



PUBLIC NOTICE

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MULTICHANNEL VIDEO DISTRIBUTION AND DATA SERVICE SPECTRUM AUCTION

14 Qualified Bidders

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

In this *Public Notice*, the Federal Communications Commission (“FCC” or “Commission”) identifies 14 applicants found to be qualified to bid in the upcoming auction of 214 Multichannel Video Distribution and Data Service (“MVDDS”) licenses (“Auction No. 53”). Auction No. 53 is scheduled to begin on Wednesday, January 14, 2004. In addition, this *Public Notice* contains bidding instructions and other important information regarding Auction No. 53.

Attachment A lists each of the 14 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. 53 Procedures Public Notice* and subsequent public notices.¹ This *Public Notice* and other documents related to Auction No. 53 are available on the Commission’s auctions website, <http://wireless.fcc.gov/auctions/>. The following information provides additional guidance.

¹ See 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*, 18 FCC Rcd 17553 (2003) (“*Auction No. 53 Procedures Public Notice*”); see also Multichannel Video Distribution and Data Service Spectrum Auction, Status of FCC Form 175 Applications to Participate in the Auction, *Public Notice*, DA 03-3781 (rel. November 26, 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 Wednesday, January 7, 2004**, 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. 53. 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. 53, calculated in accordance with the formulas previously announced.² The minimum opening bid amount is subject to reduction at the discretion of the Commission. However, bidders should be aware that the Commission will not entertain requests to lower 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, January 14, 2004, and continuing until further notice, will be:

Bidding Period	9:00 a.m.	-	10:00 a.m. ET
Bidding Period	11:00 a.m.	-	12:00 p.m. ET
Bidding Period	1:30 p.m.	-	2:30 p.m. ET
Bidding Period	3:30 p.m.	-	4:30 p.m. ET

Round results will be provided approximately 10 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. 53 Procedures Public Notice*, 18 FCC Rcd 17553 (2003). Attachment A of the *Auction No. 53 Procedures Public Notice* sets forth the minimum opening bids for each license offered in Auction No. 53.

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 and Spectrum Access 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. 53, that will be released by the Commission during the course of the auction.

Auction Tracking Tool (ATT). The FCC has developed a tool for tracking the results of its auctions. The ATT is a stand-alone application that runs on Windows 95, 98, 2000, ME, NT, and XP operating systems. It does not require any other software, although some advanced features require Microsoft Excel. The tool will allow users to import round result files and analyze bidding results after each round of the auction. For installation and user instructions, see the README file, the ATT User Manual, or the on-line help system that accompanies the ATT.

The ATT version specifically designed for Auction No. 53 is available for downloading and should be used for both the mock auction and the actual auction. The ATT is located at the auctions web site, <http://wireless.fcc.gov/auctions/>. From the options on the left, select **Tracking Tools**.

The ATT, provided to bidders free of charge, is an additional means of analyzing the auction round results. Bidders should have a back up strategy in place, which may be quickly implemented, should they experience technical difficulties with the ATT.

User Requirements. This software is designed to be used by a wide range of users. For most effective use of the tool, users should be familiar with:

- Microsoft Windows 95, 98, NT, 2000, ME or XP
- Microsoft Excel 97 or higher
- The FCC simultaneous multiple-round auction format

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 Spectrum Access Division, at the following address: auction53@fcc.gov. A separate copy of the letter should be faxed to Brian Carter, Special Counsel, Auctions and Spectrum Access Division, (202) 418-1159. Questions about other changes should be directed to Brian Carter 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

³ 47 C.F.R. § 1.65.

⁴ 47 C.F.R. § 1.2105(b).

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 operators have 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, 2002.⁶

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.⁷ 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.⁸ No stations are allowed within 5 miles of the borders.

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. 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.⁹

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. For further details regarding due diligence, please refer to the *Auction No. 53 Procedures Public Notice* under Section I.B.4.

⁵ *Id.*

⁶ 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*").

⁷ 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).

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

⁹ See, e.g., International Bureau Seeks Comment on Proposals to Permit Reducing Orbital Spacings Between U.S. Direct Broadcast Satellites, *Public Notice*, DA 03-3903 (rel. December 16, 2003).

Mock Auction. The FCC will conduct a mock auction on Friday, January 9, 2004, 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. 53 registration materials.

The mock auction will include all Auction No. 53 licenses, and will follow the rules governing the actual auction. **The mock auction will be identified as Auction No. 74. The program will assume that each bidder applied for all licenses. The program will reflect the actual upfront payment submitted by the bidder which will determine the initial (maximum) eligibility (as measured in bidding units).** The mock auction will simulate the start of the auction, and all bidders will be required to be active on 80 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 the auction.

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

The mock auction bidding schedule for Friday, January 9, 2004, will be:

Round 1 Bidding Period	9:00 a.m.	-	10:00 a.m. ET
Round 2 Bidding Period	11:00 a.m.	-	12:00 p.m. ET
Round 3 Bidding Period	1:00 p.m.	-	1:30 p.m. ET
Round 4 Bidding Period	2:00 p.m.	-	2:30 p.m. ET
Round 5 Bidding Period	3:00 p.m.	-	3:15 p.m. ET
Round 6 Bidding Period	4:00 p.m.	-	4:15 p.m. ET

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 licenses in 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).¹⁰ 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

¹⁰ 47 C.F.R. § 1.2105(c)(1); 47 C.F.R. § 1.2105(a)(2)(viii). See also *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.

their bidding or bidding strategy.¹¹ 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.¹² 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.¹³

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.¹⁴ 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.¹⁵

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 geographic areas. In Auction No. 53, for example, applicants that applied to bid for all markets are precluded from communicating with all other applicants, until after the down payment deadline.¹⁶ 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 175.¹⁷ 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.¹⁸ By signing their FCC Form 175 short-form applications, applicants certified their compliance with Section 1.2105(c).

¹¹ 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).

¹² 47 C.F.R. § 1.2105(c)(1).

¹³ 47 C.F.R. § 1.2105(c)(7)(i).

¹⁴ 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).

¹⁵ See *id.*, at 11978.

¹⁶ See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, DA 95-2244, 11 FCC Rcd 9645 (1995).

¹⁷ 47 C.F.R. § 1.2105(c).

¹⁸ See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (1995).

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.¹⁹ 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 1.65.²⁰

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.²¹ 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.²² 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.²³

Long-Form Applications. Applicants that claim status as an entrepreneur, 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.²⁴ 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.

For additional information regarding this *Public Notice*, please contact Barbara Sibert, Auctions Project Manager, at (717) 338-2888; Roy Knowles, Auctions Analyst, at (717) 338-2888; or Brian Carter, Special Counsel, Auctions and Spectrum Access Division, at (202) 418-0660.

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

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¹⁹ 47 C.F.R. § 1.65.

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

²¹ 47 C.F.R. § 1.2107(d).

²² *See* 47 C.F.R. § 1.2109(d).

²³ *Id.*

²⁴ 47 C.F.R. § 1.2112(b)(2).