



PUBLIC NOTICE

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REGIONAL NARROWBAND PCS SPECTRUM AUCTION

2 Qualified Bidders

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

In this *Public Notice*, the Federal Communications Commission (“FCC” or “Commission”) identifies two applicants found to be qualified to bid in the upcoming auction for six regional narrowband Personal Communications Service (“narrowband PCS”) licenses (“Auction No. 51”). Auction No. 51 is scheduled to begin on Wednesday, September 24, 2003. In addition, this *Public Notice* contains bidding instructions and other important information regarding Auction No. 51.

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

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

Attachment C lists the applicants that submitted FCC Form 175 applications, but did not qualify to bid in this auction.

Attachment D describes how to participate in the mock auction.

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

In order to participate effectively in the auction, qualified bidders should again familiarize themselves with the auction rules and other information contained in the *Auction No. 51 Procedures Public Notice* and subsequent public notices.¹ This *Public Notice* and other documents related to Auction No. 51 are available on the Commission’s auctions website, <http://wireless.fcc.gov/auctions/>. The following information provides additional guidance.

¹ See 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, *Public Notice*, DA 03-1994 (rel. June 18, 2003), 68 Fed. Reg. 44785 (“*Auction No. 51 Procedures Public Notice*”); see also Regional Narrowband PCS Spectrum Auction, Status of FCC Form 175 Applications to Participate in the Auction, *Public Notice*, DA 03-2659 (rel. August 20, 2003).

Registration. Qualified bidders have been automatically registered for the auction. For security reasons, the Commission will confirm registration through two separate mailings of registration materials. Both mailings will be sent to the bidder's contact person at the contact address identified in the bidder's FCC Form 175. Upon receipt of both mailings, each bidder should be in possession of the following information:

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

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

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

Any qualified bidder listed in Attachment A of this *Public Notice* that has not received both registration mailings **by noon on Monday, September 15, 2003**, must contact the Auctions Hotline directly at (717) 338-2888. Receipt of both registration mailings is critical to participating in both the mock auction and the actual auction event, and it is the responsibility of each qualified bidder to ensure that all registration information has been received.

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

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

Bidding. The Commission will conduct this auction over the Internet, 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. In either case, **each authorized bidder** must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with only 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 instructions for using them are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction. SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 51. The telephonic bidding phone number will be supplied in the first mailing along with the confidential bidder identification number.

Please note that the SecurID cards can be recycled, and we encourage bidders to return the cards to the FCC. We will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

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

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

Minimum Opening Bids. There will be a minimum opening bid for each license in Auction No. 51, calculated in accordance with the formulas previously announced.² For a package, the Bureau will calculate the minimum opening bid by adding together the minimum opening bids of the individual licenses that make up the package. The minimum opening bid amount is subject to reduction at the discretion of the Commission. However, bidders should be aware that the Commission will not entertain requests to lower minimum opening bids. The agency will exercise its discretion, if at all, independent of any communications from bidders.

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

Bidding Schedule. The bidding schedule for Wednesday, September 24, 2003, will be:

Bidding Period	9:30 a.m.	-	11:30 a.m. ET
Bidding Period	1:30 p.m.	-	3:30 p.m. ET

Round results will be provided approximately 15- 30 minutes after the close of each round. The FCC will set the pace of the auction based upon its monitoring of the bidding and its assessment of the auction's progress. All subsequent schedule changes will be made by announcement during the course of the auction.

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

² Auction No. 51 Procedures Public Notice at 26. Attachment A of the Auction No. 51 Procedures Public Notice sets forth the minimum opening bids for each license offered in Auction No. 51.

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

Monitoring Round Results. Attachment E (How to Monitor the FCC Auctions On-Line) of this *Public Notice* provides instructions for reviewing and downloading round results, as well as other material related to Auction No. 51, that will be released by the Commission during the course of the auction.

Amendments to FCC Form 175s. Applicants are responsible for maintaining the accuracy and completeness of information furnished in their FCC Form 175 and exhibits.³ Applicants should amend their applications within ten business days from the occurrence of a reportable change. Filers should make modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: auction51@fcc.gov. A separate copy of the letter should be faxed to Christopher Shields, Auctions and Industry Analysis Division, (202) 418-1186. Questions about other changes should be directed to Christopher Shields at (202) 418-0660.

As described in the Commission's rules, applicants may make only minor corrections to their FCC Form 175 applications (*e.g.*, authorized bidder, fax number).⁴ Major modifications (*e.g.*, changing the markets applied for, changing control of the applicant, changing the certifying official) will not be accepted.⁵

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.⁶

Potential bidders are also reminded that certain applications (including those for modification), petitions for rulemaking, requests for special temporary authority ("STA"), waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or incumbent licensees. In addition, certain judicial proceedings that may relate to particular applicants or incumbent licensees or the licenses available in Auction No. 51 may be commenced, may be pending, or may be subject to further review.⁷ We note that resolution of these

³ 47 C.F.R. § 1.65.

⁴ 47 C.F.R. § 1.2105(b).

⁵ *Id.*

⁶ 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 at <http://www.fcc.gov/ib/sand/agree/welcome.html>.

⁷ 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*"); 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*

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. For further details regarding due diligence, please refer to the *Auction No. 51 Procedures Public Notice* under Section I.B.3.

Mock Auction. The FCC will conduct a mock auction on Wednesday, September 17 and Thursday, September 18, 2003, which will allow qualified bidders to familiarize themselves with the FCC Automated Auction System. Only qualified bidders will be permitted to participate in the mock auction. The Bureau will conduct this auction over the Internet, 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 that wish to place bids telephonically should use the telephone number supplied in the Auction No. 51 registration materials.

The mock auction will include all Auction No. 51 licenses, and will follow the rules governing the actual auction. **The mock auction will be identified as Auction No. 75. The program will reflect all the licenses each bidder applied for and the associated upfront payments, which in turn corresponds to the number of bidding units allocated.** The mock auction will simulate the start of the auction, and all bidders will be required to be active on 60 percent of their current bidding eligibility. A bidder not meeting this requirement will have a waiver automatically applied (if the bidder has any waivers available), or its current eligibility will be permanently reduced (if the bidder has no waivers remaining), possibly eliminating the bidder from further bidding in the auction. Bidders are advised that packages created during the Mock (Auction No. 75) will not be reflected in Auction No. 51.

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

The mock auction bidding schedule for Wednesday, September 17, 2003, will be:

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

The mock auction bidding schedule for Thursday, September 18, 2003, will be:

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

and Order and Order on Reconsideration, 16 FCC Rcd 9713, at 9722 ¶ 23 (2001) ("*Third Narrowband Report and Order and Order on Reconsideration*").

OTHER IMPORTANT INFORMATION

Prohibition of Collusion. To ensure the competitiveness of the auction process, Section 1.2105(c) of the Commission's rules prohibits applicants for any of the same geographic license areas from communicating with each other during the auction about bids, bidding strategies, or settlements unless such applicants have identified each other on their FCC Form 175 applications as parties with which they have entered into agreements under Section 1.2105(a)(2)(viii).⁸ Thus, applicants for any of the same geographic license areas must affirmatively avoid all discussions with each other that affect, or in their reasonable assessment have the potential to affect bidding or bidding strategies. The Bureau has previously stated that auction applicants that have applied for licenses in any of the same geographic areas, and that 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 bidding strategy.⁹ Accordingly, the prohibition in Section 1.2105(c) applies to communications between Auction No. 50 and Auction No. 51 applicants that have applied for licenses in any of the same or overlapping geographic license areas. This prohibition became effective at the short-form application filing deadline on Friday, August 8, 2003, and will end on the post-auction down payment deadline, which will be announced in a future public notice.¹⁰ For purposes of this prohibition, Section 1.2105(c)(7)(i) defines applicant as including all controlling interests in the entity submitting a short-form application to participate in the auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity.¹¹

Applicants for licenses in any of the same 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.¹² 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.¹³

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 or overlapping

⁸ 47 C.F.R. § 1.2105(c)(1); 47 C.F.R. § 1.2105(a)(2)(viii). *See also Part 1 Seventh Report and Order*, 16 FCC Rcd 17546 (2001); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15297-98, ¶¶ 7-8.

⁹ *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).

¹⁰ 47 C.F.R. § 1.2105(c)(1).

¹¹ 47 C.F.R. § 1.2105(c)(7)(i).

¹² *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).

¹³ *See id.* at 11978.

geographic areas. In Auction No. 51, for example, applicants that applied to bid for all markets are precluded from communicating with all other applicants, including any applicants in Auction No. 50 that applied for MTAs, until after the down payment deadline.¹⁴ However, all applicants could have entered into bidding agreements *before* filing their FCC Form 175, as long as they disclosed the existence of the agreement(s) in their Form 175.¹⁵ If parties had agreed in principle on all material terms prior to the short-form filing deadline, those parties must have been identified on the short-form application pursuant to Section 1.2105(c), even if the agreement had not been reduced to writing. If the parties had not agreed in principle by the filing deadline, an applicant should not have included the names of those parties on its application, and must not have continued negotiations with other applicants for licenses in any of the same or overlapping geographic areas.¹⁶ By signing their FCC Form 175 short-form applications, applicants certified their compliance with Section 1.2105(c).

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.¹⁷ Thus, Section 1.65 requires auction applicants that engage in communications of bids or bidding strategies that result in a bidding agreement, arrangement or understanding not already identified on their short-form applications to promptly disclose any such agreement, arrangement or understanding to the Commission by amending their pending applications. In addition, Section 1.2105(c)(6) requires all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under Section 1.65.¹⁸

Applicants that are 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.¹⁹ Any applicant found to have violated the anti-collusion rule may be subject to sanctions, including forfeiture of its upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions.²⁰ In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. If an applicant 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.²¹

¹⁴ See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, DA 95-2244, 11 FCC Rcd 9645 (1995).

¹⁵ 47 C.F.R. § 1.2105(c).

¹⁶ See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (1995).

¹⁷ 47 C.F.R. § 1.65.

¹⁸ 47 C.F.R. § 1.2105(c)(6); see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555, ¶ 17.

¹⁹ 47 C.F.R. § 1.2107(d).

²⁰ See 47 C.F.R. § 1.2109(d).

²¹ *Id.*

Long-Form Applications. Applicants that claim status as a small business or very small business should be aware that at the long-form application stage, they will be subject to more extensive reporting requirements contained in the Commission's Part 1 ownership disclosure rule.²² In addition, applicants with foreign ownership interests will be required to comply with 47 U.S.C. Section 310(b) at the long-form application stage.

Tribal Land Bidding Credit Limit. In our June 18, 2003, public notice setting forth the procedures for Auction No. 51, we explained that, pursuant to the requirements in Commission rules, winning bidders will be able to apply for a tribal land bidding credit for each of their eligible markets.²³ The size of a tribal land bidding credit is determined according to a formula set forth in section 1.2110(f)(3)(iii) of the rules.²⁴ The amount produced by the formula is subject to a limit (set forth in section 1.2110(f)(3)(iv) of the rules), which is set using the amount of the high bid on the license in question.²⁵ Accordingly, in order to calculate a tribal land bidding credit for a license won as part of a package in combinatorial bidding, it will be necessary to determine how much of the winning bid for the package to allocate to that license.

For Auction No. 51, we will use the same “MHz-pops” ratio that the Commission currently employs when it apportions unjust enrichment payments arising from the combined partitioning and disaggregation of a license. When a license is both partitioned and disaggregated, the fraction of the license being assigned is calculated as the ratio of “MHz-pops” in the partial license to the total “MHz-pops” in the original license, where “MHz-pops” is defined as the number of MHz of spectrum multiplied by the population of the covered area.²⁶ For purposes of determining the tribal land bidding credit limit for licenses won as part of a package in Auction No. 51, we will calculate the winning bid on an individual license based upon the ratio of the MHz-pops of the individual license to the MHz-pops of the package.²⁷

For additional information regarding this *Public Notice*, please contact Christopher Shields, Auctions Legal Branch, or Craig Bomberger, Auctions Operations Branch at (202) 418-0660; or Lisa Stover, Auctions Operations Branch at (717) 338-2888.

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

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²² 47 C.F.R. § 1.2112(b)(2).

²³ 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, *Public Notice*, DA 03-1994 at 11, 36 (rel. June 18, 2003).

²⁴ 47 C.F.R. § 1.2110(f)(3)(iii).

²⁵ *Id.* § 1.2110(f)(3)(iv).

²⁶ See Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 96-148, 11 FCC Rcd 21,831, 21,866 ¶ 66 (1996); 47 C.F.R. § 1.2111(e)(3).

²⁷ Population figures will be taken 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.