



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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DA 03-1994
June 18, 2003

AUCTION OF REGIONAL NARROWBAND PCS LICENSES SCHEDULED FOR SEPTEMBER 24, 2003

Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, Package Bidding and Other Auction Procedures

Report No. AUC-03-51-B (Auction No. 51)

I.	General Information.....	1
A.	Introduction.....	1
1.	Background of Proceeding.....	1
2.	Licenses to Be Auctioned	2
B.	Rules and Disclaimers.....	3
1.	Relevant Authority.....	3
2.	Prohibition of Collusion	4
3.	Due Diligence	5
5.	Bidder Alerts.....	6
6.	National Environmental Policy Act (“NEPA”) Requirements	7
C.	Auction Specifics	7
1.	Auction Date.....	7
2.	Auction Title.....	8
3.	Bidding Methodology	8
4.	Pre-Auction Dates and Deadlines	8
5.	Requirements for Participation	8
6.	General Contact Information	9
II.	SHORT-FORM (FCC FORM 175) APPLICATION REQUIREMENTS	10
A.	Ownership Disclosure Requirements (FCC Form 175 Exhibit A)	10
B.	Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B).....	10
C.	Eligibility	11

1.	Bidding Credit Eligibility (FCC Form 175 Exhibit C)	11
2.	Tribal Land Bidding Credit.....	11
3.	Applicability of Part 1 Attribution Rules.....	11
4.	Supporting Documentation	13
D.	Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D)	13
E.	Installment Payments	14
F.	Other Information (FCC Form 175 Exhibits E and F).....	14
G.	Minor Modifications to Short-Form Applications (FCC Form 175)	14
H.	Maintaining Current Information in Short-Form Applications (FCC Form 175).....	15
III.	PRE-AUCTION PROCEDURES	15
A.	Auction Seminar	15
B.	Short-Form Application (FCC Form 175) — Due August 8, 2003	15
1.	Electronic Filing	15
2.	Completion of the FCC Form 175	16
3.	Electronic Review of FCC Form 175	16
C.	Application Processing and Minor Corrections	16
D.	Upfront Payments — Due August 26, 2003	16
1.	Making Auction Payments by Wire Transfer	17
2.	FCC Form 159	18
3.	Amount of Upfront Payment	18
4.	Applicant’s Wire Transfer Information for Purposes of Refunds of Upfront Payments	20
E.	Auction Registration	20
F.	Remote Electronic Bidding.....	21
G.	Mock Auction	21
IV.	AUCTION EVENT	21
A.	Auction Structure	21
1.	Simultaneous Multiple Round Auction with Package Bidding	21
2.	Maximum Eligibility.....	22
3.	Activity Rule.....	22
4.	Activity Rule Waivers and Reducing Eligibility	23
5.	Auction Stopping Rules	24
6.	Auction Delay, Suspension, or Cancellation	25
B.	Bidding Procedures.....	25
1.	Round Structure	25

2.	Packages	25
3.	Reserve Price or Minimum Opening Bid.....	26
4.	Minimum Acceptable Bids and Bid Increments	27
5.	Winning and Provisionally Winning Bids.....	28
6.	Last and Best Bids	29
7.	Renewed Bids	30
8.	Bidding	30
9.	Bid Removal and Bid Withdrawal.....	31
10.	Round Results.....	31
11.	Auction Announcements.....	32
12.	Default	32
13.	Maintaining the Accuracy of FCC Form 175 Information	34
V.	POST-AUCTION PROCEDURES.....	34
A.	Down Payments	34
B.	Auction Discount Voucher	34
C.	Long-Form Application (FCC Form 601)	35
D.	Ownership Disclosure Information Report (FCC Form 602)	35
E.	Tribal Land Bidding Credit.....	36
F.	Default and Disqualification.....	36
G.	Refund of Remaining Upfront Payment Balance	37
VI.	Attachment A: Licenses to be Auctioned	A-1
VII.	Attachment B: FCC Auction Seminar Registration Form	B-1
VIII.	Attachment C: Electronic Filing and Review of the FCC Form 175	C-1
IX.	Attachment D: Guidelines for Completion of FCC Form 175 and Exhibits.....	D-1
X.	Attachment E: Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159 - February 2000 Edition	E-1
XI.	Attachment F: Using the Smoothed Anchoring Method to Obtain Current Price Estimates.....	F-1
XII.	Attachment G: Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing Application of the Anti-Collusion Rules	G-1

I. GENERAL INFORMATION

A. Introduction

By this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) announces the procedures and minimum opening bids for the upcoming auction of six regional narrowband Personal Communications Services (“narrowband PCS”) licenses in the 900 MHz band scheduled for September 24, 2003 (Auction No. 51). On April 3, 2003, in accordance with the Balanced Budget Act of 1997,¹ the Bureau released a public notice seeking comment on reserve prices or minimum opening bids and the procedures to be used for the auction of six regional narrowband PCS licenses.² The Bureau received no comments and no reply comments in response to the *Auction No. 51 Comment Public Notice*.

1. Background of Proceeding

In the *PCS First Report and Order*, the Commission provided for the operation of narrowband PCS in three one-megahertz blocks in the 900 MHz band.³ The Commission broadly defined PCS as mobile and fixed communications offerings that serve individuals and businesses and that can be integrated with a variety of competing networks.⁴ The Commission also adopted a spectrum allocation and channelization plan, licensing rules, and technical standards for narrowband PCS.⁵ In the *Competitive Bidding Second Report and Order*, the Commission determined that, pursuant to Section 309(j) of the Communications Act of 1934, as amended, PCS is subject to competitive bidding in the case of mutually exclusive applications.⁶ In the *Competitive Bidding Third Report and Order*, the Commission established competitive bidding rules specifically for narrowband PCS.⁷

¹ Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251, § 3002(a) (1997) (codified at 47 U.S.C. § 309(j)(4)(F)) (“Balanced Budget Act”). The Commission’s authority to establish a reserve price or minimum opening bid is set forth in 47 C.F.R. § 1.2104(c) and (d).

² See Auction of Regional Narrowband PCS Licenses Scheduled for September 24, 2003; Comment Sought on Package Bidding Procedures, Reserve Prices or Minimum Opening Bids, and Other Auction Procedures, *Public Notice*, DA 03-1065 (rel. April 3, 2003), 68 Fed. Reg. 18642 (“*Auction No. 51 Comment Public Notice*”).

³ Amendment of the Commission’s Rules to Establish New Narrowband Personal Communications Services, GEN Docket No. 90-314, ET Docket No. 92-100, *First Report and Order*, 8 FCC Rcd 7162 (1993) (“*PCS First Report and Order*”), on recon, *Memorandum Opinion and Order*, 9 FCC Rcd 1309 (1994) (*PCS Memorandum Opinion and Order*)).

⁴ *PCS First Report and Order*, 8 FCC Rcd at 7164, ¶ 13.

⁵ *Id.* at 7164-71, ¶¶ 15-37, 39-54; *PCS Memorandum Opinion and Order*, 9 FCC Rcd at 1311, ¶¶ 7-19.

⁶ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket 93-253, *Second Report and Order*, 9 FCC Rcd 2348-2358, ¶¶ 54-58 (1994) (“*Competitive Bidding Second Report and Order*”). In the Balanced Budget Act of 1997, Congress amended Section 309(j) to expand the Commission’s auction authority and statutory mandate. The Commission is now required to assign initial licenses by competitive bidding whenever mutually exclusive applications are accepted for filing, with certain limited exceptions. Balanced Budget Act of 1997, Pub. L. No. 105-33, Title II, 111 Stat. 251 (1997).

⁷ Implementation of Section 309(j) of the Communication Acts – Competitive Bidding, PP Docket No. 93-253, *Third Report and Order*, 9 FCC Rcd 2941, 2944-79, ¶¶ 9-89 (1994) (“*Competitive Bidding Third Report and Order*”).

Subsequently, in the *Narrowband Second Report and Order and Second Further Notice of Proposed Rule Making*, the Commission adopted modifications to its service rules for narrowband PCS.⁸ Specifically, the Commission: (i) adopted Major Trading Areas (“MTAs”) for future licensing of narrowband PCS; (ii) eliminated the restriction, which only applied to 100 kilohertz of the 3 megahertz blocks allocated for narrowband PCS, that limited eligibility for acquiring narrowband PCS response channels to existing paging licensees; (iii) modified the construction and minimum coverage requirement for narrowband PCS spectrum by allowing licensees to meet a “substantial service” alternative; (iv) adopted Subpart Q of Part 1 of the Commission rules to apply to narrowband PCS; and (v) eliminated the narrowband PCS spectrum aggregation limit, finding that it is not necessary to prevent an undue concentration of licenses.⁹ In the *Third Narrowband Report and Order and Order on Reconsideration*, the Commission modified its channel band plan to allow for the licensing of narrowband PCS spectrum for eight additional nationwide licenses and seven licenses in each of the 51 MTAs.¹⁰ Further, the Commission channelized and licensed the one megahertz of narrowband spectrum that had been held in reserve and re-channelized 712 kilohertz of previously channelized spectrum for which licenses had not been auctioned.¹¹ With that action, the Commission resolved the remaining issues concerning narrowband PCS in preparation for auctioning licenses for the remaining narrowband PCS spectrum.¹² In 2001, the Commission conducted an auction of nationwide and MTA narrowband PCS licenses in Auction No. 41.¹³

2. Licenses to Be Auctioned

Auction No. 51 will offer six regional narrowband PCS licenses. The spectrum to be auctioned was previously associated with licenses that were awarded based on Auction No. 3 but have since been cancelled or terminated. A complete list of licenses available in Auction No. 51 and their descriptions is included in Attachment A of this Public Notice.

The following table describes the licenses that will be auctioned:

⁸ See Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS, GEN Docket No. 90-314, ET Docket No. 92-100, Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Narrowband PCS, PP Docket No. 93-253, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 15 FCC Rcd 10456 (2000) (“*Narrowband Second Report and Order and Second Further Notice of Proposed Rule Making*”).

⁹ *Id.* at 10458-59.

¹⁰ See Amendment of the Commission’s Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, ET Docket No. 92-100, Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Narrowband PCS, PP Docket No. 93-253, *Third Report and Order and Order on Reconsideration*, 16 FCC Rcd 9713, at 9722 ¶ 23 (2001) (“*Third Narrowband Report and Order and Order on Reconsideration*”).

¹¹ *Id.* at 9720-9721, ¶ 21.

¹² *Id.* at 9723, ¶¶ 1, 28.

¹³ Narrowband PCS Auction Closes, *Public Notice*, 16 FCC Rcd 18663 (2001) (“*Auction No. 41 Closing Public Notice*”).

Region	Channel Number	Channel Description	Frequency Bands (MHz)	Bandwidth (kHz)
Northeast	17	12.5 kHz/50 kHz paired	901.8250–901.8375, 930.70–930.75	62.5
South	16	12.5 kHz/50 kHz paired	901.8125–901.8250, 930.65–930.70	62.5
South	17	12.5 kHz/50 kHz paired	901.8250–901.8375, 930.70–930.75	62.5
Midwest	17	12.5 kHz/50 kHz paired	901.8250–901.8375, 930.70–930.75	62.5
Central	17	12.5 kHz/50 kHz paired	901.8250–901.8375, 930.70–930.75	62.5
West	17	12.5 kHz/50 kHz paired	901.8250–901.8375, 930.70–930.75	62.5

B. Rules and Disclaimers

1. Relevant Authority

Prospective bidders must familiarize themselves thoroughly with the Commission’s rules relating to narrowband PCS, contained in Title 47, Part 24 and Part 90 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in Title 47, Part 1 of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, “terms”) contained in this Public Notice; the *Auction No. 51 Comment Public Notice*; the *Part 1 Fifth Report and Order* (as well as prior and subsequent Commission proceedings regarding competitive bidding procedures);¹⁴ the *Narrowband PCS R&O/Further Notice*;¹⁵ the *Narrowband Second Report and Order and Second Further Notice of Proposed Rule*;¹⁶ and the *Third Narrowband Report and Order and Order on Reconsideration*.¹⁷

The terms contained in the Commission’s rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the

¹⁴ Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293 (2000) (modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)) (“*Part 1 Fifth Report and Order*”) (recons. pending). Other decisions regarding the Commission’s competitive bidding procedures include, but are not limited to, the following: Amendment of Part 1 of the Commission’s Rules—Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546, (2001) (“*Part 1 Seventh Report and Order*”) (amending the anti-collusion rule, which is codified at 47 C.F.R. § 1.2205(c)); Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, WT Docket 97-82, *Eighth Report and Order*, 17 FCC Rcd 2962 (2002) (amending Section 1.2110 of the Commission’s rules); and Amendment of Part 1 of the Commission’s Rules-Competitive Bidding Procedures, *Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*, FCC 03-98 (rel. May 8, 2003) (“*Order on Reconsideration of the Part 1 Fifth Report and Order*”) (further amending Section 1.2110 to exempt the gross revenues of the affiliates of a rural telephone cooperative’s officers and directors from attribution to the applicant and adopting other modifications to the competitive bidding rules).

¹⁵ Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS, Implementation of Section 309(j) of the Communications Act — Competitive Bidding, Narrowband PCS, GEN Docket No. 90-314, ET Docket No. 92-100, PP Docket No. 93-253, *Report and Order and Further Notice of Proposed Rule Making*, 12 FCC Rcd 12972 (1997) (“*Narrowband R&O/Further Notice*”).

¹⁶ *Narrowband Second Report and Order and Second Further Notice of Proposed Rule Making*, *supra* at note 8.

¹⁷ *Third Narrowband Report and Order and Order on Reconsideration*, *supra* at note 10.

responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554, or may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com. When ordering documents from Qualex, please provide the appropriate FCC document number (for example, FCC 01-135 for the *Third Narrowband Report and Order and Order on Reconsideration*).

2. Prohibition of Collusion

To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for any of the same or overlapping geographic license areas from communicating with each other during the auction about bids, bidding strategies, or settlements.¹⁸ The Bureau has previously stated that auction applicants who have applied for licenses in any of the same geographic areas, and who are also applicants for licenses in the same or competing services must affirmatively avoid all discussions with each other that affect, or in their reasonable assessment have the potential to affect their bidding or their bidding strategy.¹⁹ Accordingly, the prohibition in Section 1.2105(c) applies to communications between Auction No. 50 and Auction No. 51 applicants who have applied for licenses in any of the same or overlapping geographic license areas. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. Applicants for licenses in any of the same or overlapping geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants and conveys information concerning the substance of bids or bidding strategies between the applicants he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.²⁰

However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.²¹ The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for licenses covering the same geographic areas. Note that Auction No. 51 applicants and Auction No. 50 applicants for licenses in the same or overlapping geographic license areas will not be able to take advantage of these rule provisions,

¹⁸ See *Part I Seventh Report and Order*, 16 FCC Rcd 17546 (2001); *Part I Fifth Report and Order*, 15 FCC Rcd at 15297-98, ¶¶ 7-8. See also 47 C.F.R. § 1.2105(c).

¹⁹ See *Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E, and F Block Bidders*, *Public Notice*, DA 96-1460, 15 FCC Rcd 6196 (1996).

²⁰ See *In re Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A*, *Memorandum Opinion and Order*, 13 FCC Rcd 11973, 11977 ¶ 11 (1998) ("*Nevada Wireless*").

²¹ See *id.*, at 11978.

even though the licenses are not completely co-extensive. For example, assume that one applicant applies for several Major Trading Area (“MTA”) licenses in its Auction No. 50 FCC Form 175 and that a second applicant applies for a regional license in its Auction No. 51 FCC Form 175. If the first applicant selects licenses for MTAs that are within the region covered by the regional license selected by the second applicant, the two parties will have applied for licenses covering the same geographic areas. Consequently, unlike applicants who have applied for licenses that do not cover the same geographic areas, these two applicants will not be permitted to form a consortium or bid jointly for licenses after they file FCC Form 175.²² However, all applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175.²³ If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to Section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for licenses covering any of the same geographic areas.²⁴ By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with Section 1.2105(c).

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 significance to that application.²⁵ Thus, Sections 1.65 and 1.2105 require 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.²⁶

A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment G.

3. Due Diligence

Potential bidders seeking licenses for regions that are in the border area of Canada or Mexico will be subject to the terms of the coordination arrangements/protocols currently in effect with those respective countries.²⁷

Potential bidders also should be aware that certain applications (including those for modification),

²² See 47 C.F.R. § 1.2105(c)(3) and (4).

²³ 47 C.F.R. § 1.2105(c).

²⁴ See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (1995).

²⁵ 47 C.F.R. § 1.65.

²⁶ 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. *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555, ¶ 17.

²⁷ See 47 C.F.R. § 24.129 note. Current agreements and coordination arrangements between the United States and Canada or Mexico may be found on the Commission’s website under <http://www.fcc.gov/ib/sand/agree/welcome.html>.

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 incumbent licensees or the licenses available in Auction No. 51 may be commenced, may be pending, or may be subject to further review.²⁸ We note that resolution of these matters could have an impact on the availability of spectrum in Auction No. 51. Some of these matters (whether before the Commission or the courts) may not be resolved by the time of the auction.

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. 51.

Potential bidders may obtain information about licenses available in Auction No. 51 through the Bureau’s licensing databases on the World Wide Web at <http://wireless.fcc.gov/uls>. Potential bidders should direct questions regarding the search capabilities to the FCC Technical Support hotline at (202) 414-1250 (voice) or (202) 414-1255 (TTY), or via e-mail at auctech@fcc.gov. The hotline is available to assist with questions Monday through Friday, from 8:00 AM to 6:00 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded*. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. Furthermore, 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 database. Potential bidders are strongly encouraged to physically inspect any sites located in, or near, the region for which they plan to bid.

5. 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.²⁹ 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.

The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 51 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

²⁸ See *supra* notes 8 and 10.

²⁹ 47 C.F.R. § 1.2105.

- The first contact is a “cold call” from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service (“IRS”), Federal Trade Commission (“FTC”), Securities and Exchange Commission (“SEC”), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

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 regarding Auction No. 51 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

6. National Environmental Policy Act (“NEPA”) Requirements

Licensees must comply with the Commission’s rules regarding the National Environmental Policy Act (NEPA).³⁰ The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission’s NEPA rules for each such facility.³¹ The Commission’s NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission. For more information, see the Commission’s web site at <http://wireless.fcc.gov/siting/environment.html>.

C. Auction Specifics

1. Auction Date

The auction will begin on Wednesday, September 24, 2003. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses and packages will be conducted on each business day until bidding has stopped on all licenses and packages.

³⁰ 47 C.F.R. Ch. 1, Subpart I.

³¹ 47 C.F.R. §§ 1.1305-1.1319.

2. Auction Title

Auction No. 51 – Regional Narrowband PCS

3. Bidding Methodology

The bidding methodology for Auction No. 51 will be simultaneous multiple round with package bidding (or “package bidding”). The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically.

4. Pre-Auction Dates and Deadlines

Auction Seminar	July 31, 2003
Short-Form (FCC Form 175) Filing Window Opens.....	July 31, 2003; 12:00 p.m. ET
Short-Form (FCC Form 175) Application Deadline	August 8, 2003; 6:00 p.m. ET
Upfront Payments (via wire transfer)	August 26, 2003; 6:00 p.m. ET
Mock Auction	September 17 and 18, 2003
Auction Begins.....	September 24, 2003

5. Requirements for Participation

Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6:00 p.m. ET, August 8, 2003.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, August 26, 2003.
- Comply with all provisions outlined in this public notice.

6. General Contact Information

GENERAL AUCTION INFORMATION

General Auction Questions
Seminar Registration

FCC Auctions Hotline
(888) 225-5322, Press Option #2
or direct (717) 338-2888
Hours of service: 8:00 a.m. – 5:30 p.m. ET,
Monday through Friday

AUCTION LEGAL INFORMATION

Auction Rules, Policies, Regulations

Auctions and Industry Analysis Division
Legal Branch (202) 418-0660

LICENSING INFORMATION

Rules, Policies, Regulations
Licensing Issues
Due Diligence
Incumbency Issues

Commercial Wireless Division
(202) 418-0620

TECHNICAL SUPPORT

Electronic Filing
FCC Automated Auction System

FCC Auctions Technical Support Hotline
(202) 414-1250 (Voice),
(202) 414-1255 (TTY)
Hours of service: 8:00 a.m. – 6:00 p.m. ET,
Monday through Friday

PAYMENT INFORMATION

Wire Transfers
Refunds

FCC Auctions Accounting Branch
(202) 418-0578 or (202) 418-0496
(202) 418-2843 (Fax)

TELEPHONIC BIDDING

Will be furnished only to qualified bidders

FCC COPY CONTRACTOR

Additional Copies of
Commission Documents

Qualex International
Portals II, 445 12th Street, SW, Room CY-B402
Washington, DC 20554
(202) 863-2893
(202) 863-2898 (Fax)
qualexint@aol.com (E-mail)

PRESS INFORMATION

Meribeth McCarrick (202) 418-0654

FCC FORMS

(800) 418-3676 (outside Washington, DC)
(202) 418-3676 (in the Washington Area)
<http://www.fcc.gov/formpage.html>

FCC INTERNET SITES

<http://www.fcc.gov>
<http://wireless.fcc.gov/auctions>
<http://wireless.fcc.gov/uls>

II. SHORT-FORM (FCC FORM 175) APPLICATION REQUIREMENTS

Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment C to this public notice. The short-form application seeks the applicant's name and address; legal classification; status; bidding credit eligibility; identification of the license(s) sought; and the authorized bidders and contact persons. 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, as discussed below in Section II.D, "Provisions Regarding Defaulters and Former Defaulters," that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

A. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

All applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by Sections 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to file an "Exhibit A" providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in Section 1.2112 of the Commission's rules.³²

B. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)

Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure.³³ Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid.³⁴ As discussed above, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with applicants for the same geographic license area(s) after the deadline.³⁵ Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an "Exhibit B" to the FCC Form 175.

A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a

³² 47 C.F.R. § 1.2105 requires the disclosure on the short-form of the applicant's ownership information as set forth in 47 C.F.R. § 1.2112. Note that both of these sections were revised in the *Part 1 Fifth Report and Order*.

³³ 47 C.F.R. §§ 1.2105(a)(2)(viii), (c)(1).

³⁴ 47 C.F.R. § 1.2105(a)(2)(ix).

³⁵ See Section I.B.2, above.

consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants.³⁶ While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

C. Eligibility

1. Bidding Credit Eligibility (FCC Form 175 Exhibit C)

A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests.³⁷

In the *Narrowband Second Report and Order*, the Commission adopted two tiers of bidding credits to promote and facilitate the participation of small businesses in the competitive bidding for licenses in the narrowband PCS service.³⁸ Therefore, bidding credits are available to small and very small businesses, or consortia thereof, as follows for Auction No. 51:

- A bidder with attributed average annual gross revenues of not more than \$40 million for the preceding three years ("small business") will receive a 15 percent discount on its winning bids;
- A bidder with attributed average annual gross revenues of not more than \$15 million for the preceding three years ("very small business") will receive a 25 percent discount on its winning bids.³⁹

Bidding credits are not cumulative; a qualifying applicant receives either the 15 percent or 25 percent bidding credit on its winning bid, but only one credit per license.

2. Tribal Land Bidding Credit

To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. *See* Section V.E. of this Public Notice.

3. Applicability of Part 1 Attribution Rules

Controlling interest standard. On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order*, in which the Commission, *inter alia*, adopted a "controlling interest" standard for attributing to auction applicants the gross revenues of their investors and affiliates in determining small business eligibility for future auctions.⁴⁰ The Commission observed that the rule modifications adopted in the

³⁶ 47 C.F.R. § 1.2105(c)(4)(i), (ii).

³⁷ *See* 47 C.F.R. §§ 1.2110(f), 24.321.

³⁸ *See Narrowband Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd at 10478, ¶ 44.

³⁹ *See* 47 C.F.R. §§ 1.2110(f), 24.321

⁴⁰ *See Part 1 Fifth Report and Order*, 15 FCC Rcd at 15323-27, ¶¶ 59-67.

various Part 1 orders would result in discrepancies and/or redundancies between certain of the new Part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the Part 1 proceeding.⁴¹ More recently, the Commission made further modifications to its rules governing the attribution of gross revenues for purposes of determining small business eligibility. These changes included exempting the gross revenues of the affiliates of a rural telephone cooperative's officers and directors from attribution to the applicant if certain specified conditions are met.⁴² The Commission also clarified that in calculating an applicant's gross revenues under the controlling interest standard, the personal net worth, including personal income, of its officers and directors will not be attributed to the applicant.⁴³

Eligibility for small business preferences will be determined based on the attribution rules in effect at the short-form application deadline.⁴⁴ Accordingly, the "controlling interest" standard as recently modified, and the Part 1 rules that superseded inconsistent service-specific rules, will control in Auction No. 51.

Control. The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, ownership of at least 50.1 percent of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis.⁴⁵ The following are some common indicia of *de facto* control:

- the entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- the entity plays an integral role in management decisions.

Attribution for small and very small business eligibility. In determining which entities qualify as small

⁴¹ *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15330, ¶ 78. Pursuant to this delegation of authority, the Bureau made conforming edits to service-specific competitive bidding rules and portions of the Part 1 general competitive bidding rules. These modifications became effective on August 8, 2002. Amendment of Parts 1, 21, 22, 24, 25, 26, 27, 73, 74, 80, 90, 95, 100, and 101 of the Commission Rules – Competitive Bidding, *Order*, 17 FCC Rcd 6534 (2002).

⁴² *Order on Reconsideration of the Part 1 Fifth Report and Order*, FCC 03-98, at ¶¶ 10-18.

⁴³ However, to the extent that the officers and directors of the applicant are controlling interest holders of other entities, the gross revenues of those entities will be attributed to the applicant. *Order on Reconsideration of the Part 1 Fifth Report and Order*, FCC 03-98, at ¶¶ 8-9.

⁴⁴ *See Part 1 Fifth Report and Order*, 15 FCC Rcd at 15327, ¶ 67

⁴⁵ For further guidance on the issue of *de facto* control, see the Commission's affiliation rule at 47 C.F.R. § 1.2110(b)(5); *see also* *Ellis Thompson Corp.*, *Summary Decision of Administrative Law Judge Joseph Chachkin*, 10 FCC Rcd 12554, 12555-56 (1994), in which the Commission identified the following factors used to determine control of a business: (1) use of facilities and equipment; (2) control of day-to-day operations; (3) control of policy decisions; (4) personnel responsibilities; (5) control of financial obligations; and (6) receipt of monies and profits; *Intermountain Microwave*, 12 FCC 2d 559 (1963), and *Application of Baker Creek Communications, L.P.*, for Authority to Construct and Operate Local Multipoint Distribution Services in Multiple Basic Trading Areas, *Memorandum Opinion and Order*, 13 FCC Rcd 18709 (1998).

or very small businesses, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, the applicant and its affiliates, will be counted in determining small business eligibility.

A consortium of small or very small businesses is a “conglomerate organization formed as a joint venture between or among mutually independent business firms,” each of which *individually* must satisfy the definition of small or very small business in Sections 1.2110(f) and 24.321. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. We note that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

4. Supporting Documentation

Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as small or very small businesses (or consortia of small or very small businesses) for this auction.⁴⁶

Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form’s instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

Small or very small business eligibility (Exhibit C). Entities applying to bid as small or very small businesses (or consortia of small or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (1) the applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests. **Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period.** If the applicant is applying as a consortium of small or very small businesses, this information must be provided for each consortium member.

D. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D)

Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency.⁴⁷ In addition, each

⁴⁶ 47 C.F.R. § 1.2105.

⁴⁷ 47 C.F.R. § 1.2105(a)(2)(x).

applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interest have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110 of the Commission's rules.⁴⁸ **Applicants must include this statement as Exhibit D of the FCC Form 175.** Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, 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.

“Former defaulters” — *i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies — are eligible to bid in Auction No. 51, provided that they are otherwise qualified. However, as discussed *infra* in Section III.D.3, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.⁴⁹

E. Installment Payments

Installment payment plans will not be available in Auction No. 51.

F. Other Information (FCC Form 175 Exhibits E and F)

Applicants owned by minorities or women, as defined in 47 C.F.R. § 1.2110(c)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of “designated entities” in its auctions. Applicants wishing to submit additional information may do so on Exhibit F (Miscellaneous Information) to the FCC Form 175.

G. Minor Modifications to Short-Form Applications (FCC Form 175)

After the short-form filing deadline (August 8, 2003), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official or change control of the applicant or change bidding credits). *See* 47 C.F.R. § 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these 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: auction51@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 51. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

⁴⁸ 47 C.F.R. § 1.2105(a)(2)(xi).

⁴⁹ 47 C.F.R. § 1.2106(a).

A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850. Questions about other changes should be directed to Christopher Shields of the Auctions and Industry Analysis Division at (202) 418-0660.

H. Maintaining Current Information in Short-Form Applications (FCC Form 175)

Applicants have an obligation under 47 C.F.R. §1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 C.F.R. § 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. PRE-AUCTION PROCEDURES

A. Auction Seminar

On Thursday, July 31, 2003, the FCC will sponsor a free seminar for Auction No. 51 at the Federal Communications Commission, located at 445 12th Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, the FCC Automated Auction System, and the narrowband PCS and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

To register, complete the registration form found in Attachment B and submit it by Tuesday, July 29, 2003. Registrations are accepted on a first-come, first-served basis.

B. Short-Form Application (FCC Form 175) — Due August 8, 2003

In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6:00 p.m. ET on August 8, 2003. Late applications will not be accepted.

There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* Section III.D, *below*.

1. Electronic Filing

Applicants must file their FCC Form 175 applications electronically.⁵⁰ Applications may generally be filed at any time beginning at noon ET on July 31, 2003, until 6:00 p.m. ET on August 8, 2003. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on August 8, 2003.

Applicants must press the “SUBMIT Application” button on the “Submission” page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); hours of service

⁵⁰ 47 C.F.R. § 1.2105(a).

Monday through Friday, from 8:00 AM to 6:00 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded.*

Applicants can also contact Technical Support via e-mail. To obtain the address, click the **Support** tab on the Form 175 Homepage.

2. Completion of the FCC Form 175

Applicants should carefully review 47 C.F.R. § 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of this public notice. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D to this public notice provide information on the required attachments and appropriate formats.

3. Electronic Review of FCC Form 175

The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. There is no fee for accessing this system. *See* Attachment C for details on accessing the review system.

Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. NOTE: Applicants should not include sensitive information (*i.e.*, TIN/EIN) on any exhibits to their FCC Form 175 applications.

C. Application Processing and Minor Corrections

After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

As described more fully in the Commission's rules, after the August 8, 2003, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).⁵¹

D. Upfront Payments — Due August 26, 2003

In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6:00 p.m. ET on August 26, 2003.

⁵¹ 47 C.F.R. § 1.2105; *see also* Two Way Radio of Carolina, Inc., *Memorandum Opinion and Order*, 14 FCC Rcd 12035 (1999).

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 51 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the August 26, 2003, deadline will result in dismissal of the application and disqualification from participation in the auction.

1. Making Auction Payments by Wire Transfer

Wire transfer payments must be received by 6:00 p.m. ET on August 26, 2003. 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: A51U)
FCC CODE 1 (same as FCC Form 159, block 28A: “51”)
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.

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). On the cover sheet of the fax, write “Wire Transfer — Auction Payment for Auction Event No. 51.” In order to meet the Commission’s upfront payment deadline, an applicant’s payment must be credited to the Commission’s account by the deadline.⁵² **Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.**

⁵² Letter from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Patrick Shannon, Esq., Counsel for Lynch 3G Communications Corporation, DA 03-1944, dated June 13, 2003.

2. FCC Form 159

A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E to this public notice. An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

3. Amount of Upfront Payment

In the *Part 1 Order* the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction.⁵³ In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that “former defaulters,” *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-“former defaulters.”⁵⁴ For purposes of this calculation, the “applicant” includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by Section 1.2110 of the Commission’s rules (as amended in the *Part 1 Fifth Report and Order*).⁵⁵

In the *Auction No. 51 Comment Public Notice*, we proposed that the amount of the upfront payment would determine the initial maximum eligibility (as measured in bidding units) for each bidder.⁵⁶ Each license is assigned a specific number of bidding units equal to the upfront payment, on a bidding unit per dollar basis. For a package, we proposed to calculate the bidding units by adding together the bidding units of the individual licenses that make up the package.⁵⁷ In order to bid on a license or package, otherwise qualified bidders that applied for the license(s) on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to the license or package.⁵⁸ At a minimum, therefore, an applicant’s total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to bid (via bids on licenses and/or packages) at any given time.

⁵³ Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Proceeding, WT Docket No. 97-82, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 12 FCC Rcd. 5686, 5697-5698, ¶ 16 (1997) (“*Part 1 Order*”).

⁵⁴ *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-17, ¶¶ 40-42; 47 C.F.R. § 1.2106(a); *see* 47 C.F.R. §§1.2105(a)(2)(xi).

⁵⁵ *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-17, ¶¶ 40-42.

⁵⁶ *Auction No. 51 Comment Public Notice* at 8.

⁵⁷ *Id.*

⁵⁸ Bidders are permitted to bid on and create packages from only those licenses they selected on FCC Form 175.

In the *Auction No. 51 Comment Public Notice*,⁵⁹ the Bureau proposed to calculate upfront payments on a license-by-license basis using the following formula:

$$\$0.00001 * \text{kHz} * \text{License Area Population}^{60} \text{ rounded.}^{61}$$

We received no comments on this issue. Therefore, the Bureau adopts its proposed upfront payments. The specific upfront payments and bidding units for each license are set forth in Attachment A of this Public Notice.

In calculating its upfront payment amount, an applicant should determine the bidding units of all the licenses it may wish to win at one time and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all of these licenses. **Applicants should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.**

Example: Upfront Payments and Bidding Flexibility

Market Number	Channel Number	Market Name	Bidding Units	Upfront Payment
RPC001	17	Northeast	34,000	\$34,000
RPC002	17	South	38,000	\$38,000

If a bidder wishes to bid on both licenses in a round or on a package of both licenses, it must have selected both on its FCC Form 175 and purchased at least 72,000 bidding units (34,000 + 38,000). If a bidder only wishes to bid on one license, but not both, purchasing 38,000 bidding units would meet the requirement for either license. The bidder would be able to bid on either license, but not both at the same time. If the bidder purchased only 34,000 bidding units, it would have enough eligibility for the Northeast license but not for the South license.

Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

NOTE: An applicant may, on its FCC Form 175, apply for every applicable license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

⁵⁹ *Auction No. 51 Comment Public Notice* at 8.

⁶⁰ All population figures are from the 2000 U.S. Census, U.S. Department of Commerce, Bureau of the Census. See Census 2000 Summary File 1 (SF1) and July 3, 2001, News Releases covering the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

⁶¹ Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

4. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

The Commission will use wire transfers for all Auction No. 51 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed below be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser or Tim Dates, at (202) 418-2843 by August 26, 2003. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418-0578 or Tim Dates at (202) 418-0496.

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

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Section V.G., *below*.

E. Auction Registration

Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) and the other containing the SecurID cards, both of which are required to place bids. **These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.**

Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Monday, September 15, 2003, should contact the Auctions Hotline at (717) 338-2888. Receipt of both registration mailings is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing in person at the FCC headquarters, located at 445 12th St., SW, Washington, DC 20554. Only an authorized representative or certifying official, as designated on an 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.

F. Remote Electronic Bidding

The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically. Each applicant should indicate its bidding preference — electronic or telephonic — on the FCC Form 175. In either case, **each authorized bidder** must have its own SecurID card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the FCC Automated Auction System user manual 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; therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 51. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes 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.

G. Mock Auction

All qualified bidders will be eligible to participate in a mock auction on Wednesday, September 17, and Thursday, September 18, 2003. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. AUCTION EVENT

The first round of bidding for Auction No. 51 will begin on Wednesday, September 24, 2003. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

1. Simultaneous Multiple Round Auction with Package Bidding

In the *Auction No. 51 Comment Public Notice*, we proposed to award all licenses in Auction No. 51 in a simultaneous multiple round auction with package bidding.⁶² We received no comments on this issue. We conclude that it is operationally feasible and appropriate to auction the regional narrowband PCS licenses through a simultaneous multiple round auction with package bidding. Unless otherwise announced, bids will be accepted on all individual licenses and on packages of licenses in each round of the auction. We believe this approach allows bidders to express complementarities among licenses, and we believe this approach does not unreasonably disadvantage bidders who do not wish to win packages of licenses. We also believe this approach is administratively efficient.

⁶² *Auction No. 51 Comment Public Notice* at 7.

2. Maximum Eligibility

In the *Auction No. 51 Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder.⁶³ We received no comments on this issue.

For Auction No. 51 we adopt this proposal. The amount of the upfront payment submitted by a bidder determines the maximum eligibility (in bidding units) for each bidder. Note again that each license is assigned a specific number of bidding units equal to the upfront payments listed in Attachment A on a bidding unit per dollar basis, and the number of bidding units associated with a package is calculated by adding together the bidding units of the individual licenses that make up the package. The total upfront payment defines the initial maximum number of bidding units on which the applicant will be permitted to bid in a given round. As there is no provision for increasing a bidder's eligibility during the course of an auction, prospective bidders are cautioned to calculate their upfront payments carefully. **The total upfront payment does not affect the total dollars a bidder may bid on any given license or package.**

3. Activity Rule

In order to ensure that the auction closes within a reasonable period of time, an activity rule provides incentives for bidders to participate throughout the auction. The activity rule requires each bidder to have active bids in each round that account for a specified fraction of the bidder's current eligibility, as measured in bidding units. A bidder that does not satisfy the activity rule will either use an activity rule waiver (if any remain) or lose bidding eligibility for the next round. Losing eligibility matters to bidders because a bidder's bidding activity cannot exceed its current eligibility.

In the *Auction No. 51 Comment Public Notice*, we proposed to measure a bidder's *bidding activity* in a round as the maximum number of bidding units the bidder can win considering new bids placed and provisionally winning bids renewed in that round. Thus, when a bidder submits bids in a round the FCC Automated Auction System will determine the set of bids, among the bidder's new bids and renewed provisionally winning bids, that contains the most bidding units and has no overlap among the licenses. We also proposed that a bidder be considered active if the bidder has provisionally winning bids from the previous round. A bidder's bids made in different rounds will be considered mutually exclusive,⁶⁴ so the bidding units associated with provisionally winning bids must be viewed independently from the bidding units associated with current round bids. We proposed to define a bidder's *eligibility activity* in a round as the greater of (i) its bidding activity in the round and (ii) the bidding units associated with the bidder's provisionally winning bids from the prior round.⁶⁵

For Auction No. 51, we proposed that, in each round of the auction, a bidder desiring to maintain its current eligibility would be required to have eligibility activity equal to sixty percent (three-fifths) of its current eligibility.⁶⁶ For a bidder that failed to meet the activity requirement in a given round, the

⁶³ *Auction No. 51 Comment Public Notice* at 8.

⁶⁴ That is, for each bidder, some or all of its bids from the current round or a previous round, but not both, can be provisional winners.

⁶⁵ *Auction No. 51 Comment Public Notice* at 9.

⁶⁶ *Id.*

Automated Auction System would reduce the bidder's eligibility for the next round to five-thirds times its eligibility activity in the current round.⁶⁷ Thus, a bidder's eligibility in the current round is equal to either its eligibility in the previous round (bidder met the activity requirement) or five-thirds of its eligibility activity in the previous round (bidder did not meet the activity requirement), whichever is less:

$$\text{Eligibility (t)} = \text{Min (Eligibility (t-1), } 5/3 * \text{Eligibility Activity (t-1))}$$

Activity rule waivers provide an exception to this rule and are discussed in the next section, "Activity Rule Waivers and Reducing Eligibility."

In addition, we proposed to retain the discretion to increase to eighty percent (four-fifths) the proportion of bidding units on which bidders must be active to retain their current eligibility.⁶⁸ Any such change will be announced to bidders prior to the beginning of the round in which the change takes effect. For a bidder that failed to meet an eighty percent activity requirement in a given round, the Automated Auction System would reduce the bidder's eligibility for the next round to five-fourths times its eligibility activity in the current round.

CAUTION: If the Bureau exercises its discretion to increase the activity requirement to eighty percent, bidders must carefully check their current activity during the bidding period of the first round following the change. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity after an increase in the activity requirement. Bidders may check their activity against the required activity level by using the bidding system's bidding module.

We received no comments on these proposals. Because employing an activity rule has proven successful in maintaining proper pace in previous auctions, we adopt our proposal for Auction No. 51.

4. Activity Rule Waivers and Reducing Eligibility

In the *Auction No. 51 Comment Public Notice*, we proposed that each bidder in the auction would be provided five activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction.⁶⁹ No comments were received on this issue.

Based upon our experience in previous auctions, **we adopt our proposal that each bidder be provided five activity rule waivers that may be used in any round during the course of the auction.** Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's eligibility activity in the current round being below the required level. An activity rule waiver applies to an entire round of bidding and not to a particular license or package. We are satisfied that our practice of providing five waivers over the course of the auction provides a sufficient number of waivers and flexibility to the bidders while safeguarding the integrity of the auction.

The FCC Automated Auction System assumes that bidders with insufficient eligibility activity would

⁶⁷ The bidder's new eligibility would be its eligibility activity in the current round multiplied by the reciprocal of the activity requirement (1/activity requirement) — in this case, (1/(3/5)), or 5/3.

⁶⁸ *Auction No. 51 Comment Public Notice* at 10.

⁶⁹ *Auction No. 51 Comment Public Notice* at 10.

prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an “automatic waiver”) at the end of any round where a bidder’s eligibility activity is below the activity requirement unless: (1) the bidder has no activity rule waivers remaining; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. **If a bidder has no waivers remaining and does not satisfy the activity requirement, its current eligibility will be permanently reduced, possibly eliminating the bidder from further bidding in the auction.**

A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the “reduce eligibility” function in the bidding system. In this case, the bidder’s eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in “Activity Rule” (*see* Section IV.A.3 discussion *above*). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

Finally, the Bureau adopts its proposal not to permit bidders to submit an activity rule waiver proactively as a means to keep the auction open absent bidding activity.⁷⁰

5. Auction Stopping Rules

For Auction No. 51, the Bureau proposed to employ a two-round simultaneous stopping rule; that is, the auction would close after two consecutive rounds with no new bids. The Bureau also proposed that, for purposes of the stopping rule, last and best bids would be considered new bids (*i.e.*, would keep the auction open) but renewed bids would not.⁷¹

In addition, we proposed that the Bureau reserve the right to declare that the auction will end after a designated number of additional rounds (“special stopping rule”). We proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time.⁷² Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the activity requirement (where bidders will be required to maintain a higher level of bidding activity)⁷³, increasing the number of rounds per day, and/or adjusting the minimum acceptable bids and bid increments for the licenses.

We received no comment on this issue. We adopt the above proposals. Auction No. 51 will begin under the two-round simultaneous stopping rule, and the Bureau will retain the discretion to invoke the special stopping rule. We believe that these stopping rules are most appropriate for Auction No. 51 because our experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

⁷⁰ *Id.*

⁷¹ *Auction No. 51 Comment Public Notice* at 16.

⁷² *Id.*

⁷³ If the activity requirement percentage is at sixty percent (three-fifths) we will increase it to eighty percent (four-fifths).

6. Auction Delay, Suspension, or Cancellation

In the *Auction No. 51 Comment Public Notice*, we proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.⁷⁴ Because this approach has proven effective in resolving exigent circumstances in previous auctions, we adopt our proposed auction cancellation rules. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

1. Round Structure

The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day.

The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

2. Packages

The Bureau proposed that, in addition to bidding on individual licenses, bidders be permitted to create and bid on up to twelve different packages of their own choosing during the course of the auction.⁷⁵ A bid on an individual license does not count as a bid on a package; packages consist of two or more licenses. Bidders will not be required to identify or create their packages before the start of the auction, but may create their packages as the auction progresses.⁷⁶ A bidder may modify or delete a package it has created up until the point where it has bid on the package and the round has closed. If the bidder submits a bid on a package and subsequently removes the bid during the same round, the bidder has the option of also deleting or modifying the package. However, once a bidder bids on a package and the round closes, the package may not be modified or deleted and counts as one of the bidder's twelve allowable packages.

We received no comments on this issue. We adopt the above proposals regarding packages.

⁷⁴ *Auction No. 51 Comment Public Notice* at 11.

⁷⁵ *Auction No. 51 Comment Public Notice* at 12.

⁷⁶ Bidders are limited to bidding on, and hence creating packages from, those licenses that they selected on their FCC Form 175 and for which they have eligibility. *See generally* III.D.3, "Amount of Upfront Payment."

3. Reserve Price or Minimum Opening Bid

Background. The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because mutually exclusive applications were filed), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.⁷⁷ Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.⁷⁸ Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned.⁷⁹ The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.⁸⁰

In the *Auction No. 51 Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 51. The Bureau also proposed to retain discretion to lower the minimum opening bids.⁸¹ Specifically, for Auction No. 51, the Bureau proposed the following license-by-license formula for calculating minimum opening bids:

$$\$0.00001 * \text{kHz} * \text{License Area Population},^{82} \text{rounded}.^{83}$$

For a package, the Bureau proposed to calculate the minimum opening bid by adding together the minimum opening bids of the individual licenses that make up the package.⁸⁴

We received no comments on this issue. Consequently, we adopt our proposed minimum opening bids for Auction No. 51. The minimum opening bids we adopt for Auction No. 51 are reducible at the discretion of the Bureau. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any requests to reduce the minimum opening bid on specific licenses.

⁷⁷ See Balanced Budget Act, section 3002(a), 47 U.S.C. § 309(j)(4)(F).

⁷⁸ See *Part 1 Third Report and Order*, 13 FCC Rcd 374, 455-456 ¶ 141 (1997).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Auction No. 51 Comment Public Notice* at 12.

⁸² All population figures are from the 2000 U.S. Census, U.S. Department of Commerce, Bureau of the Census. See Census 2000 Summary File 1 (SF1) and July 3, 2001, News Releases covering the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

⁸³ Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

⁸⁴ *Auction No. 51 Comment Public Notice* at 12.

The specific minimum opening bids for each license available in Auction No. 51 are set forth in Attachment A.

4. Minimum Acceptable Bids and Bid Increments

In the *Auction No. 51 Comment Public Notice*, the Bureau proposed that in each round, eligible bidders will be able to place bids on a given license or package in any of nine different amounts.⁸⁵ The Automated Auction System interface will list the nine acceptable bid amounts for each license and package. In the first round of the auction, the minimum acceptable bid for a license or package will be equal to its minimum opening bid. The Bureau proposed that in all subsequent rounds, the minimum acceptable bid for a license or package will be the greatest of: (i) the minimum opening bid; (ii) the bidder's own previous high bid on a license or package plus $x\%$, where the Bureau will specify the value of x in each round; and (iii) the *current price estimate* of the license plus $z\%$, or for a package, the sum of the current price estimates for the licenses in the package plus $z\%$, where the Bureau will specify the value of z in each round.

Current price estimates are estimates of the individual prices of the licenses being auctioned. The estimates take into account the minimum opening bids for the licenses as well as all the bids placed in the auction and, therefore, reflect all available information that has been revealed in the auction about the relative demands for the licenses. For a provisionally winning package, the current price estimates for the licenses that make up the package are set such that the sum of those current price estimates equals the provisionally winning bid on the package. These estimates are generated during round results following every round of the auction as part of the mathematical optimization process used by the Bureau to determine the provisionally winning bids. The precise methodology used to calculate current price estimates is described in Attachment F. Until a bid is placed on a license or on a package containing that license, by any bidder in any round, the current price estimate is the FCC bid amount.

The Bureau proposed to retain an exception to part (iii) for calculating the minimum acceptable bid for a “global” package — a package consisting of all six of the licenses available in the auction. After the first round of the auction, part (iii) of the minimum acceptable bid rule for a global package will always be the revenue generated by the provisionally winning bid set in the previous round plus $w\%$, where the Bureau will specify the value of w in each round.

The result of the minimum acceptable bid calculation will be rounded using our standard rounding procedure.⁸⁶ The Bureau proposed to initially set x at ten, z at five and w at five, and to retain the discretion to adjust these variables during the course of the auction.

For bids higher than the minimum acceptable bid — *i.e.*, multi-increment bids — we proposed to define the amount of the additional bid increments as $v\%$ of the minimum acceptable bid, where the minimum acceptable bid is determined as discussed above. The Bureau proposed to initially set v at ten and to retain the discretion to adjust the amount during the course of the auction. Thus, when v equals ten, a bidder will be able to place multi-increment bids of the minimum acceptable bid plus approximately 10%, 20%, etc. with the maximum bid being approximately equal to the minimum acceptable bid plus 80%.

⁸⁵ Bidders must have selected the licenses on FCC Form 175 and must have sufficient eligibility to place a bid on the particular licenses or packages. See III.D.3, “Amount of Upfront Payment,” *supra*.

⁸⁶ Results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

We received no comments on these issues. The Bureau adopts the above proposals. The Bureau retains the discretion to change minimum acceptable bids, and to do so on a license-by-license and package-by-package basis, if circumstances so dictate. If the Bureau exercises this discretion, it will announce any change in the Automated Auction System.⁸⁷

5. Winning and Provisionally Winning Bids

In the *Auction No. 51 Comment Public Notice*, the Bureau proposed the procedures set forth below.⁸⁸

Winning bids in a package bidding auction are the set of “consistent” bids (non-overlapping, and for each winning bidder, only bids made or renewed in the same round) on individual licenses and packages that maximizes total revenue when the auction closes.⁸⁹ *Provisionally winning bids* are the set of consistent bids that maximizes total revenue in a particular round (they would win if the auction were to close in that round), assigning each license to either a bidder or the FCC. When determining winning and provisionally winning bids, all bids made in every round throughout the course of the auction (except for bids that are placed and subsequently removed during the same round) will be considered. In addition, each license is treated as having a bid placed by the FCC at \$1000 less than the minimum opening bid. This procedure will ensure that a bid on a license or package at the minimum opening bid always beats the FCC bid.⁹⁰

Since there can be more than one set of consistent bids that produces the maximum revenue, we proposed to use a procedure that randomly selects among these tied sets when determining the provisionally winning bids. This tie breaking procedure involves two steps: (1) the assignment of a *selection number* to each bid,⁹¹ and (2) the determination of, among all tied bid sets, the set that produces the *maximum sum of*

⁸⁷ As described further in the “Last and Best Bids” and “Renewed Bids” sections, there are two exceptions to the minimum acceptable bid requirement. First, bidders who choose to place no further bids in the auction may place “last and best bids” at any amount between the bidder’s previous high bid — or, if the bidder has not placed a bid on the license or package, the minimum opening bid — and the eighth increment above the minimum acceptable bid. Second, at any time bidders may “renew” their highest previous bid on a license or package without increasing the bid; however, a bidder is not conferred activity of any kind for renewing a non-provisionally winning bid. Because bids in each round are considered mutually exclusive, renewing a provisionally winning bid does not double count that bid towards a bidder’s total eligibility activity credit.

⁸⁸ *Auction No. 51 Comment Public Notice* at 13-14.

⁸⁹ If the auction closes with any license(s) unsold, the unsold license(s) will remain held by the FCC.

⁹⁰ For example, suppose Bidder 1 bids \$13,000 for License A; there are no bids for License B, which has a minimum opening bid of \$10,000; and Bidder 2 bids \$20,000 for Package AB. In determining the provisional winners, we will consider License B to have been bid on by the FCC at \$1000 less than the minimum opening bid, i.e., \$9,000. The provisional winning set will therefore consist of Bidder 1 holding License A and the FCC holding License B because the sum of their bids (\$13,000+ \$9,000 = \$22,000) exceeds Bidder 2’s bid for Package AB (\$20,000).

⁹¹ A pseudo-random number generator based on the L’Ecuyer algorithms will be used to assign a selection number to each bid. A description of the L’Ecuyer algorithms can be found in L’Ecuyer, P. (1999) “Good Parameters and Implementations for Combined Multiple Recursive Random Number Generators” *Operations Research* 47 (1), pp.159-164. A longer version of this paper and the C code for the algorithms can be found on the author’s website at <http://www.iro.umontreal.ca/~lecuyer/papers.html>.

selection numbers.

A bid's *selection number* is the sum of n pseudo-random numbers where n is the number of licenses comprising the bid's package. A bid's selection number will be included in the publicly-available round results released after each round.

Selection numbers will be generated for each license in each bid in each round. In the event that more than one set of consistent bids produces the maximum revenue, the second step of the tie breaking procedure will determine the provisionally winning bid set. Computer software will be used to determine the consistent set that produces the maximum revenue and the maximum sum of selection numbers.⁹² Each license in each bid will be assigned a new selection number in every round. Consequently, if there are ties, the set of provisionally winning bids may change even after a round in which there are no new bids. The solver will not be run after the last round of the auction, so that the winning set is the same as the set of provisional winners generated after the next-to-the-last round (*i.e.*, there won't be any surprise winners).

Please note that it is possible that a provisionally winning bid might not be the highest bid on the particular license or package. This possibility is primarily due to each bidder's bids being considered mutually exclusive across rounds. For example, if one bidder has placed the highest bid on each of two different licenses in two different rounds (and did not renew the earlier of the two bids), then those two bids are considered as mutually exclusive and only one of them can be a provisionally-winning bid.

We received no comments on these proposals. The Bureau adopts the above procedures regarding winning and provisionally winning bids.

6. Last and Best Bids

In the *Auction No. 51 Comment Public Notice*, we proposed to allow bidders that wish to drop out of the auction or that believe they are about to lose their bidding eligibility to have an opportunity before they drop out to place up to two mutually exclusive sets of "last and best" bids on any licenses or packages for which they remain eligible.⁹³ This is a limited exception to minimum acceptable bids and to click-box bidding. Such bids may be of any amount (in thousand dollar increments) between the bidder's previous high bid on the license or package and the amount of the highest acceptable bid for the license or package in the current round (the eighth increment above the minimum acceptable bid).⁹⁴ If a bidder chooses this option, it will not be permitted to make any further bids during the auction.

We received no comments on this issue. Therefore, we adopt our proposal.

⁹² The computer software will not need to identify all consistent sets that produce the maximum revenue except in the rare chance that more than one consistent set of bids produces both the maximum revenue and the maximum sum of selection numbers. If such a case exists, all such sets will be generated and assigned a random number. The set with the largest associated random number will be the set of provisionally winning bids.

⁹³ *Auction No. 51 Comment Public Notice* at 15.

⁹⁴ If the bidder has never placed a bid on the license or package, the lower bound on the last and best bid amount will be equal to the minimum opening bid.

7. Renewed Bids

Without regard to the minimum acceptable bid requirement, we proposed to allow a bidder to “renew” in the current round the highest previous bid it made on any license or package; that is, it may resubmit the bid without increasing the amount bid. No eligibility activity or bidding activity is conferred for renewing a non-provisionally winning bid. Renewed provisionally winning bids confer bidding activity (non-renewed provisionally winning bids count toward eligibility activity). Renewed bids will be treated as being made in the current round.⁹⁵

Renewals provide bidders a means to ensure that bids from previous rounds are considered *in addition to* the bids placed in the current round. Otherwise, bids made in different rounds are treated as mutually exclusive, so that the bidder may win some or all of the bids from the current round, or a previous round, but not both.

We received no comments on this issue. Therefore, we adopt our proposal.

8. Bidding

During a round, a bidder may submit new bids or renewed bids for as many licenses and packages as it wishes (subject to eligibility requirements, its FCC Form 175 license selection, and the twelve package limitation); remove bids placed in the same bidding round; or permanently reduce eligibility. Bidders also have the option of making multiple submissions in each round. If a bidder submits multiple bids for a single license or package in the same round, the system takes the last bid entered as that bidder’s bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed its bid do not count towards the bidder’s activity at the close of the round.

Bidding is constrained by the eligibility and activity rules, which determine both minimum and maximum permissible levels of bidding, as measured in bidding units. As previously discussed, minimum bidding, as measured in bidding units, is constrained by the activity rules. In each round, a bidder desiring to maintain its current eligibility and not use an activity rule waiver must be active, based on eligibility activity, on licenses associated with enough bidding units to meet the activity requirement for the current round. For more details, please refer to Section IV.A.3. “Activity Rule.”

Maximum bidding, as measured in bidding units, is constrained by the eligibility rules. *Bidding activity* for a round, defined as the maximum number of bidding units a bidder can win considering new bids and renewed provisionally winning bids placed in that round, cannot exceed current eligibility. That is, when a bidder submits a set of bids in a round, the system will not accept the set of bids if it determines that the bidding activity generated by those bids exceeds the bidder’s current eligibility. Bidding in a round is further limited by the requirement that a bidder’s *bidding exposure* in a round must be less than or equal to its initial eligibility. Bidding exposure is the maximum number of bidding units a bidder can win considering all the bids (new, renewed provisionally winning or non-provisionally winning) placed in the round. Similarly, when a bidder submits a set of bids in a round, the system will not accept the set of bids if it determines that the bidding exposure generated by those bids exceeds the bidder’s initial eligibility. In either case, if a set of bids is rejected, the system will notify the bidder that its bids have not been accepted and report which rule is in violation.

Bidders are permitted only to bid on the specific licenses they selected on their FCC Form 175. Any

⁹⁵

Auction No. 51 Comment Public Notice at 15.

packages they create must be comprised entirely of licenses selected on their Form 175. The bid submission screens are customized using the bidder's Form 175 information, and will not permit bidding on non-selected licenses (or packages of those licenses).

Please note that all bidding will take place remotely either through the FCC Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round.) There will be no on-site bidding during Auction No. 51.

In order to access the bidding functions of the FCC Automated Auction System, bidders must be logged in during the bidding round using the bidder identification number provided in the registration materials, and the passcode generated by the SecurID card. Bidders are strongly encouraged to print bid confirmations for each round after they have completed all of their activity for that round.

In each round, eligible bidders will be able to place bids on a given license or package in any of nine different amounts.⁹⁶ Bidders may use the drop-down box to select from among the nine bid amounts; to renew any bids (if applicable); or to remove any bids made within the current round.

Finally, bidders are cautioned in selecting their bid amounts because, as explained in the following section, bidders are not permitted to withdraw bids from a previous round, even if mistakenly or erroneously made. As explained previously, when determining winning and provisionally winning bids, we consider all bids made throughout the course of the auction.⁹⁷

9. Bid Removal and Bid Withdrawal

In the *Auction No. 51 Comment Public Notice*, we proposed bid removal and bid withdrawal procedures.⁹⁸ With respect to bid withdrawals, we proposed not to allow any bid withdrawals in Auction No. 51. We received no comments on this issue. Therefore, the Bureau adopts its proposal.

Bid Removal Procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is removed does not count towards bidding activity. This procedure will enhance bidder flexibility during the auction, and therefore, we adopt these procedures for Auction No. 51.

10. Round Results

Bids placed during a round will not be made public until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids made in that round, the set of bids considered when determining the current provisionally winning bids, current price estimates, new minimum acceptable bids for all bidders, current provisionally winning bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders'

⁹⁶ Bidders must have sufficient eligibility to place a bid on the particular license. See III.D.3, "Amount of Upfront Payment," *infra*.

⁹⁷ See Section IV.B.5, *infra*.

⁹⁸ *Auction No. 51 Comment Public Notice* at 15-16.

identities for Auction No. 51 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding. Details regarding round results formats and locations will be included in a subsequent public notice.

11. Auction Announcements

The FCC will use auction announcements to announce items such as schedule changes. All FCC auction announcements will be available by clicking a link on the FCC Automated Auction System.

12. Default

The Commission recently adopted a special rule for calculating default payments in connection with package bidding.⁹⁹ In the event a winning bidder defaults on payments due after an auction closes or is disqualified after the auction, a default payment will be assessed. The default payment will consist of a deficiency portion and an additional 25% payment.¹⁰⁰ The special default rule is modeled on the default rule used in other auctions. However, there are substantial differences, perhaps most significantly in the amount of the additional payment. The default rule used in other auctions sets the additional payment at three percent (3%) of the lesser of the subsequent winning bid and the defaulted bid.¹⁰¹ In contrast, the default rule for use with package bidding sets the additional payment at twenty-five percent (25%) of the lesser of the subsequent winning bid and the defaulted bid.

The deficiency portion will make up any loss to the Commission that results when defaulted bid(s) are replaced by subsequent winning bid(s). If the subsequent winning bid(s) exceed the defaulted bid(s), no deficiency portion will be assessed. Even in the absence of a deficiency portion, however, an additional 25% payment will be due. Where a defaulting bidder held winning bids on individual licenses (*i.e.*, not as part of a package), and in a subsequent auction the licenses are also won individually, the deficiency portion will be calculated by subtracting the subsequent winning bid from the defaulted bid. The deficiency portion for such bids will be calculated on a license-by-license basis (*i.e.*, in the event of defaults on multiple bids, the differences between the amounts originally bid and the amounts subsequently bid will not be aggregated to determine a net amount owed).¹⁰²

Where a defaulting bidder won licenses in package(s), and in a subsequent auction the licenses are won either (a) in the same package(s), or (b) in smaller packages or as individual licenses that correlate to the defaulted package(s), the deficiency portion will be determined on a package-by-package basis. In the event a defaulting bidder defaults on more than one such bid, the differences between the amount originally bid and the amount(s) subsequently bid will not be aggregated to determine a net amount

⁹⁹ See *Order on Reconsideration of the Part 1 Fifth Report and Order*, ¶¶ 25-31, 55.

¹⁰⁰ *Id.* at ¶ 29.

¹⁰¹ 47 C.F.R. § 1.2104(g)(2).

¹⁰² *Id.* at ¶ 30.. For example, if a bidder defaults on two bids, one for License A for \$100 and one for License B for \$150, and in a subsequent auction, the licenses are won as License A for \$150 and License B for \$120, the default payment would be calculated separately for License A (by comparing the original bid (\$100) to the amounts subsequently bid (\$150), yielding no deficiency but an additional 25% payment)) and License B (by comparing the original bid (\$150) to the amount subsequently bid for License B (\$120), yielding a deficiency of \$30, plus an additional 25% payment)).

owed.¹⁰³ Thus, in this situation, the deficiency portion will be calculated in a manner analogous to where the licenses are sold individually. However, with regard to each individual package, where the licenses are subsequently sold individually or as part of smaller packages, the amounts received in the subsequent auction will be aggregated in order to determine any deficiency.

Where a defaulting bidder or bidders won licenses either individually or as part of packages, and in a subsequent auction the licenses are won as larger packages or different packages (not including the situation described in the preceding paragraph), the deficiency portion will be calculated by subtracting the aggregate amount originally bid for the licenses from the aggregate amount bid in the subsequent auction for the licenses.¹⁰⁴ Thus, in this situation, the deficiency portion will not be calculated on a bid-by-bid basis.

If, in a situation requiring that bids be aggregated in order to determine the deficiency portion of the default payments for the bids, there are multiple defaulting bidders, the default payment (both the deficiency portion and the additional 25% payment portion) will be allocated to the defaulting bidders in proportion to their share of the aggregated default bids.¹⁰⁵

In the event that a bidding credit applies to any applicable bid(s), the Bureau will assess the deficiency portion of the default payment using the lesser of the difference between gross bids and the difference between net bids. (In the event that a bidder does not have a bidding credit, the bidder's gross bid and net bid are the same.) In other words, the Bureau will compare (i) the sum of the gross defaulted Auction No. 51 bid(s) minus the gross subsequent winning bid(s) and (ii) the sum of the net defaulted Auction No. 51 bid(s) minus the net subsequent winning bid(s). The Bureau will impose the lesser of (i) and (ii) as the deficiency portion.¹⁰⁶

¹⁰³ *Id.* For example, if a bidder defaults on Package ABC (*i.e.*, a package consisting of Licenses A, B and C) with a bid of \$900 and Package DE with a bid of \$600, and in a subsequent auction, the licenses are won as License A for \$200, Package BC for \$600, and Package DE for \$700, the default payment would be calculated separately for Package ABC (by comparing the original bid (\$900) to the amounts subsequently bid for License A and Package BC (\$200 and \$600, which equals \$800, yielding a \$100 deficiency plus the additional 25% payment)) and Package DE (by comparing the original bid (\$600) to the amount subsequently bid for Package DE (\$700, yielding no deficiency, but an additional 25% payment)).

¹⁰⁴ *Id.* For example, if a bidder defaults on Package AB with a bid of \$200 and Package CD with a bid of \$300, and in a subsequent auction the licenses are sold as Package AC for \$250 and Package BD for \$250, the default payment would be calculated by aggregating the amounts originally bid (\$200 plus \$300 equals \$500) and comparing the aggregate to the amounts subsequently bid (\$250 plus \$250 equals \$500) to determine the deficiency amount (\$500 less \$500 equals \$0); the additional 25% payment would be based on either the original aggregate amount or the subsequent aggregate amount, whichever is less (in this case, they are the same, \$500).

¹⁰⁵ *Id.* For example, if Bidder 1 defaults on Package ABC for \$200, and Bidder 2 defaults on Package DE for \$400, and in a subsequent auction the licenses are won in Package AB for \$150 and Package CDE for \$350, Bidder 1 would be liable for 1/3 of the default payment and Bidder 2 would be responsible for 2/3. Where Bidder 1 bid \$200 and Bidder 2 bid \$400, the total bid equals \$600 and Bidder 1's proportion equals \$200/\$600 or 1/3 and Bidder 2's proportion equals \$400/\$600 or 2/3. The total default payment would be equal to the difference between the total of the original bids (\$600) and the total of the subsequent amounts bid (\$500) plus an additional payment of 25% of the total of the subsequent amounts bid. The total default payment therefore would equal \$100 (\$600-\$500) plus 25% of \$500 (\$125), for a total default payment of \$225.

¹⁰⁶ *Id.*

As noted at the outset, the default payment consists of the deficiency portion **and** an additional 25% payment. The additional payment will be 25% of the lesser of the subsequent winning bid(s) and the defaulted bid(s).¹⁰⁷ The Bureau will use the same gross or net bid(s) that it used to calculate the deficiency portion when assessing the additional 25% payment. That is, the Bureau will compare the defaulted and subsequent bid(s) according to the methods described above for calculation of the deficiency portion of the default payment when determining whether the defaulted bid(s) or the subsequent winning bid(s) is the lesser amount. Should there be no difference between the gross or net bid(s) for purposes of assessing the deficiency portion, the Bureau will assess the additional 25% payment using the lesser of the gross or net bid(s).

13. Maintaining the Accuracy of FCC Form 175 Information

As noted in Section II.G, after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Applicants must make these 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: auCTION51@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 51. The Bureau requests that parties format any attachments to electronic mail as Adobe[®] Acrobat[®] (pdf) or Microsoft[®] Word documents.

A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850. Questions about other changes should be directed to Christopher Shields of the Auctions and Industry Analysis Division at (202) 418-0660.

V. POST-AUCTION PROCEDURES

A. Down Payments

After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying winning bidders and down payments due.

Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 51 to 20 percent of its net winning bids (actual bids less any applicable small or very small business bidding credits).¹⁰⁸

B. Auction Discount Voucher

On June 8, 2000, the Commission awarded Qualcomm, Inc. a transferable Auction Discount Voucher (“ADV”) in the amount of \$125,273,878.00.¹⁰⁹ Subject to the terms and conditions set forth in the Commission’s Order, Qualcomm or its transferee could use this ADV, in whole or in part, to adjust a

¹⁰⁷ *Id.*

¹⁰⁸ 47 C.F.R. § 1.2107(b).

¹⁰⁹ In the Matter of 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).

winning bid in any spectrum auction prior to June 8, 2003.¹¹⁰ On April 28, 2003, the Bureau granted Qualcomm an additional year, until June 8, 2004, to use the remaining amount of its ADV.¹¹¹ Qualcomm transferred \$10,848,000.00 of the ADV to a winning bidder in FCC Auction No. 35. The transferee used this amount to pay a portion of one of its winning bids in Auction No. 35.¹¹² Qualcomm also transferred \$50,536,998.75 of the ADV to an assignee of broadband PCS licenses that requests this amount be applied to pay the unpaid principal and interest accrued on the licenses.¹¹³ The remaining \$63,888,879.25 of Qualcomm's ADV could be used to adjust winning bids in another FCC Auction, including Auction No. 51.

C. Long-Form Application (FCC Form 601)

Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for each license won through Auction No. 51. Winning bidders that are small or very small businesses must include an exhibit demonstrating their eligibility for small or very small business bidding credits. *See* 47 C.F.R. § 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

D. Ownership Disclosure Information Report (FCC Form 602)

At the time it submits its long-form application (FCC Form 601), each winning bidder also must comply with the ownership reporting requirements as set forth in 47 C.F.R. §§ 1.913, 1.919, and 1.2112. Applicants are reminded that the FCC Form 602 must now be filed electronically.¹¹⁴ Accordingly, forms filed manually will not be accepted. Winning bidders without a current Form 602 already on file with the Commission must submit a properly completed Form 602 at the time they submit their long-form applications. Further filing instructions will be provided to auction winners at the close of the auction.

¹¹⁰ *Id.* *See also* Qualcomm, Inc. Petition for Waiver of Certain Terms and Conditions of its Auction Discount Voucher, *Order*, FCC 02-321, WT Docket No. 02-234 (WTB, rel. Nov. 27, 2002).

¹¹¹ Qualcomm Incorporated Petition for Waiver of Auction Discount Voucher Terms and Conditions, 18 FCC Rcd 8048 (2003).

¹¹² *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, DA 01-2071, *Public Notice*, 16 FCC Rcd 16,025 (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* In the Matter of 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); *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).

¹¹³ Letter from John T. Scott, III, Vice President and Deputy General Counsel, Verizon Wireless, to Marvin Washington, Auctions Accounting Group, Federal Communications Commission (May 23, 2003).

¹¹⁴ Beginning December 10, 2002, electronic filing of FCC Form 602 via ULS became mandatory. *See* "Wireless Telecommunications Bureau Reminds Filers of Effective Date for Mandatory Electronic Filing of FCC Form 602," *Public Notice*, 17 FCC Rcd 22934 (2002). For more information on FCC Form 602, *see also* "Wireless Telecommunications Bureau Announces Revised Version of FCC Form 602 is Now Available," *Public Notice*, 17 FCC Rcd 16197 (2002); "Wireless Telecommunications Bureau Answers Frequently Asked Questions Concerning Reporting of Ownership Information on FCC Form 602," *Public Notice*, 14 FCC Rcd 8261 (1999).

E. Tribal Land Bidding Credit

A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally-recognized tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 C.F.R. §§ 1.2107 and 1.2110(f). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit *after* winning the auction when it files its long-form application (FCC Form 601). When filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal land bidding credit, for each market won in the auction, by checking the designated box(es). After stating its intent to seek a tribal land bidding credit, the applicant will have 90 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications.¹¹⁵ Licensees receiving a tribal land bidding credit are subject to performance criteria as set forth in 47 C.F.R. § 1.2110(f).

For additional information on the tribal land bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal land bidding credits and related public notices.¹¹⁶ Relevant documents can be viewed on the Commission's web site by going to <http://wireless.fcc.gov/auctions> and clicking on the *Tribal Land Credits* link.

F. Default and Disqualification

Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 C.F.R. § 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at their final bid. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing

¹¹⁵ The Commission, in a Second Report and Order, extended the tribal lands certification period to 180 days. *See Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd at 4778-9 ¶ 10. The new 180-day certification period will be effective on July 1, 2003. *See* 68 Fed. Reg. 23417 (May 2, 2003).

¹¹⁶ *See* Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 4775 (2003); Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 11794 (2000); "Wireless Telecommunications Bureau Announces Enhancements to the Universal Licensing System to Help Winning Bidders of FCC Auctions File for Tribal Land Bidding Credits," *Public Notice*, 16 FCC Rcd 5355 (2001); "Wireless Telecommunications Bureau Releases Additional Information Regarding the Procedures for Obtaining a Tribal Lands Bidding Credit and List of Tribal Lands," *Public Notice*, 15 FCC Rcd 24838 (2000); "Wireless Telecommunications Bureau Announces Availability of Bidding Credits For Providing Wireless Services To Qualifying Tribal Lands: Tribal Land Bidding Credits to be Available Beginning in Auction No. 36 (800 MHz Specialized Mobile Radio (SMR) Lower 80 Channels) and in Future Auctions," *Public Notice*, 15 FCC Rcd 18351 (2000).

licenses held by the applicant.¹¹⁷

G. Refund of Remaining Upfront Payment Balance

All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 51 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

At the end of the auction, those bidders who are eligible for a refund must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund request to:

Federal Communications Commission
Financial Operations Center
Auctions Accounting Group
Gail Glasser or Tim Dates
445 12th Street, SW, Room 1-C863
Washington, DC 20554

Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418-2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

NOTE: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418-0578 or Tim Dates at (202) 418-0496.

For further information concerning this proceeding, contact:

Media Contact:

For press inquiries: Meribeth McCarrick at (202) 418-0654

Auctions and Industry Analysis Division, WTB:

For legal questions: Christopher Shields at (202) 418-0660
For general auction questions: Lisa Stover at (717) 338-2888
For questions about package bidding: Martha Stancill at (202) 418-0660
Craig Bomberger at (202) 418-0660

¹¹⁷ 47 C.F.R. § 1.2109(d).

Commercial Wireless Division, WTB:

For service rule questions:

Amal Abdallah at (202) 418-7307

Evan Baranoff at (202) 418-7142

JoAnn Epps at (202) 418-0620

Dwain Livingston at (202) 418-0620

– FCC –

VI. ATTACHMENT A

PLACE HOLDER

VII. ATTACHMENT B

FCC AUCTION SEMINAR REGISTRATION FORM

Auction No. 51

The FCC will sponsor a one-day seminar for Auction No. 51 applicants. The seminar is free of charge and will provide information about pre-auction procedures, service and auction rules, conduct of the auction, and the FCC Automated Auction System.

Representatives from each company may attend on a reservation basis, first-come first-served until room capacity is filled. The seminar will be held:

Thursday, July 31, 2003
Federal Communications Commission
445 12th Street SW
Washington, DC 20554
Registration 9:30 a.m. – 10:00 a.m.
Seminar 10:00 a.m. – 2:00 p.m.

If hotel accommodations are needed
Please contact 1-888-225-5322 (option #2) for a list of hotels in the area

To register, complete the form below and
return no later than
Tuesday, July 29, 2003, by fax to:

FCC Auction 51
Auctions Operations Branch
1270 Fairfield Road
Gettysburg, PA 17325-7245

FAX: 717-338-2850
Phone: 717-338-2888

I/We will attend the Auction No. 51 Seminar, scheduled for Thursday, July 31, 2003.

Name of attendee: _____

Name of attendee: _____

Company name: _____

Company address: _____

Phone: _____ Fax: _____

VIII. ATTACHMENT C

ELECTRONIC FILING AND REVIEW OF THE FCC FORM 175

Applicants must submit their FCC Form 175 applications electronically. The FCC recommends submitting Form 175 via the Internet. As a contingency plan, applicants can submit via the FCC Wide-Area Network. FCC Form 175 applications must be submitted and confirmed by **6:00 p.m. ET on Friday, August 8, 2003**. Late applications or unconfirmed submissions of electronic data will not be accepted.

Applicants must click the **SUBMIT Application** button on the *Submission* page to successfully submit their FCC Form 175. The electronic filing process consists of an initial filing period and a resubmission period to make minor corrections. During each filing period, submitted applications may be updated and amended multiple times until the filing deadline.

A. Software Requirements

Applicants will need to meet the following minimum software requirements:

- Web Browser, either of the following:
 - ◆ Microsoft® Internet Explorer 4.0 or higher (recommended). 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_08.

Java Plug-In Version 1.3.1_08 is available for downloading at
<http://java.sun.com/j2se/1.3/download.html>.

- PDF Viewer: Adobe Acrobat Reader 5.0 or higher (available at <http://www.adobe.com>)
- If you wish to use the download feature on the Search Results page, you will need a .tar file extraction utility, e.g., Winzip (available at <http://www.winzip.com>) or Pkzip for Windows (available at <http://www.pkware.com/shareware>).

B. Submitting FCC Form 175 Applications

You can submit FCC Form 175 applications electronically via the Internet. Start your web browser and point it to either <https://auctions.fcc.gov/> (primary location) or <https://auctions2.fcc.gov/> (secondary location). On the FCC Auctions page, click **Form 175 Application & Search** to obtain the Form 175 Homepage.

Note: As a contingency plan, you may submit FCC Form 175 applications via the FCC Wide Area Network, using Dial-Up Networking. To access the Wide Area Network, configure your dial-up network to dial either **202-408-7835** or **717-338-0735**. These phone numbers are located in Washington, DC, and Gettysburg, PA, respectively. Thus, calls to these numbers may be long-distance calls, depending on where the calls originate.

1. Logging On

The Form 175 Homepage has a Form 175 Logon area at the top right. This area provides fields that let you identify yourself to the system. In these fields, type your assigned FRN (*without* the hyphens) and the password you created in CORES, respectively, then click the **Logon** button.

Once you have logged on with your FRN, you can click the **New Form** link to obtain the *Profile* page for the auction.

2. Uploading Attachments

When uploading attachments from the Form 175 *Attachments* page, you may use a variety of file formats — including Word 2000 or earlier, WordPerfect 6.x or earlier, Adobe PDF, and ASCII text — and you should verify that the files contain all exhibit information. Also note the following about files to be uploaded:

- Files may be no larger than 1.5 Mb.
- Graphics files (e.g., *.bmp*, *.tiff*, *.jpg*) and spreadsheets (e.g., Excel, Lotus) are not supported.
- Word processing files that are uploaded may not contain graphic images.
- You may include hyphens (-) and underscore (_) symbols in the name of a file to be uploaded, but do not use other punctuation marks or blank spaces. The FCC system will not be able to convert that file.
- The path to a file (i.e., the file name and its directory) must not exceed 60 characters.
- Do not upload a password-protected file. The FCC system will not be able to open it or convert it.
- Do not include your TIN in any attachment to be uploaded. Contents of attachments become public once the Status PN is released.

The system converts each uploaded attachment to PDF format. (The conversion process generally completes within 30 minutes.) Until the system has converted your file to PDF format, the description field shows *Not converted*.

Repeat this procedure for each additional attachment you want to add. When you have finished adding attachments, click the **Continue to CERTIFICATION** button to obtain the *Certification* page.

a. Unreadable Attachment Files

If you are unable to read an attachment file after it has been converted, please do the following:

1. Re-upload the attachment.
2. If the file still has not been converted properly, then simplify the formatting of the file.

For example, if you are using a Table structure in a WordPerfect document, remove the Table structure and leave the contents of the table, then re-upload the attachment.

After you have successfully re-uploaded an attachment, please delete the old, unreadable attachment files using their **Delete** links.

3. Completing the Submission Procedure

Applicants must press the **SUBMIT Application** button on the *Submission* page to successfully submit their FCC Form 175. Pressing **SUBMIT Application** produces a *Submission Confirmation* page showing the assigned FCC Account Number. During each filing period, submitted applications may be updated and amended multiple times until the filing deadline.

C. Reviewing FCC Form 175 Applications

Once the FCC has completed the 175 Review process, you can view FCC Form 175 applications electronically by searching for them in the FCC database. Start your web browser and point it to either <https://auctions.fcc.gov/> (primary location) or <https://auctions2.fcc.gov/> (secondary location). Click the **Form 175 Application & Search** link, then click the **SEARCH** link at the top of the page. When the *Form 175 Search* page appears, select the search criteria you want and then click the **Submit** button.

D. Help

For technical assistance with using FCC software, 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.*

You can also contact Technical Support via e-mail. To obtain the address, click the **Support** tab on the Form 175 Homepage.

IX. ATTACHMENT D

GUIDELINES FOR COMPLETION OF FCC FORM 175 AND EXHIBITS

A. FCC Form 175

Because of the significance of the FCC Form 175 application to the auction, bidders should especially note the following:

Applicant: Name given is used as your bidder name in the auction.

Address: Applicants must provide a street address (not a Post Office box number) for the applicant, suitable for mail or private parcel delivery.

Legal Classification: Applicants must indicate their legal classification. The FCC Form 175 requires the applicant to classify itself as an individual, joint venture, partnership, trust, corporation, consortium, association, limited liability corporation (LLC) or government entity.

Applicant Status: Applicants are requested to indicate their status as a rural telephone company, minority- and/or women-owned business, so that the FCC can monitor its performance in promoting economic opportunities for these designated entities.

Contact person/address: If the Commission wishes to communicate with the applicant by telephone or fax, those communications will be directed to the contact person identified on the FCC Form 175. Space is provided for an address, telephone number, fax number, and e-mail address. **All written communication and registration information will be directed to the applicant's contact person at the address specified on the FCC Form 175.** Applicants must provide a street address for the contact person; **no P.O. Box addresses may be used.**

Authorized Bidders: Applicants must list the name(s) of the person(s) (no more than three) authorized to represent them at the auction. Only those individuals listed on the FCC Form 175 will be authorized to place bids for the applicant during the auction.

Bidding Credit Eligibility: Applicants that qualify for a small business or very small business bidding credit must select the applicable bidding credit (15 percent or 25 percent) in the bidding credit eligibility item on the Form 175. Applicants are advised that this is the sole opportunity applicants have to elect small business status and bidding credit level (if applicable). There is no opportunity to change the election once the short-form filing deadline passes on August 8, 2003.

Electronic or Telephonic Bidding Options: Bidders may participate in the auction either electronically or telephonically, and must specify their preference. To participate in the auction, every authorized bidder must have a SecurID card, which the FCC will provide free of charge.

License Selection: Applicants should select all licenses on which they want to be eligible to bid in the auction. Be advised that there is no opportunity to change this list once the short-form filing deadline passes on August 8, 2003. It is critically important that you confirm the licenses that you have selected because the auction system will not accept a bid on licenses for which an applicant has not applied on its FCC Form 175.

B. Exhibits and Attachments

In addition to the FCC Form 175, applicants must submit additional information required by the FCC's rules. If attachments are not uploaded, the FCC Form 175 submission process cannot be completed. Although the FCC does not require a particular format for this information, it has developed the following guidelines that will facilitate the processing of short-form applications. The FCC encourages applicants to submit this information using the following format.

If you find that an attachment has not converted properly to Adobe PDF format, take the following steps:

- 1) Simplify the formatting of the file. For example, if using a Table structure in a WordPerfect document, remove the Table structure leaving the contents of the table, re-save the document.*
- 2) Re-upload the attachment.*
- 3) When the re-uploaded attachment has successfully converted, delete the failed attachment.*

NOTE: Applicants should not include sensitive information (i.e., TIN/EIN) on any exhibits to their FCC Form 175s.

Exhibit A -- Applicant Identity and Ownership Information: 47 C.F.R. § 1.2105(a)(2)(ii) requires each applicant to fully disclose the real party or parties-in-interest in an exhibit to its FCC Form 175 application. Each member of an applicant applying to bid as a small or very small business consortium must provide this information. The following information is required:

1. General Information

<i>Applicant Status</i>	<i>Required Information</i>
General Partnership	Name, citizenship, and address of all partners, and the share or interest participation of each partner
Limited Partnership	Name, citizenship, and address of each limited partner whose interest in the applicant is equal to or greater than 10 percent (as calculated according to the percentage of equity paid in and the percentage of distribution of profits and losses)
Corporation	Corporate name and address; name, title, and citizenship of a responsible officer or director
Limited Liability Corporation	Corporate name and address; name, address, and citizenship of all members whose interest in the applicant is equal to or greater than 10 percent (as calculated according to the percentage of equity paid in and the percentage of distribution of profits and losses)
Trust	Name, citizenship, and address of trustee
None of the above	Name, citizenship, title or other relation to the applicant, and address of a principal or other responsible person

2. Ownership Information

Applicant Status

All applicants

Required Information

Name, citizenship, and address of all controlling interests of the applicant as discussed in Section 1.2110 of the Commission's rules.

All applicants

Name, citizenship, and address of all parties holding 10 percent or more of each class of stock, warrants, options or debt securities and the amount and percentage held.

All applicants

Name of all parties holding a 10 percent or greater interest in the applicant and the specific amount held.

All applicants

List of all parties holding indirect ownership interests in the applicant that equals 10 percent or more, as determined by successive multiplication of the ownership percentages in each link of the vertical ownership chain, except that if the ownership percentage for any link in the chain exceeds 50 percent or represents actual control, it shall be reported as if it were a 100 percent interest.

Example. Company A owns 10% of Company B, which owns 60% of Company C, which owns 25% of the applicant. Company B's interest in the applicant would be 25% (the same as Company C's interest since Company B's interest in Company C exceeds 50%), and Company A's interest in the applicant would be 2.5% ($0.1 * 0.25$). Under the 10% attribution benchmark, Company B's interest in the applicant must be reported on the applicant's FCC Form 175 Exhibit A, while Company A's interest in the applicant need not be reported. However, if Company A owned 40% of Company B in the above example, then Company A's interest in the applicant would be 10% ($0.4 * 0.25$), and the applicant would need to report it on the applicant's FCC Form 175 Exhibit A

All applicants

List of any FCC-regulated entity or applicant for an FCC license, in which

- a. the applicant;
- b. any party with a 10 percent or greater interest in the applicant; or
- c. a controlling interest (as discussed in Section 1.2110 of the Commission's rules)

owns a 10 percent or greater interest of the applicant or 10 percent or more of any class of stock, warrants, options or debt securities of the applicant. (*See also* 47 C.F.R. § 1.2110) This list must include a description of each such entities' principal business and a description of each such entities' relationship to the applicant.

Example of a. The applicant owns 10 percent of Company A (an FCC regulated entity or an applicant for an FCC license). The applicant must list Company A on its FCC Form 175 Exhibit A and provide the required

Applicant Status

Required Information

information.

Example of b. Company A owns 10 percent of the applicant and 10 percent of Company B (an FCC regulated entity or an applicant for an FCC license). The applicant must list both Company A and Company B on its FCC Form 175 Exhibit A and provide the required information.

Example of c. Company A owns 55% of the applicant and owns 10 percent of Company B (an FCC regulated entity or an Applicant for an FCC license). The applicant must list both Company A and Company B on its FCC Form 175 Exhibit A and provide the required information.

Exhibit B – Agreements with Other Parties/Joint Bidding Arrangements: Applicants must attach an exhibit identifying all parties with which they have entered into any agreements, arrangements or understandings which relate in any way to the licenses being auctioned, including any relating to the post-auction market structure. *See* 47 C.F.R. §1.2105(a)(2)(viii).

Be aware that pursuant to Certification (4) on the FCC Form 175, the applicant certifies that it will not enter into any explicit or implicit agreements or understandings of any kind with parties not identified in the application regarding bid amounts, bidding strategies, or the particular licenses on which the applicant will or will not bid. *See* 47 C.F.R. § 1.2105(a)(2)(ix). *To prevent collusion, the Commission's Rules generally prohibit competing applicants from communicating concerning bids, bidding strategies, or settlements during the period between the initial short-form applications filing deadline and the deadline for down payments on licenses won in the auction.* 47 C.F.R. § 1.2105(c).

Exhibit C – Status as a Small Business, or Very Small Business: Applicants claiming status as a small business or very small business must attach an exhibit providing the following information regarding this status.

Entity

Applicant

Required Information

Average annual gross revenues for the preceding three years set forth *both separately* (e.g., for each of the preceding three years individually) *and in the aggregate* (for all of the preceding three years combined). Certification that the average of the aggregated annual gross revenues for the preceding three years do not exceed the required limit, or providing average gross revenues for the 3-year period without providing the gross revenues for each of the preceding three years, is insufficient.

Applicant's Affiliates

See 47 CFR §§ 1.2110, 1.2112

Same information required as discussed above

Applicant's Controlling Interests

See 47 CFR §§ 1.2110, 1.2112.

Same information required as discussed above

Example. The applicant had gross revenues of \$500,000 in 2000, \$1,000,000 in 2001, and \$3,000,000 in 2002, with average gross revenues for that time period of \$1,500,000. The applicant owns 60% of

Entity**Required Information**

Company A, making Company A an affiliate of the applicant under Section 1.2110(c)(5)(i)(B). Company B owns 52% of the applicant, making Company B a controlling interest of the applicant, as defined in Section II.C.3 of this public notice. Company B owns 100% of Company C, making Company C an affiliate of the applicant's controlling interest, under Section 1.2110(c)(5)(i)(C). The applicant's Exhibit C would look like this:

Applicant Name

2000 gross revenues \$ 500,000

2001 gross revenues \$ 1,000,000

2002 gross revenues \$ 3,000,000

Average gross revenues for the preceding 3 years \$ 1,500,000

Company A (an affiliate of the applicant)

2000 gross revenues \$ enter amount

2001 gross revenues \$ enter amount

2002 gross revenues \$ enter amount

Average gross revenues for the preceding 3 years \$ enter amount

Company B (a controlling interest in the applicant)

2000 gross revenues \$ enter amount

2001 gross revenues \$ enter amount

2002 gross revenues \$ enter amount

Average gross revenues for the preceding 3 years \$ enter amount

Company C (an affiliate of the applicant's controlling interest)

2000 gross revenues \$ enter amount

2001 gross revenues \$ enter amount

2002 gross revenues \$ enter amount

Average gross revenues for the preceding 3 years \$ enter amount

NOTE: Each member of an applicant that is applying to bid as a consortium of small or very small businesses must provide this information and qualify for the claimed status.

Exhibit D – Information Required of All Applicants Regarding Prior Defaults and Prior Delinquencies:

Each applicant must include at Exhibit D a statement made under penalty of perjury indicating whether the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interest have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, for each of its controlling interests and affiliates, and for each affiliate of its controlling interests as defined by Section 1.2110 of the Commission’s rules (as amended in the *Part 1 Fifth Report and Order*).

Exhibit E – Information Requested of Designated Entities: Applicants owned by minorities or women, as defined in 47 C.F.R. § 1.2110(c), or that are rural telephone companies, may attach an exhibit regarding this status. This information, in conjunction with the information requested on the FCC Form 175, will assist the Commission in monitoring the participation of these “designated entities” in its auctions.

Exhibit F – Miscellaneous Information: Applicants wishing to submit additional information should include it in Exhibit F.

Waivers: Applicants requesting waiver of any rules must submit a statement of reasons sufficient to justify the waiver sought. *See* 47 C.F.R. §§ 1.3, 1.925.

Certifications: Applicants should carefully read the list of certifications on the FCC Form 175. These certifications help to ensure a fair and competitive auction and require, among other things, disclosure to the Commission of certain information on applicant ownership and agreements or arrangements concerning the auction. Submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form’s instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

Completeness: Applicants must submit all information required by the FCC Form 175 and by applicable rules. Failure to submit required information by the resubmission date will result in dismissal of the application and inability to participate in the auction. *See* 47 C.F.R. § 1.2105(b).

NOTE: Applicants must press the “SUBMIT Application” button on the “Submission” page to successfully submit their FCC Form 175.

Continuing Accuracy: Each applicant is responsible for the continuing accuracy and completeness of information furnished in the FCC Form 175 and its exhibits. *See* 47 C.F.R. § 1.65. It is the FCC’s position that during the conduct of an auction, thirty business days from a reportable change is a reasonable period of time. Applicants are reminded that they consent to be audited in the certification section of the FCC Form 175 (see certification item number 6).

Applicants are reminded that all information required in connection with applications to participate in spectrum auctions is necessary to determine the applicants’ qualifications, and as such will be available for public inspection. Required proprietary information may be redacted, or confidentiality may be requested,

following the procedures set forth in 47 C.F.R. § 0.459. Such requests must be submitted by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: auction51@fcc.gov, in which case the applicant must indicate in Exhibit F that it has filed a confidentiality request. Because the required information bears on applicants' qualifications, the FCC envisions that confidentiality requests will not be routinely granted.

The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 51. The Bureau requests that parties format any attachments to electronic mail as Adobe[®] Acrobat[®] (pdf) or Microsoft[®] Word documents.

A separate copy of the letter should be faxed to the attention of Kathryn Garland at 717-338-2850.

X. ATTACHMENT E

AUCTION-SPECIFIC INSTRUCTIONS FOR FCC REMITTANCE ADVICE (FCC FORM 159-February 2000 Edition)

A. Upfront Payments

The following information supplements the standard instructions for FCC Form 159 (Revised 2/00), and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction No. 51. Applicants need to complete FCC Form 159 carefully, since:

- **Mistakes may affect their bidding eligibility; and**
- **Lack of consistency between information set forth in FCC Form 159 (Revised 2/00), FCC Form 175, long-form application, and correspondence about an application may cause processing delays.**

Therefore appropriate cross-references between the FCC Form 159 Remittance Advice and the FCC Form 175 Short Form Application are described below:

Block Number	Required Information
1	LOCKBOX # - Enter "358415"
2	Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as FCC Form 175.
3	Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/00).
4-8	Street Address, City, State, ZIP Code - Enter the street mailing address (not Post Office box number) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section.
9	Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
11	Payer FRN - Enter the payer's ten-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).
12	Payer TIN - Enter the payer's nine-digit Taxpayer Identification Number (TIN).
24A	Payment Type Code - Enter "A51U"

- 25A Quantity - Enter the number “1”
- 26A Fee Due - Amount of Upfront Payment
- 27A Total Fee - Will be the same amount as 26A.
- 28A FCC Code 1 - Enter the number “51” (indicating Auction No. 51).

NOTES:

- Do not use Remittance Advice (Continuation Sheet), FCC Form 159-C, for upfront payments.
- If applicant is different from the payer, complete blocks 13 through 22 for the applicant, using the same information shown on FCC Form 175. Otherwise leave them blank.
- Since credit card payments will not be accepted for this auction, leave Section E blank.

B. Winning Bidder Requirements, Down Payments and Final Payments

Specific information regarding down payments and final payments will be included in a post-auction public notice announcing the winning bidders.

USING THE SMOOTHED ANCHORING METHOD TO OBTAIN CURRENT PRICE ESTIMATES

This appendix describes the method by which bid information on packages and licenses is used to approximate a “price” associated with each license at the close of every round. These “current price estimates,” as they are called, are then used in the next round when calculating part (iii) of the minimum acceptable bid formula.¹¹⁸ Specifically, for a license, this value is the current price estimate of the license plus $z\%$. For a package, the value is the sum of the current price estimates of the licenses that make up the package plus $z\%$ of the sum.

The current price estimates of the licenses are based on the concept that every linear optimization problem has a dual problem that provides pricing information. We begin by discussing a simplified representation of the FCC winner determination problem and then discuss its linear programming relaxation before explaining the dual problem of interest. The winner determination problem is shown in (P1):

$$\begin{aligned}
 & \max \quad \sum_{j \in B^t} b_j x_j \\
 \text{(P1):} \quad & s.t. \quad \sum_{j \in B^t} a_{ij} x_j = 1, \quad \text{for all } i \in L \quad (1) \\
 & x_j \in \{0, 1\}, \quad \text{for all } j \in B^t
 \end{aligned}$$

where B^t is the set of considered bids in round t ,

b_j is the bid amount of bid j ,

L is the set of licenses being auctioned,

$$a_{ij} = \begin{cases} 1 & , \text{if license } i \text{ is in bid } j \\ 0 & , \text{otherwise} \end{cases} \text{ and,}$$

$$x_j = \begin{cases} 1 & , \text{if bid } j \text{ is in the winning set} \\ 0 & , \text{otherwise} \end{cases}$$

In this formulation, x_j is an indicator variable that equals one if bid j is in the provisionally winning set and zero otherwise. Thus, the sum of the bid amounts of all provisionally winning bids produces the maximum obtainable revenue for round t . Constraints (1) ensure that each license is awarded exactly once. The constraints that ensure that a bidder’s bids between rounds are mutually exclusive are not represented in (P1) since they will be ignored in the linear representation of the problem.¹¹⁹

¹¹⁸ In addition to the part (iii) formula derived here, the minimum acceptable bid also considers part (i) and (ii) amounts, where (i) is the minimum opening bid and (ii) is the bidder’s own previous high bid plus $x\%$, where x is specified by the Bureau. The minimum acceptable bid is the *greatest* of the three amounts.

¹¹⁹ These constraints will be ignored in the linear program representation since they are rarely binding in the relaxation of the integer-programming problem and because adding such constraints to the dual problem creates “degeneracy” in the solution thereby causing multiple alternative solutions.

The linear program of (P1) relaxes the restriction on the variables x_j , for all $j \in B^t$, allowing these variables to take on any value between zero and one. The linear programming representation of (P1) is shown in (P2):

$$\begin{aligned}
 \max \quad & \sum_{j \in B^t} b_j x_j \\
 \text{(P2):} \quad & s.t. \quad \sum_{j \in B^t} a_{ij} x_j = 1, \quad \text{for all } i \in L \\
 & x_j \geq 0, \quad \text{for all } j \in B^t
 \end{aligned}$$

The dual formulation of (P2) can be used to identify a price, π_i , for each license i , and is shown in the following linear program (P3):

$$\begin{aligned}
 \min \quad & \sum_{i \in L} \pi_i \\
 \text{(P3):} \quad & s.t. \quad \sum_{i \in L} a_{ji} \pi_i \geq b_j, \quad \text{for all } j \in B^t \setminus F \\
 & \pi_i \geq b_j, \quad \text{for all } j \in F \\
 & \text{and } i \text{ is the license index associated with bid } j \quad (3)
 \end{aligned}$$

where $F \subset B^t$ is the set of FCC bids on each license¹²⁰ and,

$$a_{ji} = \begin{cases} 1 & , \text{if bid } j \text{ contains license } i \\ 0 & , \text{otherwise} \end{cases}$$

The optimal value of each variable, π_i , in (P3) corresponds to a dual price¹²¹ — often called a “shadow price” — for each constraint, i.e., each license, in (P2). The dual price of each license measures the monetary cost of not awarding the license to whom it has been provisionally assigned under the solution to (P2). Thus, this monetary cost has a clear and natural use in estimating the current price of a license given the bids considered in the current round.

Constraints (2) in (P3) ensure that the dual price of a license must be at least as large as the greatest bid made on that license. For a package, these constraints ensure that the sum of the dual prices of the licenses that make up a particular package must be at least as large as the greatest bid made on that package. Constraints (3) in (P3) ensure that if a license has not been bid on, the dual price of that license is at least as large as the FCC bid amount.

Ideally, the solution to (P2) is identical to the solution of (P1). When this occurs, the sum of the dual prices of the licenses comprising any provisionally winning bid equals the winning bid amount. However,

¹²⁰ The bid amount for an FCC bid is some small amount less than the minimum-opening bid for that license. See IV.B.5, “Winning and Provisionally Winning Bids.”

¹²¹ We note that for non-linear problems, these dual prices are also known as *Lagrange multipliers*.

(P2) is only an approximation to the integer problem¹²² and often *overestimates* the maximum revenue of (P1). When this occurs, the sum of the dual prices of the licenses in at least one provisionally winning bid will be greater than the respective bid amount. Thus, using the dual prices of (P3) can result in minimum acceptable bid amounts that are too high.

We propose to resolve this issue by using *pseudo-dual prices*,¹²³ rather than the dual prices of (P3). These pseudo-dual prices are obtained by forcing the sum of the dual prices of the licenses comprising a provisionally winning bid to equal its respective bid amount. For example, suppose there are two bids in the provisionally winning set in round t : a bid on license A for \$10 and a bid on package BC for \$25. The pseudo-dual price of A would exactly equal \$10 and the sum of the pseudo-dual prices of B and C would exactly equal \$25. These restrictions ensure that the sum of the pseudo-dual prices equals the maximum revenue for the round (e.g. \$35) and that minimum acceptable bid amounts reflect the bid amounts of bids in the provisionally winning set.

Pseudo-dual prices for each license i , denoted π_i , satisfy the following constraints:

$$\sum_{i \in L} a_{ji} \pi_i + \delta_j \geq b_j, \text{ for all } j \in B^t \setminus (W^t \cup F) \quad (4)$$

$$\sum_{i \in L} a_{ji} \pi_i = b_j, \quad \text{for all } j \in W^t \quad (5)$$

$$\pi_i \geq b_j, \quad \text{for all } j \in F \setminus (W^t \cap F) \quad (6)$$

and i is the license index associated with bid j

$$\delta_j \geq 0, \quad \text{for all } j \in B^t \setminus (W^t \cup F) \quad (7)$$

where $W^t \subset B^t$ is the provisionally winning bid set in round t and,
 δ_j is a slack variable that represents the difference between the bid amount of non-winning bid j and the sum of pseudo-dual prices of the licenses contained in non-winning bid j

Constraints (5) ensure that for each provisionally winning bid, the sum of the dual prices of the licenses comprising that bid equal its respective bid amount. This new restriction requires that we ease restriction (2) in (P3) for non-winning bids in order to ensure that a feasible solution exists. Constraints (4) provide this needed slack. Constraints (6) are equivalent to constraints (3) in (P3) and constraints (7) force the slack variables to be non-negative.

Satisfying constraints (5) implies that the sum of the pseudo-dual prices always yields the maximum revenue for the round. There are likely to be many sets of pseudo-dual prices that satisfy this constraint set. For instance, in the example provided earlier, the pseudo-dual prices of B and C might be any two numbers that together sum to \$25.

¹²² When the problem is a convex optimization problem, the primal and dual problems yield the same objective function values. This is called strong-duality. These conditions do not hold for integer programming problems, often resulting in a gap between the linear programming and integer programming solution values.

¹²³ In our research we found this term first applied to auction pricing in the paper by Rassenti, Smith and Bulfin (1982), "A Combinatorial Auction Mechanism for Airport Slot Allocation," *Bell Journal of Economics*, vol. 13, pp. 402-417.

By keeping constraints (4)-(7), we have the flexibility to choose an objective function that will help in selecting among multiple solutions while still ensuring that the sum of the pseudo-dual prices yields the maximum revenue of the round. We would like an objective function that minimizes the values of the slack variables δ_j , for all $j \in B^t \setminus (W^t \cup F)$ in order to obtain pseudo-dual prices that are close to the dual prices of (P3). We have tested a number of alternative objective functions:

1. Minimization of the maximum δ_j for all $j \in B^t \setminus (W^t \cup F)$ followed by maximization of the minimum π_i for all i in license set L , in an iterative manner. (DeMartini, Kwasnica, Ledyard and Porter, 1999)
2. Minimization of the sum of the squares of δ_j for all $j \in B^t \setminus (W^t \cup F)$. (also DeMartini, Kwasnica, Ledyard and Porter, 1999)
3. Minimization of the sum of the δ_j for all $j \in B^t \setminus (W^t \cup F)$ using a “centering” algorithm¹²⁴ to solve, essentially finding an average among all sets of optimal pseudo-dual prices.

In testing the above alternatives, we frequently observed instances where the pseudo-dual price of a license significantly changed from round to round. We acknowledge that prices of licenses should be allowed to reflect real changes, both increases and decreases, in the way bidders value the licenses over time. However, we believe that large oscillations in minimum acceptable bid amounts for the same bid that are due to irrelevant factors such as multiple optimal solutions, can be confusing to bidders. We have therefore chosen a method that attempts to balance minimizing the slack variables and reducing the fluctuations in pseudo-dual prices from round to round. This method requires solving two optimization problems, the first of which is alternative 3 above, which we present as (P4):

$$\begin{aligned}
 \Omega^* = \min \quad & \sum_{j \in B^t \setminus (W^t \cup F)} \delta_j \\
 \text{s.t.} \quad & \sum_{i \in L} a_{ji} \pi_i + \delta_j \geq b_j, \text{ for all } j \in B^t \setminus (W^t \cup F) \\
 \text{(P4):} \quad & \sum_{i \in L} a_{ji} \pi_i = b_j, \quad \text{for all } j \in W^t \\
 & \pi_i \geq b_j, \quad \text{for all } j \in F \setminus (W^t \cap F) \\
 & \quad \text{and } i \text{ is the license index associated with bid } j \\
 & \delta_j \geq 0, \quad \text{for all } j \in B^t \setminus (W^t \cup F)
 \end{aligned}$$

Since multiple optimal solutions can exist to (P4) we solve a second optimization problem that chooses a solution in a way that reduces the magnitude of price fluctuations between rounds. Specifically, we use an objective function that applies the concepts of exponential smoothing¹²⁵ to choose among alternative pseudo-dual prices with the additional constraint on the problem that the sum of the slack variables equals Ω^* (the optimal value of (P4)). This objective function minimizes the sum of the squared deviations of

¹²⁴ The centering algorithm used in this testing was the barrier method available in CPLEX, a commercial optimization package.

¹²⁵ Exponential smoothing often is used in determining minimum acceptable bids in FCC auctions. *See, e.g.,* 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, DA 02-563, *Public Notice*, 17 FCC Rcd 4935, 4971-4972, 5003-5005 (rel. March 20, 2002) (“*Auction No. 44 Procedures Public Notice*”).

the resulting pseudo-dual prices in round t , from their respective smoothed prices in round $t-1$.¹²⁶ At the start of the auction, we use the minimum opening bid prices as the prior smoothed prices. Since these opening prices are based on bandwidth and population, the pricing algorithm begins with *a priori* information about the differences among licenses.

Let π_i^t be the pseudo-dual price of license i in round t . The smoothed price for license i in round t is calculated using the following exponential smoothing formula:

$$p_i^t = \alpha \pi_i^t + (1 - \alpha) p_i^{t-1}$$

where p_i^{t-1} is the smoothed price in round $t-1$,

$$0 \leq \alpha \leq 1, \text{ and}$$

$$p_i^0 = \text{the minimum opening bid amount for license } i.$$

Consistent with prior practice of the Commission, a weighting factor of $\alpha = 0.5$ has been chosen but can change, as the Commission requires.

The following quadratic program (QP) will find the pseudo-dual price, π_i^t , for each license i in round t that minimizes the sum of the squared deviations from the respective smoothed prices in round $t-1$ while ensuring that the pseudo-dual prices sum up to the provisionally winning bid amounts and that the sum of the slack variables is minimized.

$$\begin{aligned}
 \text{(QP): } \quad & \min \sum_{i \in L} (\pi_i^t - p_i^{t-1})^2 \\
 & s.t. \quad \sum_{i \in L} a_{ji} \pi_i^t + \delta_j \geq b_j, \text{ for all } j \in B^t \setminus (W^t \cup F) \\
 & \quad \sum_{i \in L} a_{ji} \pi_i^t = b_j, \quad \text{for all } j \in W^t \\
 & \quad \sum_{j \in B^t \setminus (W^t \cup F)} \delta_j = \Omega^* \\
 & \quad \pi_i^t \geq b_j, \quad \text{for all } j \in F \setminus (W^t \cap F) \\
 & \quad \quad \quad \text{and } i \text{ is the license index associated with bid } j \\
 & \quad \delta_j \geq 0, \quad \text{for all } j \in B^t \setminus (W^t \cup F)
 \end{aligned}$$

where p_i^{t-1} is known and treated as a constant within the optimization.¹²⁷

¹²⁶ This objective function is a convex, quadratic function. This quadratic optimization problem is solved using the barrier method.

¹²⁷ Once the pseudo-dual prices, π_i^t , have been determined, the smoothed prices, p_i^t , can be calculated and used for solving (QP) in round $t+1$.

Among alternative prices that satisfy all constraints, the objective function of this optimization problem chooses one that forces the pseudo-dual prices to be as close as possible to the previous round's smoothed price. Thus, we call this the *Smoothed Anchoring Method* since we “anchor” on the smoothed prices when solving for the pseudo-dual prices. We define the “current price estimate” for license i in round t as the pseudo-dual price, π_i^t , obtained by solving (QP).

The minimum acceptable bid amount for a license in round $t+1$ under part (iii) will be the current price estimate of the license, as calculated above, plus $z\%$. For a package, the value will be the sum of the current price estimates of the licenses that make up the package plus $z\%$ of the sum. This part (iii) amount is then compared to the amounts of parts (i) and (ii), and the greatest is the minimum acceptable bid for the next round.

XII. ATTACHMENT G

SUMMARY LISTING OF DOCUMENTS FROM THE COMMISSION AND THE WIRELESS TELECOMMUNICATIONS BUREAU ADDRESSING APPLICATION OF THE ANTI-COLLUSION RULES

A. Commission Decisions:

Second Report and Order in PP Docket No. 93-253, FCC 94-61, 9 FCC Rcd. 2348, 2386-2388 (1994), paragraphs 221-226.

Fifth Report and Order in PP Docket No. 93-253, FCC 94-178, 9 FCC Rcd. 5532, 5570-5571 (1994), paragraphs 91-92.

Fourth Memorandum Opinion and Order in PP Docket No. 93-253, FCC 94-264, 9 FCC Rcd. 6858, 6866-6869 (1994), paragraphs 47-60.

Second Memorandum Opinion and Order in PP Docket No. 93-253, FCC 94-215, 9 FCC Rcd. 7245, 7253-7255 (1994), paragraphs 48-55.

Memorandum Opinion and Order in PP Docket No. 93-253, FCC 94-295, 9 FCC Rcd. 7684, 7687-7689 (1994), paragraphs 8-12.

In re Commercial Realty St. Pete, *Notice of Apparent Liability for Forfeiture*, 10 FCC Rcd. 4277 (1995),
In re Commercial Realty St. Pete, *Memorandum Opinion and Order*, 11 FCC Rcd. 15,374 (1996).

In re Applications of Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd. 17,970 (1997) (petition for partial reconsideration pending).

Amendment of Part 1 of the Commission's rules -- Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, FCC 97-413, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd. 374, 463-469 (1997), paragraphs 155-166.

In re Application of US West Communications, Inc., *Notice of Apparent Liability for Forfeiture*, 13 FCC Rcd 8286 (1998); In the Matter of Notice of Apparent Liability for Forfeiture of US West Communications, Inc., *Order*, FCC 99-90 (May 7, 1999).

In re Application of Western PCS BTA I Corporation, *Notice of Apparent Liability for Forfeiture*, FCC 98-42 (March 16, 1998); In the Matter of Notice of Apparent Liability for Forfeiture of Western PCS BTA I Corporation, *Memorandum Opinion and Order*, 14 FCC Rcd 21571, 21577-78, ¶ 20 (rel. Dec. 13, 1999).

In the Matter of Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001).

B. Wireless Telecommunications Bureau Decisions:

Amendment of Parts 21 and 74 of the Commission's rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, *Order*, 11 FCC Rcd. 9655 (Wireless Tel. Bur. 1995).

In re Applications of GWI PCS, Inc. For Authority to Construct and Operate Broadband PCS Systems Operating on Frequency Block C, *Memorandum Opinion and Order*, 12 FCC Rcd. 6441 (Wireless Tel. Bur. 1997).

In re Applications of Mercury PCS II, LLC, For Facilities in the Broadband Personal Communications Services in the D, E, and F Blocks, *Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd. 18,093 (Wireless Tel. Bur. 1997).

In the Matter of Applications of High Plains Wireless, L.P., For Authority to Construct and Operate Broadband PCS Systems on Frequency Blocks D, E, and F, *Memorandum Opinion and Order*, 12 FCC Rcd. 19,627 (Wireless Tel. Bur. 1997).

In the Matter of Applications of Mercury PCS II, LLC, For Authority to Construct and Operate Broadband PCS Systems on Frequency Blocks D, E, and F, *Memorandum Opinion and Order*, 13 FCC Rcd. 5756 (Wireless Tel. Bur. 1997).

1. Public Notices:

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

FCC Staff Clarifies Application of Anti-Collusion Rule to Broadband PCS 'C' Block Reauction, *Public Notice*, 11 FCC Rcd. 7031 (1996).

Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders, *Public Notice*, 11 FCC Rcd. 10,134 (1996).

Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, DA 98-37 (rel. January 9, 1998).

2. Letters from the Office of General Counsel and the Wireless Telecommunications Bureau:

Letter to Gary M. Epstein and James H. Barker from William E. Kennard, General Counsel, Federal Communications Commission (released October 25, 1994).

Letter to Alan F. Ciamporzero from William E Kennard, General Counsel, Federal Communications Commission (released October 25, 1996).

Letter to R. Michael Senkowski from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau (released December 1, 1994).

Letter to Leonard J. Kennedy from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless

Telecommunications Bureau (released December 14, 1994).

Letter to Jonathan D. Blake and Robert J. Rini from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, DA 95-2404 (released November 28, 1995).

Letter to Mark Grady from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, 11 FCC Rcd. 10,895 (1996).

Letter to David L. Nace from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, 11 FCC Rcd. 11,363 (1996).

Letter to Elliott J. Greenwald from Christopher J. Wright, General Counsel, Federal Communications Commission (released April 6, 1998).

Letter to Robert Pettit, Wiley, Rein & Fielding from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 00-2905 (released December 26, 2000).

3. Civil Actions Initiated by U.S. Department of Justice:

U.S. v. Omnipoint Corp., Proposed Final Judgements and Competitive Impact Statements, Department of Justice, 63 FR 65,228 (November 25, 1998).

"Justice Department Sues Three Firms Over FCC Auction Practices," *Press Release*, U.S. Department of Justice (November 10, 1998).

Complaint, *U.S. v. Omnipoint Corp.*, No. 1:98CV02750 (D.D.C. November 10, 1998).

Complaint, *U.S. v. Mercury PCS II, L.L.C.*, No. 1:98CV02751 (D.D.C. November 10, 1998).

Complaint, *U.S. v. 21st Century Bidding Corp.*, No. 1:98CV02752 (D.D.C. November 10, 1998).

How to Obtain Copies of the Anti-Collusion Decisions:

Many of the documents listed in this attachment can be retrieved from the following Commission web site: <http://wireless.fcc.gov/auctions/anticollusion>

The documents may be located by using our search engine (select the link "search"). Documents retrieved from the web site are available in various formats including Word, WordPerfect, Acrobat Reader, Excel, and ASCII Text. To review a document in its entirety, including footnotes, it is necessary to access the document in WordPerfect, MS Word, or Acrobat Reader.

Additionally, all of the documents can be ordered in hard copy for a fee from the Commission's contractor, Qualex International at (202) 863-2893.