



PUBLIC NOTICE

Federal Communications Commission
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AUCTION OF LICENSE FOR 1670-1675 MHz Band

2 Qualified Bidders

Report No. AUC-03-46-G (Auction No. 46)

In this *Public Notice*, the Federal Communications Commission (“FCC” or “Commission”) identifies two applicants found to be qualified to bid in the upcoming auction for one nationwide license in the 1670-1675 MHz band (“Auction No. 46”). Auction No. 46 is scheduled to begin on Wednesday, April 30, 2003. In addition, this *Public Notice* contains bidding instructions and other important information regarding Auction No. 46.

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

Attachment B lists the applicant that submitted an FCC Form 175 application, but did not qualify to bid in this auction.

Attachment C describes how to participate in the mock auction.

Attachment D 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. 46 Procedures Public Notice* and subsequent public notices.¹ This *Public Notice* and other documents related to Auction No. 46 are available on the Commission’s auctions website, <http://wireless.fcc.gov/auctions/>. The following information provides additional guidance.

Registration. Qualified bidders have been automatically registered for the auction. For security reasons, the Commission will confirm registration through two separate mailings of registration materials. Both

¹ 1670-1675 MHz Band Auction Scheduled for October 30, 2002; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures, *Public Notice*, DA 02-1871 (rel. Aug. 5, 2002), 67 Fed. Reg. 72174 (“*Auction No.46 Procedures Public Notice*”); 1670-1675 MHz Band Auction (Auction No. 46) Postponed Until April 30, 2003, *Public Notice*, DA 02-2395 (rel. Sept. 25, 2002), 67 Fed. Reg. 63095.

mailings will be sent to the bidder's contact person at the contact address identified in the bidder's FCC Form 175. Upon receipt of both mailings, each bidder should be in possession of the following information:

- Bidder Identification Number
- At least two SecurID cards
- Bidding System User Manual
- FCC Telephonic Bidding phone number

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.

Any qualified bidder listed in Attachment A of this *Public Notice* that has not received both registration mailings **by noon on Wednesday, April 23, 2003**, must contact the Auctions Hotline directly at (717) 338-2888. Receipt of both registration mailings is 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 all registration information has been received.

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, and the FCC Wide Area Network 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 will provide at no charge. Each applicant with less than three authorized bidders will be issued two SecurID cards, while applicants with three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the instructions for using them are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction. SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 46. The telephonic bidding phone number will be supplied in the first mailing along with the confidential bidder identification number.

Please note that the SecurID cards can be recycled, and we encourage bidders to return the cards to the FCC. We will provide pre-addressed envelopes that bidders may use 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 will be 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 Bid. The minimum opening bid for the nationwide license in Auction No. 46 is \$12,628,000, calculated in accordance with the formula previously announced.² 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 the minimum opening bid. 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.

Bidding Schedule. The bidding schedule for Wednesday, April 30, 2003, will be:

| | |
|----------------|----------------------------|
| Bidding Period | 9:00 a.m. - 9:30 a.m. ET |
| Bidding Period | 11:00 a.m. - 11:30 a.m. ET |
| Bidding Period | 2:00 p.m. - 2:30 p.m. ET |
| Bidding Period | 4:00 p.m. - 4:30 p.m. ET |

Round results will be provided approximately five 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.

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:

² Auction No. 46 Procedures Public Notice at 23-24.

| | |
|---|--|
| 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 C (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. 46, that will be released by the Commission during the course of the auction.

Amendments to FCC Form 175s. Applicants are responsible for maintaining the accuracy and completeness of information furnished in their FCC Form 175 and exhibits.³ 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: auktion46@fcc.gov. A separate copy of the letter should be faxed to Francis Gutierrez, Auctions and Industry Analysis Division, (202) 418-6763. Questions about other changes should be directed to Francis Gutierrez 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).⁴ Major modifications (*e.g.*, changing control of the applicant, changing the certifying official) will not be accepted.⁵

Due Diligence. Bidders are reminded that they should continue to conduct due diligence examinations regarding incumbent Federal entities and other legal developments with respect to the nationwide license during the course of the auction.⁶ Bidders should be aware that certain applications, petitions for rulemaking, requests for special temporary authority (“STA”), waiver requests, petitions for reconsideration,⁷ and applications for review may be pending before the Commission and relate to particular applicants or incumbent Federal entities.

³ 47 C.F.R. § 1.65.

⁴ 47 C.F.R. § 1.2105(b).

⁵ *Id.*

⁶ *See Auction No. 46 Procedures Public Notice* at 4-5.

⁷ 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 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. Amendments to Parts 1, 2, 27 and 90 of the Commission’s Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, WT Docket 02-8, *Report and Order*, 17 FCC Rcd 9980, 9982, ¶ 1 (2002) (petitions for reconsideration pending) (“*Service Rules Report and Order*”). 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.

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.

Mock Auction. The FCC will conduct a mock auction on Friday, April 25, 2003, which will allow qualified bidders to familiarize themselves with the FCC Automated Auction System. Only qualified bidders will be permitted to participate in the mock auction. The Bureau will conduct this auction over the Internet. Telephonic bidding will also be available, and the FCC Wide Area Network will be available as well. Qualified bidders that wish to place bids telephonically should use the telephone number supplied in the Auction No. 46 registration materials.

The mock auction will follow the rules governing the actual auction. **The mock auction will be identified as Auction No. 74.** The mock auction will simulate the start of the auction, and all bidders will be required to be active on 100 percent of their bidding eligibility during each round. A bidder not meeting this requirement will have a waiver automatically applied, if the bidder has any waivers available; or the bidder's bidding eligibility will be permanently reduced, thus 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 second mailing. Attachment B of this *Public Notice* provides instructions for accessing the FCC Mock Auction site.

The mock auction bidding schedule for Friday, April 25, 2003, will be:

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

OTHER IMPORTANT INFORMATION

Clarification. The Bureau has received several inquiries regarding the smoothing formula in Auction No. 46 as it pertains to determining minimum acceptable bids and bid increments. The *Auction No. 46 Procedures Public Notice* provides for a minimum percentage increment of 0.05 (5 percent) and a maximum of 0.20 (20 percent).⁸ However, Attachment F of the *Auction No. 46 Procedures Public Notice* indicates that the minimum percentage increment is 0.10 (10 percent) and the maximum is 0.20 (20 percent).

The Bureau clarifies that for Auction No. 46, the minimum percentage increment is 0.05 (5 percent) and the maximum percentage increment is 0.20 (20 percent). Attachment F was intended to explain how the smoothing formula and methodology work. Any factors (e.g., activity weight factor, minimum percentage increment, maximum percentage increment, etc.) displayed on Attachment F are for illustrative purpose only.

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

⁸ *Auction No. 46 Procedures Public Notice* at 25 and Attachment F.

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)⁹. For Auction No. 46, this prohibition became effective at the filing deadline of short-form applications on Tuesday, March 25, 2003, 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 writing¹⁰. 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.¹¹

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.¹² 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.¹³ For further details regarding the prohibition against collusion refer to the *Auction No. 46 Procedures Public Notice*.¹⁴

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

Long-Form Applications. Applicants that claim status as a small or very small business 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.¹⁷ 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.

⁹ 47 C.F.R. §§ 1.2105(c), 1.2105(a)(2)(viii).

¹⁰ 47 C.F.R. § 1.2105(c).

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

¹² 47 C.F.R. § 1.65.

¹³ 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).

¹⁴ *Auction No. 46 Procedures Public Notice* at 5-6 and Attachment G.

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

¹⁶ 47 C.F.R. § 1.2109(d).

¹⁷ 47 C.F.R. § 1.2112(b)(2).

For additional information regarding this *Public Notice*, please contact Lisa Stover, Auctions Project Manager at (717) 338-2888, Lyle Ishida, Auctions Analyst, or Francis Gutierrez, 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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