



PUBLIC NOTICE

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MULTICHANNEL VIDEO DISTRIBUTION AND DATA SERVICE SPECTRUM AUCTION

Status of FCC Form 175 Applications to Participate in the Auction

Report No. AUC-03-53-E (Auction No. 53)

The Federal Communications Commission (“Commission”) has received 27 FCC Form 175 applications to participate in Auction No. 53 scheduled to begin on Wednesday, January 14, 2004, for 214 Multichannel Video Distribution and Data Service (“MVDDS”) licenses. 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..... 6 Applications

INCOMPLETE..... 21 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 December 8, 2003.**¹ 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.² Attachment A also includes FCC account numbers that were automatically created by the FCC software system for each applicant and indicates the licenses selected by each applicant on its FCC Form 175 filing.

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.**

¹ See 47 C.F.R. § 1.2106.

² See 47 C.F.R. § 1.65. See also Auction of Licenses in the Multichannel Video Distribution and Data Service rescheduled for January 14, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Auction Procedures, *Public Notice*, DA 03-2354, at 16-18 (rel. August 28, 2003), 68 Fed. Reg. 57896 (“*Auction No. 53 Procedures Public Notice*”).

ET on Monday, December 8, 2003; and (2) resubmit their applications by 6:00 p.m. ET on Monday, December 8, 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.³ 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 Monday, December 8, 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.

Waiver Requests: In Attachment B, the application denoted with an asterisk (*) has a pending waiver request. Final resolution of this request will be released separately and may affect the applicant's qualifications to participate in Auction No. 53 (either entirely or with respect to particular licenses) or eligibility for a bidding credit.⁴

UPFRONT PAYMENT DEADLINE

Upfront payments and accompanying FCC Remittance Advice (FCC Form 159) for Auction No. 53 are due in the proper account at Mellon Bank, Pittsburgh, Pennsylvania, **no later than 6:00 p.m. ET on Monday, December 8, 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.⁵ Payments must be made by wire transfer in accordance with the instructions provided in the *Auction No. 53 Procedures Public Notice*.⁶ No other payment method is acceptable for this auction. Applicants are reminded to use their FCC Registration Number ("FRN"), not their FCC Account Numbers, on the FCC Form 159. Applicants must fax a completed FCC Form 159 (revised February 2003) 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 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 and wire transfer instructions from the payer of record, any upfront payment made prior to dismissal will be refunded in a timely manner upon request.

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

³ See 47 C.F.R. § 1.65.

⁴ The Bureau received one waiver request from Douglas Thomas who has requested a waiver of the upfront payment requirement.

⁵ Letter from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Patrick Shannon, Esq., Counsel for Lynch 3G Communications Corporation, 18 FCC Rcd 11552 (2003).

⁶ See *Auction No. 53 Procedures Public Notice* at 18-19.

information regarding upfront payments including additional requirements for “former defaulters” can be found in the *Auction No. 53 Procedures Public Notice* under Section II.E and Section III.D.⁷

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

OTHER IMPORTANT INFORMATION

Qualified Bidders: Approximately two weeks 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 there are a number of incumbent terrestrial private operational fixed point-to-point licensees in the 12.2-12.7 GHz band which were licensed prior to MVDDS and are not entitled to protection from harmful interference caused by later MVDDS entrants in the 12.2-12.7 GHz band, except for public safety stations, which must be protected. MVDDS has the responsibility of resolving any harmful interference problems that their operations may cause to these public safety incumbent point-to-point operations in the 12.2-12.7 GHz band. To aid potential bidders, a list of public safety incumbents in this band is attached as Appendix I to the *Second Report and Order*, ET Docket No. 98-206, released May 23, 2002.⁸

Potential bidders are also reminded that MVDDS licensees must comply with the interference protection and coordination requirements set forth in Sections 101.105, 101.1421, and 101.1440 of the Commission’s rules.⁹ Sections 101.105, 101.1421, and 101.1440 establish standards for protection of co-primary NGSO FSS earth stations, incumbent and adjacent area licensees and co-primary DBS earth stations. MVDDS shall be licensed on a non-harmful interference co-primary basis to existing DBS operations and on a co-primary basis with NGSO FSS stations in this band. MVDDS licensees must also protect and/or develop sharing agreements with neighboring licensees. MVDDS systems in the United States within 56 km (35 miles) of the Canadian and Mexican border will be granted conditional licenses, until final international agreements are approved. MVDDS systems may not cause harmful interference to stations in Canada or Mexico.¹⁰ No stations are allowed within 5 miles of the borders.

⁷ *Id.* at 15, 18-21.

⁸ See Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2-12.7 GHz Band, ET Docket No. 98-206, *Memorandum Opinion and Order and Second Report and Order*, 17 FCC Rcd 9614 (2002) (“*Second Report and Order*”).

⁹ 47 C.F.R. § 101.105 (Interference protection criteria), 47 C.F.R. § 101.1421 (Coordination of adjacent area MVDDS stations and incumbent public safety POFS stations), and 47 C.F.R. § 101.1440 (MVDDS protection of DBS).

¹⁰ 47 C.F.R. § 101.147(p), § 101.1423, and §§ 1.928(f)(1) and (2).

Potential bidders also should be aware 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. 53 may be commenced, may be pending, or may be subject to further review. We note that resolution of these matters could have an impact on the availability of spectrum in Auction No. 53. Some of these matters (whether before the Commission or the courts) may not be resolved by the time of the auction.

Potential bidders may obtain information about licenses available in Auction No. 53 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 ulscomm@fcc.gov. The hotline is available to assist with questions Monday through Friday, from 8:00 a.m. to 6:00 p.m. 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.

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. 53.

Prohibition of Collusion: Applicants are reminded that Section 1.2105(c) of the Commission’s rules prohibits applicants for licenses in any of the same geographic license areas 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 purposes of this prohibition, Section 1.2105(c) defines applicant as including the applicant’s controlling interests, all officers and directors of the applicant, and holders of certain ownership interests in the applicant.¹¹ 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 bidding strategy.¹² For Auction No. 53, this prohibition became effective at the short-form application filing deadline on Wednesday, November 12, 2003, and will end on the post-auction down payment deadline, which will be announced in a future public notice.¹³ If parties had agreed in principle on all material terms, those parties must have been identified on the short-form application under Section 1.2105(c), even if the agreement had not been reduced to writing. If parties had not agreed in principle by the filing deadline, an applicant should not have included the names of those parties on its application, and must not have continued negotiations with other applicants for licenses in the same geographic areas.¹⁴

¹¹ 47 C.F.R. § 1.2105(c)(7)(i).

¹² 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).

¹³ 47 C.F.R. § 1.2105(c)(1).

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

The Bureau has encouraged applicants competing for licenses in any of the same geographic license areas not to use the same individual as an authorized bidder.¹⁵ 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 bidders 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 take precautionary steps to prevent communication between authorized bidders.¹⁶

In addition, Section 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional importance to that application.¹⁷ 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. Applicants therefore are required to make such notification to the Commission immediately upon discovery.¹⁸ For further details regarding the prohibition against collusion, refer to the *Auction No. 53 Procedures Public Notice* under Section I.B.2.

Applicants who 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. Any applicant found to have violated the anti-collusion rule may be subject to sanctions.¹⁹ 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 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.²⁰

Auction Discount Voucher: On June 8, 2000, the Commission awarded Qualcomm, Inc., a transferable Auction Discount Voucher ("ADV") in the amount of \$125,273,878.00.²¹ 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 winning bid in any spectrum auction prior to June 8, 2003.²² On April 28, 2003, the

¹⁵ See *Auction No. 53 Procedures Public Notice* at 4-6.

¹⁶ 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*").

¹⁷ See 47 C.F.R. § 1.65.

¹⁸ The Commission amended Section 1.2105 to require auction applicants to report prohibited communications in writing to the Commission immediately, but in no case later than five business days after the communication occurs. Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546, 17555, ¶ 17 (2001).

¹⁹ See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

²⁰ 47 C.F.R. §1.2109 (d).

²¹ Qualcomm Incorporated Petition for Declaratory Ruling Giving Effect to the Mandate of the District of Columbia Circuit Court of Appeals, WT Docket No. 99-168, *Order*, 16 FCC Rcd 4042 (2000).

²² *Id.* See also Qualcomm Incorporated Petition for Waiver of Certain Terms and Conditions of its Auction Discount Voucher, WT Docket No. 02-234, *Order*, 17 FCC Rcd 24311 (WTB 2002).

Bureau granted Qualcomm an additional year, until June 8, 2004, to use the remaining amount of its ADV.²³ Qualcomm transferred \$10,848,800.00 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. 35.²⁴ Qualcomm also transferred \$50,536,998.74 of the ADV to an assignee of broadband PCS licenses that used this amount to pay the unpaid principal and interest accrued on the licenses.²⁵ Qualcomm also transferred \$4,020,165.65 of the ADV to an entity that made installment payments on behalf of several of the entity's affiliates, who are broadband PCS C Block licensees.²⁶ Qualcomm transferred an additional \$4,020,165.65 of the ADV to the same entity on both July 30, 2003 and October 28, 2003.²⁷ Qualcomm also used \$7,607,200.00 of its ADV to make its down payment on licenses it won in Auction No. 49,²⁸ and used an additional \$30,428,800.00 of its ADV to make its final payment on licenses it won in that Auction.²⁹ The remaining \$13,791,582.31 of Qualcomm's ADV could be used to adjust winning bids in another FCC Auction, including Auction No. 53.

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 1.1208³⁰ of the Commission's rules.³¹

²³ Qualcomm Incorporated Petition for Waiver of Auction Discount Voucher Terms and Conditions, WT Docket No. 02-234, *Order*, 18 FCC Rcd 8048 (WTB 2003).

²⁴ 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 16025 (2001). All of the terms and conditions applicable to Qualcomm's use of the ADV shall apply to its use by a transferee, except that a transferee may not transfer the ADV to an entity other than back to Qualcomm. See Qualcomm Incorporated Petition for Declaratory Ruling Giving Effect to the Mandate of the District of Columbia Circuit Court of Appeals, WT Docket No. 99-168, *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).

²⁵ Letter from Mark Reger, Chief Financial Officer, Federal Communications Commission to Kevin J. Kelly, Senior Vice President, Qualcomm Incorporated (May 23, 2003); Letter from Mark Reger, Chief Financial Officer, Federal Communications Commission to Kevin J. Kelly, Senior Vice President, Qualcomm Incorporated (May 9, 2003).

²⁶ Letter from Mark Reger, Chief Financial Officer, Federal Communications Commission to Kevin J. Kelly, Senior Vice President, Qualcomm Incorporated (April 22, 2003).

²⁷ Letter from Patricia Cappello, Deputy Chief Financial Officer, Federal Communications Commission to Kevin J. Kelly, Senior Vice President, Qualcomm Incorporated (July 11, 2003); Letter from Mark Reger, Chief Financial Officer, Federal Communications Commission to Kevin J. Kelly, Senior Vice President, Qualcomm Incorporated (October 28, 2003).

²⁸ Letter from Patricia Cappello, Deputy Chief Financial Officer, Federal Communications Commission to Kevin J. Kelly, Senior Vice President, Qualcomm Incorporated (July 10, 2003).

²⁹ Letter from Mark Reger, Chief Financial Officer, Federal Communications Commission to Kevin J. Kelly, Senior Vice President, Qualcomm Incorporated (November 12, 2003).

³⁰ 47 C.F.R. § 1.1208.

³¹ See "Commission Announces that Mutually Exclusive 'Short-Form' Applications (Form 175) to Participate in Competitive Bidding Process ('Auctions') Are Treated as Exempt for Ex Parte Purposes," *Public Notice*, 9 FCC Rcd 6760 (1994).

Mock Auction: All applicants found to be qualified bidders will be eligible to participate in a mock auction on Friday, January 9, 2004. 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)
- Monitor: VGA or above
- Mouse or other pointing device
- Operating System: Microsoft® Windows™ 95™, 98™, 2000™, ME™, NT™, XP™
- 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_08 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/products/archive/index.html>

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.³²

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.³³ Each applicant must also certify that the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110, 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.³⁴

³² See 47 C.F.R. § 1.2112(b)(2).

³³ 47 C.F.R. § 1.2105(a)(2)(v).

³⁴ 47 C.F.R. § 1.2105(a)(2)(x); 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 at 15317, ¶ 42 (2000) (“*Order on Reconsideration of the Part 1 Third Report and Order*”).

Each FCC Form 175 application must also contain an attached statement made under penalty of perjury indicating whether the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110, have ever been in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.³⁵ Prospective applicants 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.

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.*

For additional information, contact the Auctions & Spectrum Access Division: Brian Carter (regarding legal questions) at (202) 418-0660; Roy Knowles (regarding bidding and auction procedures) at (717) 338-2888; or Barbara Sibert (regarding bidding and general filing status) at (717) 338-2888.

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³⁵ 47 C.F.R. § 1.2105(a)(2)(xi); *Order on Reconsideration of the Part 1 Third Report and Order*, 15 FCC Rcd at 15317, n. 142.