline are recorded.*

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

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