



# PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION  
445 12th STREET, S.W.  
WASHINGTON, D.C. 20554

News Media Information: (202) 418-0500  
Fax-On-Demand: (202) 418-2830  
Internet: <http://www.fcc.gov>  
<ftp.fcc.gov>

DA 03-2098  
June 27, 2003

## CLOSED BROADCAST AUCTION NO. 54 CONSTRUCTION PERMITS FOR NEW BROADCAST STATIONS

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

#### Report No. AUC-03-54-C (Auction No. 54)

The Federal Communications Commission (“Commission”) has received eleven FCC Form 175 applications to participate in Auction No. 54 scheduled to begin on Wednesday, July 23, 2003, for one new full power television (TV), two low power television (LPTV), and four FM broadcast stations. The applications have been reviewed for completeness and compliance with the Commission’s rules, and have been classified into the categories listed below.

#### Application Categories:

ACCEPTED FOR FILING..... 5 Applications

INCOMPLETE..... 3 Applications

REJECTED..... 3 Applications

**Accepted:** Applications accepted for filing are listed alphabetically in Attachment A. **These applicants will become qualified bidders upon receipt of the required upfront payment due by 6:00 p.m. ET on Thursday, July 3, 2003.**<sup>1</sup> With respect to the FCC Form 175 applications, these applicants need take no further action except as may be necessary to maintain the accuracy of their applications.<sup>2</sup> Attachment A also includes FCC account numbers that were automatically created by the FCC software system for each applicant and indicates the construction permit(s) selected by each applicant on its FCC Form 175 filing.

<sup>1</sup> See 47 C.F.R. § 1.2106.

<sup>2</sup> See 47 C.F.R. § 1.65. See also Closed Broadcast Auction No. 54 Construction Permits for New Broadcast Stations Scheduled for July 23, 2003, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures, *Public Notice*, DA 03-1547, at 15-17 (rel. May 12, 2003) (“*Auction No. 54 Procedures Public Notice*”).

**Incomplete:** Applications found to be incomplete are listed alphabetically in Attachment B. Applicants whose FCC Form 175 applications have been deemed incomplete will receive overnight correspondence indicating what information is required to make the applications acceptable for filing. **These applicants may become qualified bidders only if they: (1) make the required upfront payments by 6:00 p.m. ET on Thursday, July 3, 2003; and (2) resubmit their applications by 6:00 p.m. ET on Thursday, July 3, 2003, to correct the deficiencies indicated.** Applicants also must maintain the accuracy of their FCC Form 175 applications as required by the Commission's rules.<sup>3</sup> Applicants are advised that Attachment B includes FCC account numbers that were automatically created by the FCC software system for each applicant.

The filing window for resubmitting FCC Form 175 applications is now open. Corrected applications must be filed no later than **6:00 p.m. ET on Thursday, July 3, 2003.** This will be the only opportunity to cure FCC Form 175 defects; late resubmissions will not be accepted. In addition, if an application remains incomplete or otherwise deficient after the resubmission deadline has passed, the application will be dismissed.

**Rejected:** Applications classified as rejected are listed alphabetically in Attachment C. Applicants whose applications have been classified as rejected are disqualified from participation in Auction No. 54. Certain MX Groups will be removed from Auction No. 54 because only one completed and timely submitted FCC Form 175 was filed or accepted for those MX Groups. In these cases, the underlying long-form applications associated with these FCC Form 175 applications will be the subject of an applicant qualifications review or other appropriate Commission action by the Media Bureau at a later date.

In addition to Attachments A, B, and C, this Public Notice includes the following attachment:

Attachment D: MX Groups Removed from the Auction

#### **UPFRONT PAYMENT DEADLINE**

Upfront payments and accompanying FCC Remittance Advice (FCC Form 159) for Auction No. 54 are due in the proper account at Mellon Bank, Pittsburgh, Pennsylvania, **no later than 6:00 p.m. ET on Thursday, July 3, 2003. 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.**<sup>4</sup> **Payments must be made by wire transfer in accordance with the instructions provided in the *Auction No. 54 Procedures PN.***<sup>5</sup> No other payment method is acceptable for this auction. Applicants are reminded to use their FCC Registration Number ("FRN") and Taxpayer Identification Number ("TIN"), not their FCC Account Numbers on the FCC Form 159. Applicants must fax a completed FCC Form 159 (Revised February 2000) to Mellon Bank at (412) 209-6045 at least one hour before placing the order for the wire transfer (but on the same business day).

**Applicants that have filed applications deemed to be incomplete, as noted in this public notice, must submit timely and sufficient upfront payments before the Commission will review their submitted**

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<sup>3</sup> See 47 C.F.R. § 1.65

<sup>4</sup> 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.

<sup>5</sup> See *Auction No. 54 Procedures Public Notice* at 18.

**applications.** If no upfront payment is made or the application remains incomplete following its resubmission, the application will be dismissed. If the applicant has provided its FRN, TIN and wire transfer instructions, any upfront payment made prior to dismissal will be refunded automatically.

**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. We remind applicants that to avoid untimely upfront payments they should discuss arrangements (including bank closing schedules) with their banker several days before making the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.** Detailed information regarding upfront payments including additional requirements for “former defaulters” can be found in the *Auction No. 54 Procedures Public Notice* under Section II.E and Section III.D.<sup>6</sup>

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

## **OTHER IMPORTANT INFORMATION**

**Qualified Bidders:** Approximately one week after the upfront payment deadline, following Commission review of resubmitted FCC Form 175 applications, and correlation of payments and applications, a public notice listing all applicants qualified to bid in the auction will be released. The same public notice will also include instructions for participating in the mock auction and a bidding schedule for the mock auction and the first day of the auction.

**Due Diligence:** Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the broadcast facilities in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 54 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 54 are strongly encouraged to continue such research during the auction. For further details regarding due diligence, please refer to the *Auction No. 54 Procedures Public Notice* under Section I.B.3.

**Prohibition of Collusion:** Bidders are reminded that Sections 1.2105(c) and 73.5002 of the Commission’s rules prohibits applicants for the same market from communicating with each other during the auction about bids, bidding strategies, or settlements unless they have identified each other as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii). For Auction No. 54, this prohibition became effective at the short-form application filing deadline on Friday, June 20, 2003, and will end on the down payment deadline after the auction, which will be announced in a future public notice.<sup>7</sup> Bidders competing for construction permits in the same market are encouraged not to use the same individual as an authorized bidder. 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 the same market.<sup>8</sup>

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<sup>6</sup> *Id.* at 15, 17-20.

<sup>7</sup> *See* 47 C.F.R. §§ 1.2105(c)(1).

<sup>8</sup> *See* “Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules,” *Public Notice*, DA 95-2244, 11 FCC Rcd 9645 (1995) (rel. October 26, 1995).

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.<sup>9</sup> 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.<sup>10</sup> For further details regarding the prohibition against collusion refer to the *Auction No. 54 Procedures Public Notice* under Section I.B.2.

Winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process. Bidders found to have violated the anti-collusion rule may be subject to sanctions.<sup>11</sup> In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. If a bidder is found to have violated the antitrust laws in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions.<sup>12</sup>

**Ex Parte Rule:** Applicants should also be aware that the Commission has generally exempted auction proceedings from the strict requirements of the *ex parte* rule found in Section 1.1208<sup>13</sup> of the Commission's rules.<sup>14</sup>

**Mock Auction:** All applicants found to be qualified bidders will be eligible to participate in a mock auction on Friday, July 18, 2003. We encourage all qualified bidders to take advantage of this mock auction to become familiar with the FCC Automated Auction System. In the *Qualified Bidders Public Notice*, the Bureau will announce the bidding schedule for the mock auction and give details about participation. The mock auction will be conducted over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network.

**Electronic Bidding:** Applicants are reminded that qualified bidders are eligible to bid either electronically or telephonically. Applicants should specify their bidding preference on the FCC Form 175.

Bidders can access the FCC Automated Auction System over the Internet. Access to the system via the Internet requires, at a minimum, the following hardware and software:

- CPU: Pentium 133 or above
- RAM: 32 MB (64 MB recommended)

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<sup>9</sup> See 47 C.F.R. § 1.65.

<sup>10</sup> The Commission recently 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. See *Seventh Report and Order*, 16 FCC Rcd at 17555.

<sup>11</sup> See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

<sup>12</sup> 47 C.F.R. §1.2109 (d).

<sup>13</sup> 47 C.F.R. §1.1208.

<sup>14</sup> See "Commission Announces that Mutually Exclusive 'Short-Form' Applications (Form 175) to Participate in Competitive Bidding Process ('Auctions') Are Treated as Exempt for Ex Parte Purposes," *Public Notice*, 9 FCC Rcd 6760 (1994).

- Monitor: VGA or above
- Mouse or other pointing device
- Operating System: Microsoft® Windows™ 95™, 98™, 2000™, ME™, NT™
- Web Browser, either of the following:
  - ◆ Microsoft® Internet Explorer 4.0 or higher (recommended). If you have Internet Explorer 5.0 or higher, your browser must have either Microsoft VM or Java Plug-In Version 1.3.0 installed.
  - ◆ Netscape® Communicator™ 4.0 or higher, with Java Plug-In Version 1.3.0.

Java Plug-In Version 1.3.0 is available for downloading at  
[https://wtbjag1w.fcc.gov/ieplugin/j2re-1\\_3\\_0\\_02-win.exe](https://wtbjag1w.fcc.gov/ieplugin/j2re-1_3_0_02-win.exe)

As a contingency plan, bidders can also access the FCC Automated Auction System by dialing in to the FCC's Wide Area Network. Bidders dialing in to the FCC's Wide Area Network will need:

- Modem: 28.8 Kbps Hayes© compatible modem or faster (56 Kbps recommended)
- Point-to-Point Protocol (PPP) Dialer: Use the Dial-Up Networking feature included with the operating system

**Long-Form Applications:** All applicants should be aware that at the long-form application stage, they will be subject to the more extensive reporting requirements contained in the Commission's Part 1 ownership disclosure rule.<sup>15</sup>

**Bidder Alerts:** All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

## CONTACT INFORMATION

For questions about payment or instructions for wiring upfront payments, contact Gail Glasser, Auctions Accounting Group, at (202) 418-0578 or Tim Dates, Auctions Accounting Group, at (202) 418-0496.

For specific questions about an applicant's incomplete status, the applicant should contact the staff reviewer identified in the correspondence sent to the applicant by overnight mail.

For technical assistance with using the FCC Automated Auction System, contact the FCC Technical Support Hotline at (202) 414-1250 (V) or (202) 414-1255 (TTY). The FCC Technical Support Hotline is generally available Monday through Friday from 8:00 a.m. to 6:00 p.m. ET. *All calls to the FCC Technical Support Hotline are recorded.*

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<sup>15</sup> See 47 C.F.R. § 1.2112(b)(2); see also 47 C.F.R. § 73.5007 (new entrant bidding eligibility).

For additional information, contact: Auctions and Industry Analysis Division: Kenneth Burnley, Auctions Legal Branch (regarding legal questions); Lyle Ishida, Analyst, Auctions Operations (regarding bidding and auction structure) at (202) 418-0660; or Linda Sanderson, Auctions Operations (regarding bidding and general filing status) at (717) 338-2888; Video Division: Shaun Maher at (202) 418-1600; Audio Division: Lisa Scanlan at (202) 418-2700.

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