



# PUBLIC NOTICE

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## AUTOMATED MARITIME TELECOMMUNICATIONS SYSTEM SPECTRUM AUCTION

### 4 Qualified Bidders

#### Report No. AUC-04-57-D (Auction No. 57)

In this *Public Notice*, the Federal Communications Commission (“FCC” or “Commission”) identifies four applicants found to be qualified to bid in the upcoming auction for 20 licenses in the Automated Maritime Telecommunications System (“AMTS”) spectrum (“Auction No. 57”). Auction No. 57 is scheduled to begin on Wednesday, September 15, 2004. In addition, this *Public Notice* contains bidding instructions and other important information regarding Auction No. 57.

**Attachment A** lists each of the four 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 applicant that submitted an FCC Form 175 application, 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, procedures, and other information contained in the *Auction No. 57 Procedures Public Notice* and subsequent public notices.<sup>1</sup> This *Public Notice* and other documents related to Auction No. 57 are available on the Commission’s auctions website, <http://wireless.fcc.gov/auctions/>. The following information provides additional guidance.

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<sup>1</sup> See “Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Auction Procedures,” *Public Notice*, 19 FCC Rcd. 9518 (2004) (“*Auction No. 57 Procedures Public Notice*”).

**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
- Automated Auction System Bidder's Guide
- 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, September 8, 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 12<sup>th</sup> 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 – **(202) 414-1250 (V) or (202) 414-1255 (TTY)** - 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. 57. 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, 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 five to ten minutes 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. 57, calculated in accordance with the formulas previously announced.<sup>2</sup> 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 15, 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:

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<sup>2</sup> *Auction No. 57 Procedures Public Notice*, 19 FCC Rcd. at 9549-50. Attachment A of the *Auction No. 57 Public Notice* sets forth the minimum opening bids for each license offered in Auction No. 57.

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. 57, 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. 57 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.<sup>3</sup> 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: [auction57@fcc.gov](mailto:auction57@fcc.gov). A separate copy of the letter should be faxed to Howard Davenport, Auctions and Spectrum Access Division, (202) 418-1186. Questions about other changes should be directed to Howard Davenport 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).<sup>4</sup> Major modifications (*e.g.*, changing the markets applied for, changing control of the applicant, changing the certifying official) will not be accepted.<sup>5</sup>

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<sup>3</sup> 47 C.F.R. § 1.65.

<sup>4</sup> 47 C.F.R. § 1.2105(b).

**Due Diligence.** Potential bidders are reminded that there are a number of incumbent licensees already licensed and operating on frequencies that are subject to the upcoming auction, such as AMTS Station licensees. Such incumbents must be protected from harmful interference by AMTS Station geographic area licensees in accordance with the Commission's rules. We therefore caution potential bidders in formulating their bidding strategies to investigate and consider the extent to which AMTS frequencies are occupied by incumbents.

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. 57.

Potential bidders also should be aware that certain applications (including those for modification), petitions for rulemaking, rulemaking proceedings, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants, incumbent licensees, or the licenses available in Auction No. 57.<sup>6</sup> In addition, certain judicial proceedings that may relate to particular applicants or incumbent licensees, or the licenses available in Auction No. 57, may be commenced, or 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. 57. In addition, although the Commission will continue to act on pending applications, requests and petitions, some of these matters 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. 57.** For further details regarding due diligence, please refer to Section I.B.5 of the *Auction No. 57 Procedures Public Notice*.<sup>7</sup>

**Pending Matters Relating to Start of Auction No. 57** The Bureau has before it a Petition for Partial Reconsideration (“Petition”) filed by Warren C. Havens, Telesaurus VPC LLC, and Telesaurus Holdings GB LLC (“Havens”) on June 25, 2004, and Request for Stay filed on July 2, 2004. In these filings, Havens seeks to have the Bureau bar certain current licensees from participation in Auction No. 57 and delay the auction until the Bureau grants the relief that Havens requests in his Petition and Request for Stay. Mobex Network Services, LLC filed a Limited Opposition to the Petition. The Bureau will respond to these filings in a separate order. Also, the Bureau has before it: (i) Motion for Stay – Urgent Action Requested, Automated Maritime Telecommunications System, Auction #57 filed by Mobex Network Services, LLC (Mobex), dated August 13, 2004; (ii) Request for Declaratory Ruling – Urgent Action Requested, Automated Maritime Telecommunications System, Auction #57 filed by Mobex, dated August 13, 2004; (iii) Motion for Stay – Urgent Action Requested, Automated Maritime Telecommunications System, Auction #57, dated August 13, 2004; and (iv) Informal Request for Action – Urgent Action Requested, Automated Maritime Telecommunications System, Auction #57, filed by Mobex, dated August 13, 2004. In these filings, Mobex requests that the Bureau issue a declaratory ruling on whether two commonly-controlled entities can participate in an auction. Mobex asks that the

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<sup>5</sup> *Id.*

<sup>6</sup> For example, we note that the Exelon Generation Company (“Exelon”) filed a Petition for Waiver on July 30, 2004. In its Petition, Exelon requested a waiver of §§ 90.35 and 90.259 of the Commission’s Rules for certain enumerated licenses to have co-primary status with AMTS licenses. On August 26, 2004, Exelon filed a supplement to its Petition. The Bureau will respond to Exelon’s Petition in a separate order.

<sup>7</sup> See *Auction No. 57 Procedures Public Notice*, 19 FCC Rcd. at 9527-30.

Bureau dismiss the two applications that are commonly-controlled by Warren C. Havens and stay the date for submission of upfront payments until thirty days after the Bureau resolves the Request for a Declaratory Ruling. Mobex further requests that the Bureau stay the start date for bidding in Auction No. 57 until thirty days after the Commission has lifted the requested stay of the start date for submission of upfront payments. The Bureau will respond to these filings in a separate order.

**Mock Auction.** The FCC will conduct a mock auction on Friday, September 10, 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. 57 registration materials.

The mock auction will include all Auction No. 57 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, September 10, 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.** 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 which they have entered into agreements under Section 1.2105(a)(2)(viii).<sup>8</sup> For

<sup>8</sup> 47 C.F.R. § 1.2105(a)(2)(viii); 47 C.F.R. § 1.2105(c)(1). See also Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001) (“*Part 1 Seventh Report and Order*”); Amendment of Part of the Commission's – Competitive Bidding Procedures, *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 15297-98 ¶¶ 7-8 (2000).

Auction No. 57, this prohibition became effective at the short-form application filing deadline on Monday, July 19, 2004, and will end on the post-auction down payment deadline, which will be announced in a future public notice.<sup>9</sup> **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**<sup>10</sup> 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.<sup>11</sup> If parties had agreed in principle on all material terms of a bidding agreement(s), 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.<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup>

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>15</sup> 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

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<sup>9</sup> 47 C.F.R. § 1.2105(c)(1).

<sup>10</sup> See, e.g., Letter to Robert Pettit, Esquire, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 16 FCC Rcd 10080 (WTB 2000) (declining to except an applicant's controlling interest from coverage by the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

<sup>11</sup> 47 C.F.R. § 1.2105(c)(7)(i).

<sup>12</sup> See "Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules," *Public Notice*, 11 FCC Rcd 9645 (1995).

<sup>13</sup> See *Auction No. 57 Procedures Public Notice*, 19 FCC Rcd. at 9524-25.

<sup>14</sup> 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).

<sup>15</sup> 47 C.F.R. § 1.65.

communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under Section 1.65.<sup>16</sup>

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. Any applicant found to have violated the anti-collusion rule may be subject to sanctions.<sup>17</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 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.<sup>18</sup>

***Long-Form Applications.*** Applicants that claim status as a 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.<sup>19</sup> 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 Lisa Stover, Auctions Project Manager, at (717) 338-2888; Roy Knowles, Auctions Analyst, at (717) 338-2888; or Howard Davenport, Attorney Advisor, 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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<sup>16</sup> 47 C.F.R. § 1.2105(c)(6); *see also Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17.

<sup>17</sup> *See* 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

<sup>18</sup> 47 C.F.R. § 1.2109(d).

<sup>19</sup> 47 C.F.R. § 1.2112(b)(2).