



# PUBLIC NOTICE

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## AUCTION OF DIRECT BROADCAST SATELLITE SERVICE LICENSES RESCHEDULED FOR JULY 14, 2004

### Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures

Report No. AUC-04-52-D (Auction No. 52)

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## I. GENERAL INFORMATION

### A. Introduction

By this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) announces that Auction No. 52, an auction of licenses to use the Direct Broadcast Satellite (“DBS”) service allocation in the 12.2-12.7 GHz band, has been rescheduled for July 14, 2004.<sup>1</sup> In addition, in this Public Notice the Bureau announces the procedures and minimum opening bids for Auction No. 52 and sets forth a revised list of the DBS licenses available in the auction. On March 3, 2003, in accordance with the Balanced Budget Act of 1997,<sup>2</sup> the Commission released a public notice seeking comment on reserve prices or minimum opening bids and the procedures to be used for Auction No. 52.<sup>3</sup> Four comments and two reply comments were submitted in response to the *Auction No. 52 Comment Public Notice*.<sup>4</sup>

#### 1. Background of Proceeding

The Commission first established DBS service rules in 1982 by adopting “interim” rules that were codified in Part 100 of its regulations.<sup>5</sup> The first applications for authority to construct, launch, and

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<sup>1</sup> See Policies and Rules for the Direct Broadcast Satellite Service, *Report and Order*, 17 FCC Rcd 11331 (2002) (“*Part 100 R&O*”); Revision of Rules and Policies for the Direct Broadcast Satellite Service, *Report and Order*, 11 FCC Rcd 9712 (1995) (“*DBS R&O*”).

<sup>2</sup> Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251, § 3002(a) (1997) (codified at 47 U.S.C. § 309(j)(4)(F)) (“Balanced Budget Act”). The Commission’s authority to establish a reserve price or minimum opening bid is set forth in 47 C.F.R. § 1.2104(c) and (d).

<sup>3</sup> Auction of Direct Broadcast Satellite Service Licenses Scheduled for August 6, 2003; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures, Public Notice, FCC 03-40 (rel. March 3, 2003), 68 Fed. Reg. 12906 (“*Auction No. 52 Comment Public Notice*”). In connection with Auction No. 52, the Commission sought comment on two issues that were more appropriate for a Commission-level (rather than Bureau-level) decision, the auctionability of DBS licenses and eligibility for the available DBS licenses. In the interests of administrative efficiency, the Commission also sought comment on those auction procedures that the Bureau usually handles on delegated authority. See Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 448, ¶ 125 (1997) (“*Part 1 Third Report and Order*”); Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, 12 FCC Rcd 5686, 5697, ¶ 16 (1997).

<sup>4</sup> Comments were filed on March 17, 2003, by Northpoint Technology, Ltd. and Broadwave USA, Inc., and on March 24, 2003, by R/L DBS Company, LLC (“Rainbow DBS”), EchoStar Satellite Corporation (“EchoStar”), and PanAmSat Corporation. Reply Comments were filed on March 31, 2003, by Rainbow DBS and EchoStar. None of these Comments or Reply Comments relate to the procedural issues addressed herein, but relate instead to the issues of auctionability and eligibility raised by the Commission. Numerous *ex parte* filings were also made, none of which are relevant to the procedural issues addressed herein. For a complete list of these *ex parte* filings, see Auction of Direct Broadcast Satellite Licenses, *Order*, FCC 04-8 (rel. January 15, 2004) (“*DBS Auction Order*”).

<sup>5</sup> See Inquiry into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites for the Period Following the 1983 Regional Administrative Radio Conference, *Report and Order*, 90 FCC2d 676 (1982), *recon. denied*, 53 RR2d 1637 (1983).

operate DBS satellite systems were also accepted in 1982.<sup>6</sup> In 1995, the Commission adopted new service rules for DBS to better reflect the realities of the service as it had evolved and to promote certain goals, including the provision of DBS service to Alaska and Hawaii. At the same time, the Commission adopted competitive bidding rules for the DBS service.<sup>7</sup> The first DBS auctions were held in January 1996.<sup>8</sup>

On April 11, 2002, the Bureau, acting under delegated authority, streamlined the DBS competitive bidding rules by conforming them with the general competitive bidding rules set forth in Part 1 of the Commission's rules.<sup>9</sup> On June 13, 2002, the Commission released the *Part 100 R&O*, in which it further streamlined the regulation of DBS and moved the DBS rules from Part 100 to Part 25. The Commission's actions included clarifying the geographic service rules to enhance the delivery of DBS service to Alaska and Hawaii, updating and clarifying technical rules, and clarifying the due diligence rules.<sup>10</sup>

On January 15, 2004, the Commission released an Order affirming its conclusion in the *Auction No. 52 Comment Public Notice* that the FCC's authority to auction the DBS licenses slated for Auction No. 52 has not been altered by regulatory and statutory actions taken since DBS auctions were last held,<sup>11</sup> and declining to impose eligibility restrictions on the three available licenses to operate at the western orbit locations of 175° W.L., 166° W.L., and 157° W.L. The Commission did not address in this Order the question of whether any eligibility restrictions are appropriate for the license to use the two available channels at the eastern orbit location of 61.5° W.L. but instead deferred the resolution of this matter to a subsequent order.<sup>12</sup>

## 2. Licenses to Be Auctioned

Auction No. 52 will include three licenses for unassigned channels at orbit locations of 175° W.L., 166° W.L., and 157° W.L. The license to use the two available channels at the eastern orbit location of 61.5° W.L., which was included in the list of licenses available for auction in the *Auction No. 52 Comment Public Notice*, will not be offered in Auction No. 52 because there remains pending the issue of whether

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<sup>6</sup> Applications of CBS, Inc., Direct Broadcasting Satellite Corporation, Focus Broadcast Satellite Company, Graphic Scanning Corporation, RCA American Communications, Inc., United States Satellite Broadcasting Company, Inc., Video Satellite Systems, Inc., Western Union Telegraph Company for Authority to Establish Interim Direct Broadcast Satellite Systems, *Order*, 92 FCC2d 64 (1982); *see also* Processing Procedures Regarding the Direct Broadcast Satellite Service, *Order*, 95 FCC Rcd 250 (1983).

<sup>7</sup> *See DBS R&O*, 11 FCC Rcd 9712 (1995).

<sup>8</sup> The Commission auctioned construction permits for 28 channels at the 110° W.L. orbit location and 24 channels at the 148° W.L. orbit location.

<sup>9</sup> Amendment of Parts 1, 21, 22, 24, 25, 26, 27, 73, 74, 80, 90, 95, 100, and 101 of the Commission's Rules — Competitive Bidding, *Order*, 17 FCC Rcd 6534 (2002) (modified by errata, 17 FCC Rcd 11146 (2002)).

<sup>10</sup> *DBS Part 100 R&O*, 17 FCC Rcd 11331 (2002). The competitive bidding rules applicable to DBS are now set forth at 47 C.F.R. §§ 1.2101-1.2113 and 25.148(d) & (e).

<sup>11</sup> These auctions were conducted in 1996. *See supra* note 8.

<sup>12</sup> *DBS Auction Order*, FCC 04-8 (rel. January 15, 2004).

any eligibility restrictions are appropriate for this license.<sup>13</sup> In addition, in May 2003 the International Bureau authorized EchoStar to use three channels at the 157° W.L. orbit location. The license available for auction at that orbit location will therefore authorize the use of 29 channels, rather than 32 as previously announced in the *Auction No. 52 Comment Public Notice*.<sup>14</sup>

The licenses included in Auction No. 52 will be subject to the Commission's DBS service rules, including the geographic service rules at 47 C.F.R. § 25.148(c). A complete list and description of the licenses available in Auction No. 52 is included as Attachment A of this Public Notice.

## **B. Rules and Disclaimers**

### **1. Relevant Authority**

Prospective applicants must familiarize themselves thoroughly with the Commission's rules relating to the DBS service contained in Title 47, Part 25 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in Title 47, Part 1 of the Code of Federal Regulations. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions (collectively, "terms") contained in this Public Notice; the *Auction No. 52 Comment Public Notice*; and the *Part 1 Fifth Report and Order* (as well as prior and subsequent Commission proceedings regarding competitive bidding procedures).<sup>15</sup>

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<sup>13</sup> See *id.* at ¶¶ 26-27.

<sup>14</sup> EchoStar was authorized to use channels 1, 3, and 5 at the 157° W.L. orbit location. See *Echostar Satellite Corporation, For Assignment of Direct Broadcast Satellite Orbital Position and Channels, Order*, 18 FCC Rcd 9396 (2003). On December 10, 2003, EchoStar was granted special temporary authority to operate on channels 1, 7, and 11 at the 157° W.L. orbit location rather than on its assigned channels of 1, 3, and 5 for a period of 60 days commencing December 17, 2003, subject to certain conditions. See *Public Notice, Policy Branch Information, Report No. SAT-00181, DA 03-3942* (December 12, 2003). On December 19, 2003, EchoStar filed an application seeking to modify its authorization in order to use channels 1, 7, and 11 at the 157° W.L. orbit location instead of channels 1, 3, and 5. This application is currently pending. See *Public Notice, Policy Branch, Satellite Space Applications Accepted for Filing, Report No. SAT-00187* (January 15, 2004). See also *EchoStar Satellite LLC, SAT-MOD-20031219-00372* (filed December 19, 2003).

<sup>15</sup> Amendment of Part 1 of the Commission's Rules — 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 (2000) (modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)) ("*Part 1 Fifth Report and Order*") (recons. pending). Other decisions regarding the Commission's competitive bidding procedures include, but are not limited to, the following: 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*") (amending the anti-collusion rule, which is codified at 47 C.F.R. § 1.2105(c)); Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, *Eighth Report and Order*, 17 FCC Rcd 2962 (2002) (amending Section 1.2110 of the Commission's rules); and Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, *Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*, 18 FCC Rcd 10180 (2003) ("*Order on Reconsideration of the Part 1 Fifth Report and Order*") (recons. pending) (further amending Section 1.2110 to exempt the gross revenues of the affiliates of a rural telephone cooperative's officers and directors from attribution to the applicant and adopting other modifications to the competitive bidding rules).

Auction participants applying for licenses in the DBS service should also be familiar with the *Part 100 R&O* and Appendix 30 and 30A of the International Radio Regulations.<sup>16</sup>

The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554, or may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). When ordering documents from Qualex, please provide the appropriate FCC document number (for example, FCC 03-40 for the *Auction No. 52 Comment Public Notice*).

## 2. 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 whom they have entered into agreements under Section 1.2105(a)(2)(viii).<sup>17</sup> Because all three licenses available in Auction No. 52 have overlapping service areas, this prohibition will apply to all applicants. Thus, all applicants (unless they have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii)) must affirmatively avoid all discussions with or disclosures to each other that affect, or in their reasonable assessment have the potential to affect, bidding or bidding strategies. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.<sup>18</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 the entity.<sup>19</sup>

Because all three licenses available in Auction No. 52 have overlapping service areas, all applicants are encouraged to avoid using 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 applicants and conveys information concerning the substance of bids or bidding strategies between the applicants he or she is

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<sup>16</sup> *Part 100 R&O*, 17 FCC Rcd 11331 (2002); ITU Radio Regulations, Appendices 30 and 30A. *See also* 47 C.F.R. Part 25.

<sup>17</sup> 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.

<sup>18</sup> 47 C.F.R. § 1.2105(c)(1).

<sup>19</sup> 47 C.F.R. § 1.2105(c)(7)(i).

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.<sup>20</sup> 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.<sup>21</sup>

The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for licenses covering any of the same geographic areas.<sup>22</sup> In Auction No. 52, applicants will not be able to take advantage of these rule provisions because all three available licenses have overlapping service areas. However, all applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175.<sup>23</sup> If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to Section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with any other applicants.<sup>24</sup> By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with Section 1.2105(c).

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>25</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 communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under Section 1.65.<sup>26</sup>

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<sup>20</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>21</sup> See *id.* at 11978.

<sup>22</sup> 47 C.F.R. § 1.2105(c)(2) & (3).

<sup>23</sup> 47 C.F.R. § 1.2105(c).

<sup>24</sup> See *Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules*, *Public Notice*, 11 FCC Rcd 9645 (1995).

<sup>25</sup> 47 C.F.R. § 1.65.

<sup>26</sup> 47 C.F.R. § 1.2105(c)(6); see also *Part I Seventh Report and Order*, 16 FCC Rcd at 17555, ¶ 17.

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.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup>

A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment F.

### 3. Other Services Authorized in the 12.2-12.7 GHz Band

In 2000, the Commission allocated the 12.2-12.7 GHz band for non-geostationary satellite orbit (“NGSO”) fixed-satellite service (“FSS”) downlinks on a primary basis. At the same time, the Commission authorized the Multichannel Video Distribution and Data Service (“MVDDS”) as a new service under the existing primary status fixed service allocation in the 12.2-12.7 GHz band. The Commission concluded that MVDDS could operate in the 12 GHz band on a co-primary non-harmful interference basis with incumbent DBS providers.<sup>30</sup> In the *MVDDS Second R&O* the Commission established service rules for MVDDS, including technical criteria that will protect DBS providers from interference.<sup>31</sup> An auction of MVDDS licenses concluded on January 27, 2004.<sup>32</sup>

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<sup>27</sup> 47 C.F.R. § 1.2107(d).

<sup>28</sup> See 47 C.F.R. § 1.2109(d).

<sup>29</sup> *Id.*

<sup>30</sup> 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, *First Report and Order and Further Notice of Proposed Rule Making*, 16 FCC Rcd 4096 (2000).

<sup>31</sup> 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, *Memorandum Opinion and Order and Second Report and Order*, 17 FCC Rcd 9614 (“*MVDDS Second R&O*”).

<sup>32</sup> Multichannel Video Distribution and Data Service Spectrum Auction Closes; Winning Bidders Announced, Public Notice, DA 04-215 (rel. February 2, 2004).

#### 4. Coordination with Other Countries

All DBS licensees must comply with the provisions of the International Telecommunication Union (“ITU”) Region 2 Band Plan for Ku-band DBS satellites. They must also comply with Sections 25.114(c)(23) and 25.111(c) of the Commission’s rules.<sup>33</sup> These rules require DBS licensees to provide technical information and analyses to the Commission where it may be necessary to request a modification of the ITU Region 2 Band Plan.

#### 5. Due Diligence

Potential applicants are reminded that there are matters pending with the Commission that could affect the licenses scheduled to be offered in Auction No. 52. These matters may involve 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 that 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. 52, 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. 52. 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. To aid potential bidders, the Bureau will issue shortly a Due Diligence Announcement listing matters pending before the Commission that relate to licenses or applications in these services. However, the Commission makes no representations or guarantees that the matters listed in the Due Diligence Announcement are the only pending matters that could affect spectrum availability in these services.

**Potential applicants 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. 52.**

#### 6. Bidder Alerts

**The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.**

As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 52 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a “cold call” from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.

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<sup>33</sup> 47 C.F.R. § 25.114(c)(23); 47 C.F.R. § 25.111(c).

- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service (“IRS”), Federal Trade Commission (“FTC”), Securities and Exchange Commission (“SEC”), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

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 regarding Auction No. 52 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

## **7. National Environmental Policy Act Requirements**

Licensees must comply with the Commission’s rules regarding the National Environmental Policy Act (“NEPA”).<sup>34</sup>

### **C. Auction Specifics**

#### **1. Auction Date**

The auction will begin on July 14, 2004. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

#### **2. Auction Title**

Auction No. 52 – Direct Broadcast Satellite Service

#### **3. Bidding Methodology**

The bidding methodology for Auction No. 52 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available, and the FCC Wide Area Network will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

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<sup>34</sup> 47 C.F.R. §§ 1.1301-1.1319.

#### 4. Pre-Auction Dates and Deadlines

Auction Seminar .....	May 13, 2004
Short-Form (FCC Form 175) Filing Window Opens.....	May 13, 2004; 12:00 p.m. ET
Short-Form (FCC Form 175) Application Deadline .....	May 21, 2004; 6:00 p.m. ET
Upfront Payments (via wire transfer) .....	June 18, 2004; 6:00 p.m. ET
Mock Auction .....	July 9, 2004
Auction Begins.....	July 14, 2004

#### 5. Requirements for Participation

Any entity wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6:00 p.m. ET, May 21, 2004.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, June 18, 2004.
- Comply with all provisions outlined in this public notice.

#### 6. General Contact Information

##### GENERAL AUCTION INFORMATION

General Auction Questions  
Seminar Registration

FCC Auctions Hotline  
(888) 225-5322, Press Option #2  
or direct (717) 338-2888  
Hours of service: 8:00 a.m. – 5:30 p.m. ET,  
Monday through Friday

##### AUCTION LEGAL INFORMATION

Auction Rules, Policies, Regulations

Auctions and Spectrum Access Division  
(202) 418-0660

##### LICENSING INFORMATION

Rules, Policies, Regulations  
Licensing Issues  
Due Diligence  
Incumbency Issues

International Bureau, Satellite Division  
Rockie Patterson (202) 418-1183  
Selina Khan (202) 418-7282

##### TECHNICAL SUPPORT

Electronic Filing  
FCC Automated Auction System

FCC Auctions Technical Support Hotline  
(202) 414-1250  
(202) 414-1255 (TTY)  
Hours of service: 8:00 a.m. – 6:00 p.m. ET,  
Monday through Friday

##### PAYMENT INFORMATION

Wire Transfers  
Refunds

FCC Auctions Accounting Branch  
(202) 418-0578 or (202) 418-0496  
(202) 418-2843 (Fax)

**TELEPHONIC BIDDING**

Will be furnished only to qualified bidders

**FCC COPY CONTRACTOR**

Additional Copies of  
Commission Documents

Qualex International  
445 12<sup>th</sup> Street, SW, Room CY-B402  
Washington, DC 20554  
(202) 863-2893  
(202) 863-2898 (Fax)  
qualexint@aol.com (E-mail)

**PRESS INFORMATION**

Lauren Patrich (202) 418-7944

**FCC FORMS**

(800) 418-3676 (outside Washington, DC)  
(202) 418-3676 (in the Washington Area)  
<http://www.fcc.gov/formpage.html>

**FCC INTERNET SITES**

<http://www.fcc.gov>  
<http://wireless.fcc.gov/auctions>  
<http://wireless.fcc.gov/uls>

**II. SHORT-FORM (FCC FORM 175) APPLICATION REQUIREMENTS**

Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D to this public notice. The short-form application seeks the applicant's name and address; legal classification; status; identification of the license(s) sought; and the authorized bidders and contact persons. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license and, as discussed below in Section II.C (Provisions Regarding Defaulters and Former Defaulters), that they 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.

**A. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)**

All applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by Sections 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to file an "Exhibit A" providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in Section 1.2112 of the Commission's rules.<sup>35</sup>

**B. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)**

Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating

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<sup>35</sup> 47 C.F.R. § 1.2105 requires the disclosure on the short-form of the applicant's ownership information as set forth in 47 C.F.R. § 1.2112. Note that both of these sections were revised in the *Part 1 Fifth Report and Order*. See also *Order on Reconsideration of the Part 1 Fifth Report and Order*, 18 FCC Rcd 10180 (2003).

to post-auction market structure.<sup>36</sup> Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid.<sup>37</sup> As discussed above, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its application and may not continue discussions with other applicants after the deadline.<sup>38</sup> Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an “Exhibit B” to the FCC Form 175.

A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants.<sup>39</sup> While the anti-collusion rules do not prohibit non-auction-related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

### C. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit C)

Each applicant must certify on its FCC Form 175 application under penalty of perjury that the applicant, its controlling interests, its affiliates, and the affiliates of its controlling interests, as defined by Section 1.2110, are not in default on any Commission licenses (including down payments) and not delinquent on any non-tax debt owed to any Federal agency.<sup>40</sup> In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interests, as defined by Section 1.2110, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency.<sup>41</sup> **Applicants must include this statement as Exhibit C of the FCC Form 175.** 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.

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<sup>36</sup> 47 C.F.R. §§ 1.2105(a)(2)(viii), (c)(1).

<sup>37</sup> 47 C.F.R. § 1.2105(a)(2)(ix).

<sup>38</sup> *See supra* Section I.B.2.

<sup>39</sup> 47 C.F.R. § 1.2105(c)(4)(i), (ii).

<sup>40</sup> 47 C.F.R. § 1.2105(a)(2)(x); Amendment of Part 1 of the Commission’s Rule — 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 at 15317, ¶ 42 (“*Order on Reconsideration of the Part 1 Third Report and Order*”).

<sup>41</sup> 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.

“Former defaulters” — *i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies — are eligible to bid in Auction No. 52, provided that they are otherwise qualified. However, as discussed *infra* in Section III.D.3, former defaulters are required to pay upfront payments that are 50 percent more than the normal upfront payment amounts.<sup>42</sup>

#### **D. Installment Payments and Bidding Credits**

Neither installment payment plans nor bidding credits will be available in Auction No. 52.

#### **E. Other Information (FCC Form 175 Exhibits D and E)**

Applicants owned by minorities or women, as defined in 47 C.F.R. § 1.2110(c)(2), may attach an exhibit (Exhibit D) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of “designated entities” in its auctions. Applicants wishing to submit additional information may do so on Exhibit E (Miscellaneous Information) to the FCC Form 175.

#### **F. Minor Modifications to Short-Form Applications (FCC Form 175)**

After the short-form filing deadline (6:00 p.m. ET May 21, 2004), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections or proposed orbit location, change the certifying official, or change control of the applicant). *See* 47 C.F.R. § 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these 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: [auction52@fcc.gov](mailto:auction52@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 52. The Bureau requests that parties format any attachments to electronic mail as Adobe<sup>®</sup> Acrobat<sup>®</sup> (pdf) or Microsoft<sup>®</sup> Word documents.

**A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850.** Questions about other changes should be directed to Brian Carter of the Auctions and Spectrum Access Division at (202) 418-0660.

#### **G. Maintaining Current Information in Short-Form Applications (FCC Form 175)**

Section 1.65 of the Commission's rules requires applicants to maintain the completeness and accuracy of the information in their pending applications and to notify the Commission within 30 days of any substantial change that may be of decisional significance. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 C.F.R. § 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

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<sup>42</sup> 47 C.F.R. § 1.2106(a).

### **III. PRE-AUCTION PROCEDURES**

#### **A. Auction Seminar**

On Thursday, May 13, 2004, the FCC will sponsor a free seminar for Auction No. 52 at the Federal Communications Commission, located at 445 12<sup>th</sup> Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, the FCC Automated Auction System, and DBS service and auction rules. The seminar will also provide an opportunity for prospective applicants to ask questions of FCC staff.

To register, complete the registration form found in Attachment B and submit it by Tuesday, May 11, 2004. Registrations are accepted on a first-come, first-served basis.

#### **B. Short-Form Application (FCC Form 175) — Due May 21, 2004**

In order to participate in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6:00 p.m. ET on May 21, 2004. Late applications will not be accepted.

There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See Section III.D, below.*

##### **1. Electronic Filing**

Applicants must file their FCC Form 175 applications electronically.<sup>43</sup> Applications may generally be filed at any time beginning at noon ET on May 13, 2004, until 6:00 p.m. ET on May 21, 2004. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on May 21, 2004.

Applicants must press the “SUBMIT Application” button on the “Submission” page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 AM to 6:00 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded.*

Applicants can also contact Technical Support via e-mail. To obtain the address, click the **Support** tab on the Form 175 Homepage.

##### **2. Completion of the FCC Form 175**

Applicants should carefully review 47 C.F.R. § 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of this public notice. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D to this public notice provide information on the required attachments and appropriate formats.

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<sup>43</sup> 47 C.F.R. § 1.2105(a).

### **3. Electronic Review of FCC Form 175**

The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. There is no fee for accessing this system. *See* Attachment C for details on accessing the review system.

Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. NOTE: Applicants should not include sensitive information (*i.e.*, TIN/EIN) on any exhibits to their FCC Form 175 applications.

#### **C. Application Processing and Minor Corrections**

After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

As described more fully in the Commission's rules, after the May 21, 2004, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections or proposed orbit location, change the certifying official, or change control of the applicant).<sup>44</sup>

#### **D. Upfront Payments — Due June 18, 2004**

In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6:00 p.m. ET on June 18, 2004.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 52 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the June 18, 2004, deadline will result in dismissal of the application and disqualification from participation in the auction.

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<sup>44</sup> 47 C.F.R. § 1.2105.

## 1. Making Auction Payments by Wire Transfer

**Wire transfer payments must be received by 6:00 p.m. ET on June 18, 2004.** To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261  
Receiving Bank: Mellon Pittsburgh  
BENEFICIARY: FCC/Account # 910-0171  
OBI Field: (Skip one space between each information item)  
“AUCTIONPAY”  
FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 11 and/or 21)  
PAYMENT TYPE CODE (same as FCC Form 159, block 24A: A52U)  
FCC CODE 1 (same as FCC Form 159, block 28A: “52”)  
PAYER NAME (same as FCC Form 159, block 2)  
LOCKBOX NO. # 358430

**NOTE:** The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

Applicants must fax a completed FCC Form 159 (Revised 2/03) 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). On the cover sheet of the fax, write “Wire Transfer — Auction Payment for Auction Event No. 52.” In order to meet the Commission’s upfront payment deadline, an applicant’s payment must be credited to the Commission’s account by the deadline.<sup>45</sup> **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.**

## 2. FCC Form 159

A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/03) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E to this public notice. An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

## 3. Amount of Upfront Payment

In the *Part 1 Order* the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction.<sup>46</sup> In addition, in the *Part 1 Fifth Report and Order*, the

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<sup>45</sup> Letter from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Patrick Shannon, Esq., Counsel for Lynch 3G Communications Corporation, DA 03-1944, dated June 13, 2003.

<sup>46</sup> Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 12 FCC Rcd. 5686, 5697-5698, ¶ 16 (1997) (“*Part 1 Order*”).

Commission ordered that “former defaulters,” *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments 50 percent greater than non-“former defaulters.”<sup>47</sup> For purposes of this calculation, the “applicant” includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by Section 1.2110 of the Commission’s rules (as amended in the *Part 1 Fifth Report and Order*).<sup>48</sup>

In the *Auction No. 52 Comment Public Notice*, the Commission proposed that the amount of the upfront payment would determine the number of bidding units on which a bidder may place bids.<sup>49</sup> In order to bid on a license, otherwise qualified bidders that applied for that license on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant’s total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

In the *Auction No. 52 Comment Public Notice*, the Commission proposed upfront payments on a license-by-license basis as follows: The Commission proposed upfront payments of \$50,000 per channel for the licenses at the 175° W.L. and 166° W.L. orbit locations, \$100,000 per channel for the license at the 157° W.L. orbit location, and \$400,000 per channel for the license at the 61.5° W.L. orbit location. Given 32 channels at 175° W.L., 166° W.L., and 157° W.L., and two channels at 61.5° W.L., the Commission proposed upfront payments of \$1,600,000 for the 175° W.L. and 166° W.L. licenses, \$3,200,000 for the 157° W.L. license, and \$800,000 for the 61.5° W.L. license.<sup>50</sup>

No comments were submitted on this issue. As noted above, however, the license for the two available channels at the 61.5° W.L. orbit location will not be offered in Auction No. 52, and the license for the 157° W.L. orbit location will authorize the use of 29, rather than 32, channels.<sup>51</sup> In the *Auction No. 52 Comment Public Notice* the Commission indicated that if the number of available channels at any location changed prior to the auction, the applicable upfront payment would change proportionately.<sup>52</sup> Accordingly, the Bureau adopts the upfront payments proposed in the *Auction No. 52 Comment Public Notice* for the 175° W.L. and 166° W.L. licenses, does not adopt an upfront payment for the 61.5° W.L. license, and adopts an upfront payment of \$2,900,000 for the 157° W.L. license.

The specific upfront payments for each license are set forth in the following table and in Attachment A of this Public Notice. Attachment A also includes the number of bidding units for each license.

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<sup>47</sup> *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-17, ¶¶ 40-42; 47 C.F.R. § 1.2106(a); *see* 47 C.F.R. §§1.2105(a)(2)(xi).

<sup>48</sup> *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-17, ¶¶ 40-42.

<sup>49</sup> *Auction No. 52 Comment Public Notice* at 5.

<sup>50</sup> *Id.*

<sup>51</sup> *See supra* Section I.A.2., “Licenses to Be Auctioned.”

<sup>52</sup> *Auction No. 52 Comment Public Notice* at 5, n.21.

Upfront Payments			
	Orbit Location		
	175° W.L.	166° W.L.	157° W.L.
Per Channel	\$50,000	\$50,000	\$100,000
# of Channels	32	32	29
Upfront Payment	\$1,600,000	\$1,600,000	\$2,900,000

In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bidding units associated with licenses on which the bidder has the standing high bid from the previous round and licenses on which the bidder places a bid in the current round) in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. **Applicants should check their calculations carefully, as there is no provision for increasing maximum eligibility after the upfront payment deadline.**

Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

NOTE: An applicant may, on its FCC Form 175, apply for every applicable license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

#### **4. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments**

The Commission will use wire transfers for all Auction No. 52 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed below be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser or Tim Dates, at (202) 418-2843 by June 18, 2004. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418-0578 or Tim Dates at (202) 418-0496.

Name of Bank  
 ABA Number  
 Contact and Phone Number  
 Account Number to Credit  
 Name of Account Holder  
 FCC Registration Number (FRN)  
 Taxpayer Identification Number (see below)  
 Correspondent Bank (if applicable)  
 ABA Number  
 Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Section V.E., *below*.

#### **E. Auction Registration**

Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) and the other containing the SecurID cards, both of which are required to place bids. **These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.**

Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, July 7, 2004, should contact the Auctions Hotline at (717) 338-2888. Receipt of both registration mailings is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

Qualified bidders should note that 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> St., SW, Washington, DC 20554. Only an authorized representative or certifying official, as designated on an 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.

#### **F. Remote Electronic Bidding**

The Commission will conduct this auction over the Internet, and telephonic bidding will also be available. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically. Each applicant should indicate its bidding preference – electronic or telephonic – on the FCC Form 175. In either case, **each authorized bidder** must have its own SecurID card, which the FCC will provide at no charge. Each applicant with 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 FCC Automated Auction System user manual 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; therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 52. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175.

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.

## G. Mock Auction

All qualified bidders will be eligible to participate in a mock auction on Friday, July 9, 2004. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

## IV. AUCTION EVENT

The first round of bidding for Auction No. 52 will begin on Wednesday, July 14, 2004. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

### A. Auction Structure

#### 1. Simultaneous Multiple Round Auction

In the *Auction No. 52 Comment Public Notice*, the Commission proposed to award all licenses in Auction No. 52 in a simultaneous multiple round auction.<sup>53</sup> No comments were submitted on the issue of the use of this auction design. We conclude that it is operationally feasible and appropriate to auction the DBS licenses through a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, we believe, allows bidders to take advantage of any synergies that may exist among licenses and is administratively efficient.

#### 2. Maximum Eligibility and Activity Rules

In the *Auction No. 52 Comment Public Notice*, the Commission proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder.<sup>54</sup> No comments on this issue were received.

We adopt this proposal for Auction No. 52. The amount of the upfront payment submitted by a bidder determines the maximum initial eligibility (in bidding units) for each bidder. Note again that each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids in a round. As there is no provision for increasing a bidder's eligibility after the upfront payment deadline, prospective bidders are cautioned to calculate their upfront payments carefully. **The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.**

In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current eligibility during each round of the auction.

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<sup>53</sup> *Id.* at 5.

<sup>54</sup> *Id.*

A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits a bid in the current round (*see* "Minimum Acceptable Bids and Bid Increments" in Section IV.B.3, *below*). The minimum required activity is expressed as a percentage of the bidder's current bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under "Auction Stages" in Section IV.A.3 and "Stage Transitions" in Section IV.A.4, *below*), we adopt them for Auction No. 52.

### 3. Auction Stages

In the *Auction No. 52 Comment Public Notice*, the Commission proposed to conduct the auction in three stages and employ an activity rule. Under this proposal, in each round of Stage One a bidder desiring to maintain its current eligibility would be required to be active on licenses representing at least 50 percent of its current bidding eligibility.<sup>55</sup> In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 75 percent of its current bidding eligibility. Finally, a bidder in Stage Three, in order to maintain its current eligibility, would be required to be active on 100 percent of its current bidding eligibility. No comments on this proposal were submitted.

We adopt this proposal for the activity rule and stages. Below are the activity levels for each stage of the auction. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

**Stage One:** During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses representing at least 50 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by two.

**Stage Two:** During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 75 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by four-thirds (4/3).

**Stage Three:** During the third stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 100 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this final stage, reduced eligibility for the next round will be set at current round activity. For example, if a bidder does not have a standing high bid, does not place a bid in the current round, and does not have any activity rule waivers remaining, its eligibility will be reduced to zero, thereby eliminating the bidder from the auction.

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<sup>55</sup> *Id.* at 6.

CAUTION: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by using the bidding system's bidding module.

Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, we adopt them for Auction No. 52.

#### **4. Stage Transitions**

In the *Auction No. 52 Comment Public Notice*, The Commission proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) after two consecutive rounds in which only one new high bid is placed in each round. The Commission further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction and further proposed that the Bureau retain the discretion not to make a transition to the next stage when the conditions described above are met. This determination would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue.<sup>56</sup> No comments were submitted on this subject.

We adopt the proposal set forth in the *Auction No. 52 Comment Public Notice*. Thus, the auction will start in Stage One and will generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) after two consecutive rounds in which only one new high bid is placed in each round.<sup>57</sup> In addition, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids,<sup>58</sup> the number of new bids, and the percentage increase in revenue. We believe that these stage transition rules are appropriate for use in Auction No. 52.

#### **5. Activity Rule Waivers and Reducing Eligibility**

In the *Auction No. 52 Comment Public Notice*, the Commission proposed that each bidder in the auction would be provided three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction.<sup>59</sup> No comments were received concerning this issue.

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<sup>56</sup> *Id.*

<sup>57</sup> As explained further in Section IV.B.4., "High Bids," in the event of identical high bids on a license in a given round (*i.e.*, tied bids), we select a high bid from among the tied bids. Thus, identical high bids on a license result in one new high bid. For purposes of changing stages, absent new high bids on other licenses, identical high bids on a license meet the requirement of only one new high bid.

<sup>58</sup> When monitoring activity for determining when to change stages, we may consider the percentage of bidding units of the licenses receiving new high bids, excluding any FCC-held licenses.

<sup>59</sup> *Auction No. 52 Comment Public Notice* at 7.

Based upon our experience in previous auctions, **we adopt the proposal that each bidder be provided three activity rule waivers that may be used in any round during the course of the auction.** Use of an activity rule waiver preserves the bidder’s current bidding eligibility despite the bidder’s activity in the current round being below the required level. An activity rule waiver applies to an entire round of bidding and not to a particular license. We are satisfied that providing three waivers over the course of the auction provides a sufficient number of waivers and flexibility to the bidders while safeguarding the integrity of the auction.

The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an “automatic waiver”) at the end of any round where a bidder’s activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the bidding system. In this case, the bidder’s eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in “Auction Stages” (see Section IV.A.3 discussion *above*). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the FCC Automated Auction System) during a round in which no bids are submitted, the auction will remain open and the bidder’s eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new bids or withdrawals will not keep the auction open. **Note: Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.**

## 6. Auction Stopping Rules

For Auction No. 52, the Commission proposed to employ a simultaneous stopping rule.<sup>60</sup> The Commission also sought comment on a modified version of the stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

The Commission further proposed that the Bureau retain the discretion to keep the auction open even if no new bids or proactive waivers are submitted and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility.

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<sup>60</sup> *Id.* at 11.

In addition, the Commission proposed that the Bureau reserve the right to declare that the auction will end after a designated number of additional rounds (“special stopping rule”). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Commission proposed that the Bureau exercise these options only in certain circumstances, such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time.<sup>61</sup> Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders will be required to maintain a higher level of bidding activity), increasing the number of rounds per day, and/or adjusting the minimum acceptable bids and bid increments for the licenses.

No comments were received concerning this proposal. Therefore, we adopt the above proposals. Auction No. 52 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule. We believe that these stopping rules are most appropriate for Auction No. 52, because our experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

## **7. Auction Delay, Suspension, or Cancellation**

In the *Auction No. 52 Comment Public Notice*, the Commission proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.<sup>62</sup> No comments were received concerning this proposal.

Because this approach has proven effective in resolving exigent circumstances in previous auctions, we adopt the proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

### **B. Bidding Procedures**

#### **1. Round Structure**

The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 7.

The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

## 2. Reserve Price or Minimum Opening Bid

The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.<sup>63</sup> Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.<sup>64</sup> Among other factors, the Bureau must consider the amount of spectrum being auctioned, the size of the area being served, the extent of interference with other spectrum bands, and any other relevant factors that could reasonably have an impact on bidders' valuation of the licenses.<sup>65</sup> The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.<sup>66</sup>

In the *Auction No. 52 Comment Public Notice*, the Commission proposed to establish minimum opening bids for Auction No. 52.<sup>67</sup> Specifically, for Auction No. 52, the Commission proposed minimum opening bids on a license-by-license basis as follows: The Commission proposed minimum opening bids of \$100,000 per channel for the licenses at the 175° W.L. and 166° W.L. orbit locations, \$200,000 per channel for the license at the 157° W.L. orbit location, and \$800,000 per channel for the license at the 61.5° W.L. orbit location. Given 32 channels at 175° W.L., 166° W.L., and 157° W.L., and two channels at 61.5° W.L., the Commission proposed minimum opening bids of \$3,200,000 for the 175° W.L. and 166° W.L. licenses, \$6,400,000 for the 157° W.L. license, and \$1,600,000 for the 61.5° W.L. license.

In the alternative, the Commission sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.<sup>68</sup>

No comments were received on this issue. As noted above, however, the license for the two available channels at the 61.5° W.L. orbit location will not be offered in Auction No. 52, and the license for the 157° W.L. orbit location will authorize the use of 29, rather than 32, channels.<sup>69</sup> In the *Auction No. 52 Comment Public Notice* the Commission indicated that if the number of available channels at any location changed prior to the auction, the applicable minimum opening bid would change proportionately.<sup>70</sup>

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<sup>63</sup> See Balanced Budget Act, section 3002(a), 47 U.S.C. § 309(j)(4)(F).

<sup>64</sup> See *Part 1 Third Report and Order*, 13 FCC Rcd 374, 455-456 ¶ 141 (1997).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Auction No. 52 Comment Public Notice* at 8-9.

<sup>68</sup> *Id.* at 9.

<sup>69</sup> See *supra* Section I.A.2., "Licenses to Be Auctioned."

<sup>70</sup> *Auction No. 52 Comment Public Notice* at 8, n.27.

Accordingly, the Bureau adopts the minimum opening bids proposed in the *Auction No. 52 Comment Public Notice* for the 175° W.L. and 166° W.L. licenses, does not adopt a minimum opening bid for the 61.5° W.L. license, and adopts a minimum opening bid of \$5,800,000 for the 157° W.L. license. The minimum opening bids we adopt for Auction No. 52 are reducible at the discretion of the Bureau. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any requests to reduce the minimum opening bid on specific licenses.

The specific minimum opening bids for each license available in Auction No. 52 are set forth in the following table and in Attachment A.

Minimum Opening Bids			
	Orbit Location		
	175° W.L.	166° W.L.	157° W.L.
Per Channel	\$100,000	\$100,000	\$200,000
# of Channels	32	32	29
Minimum Opening Bid	\$3,200,000	\$3,200,000	\$5,800,000

### 3. Minimum Acceptable Bids and Bid Increments

In the *Auction No. 52 Comment Public Notice*, the Commission proposed the use of a 10 percent bid increment. This means that the minimum acceptable bid for a license is approximately 10 percent greater than the previous standing high bid received on the license. The minimum acceptable bid amount is calculated by multiplying the standing high bid times one plus the increment percentage – *i.e.*, (standing high bid) \* (1.10). The result is rounded using the Bureau’s standard rounding procedures for minimum acceptable bid calculations: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10. The Commission further proposed that the Bureau retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate.<sup>71</sup> No comments on these proposals were received, and we adopt the proposals.

In each round, each eligible bidder will be able to place a bid on a particular license for which it applied in any of nine different amounts.<sup>72</sup> The FCC Automated Auction System will list the nine bid amounts for each license.

Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described below. The difference between the minimum acceptable bid and the standing high bid for each license will define the **bid increment** — *i.e.*, bid increment = (minimum acceptable bid) – (standing high bid). The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount

<sup>71</sup> *Id.* at 9-10.

<sup>72</sup> Bidders must have sufficient eligibility to place a bid on the particular license. *See supra* Section III.D.3 “Amount of Upfront Payment.”

equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

At the start of the auction and until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. Corresponding additional bid amounts will be calculated using bid increments defined as the difference between the minimum opening bid times one plus the percentage increment, rounded as described above, and the minimum opening bid — *i.e.*, bid increment = (minimum opening bid)(1 + percentage increment) {rounded} – (minimum opening bid). At the start of the auction and until a bid has been placed on a license, the nine acceptable bid amounts for each license consist of the minimum opening bid and additional amounts are calculated using multiple bid increments (*i.e.*, the second bid amount equals the minimum opening bid plus the bid increment, the third bid amount equals the minimum opening bid plus two times the bid increment, etc).

In the case of a license for which the standing high bid has been withdrawn,<sup>73</sup> the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

The Bureau retains the discretion to change the minimum acceptable bids and bid increments and the methodology for determining the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Automated Auction System. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant.

#### 4. High Bids

At the end of each bidding round, the high bids will be determined based on the highest gross bid amount received for each license. A high bid from a previous round is sometimes referred to as a “standing high bid.” A “standing high bid” will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. Bidders are reminded that standing high bids count towards bidding activity.<sup>74</sup>

In the *Auction No. 52 Comment Public Notice*, the Commission proposed to use a random number generator to select a high bid in the event of identical high bids on a license in a given round (*i.e.*, tied bids).<sup>75</sup> No commenter opposed this proposal. Therefore, the Bureau adopts the proposal. A Sybase® SQL pseudo-random number generator based on the L’Ecuyer algorithm will be used to assign a random number to each bid<sup>76</sup>. The tied bid having the highest random number will become the standing high bid. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will

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<sup>73</sup> See *infra* Section IV.B.6 “Bid Removal and Bid Withdrawal.”

<sup>74</sup> See *supra* Section IV.A.2-5.

<sup>75</sup> *Auction No. 52 Comment Public Notice* at 10.

<sup>76</sup> A description of the L’Ecuyer algorithms can be found in L’Ecuyer, P. (1999) “Good Parameters and Implementations for Combined Multiple Recursive Random Number Generators” *Operations Research* 47 (1), pp.159-164. A longer version of this paper and the C code for the algorithms can be found on the author’s website at <http://www.iro.umontreal.ca/~lecuyer/papers.html>.

win the license. If any bids are received on the license in a subsequent round, the high bid will once again be determined on the highest gross bid amount received for the license.

## 5. Bidding

During a round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), withdraw high bids from a previous bidding round, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's activity at the close of the round.

Please note that all bidding will take place remotely either through the FCC Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 52.

A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (1) the licenses applied for on FCC Form 175 and (2) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those licenses for which the bidder applied on its FCC Form 175.

In order to access the bidding functions of the FCC Automated Auction System, bidders must be logged in during the bidding round using the bidder identification number provided in the registration materials, and the passcode generated by the SecurID card. Bidders are strongly encouraged to print bid confirmations for each round after they have completed all of their activity for that round.

In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts.<sup>77</sup> For each license, the FCC Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine bid amounts. The FCC Automated Auction System also includes an import function that allows bidders to upload text files containing bid information.

Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described in Section IV.B.3.

Finally, bidders should use caution in selecting their bid amounts because, as explained in the following section, bidders who withdraw a standing high bid from a previous round, even if mistakenly or erroneously made, are subject to bid withdrawal payments.

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<sup>77</sup> Bidders must have sufficient eligibility to place a bid on the particular license. *See infra* Section III.D.3 "Amount of Upfront Payment."

## 6. Bid Removal and Bid Withdrawal

In the *Auction No. 52 Comment Public Notice*, the Commission proposed bid removal and bid withdrawal procedures.<sup>78</sup> With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals in no more than one round during the course of the auction. The round in which withdrawals are used would be at the bidder's discretion. No comments on these proposals were submitted.

**Procedures.** Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is removed does not count towards bidding activity. These procedures will enhance bidder flexibility during the auction, and therefore we adopt them for Auction No. 52.

Once a round closes, a bidder may no longer remove a bid. However, in a later round, a bidder may withdraw standing high bids from a previous round using the withdraw bid function in the FCC Automated Auction System (assuming that the bidder has not reached its withdrawal limit). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 C.F.R. § 1.2104(g). **Note: Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted.**

In previous auctions, we have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various licenses in combination, we conclude that, for Auction No. 52, adoption of a limit on the use of withdrawals to one round per bidder is appropriate. By doing so we believe we strike a reasonable compromise that will allow bidders to use withdrawals. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block and 800 MHz SMR auctions, and is in no way a reflection of our view regarding the likelihood of any speculation or "gaming" in this auction.

The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to one round. This round will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in the round. Withdrawals during the auction will be subject to the bid withdrawal payments specified in 47 C.F.R. § 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a license.

If a high bid is withdrawn, the minimum acceptable bid will equal the second highest bid received for the license, which may be less than, or equal to, in the case of tied bids, the amount of the withdrawn bid.<sup>79</sup> To set the additional bid amounts, the second highest bid also will be used in place of the standing high bid in the formula used to calculate bid increments. The Commission will serve as a "place holder" high bidder on the license until a new bid is submitted on that license.

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<sup>78</sup> *Auction No. 52 Comment Public Notice* at 10-11.

<sup>79</sup> The Bureau retains the discretion to lower the minimum acceptable bid on such licenses in the next round or in later rounds.

**Calculation.** Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction.<sup>80</sup> If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the high bid in the same or subsequent auction(s).<sup>81</sup> In the case of multiple bid withdrawals on a single license, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s).<sup>82</sup> This policy allows bidders most efficiently to allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single license for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

In the *Part 1 Fifth Report and Order*, the Commission modified Section 1.2104(g)(1) of the rules regarding assessments of interim bid withdrawal payments.<sup>83</sup> As amended, Section 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.<sup>84</sup>

## 7. Round Results

Bids placed during a round will not be made public until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, bids withdrawn, current high bids, new minimum acceptable bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 52 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

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<sup>80</sup> 47 C.F.R. §§ 1.2104(g), 1.2109.

<sup>81</sup> The payment will equal the lower of: (1) the difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid. *See* 47 C.F.R. § 1.2104(g)(1).

<sup>82</sup> See following paragraph for discussion of interim bid withdrawal payments.

<sup>83</sup> *See Part 1 Fifth Report and Order*, 15 FCC Rcd at 15302, ¶ 15; 47 C.F.R. § 1.2104(g)(1).

<sup>84</sup> *See Part 1 Fifth Report and Order*, 15 FCC Rcd at 15302, ¶ 15.

## **8. Auction Announcements**

The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available by clicking a link on the FCC Automated Auction System.

## **9. Maintaining the Accuracy of FCC Form 175 Information**

As noted in Section II.F., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Applicants must make these 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: [auction52@fcc.gov](mailto:auction52@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 52. The Bureau requests that parties format any attachments to electronic mail as Adobe<sup>®</sup> Acrobat<sup>®</sup> (pdf) or Microsoft<sup>®</sup> Word documents.

**A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850.** Questions about other changes should be directed to Brian Carter of the Auctions and Spectrum Access Division at (202) 418-0660.

## **V. POST-AUCTION PROCEDURES**

### **A. Down Payments and Withdrawn Bid Payments**

After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying winning bidders, down payments and any withdrawn bid payments due.

Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 52 to 20 percent of its winning bids.<sup>85</sup> In addition, by the same deadline all bidders must pay any bid withdrawal payments due under 47 C.F.R. § 1.2104(g), as discussed in “Bid Removal and Bid Withdrawal,” Section IV.B.6. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

### **B. Final Payments**

Each winning bidder will be required to submit the balance of its winning bids within 10 business days after the deadline for submitting down payments.

### **C. Long-Form Application (FCC Form 312)**

Within 30 days after release of the auction closing notice, winning bidders must submit a properly completed long-form application (FCC Form 312) and required exhibits for each license won through Auction No. 52. Further filing instructions will be provided to auction winners at the close of the auction.

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<sup>85</sup> 47 C.F.R. § 1.2107(b).

#### **D. Default and Disqualification**

Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 C.F.R. § 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid.<sup>86</sup> In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.<sup>87</sup>

#### **E. Refund of Remaining Upfront Payment Balance**

All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 52 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund request to:

Federal Communications Commission  
Financial Operations Center  
Auctions Accounting Group  
Gail Glasser or Tim Dates  
445 12th Street, SW, Room 1-C863  
Washington, DC 20554

Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418-2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

NOTE: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418-0578 or Tim Dates at (202) 418-0496.

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<sup>86</sup> 47 C.F.R. § 1.2109(b) & (c).

<sup>87</sup> 47 C.F.R. § 1.2109(d).

**Media Contact:** Lauren Patrich at (202) 418-7944

**Auctions and Spectrum Access Division, WTB:**

For legal questions: Brian Carter at (202) 418-0660

For general auction questions: Jeff Crooks at (202) 418-0660 or Lisa Stover at (717) 338-2888

**Satellite Division, IB:**

For service rule questions: Rockie Patterson at (202) 418-1183 or Selina Khan at (202) 418-7282

**VI. ATTACHMENT A**

**Auction No. 52 – Licenses to Be Auctioned  
DBS Licenses: Orbit Locations and Channels, with Incumbent for 157° W.L.\***

Channels	Orbit Locations		
	175° W.L.	166° W.L.	157° W.L.
1			EchoStar
2			
3			EchoStar
4			
5			EchoStar
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
31			
32			
<b>Total No. of Available Channels</b>	<b>32</b>	<b>32</b>	<b>29</b>
<b>License No.</b>	<b>DB-175</b>	<b>DB-166</b>	<b>DB-157</b>
<b>Bidding Units</b>	<b>1,600,000</b>	<b>1,600,000</b>	<b>2,900,000</b>
<b>Upfront Payment</b>	<b>\$1,600,000</b>	<b>\$1,600,000</b>	<b>\$2,900,000</b>
<b>Minimum Opening Bid</b>	<b>\$3,200,000</b>	<b>\$3,200,000</b>	<b>\$5,800,000</b>

\*On December 10, 2003, EchoStar was granted special temporary authority to operate on channels 1, 7, and 11 at the 157° W.L. orbit location rather than on its assigned channels of 1, 3, and 5 for a period of 60 days commencing December 17, 2003, subject to certain conditions. On December 19, 2003, EchoStar filed an application seeking to modify its authorization at the 157° W.L. orbit location in order to use channels 1, 7, and 11 instead of channels 1, 3, and 5. See *supra* note 14.

Note: For each orbit location, the shaded cells show the channels that comprise the license.

**VII. ATTACHMENT B**

**FCC AUCTION SEMINAR REGISTRATION FORM**

**Auction No. 52**

The FCC will sponsor a one-day seminar for Auction No. 52 applicants. The seminar is free of charge and will provide information about pre-auction procedures, service and auction rules, conduct of the auction, and the FCC Automated Auction System.

Representatives from each company may attend on a reservation basis, first-come first-served until room capacity is filled. The seminar will be held:

Thursday, May 13, 2004  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554  
Registration 9:30 a.m. – 10:00 a.m.  
Seminar 10:00 a.m. – 2:00 p.m.

If hotel accommodations are needed  
Please contact 1-888-225-5322 (option #2) for a list of hotels in the area  
\*\*\*\*\*

To register, complete the form below and  
return no later than  
Tuesday, May 11, 2004, by fax to:

FCC Auction 52  
Auctions and Spectrum Access Division  
1270 Fairfield Road  
Gettysburg, PA 17325-7245

FAX: 717-338-2850  
Phone: 717-338-2888

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I/We will attend the Auction No. 52 Seminar, scheduled for Thursday, May 13, 2004.

Name of attendee: \_\_\_\_\_

Name of attendee: \_\_\_\_\_

Company name: \_\_\_\_\_

Company address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

## VIII. ATTACHMENT C

### ELECTRONIC FILING AND REVIEW OF THE FCC FORM 175

Applicants must submit their FCC Form 175 applications electronically. The FCC recommends submitting your Form 175 via the Internet. As a contingency, you can submit via the FCC Wide-Area Network. FCC Form 175 applications must be submitted and confirmed by **6:00 p.m. ET on Friday, May 21, 2004**. Late applications or unconfirmed submissions of electronic data will not be accepted.

Applicants must click the **SUBMIT Application** button on the Submission page to successfully submit their FCC Form 175. The electronic filing process consists of an initial filing period and a resubmission period to make minor corrections. During each filing period, submitted applications may be updated and amended multiple times until the filing deadline.

#### A. Software Requirements

Applicants will need to meet the following minimum software requirements:

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>

PDF Viewer: Adobe Acrobat Reader 5.0 or higher (available at <http://www.adobe.com>)

If you wish to use the download feature on the Search Results page, you will need a .tar file extraction utility, e.g., Winzip (available at <http://www.winzip.com>) or Pkzip for Windows (available at <http://www.pkware.com/shareware>).

#### B. Submitting FCC Form 175 Applications

You can submit FCC Form 175 applications electronically via the Internet. Start your web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). On the FCC Auctions page, click **Form 175 Application & Search** to obtain the Form 175 Homepage.

**Note:** As a contingency, you may submit FCC Form 175 application amendments via the FCC Wide Area Network, using Dial-Up Networking. To access the Wide Area Network, configure

your dial-up network to dial either **202-408-7835** or **717-338-0735**. These phone numbers are located in Washington, DC, and Gettysburg, PA, respectively. Thus, calls to these numbers may be long-distance calls, depending on where the calls originate.

## 1. Logging On

The Form 175 Homepage has a Form 175 Logon area at the top right. This area provides fields that let you identify yourself to the system. In these fields, type your assigned FRN (without the hyphens) and the password you created in CORES, respectively, then click the **Logon** button.

Once you have logged on with your FRN, you can click the **New Form** link to obtain the Profile page for the auction.

## 2. Uploading Attachments

When uploading attachments from the Form 175 *Attachments* page, you may use a variety of file formats--including Word 2000 or earlier, WordPerfect 6.x or earlier, Adobe PDF, and ASCII text--and you should verify that the files contain all exhibit information. Also note the following about files to be uploaded:

- Files may be no larger than 1.5 Mb.
- Graphics files (e.g., *.bmp*, *.tiff*, *.jpg*) and spreadsheets (e.g., Excel, Lotus) are not supported.
- Word processing files that are uploaded may not contain graphic images.
- You may include hyphens (-) and underscore (\_) symbols in the name of a file to be uploaded, but do not use other punctuation marks or blank spaces. The FCC system will not be able to convert that file.
- The path to a file (i.e., the file name and its directory) must not exceed 60 characters.
- Do not upload a password-protected file. The FCC system will not be able to open it or convert it.
- Do not include your TIN in any attachment to be uploaded. Contents of attachments become public once the Status PN is released.

The system converts each uploaded attachment to PDF format. (The conversion process generally completes within 30 minutes.) Until the system has converted your file to PDF format, the description field shows *Not converted*.

Repeat this procedure for each additional attachment you want to add. When you have finished adding attachments, click the **Continue to CERTIFICATION** button to obtain the *Certification* page.

### a. Unreadable Attachment Files

If you are unable to read an attachment file after it has been converted, please do the following:

1. Re-upload the attachment.
2. If the file still has not been converted properly, then simplify the formatting of the file.

For example, if you are using a Table structure in a WordPerfect document, remove the Table structure and leave the contents of the table, then re-upload the attachment.

After you have successfully re-uploaded an attachment, please delete the old, unreadable attachment files using their **Delete** links.

### **3. Completing the Submission Procedure**

Applicants must press the **SUBMIT Application** button on the *Submission* page to successfully submit their FCC Form 175. Pressing **SUBMIT Application** produces a *Submission Confirmation* page showing the assigned FCC Account Number. During each filing period, submitted applications may be updated and amended multiple times until the filing deadline.

#### **C. Reviewing FCC Form 175 Applications**

Once the FCC has completed the 175 Review process, you can view FCC Form 175 applications electronically by searching for them in the FCC database. Start your web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Click the **Form 175 Application & Search** link, then click the **SEARCH** link at the top of the page. When the *Form 175 Search* page appears, select the search criteria you want and then click the **Submit** button.

#### **D. Help**

For technical assistance with using FCC software, 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 a.m. to 6 p.m. ET. *All calls to the FCC Technical Support Hotline are recorded.*

You can also contact Technical Support via e-mail. To obtain the address, click the **Support** tab on the Form 175 Homepage.

## IX. ATTACHMENT D

### GUIDELINES FOR COMPLETION OF FCC FORM 175 AND EXHIBITS

#### A. FCC Form 175

Because of the significance of the FCC Form 175 application to the auction, bidders should especially note the following:

**Applicant:** Name given is used as your bidder name in the auction.

**Address:** Applicants must provide a street address (not a Post Office box number) for the applicant, suitable for mail or private parcel delivery.

**Legal Classification:** Applicants must indicate their legal classification. The FCC Form 175 requires the applicant to classify itself as an individual, joint venture, partnership, trust, corporation, consortium, association, limited liability corporation (LLC) or government entity.

**Applicant Status:** Applicants are requested to indicate their status as a rural telephone company, minority- and/or women-owned business.

**Contact person/address:** If the Commission wishes to communicate with the applicant by telephone or fax, those communications will be directed to the contact person identified on the FCC Form 175. Space is provided for an address, telephone number, fax number, and e-mail address. **All written communication and registration information will be directed to the applicant's contact person at the address specified on the FCC Form 175.** Applicants must provide a street address for the contact person; **no P.O. Box addresses may be used.**

**Authorized Bidders:** Applicants must list the name(s) of the person(s) (no more than three) authorized to represent them at the auction. Only those individuals listed on the FCC Form 175 will be authorized to place or withdraw bids for the applicant during the auction.

**Bidding Credit Eligibility:** Bidding credits are not available for Auction No. 52.

**Electronic or Telephonic Bidding Options:** Bidders may participate in the auction either electronically or telephonically, and must specify their preference. To participate in the auction, every authorized bidder must have a SecurID card, which the FCC will provide free of charge.

**License Selection:** Applicants should select all licenses on which they want to be eligible to bid in the auction. Be advised that there is no opportunity to change this list once the short-form filing deadline passes on May 21, 2004. It is critically important that you confirm the licenses that you have selected because the auction system will not accept a bid on licenses for which an applicant has not applied on its FCC Form 175.

#### B. Exhibits and Attachments

In addition to the FCC Form 175, applicants must submit additional information required by the FCC's rules. If attachments are not uploaded, the FCC Form 175 submission process cannot be completed. Although the FCC does not require a particular format for this information, it has developed the following

guidelines that will facilitate the processing of short-form applications. The FCC encourages applicants to submit this information using the following format.

**If you find that an attachment has not converted properly to Adobe PDF format, take the following steps:**

- 1) *Simplify the formatting of the file. For example, if using a Table structure in a WordPerfect document, remove the Table structure leaving the contents of the table, re-save the document.*
- 2) *Re-upload the attachment.*
- 3) *When the re-uploaded attachment has successfully converted, delete the failed attachment.*

**NOTE: Applicants should not include sensitive information (i.e., TIN/EIN) on any exhibits to their FCC Form 175s.**

**Exhibit A — Applicant Identity and Ownership Information:** 47 C.F.R. § 1.2105(a)(2)(ii) requires each applicant to fully disclose the real party or parties-in-interest in an exhibit to its FCC Form 175 application. The following information is required:

## **1. General Information**

<i>Applicant Status</i>	<i>Required Information</i>
General Partnership	Name, citizenship, and address of all partners, and the share or interest participation of each partner
Limited Partnership	Name, citizenship, and address of each limited partner whose interest in the applicant is equal to or greater than 10 percent (as calculated according to the percentage of equity paid in and the percentage of distribution of profits and losses)
Corporation	Corporate name and address; name, title, and citizenship of a responsible officer or director
Limited Liability Corporation	Corporate name and address; name, address, and citizenship of all members whose interest in the applicant is equal to or greater than 10 percent (as calculated according to the percentage of equity paid in and the percentage of distribution of profits and losses)
Trust	Name, citizenship, and address of trustee
None of the above	Name, citizenship, title or other relation to the applicant, and address of a principal or other responsible person

## **2. Ownership Information**

<i>Applicant Status</i>	<i>Required Information</i>
All applicants	Name, citizenship, and address of all controlling interests of the applicant as discussed in Section 1.2110 of the Commission's rules.
All applicants	Name, citizenship, and address of all parties holding 10 percent or more of each class of stock, warrants, options or debt securities and the amount

***Applicant Status***

***Required Information***  
and percentage held.

All applicants

Name of all parties holding a 10 percent or greater interest in the applicant and the specific amount held.

All applicants

List of all parties holding indirect ownership interests in the applicant that equals 10 percent or more, as determined by successive multiplication of the ownership percentages in each link of the vertical ownership chain, except that if the ownership percentage for any link in the chain exceeds 50 percent or represents actual control, it shall be reported as if it were a 100 percent interest.

*Example.* Company A owns 10% of Company B, which owns 60% of Company C, which owns 25% of the applicant. Company B's interest in the applicant would be 25% (the same as Company C's interest since Company B's interest in Company C exceeds 50%), and Company A's interest in the applicant would be 2.5% ( $0.1 * 0.25$ ). Under the 10% attribution benchmark, Company B's interest in the applicant must be reported on the applicant's FCC Form 175 Exhibit A, while Company A's interest in the applicant need not be reported. However, if Company A owned 40% of Company B in the above example, then Company A's interest in the applicant would be 10% ( $0.4 * 0.25$ ), and the applicant would need to report it on the applicant's FCC Form 175 Exhibit A

All applicants

List of any FCC-regulated entity or applicant for an FCC license, in which

- a. the applicant;
- b. any party with a 10 percent or greater interest in the applicant; or
- c. a controlling interest (as discussed in Section 1.2110 of the Commission's rules)

owns a 10 percent or greater interest of the applicant or 10 percent or more of any class of stock, warrants, options or debt securities of the applicant. (*See also* 47 C.F.R. § 1.2110) This list must include a description of each such entities' principal business and a description of each such entities' relationship to the applicant.

*Example of a.* The applicant owns 10 percent of Company A (an FCC regulated entity or an applicant for an FCC license). The applicant must list Company A on its FCC Form 175 Exhibit A and provide the required information.

*Example of b.* Company A owns 10 percent of the applicant and 10 percent of Company B (an FCC regulated entity or an applicant for an FCC license). The applicant must list both Company A and Company B

### ***Applicant Status***

### ***Required Information***

on its FCC Form 175 Exhibit A and provide the required information.

*Example of c.* Company A owns 55% of the applicant and owns 10 percent of Company B (an FCC regulated entity or an Applicant for an FCC license). The applicant must list both Company A and Company B on its FCC Form 175 Exhibit A and provide the required information.

**Exhibit B — Agreements with Other Parties/Joint Bidding Arrangements:** Applicants must attach an exhibit identifying all parties with which they have entered into any agreements, arrangements or understandings which relate in any way to the licenses being auctioned, including any relating to the post-auction market structure. *See* 47 C.F.R. §1.2105(a)(2)(viii).

Be aware that pursuant to Certification (4) on the FCC Form 175, the applicant certifies that it will not enter into any explicit or implicit agreements or understandings of any kind with parties not identified in the application regarding bid amounts, bidding strategies, or the particular licenses on which the applicant will or will not bid. *See* 47 C.F.R. § 1.2105(a)(2)(ix). *To prevent collusion, the Commission's Rules generally prohibit competing applicants from communicating concerning bids, bidding strategies, or settlements during the period between the initial short-form applications filing deadline and the deadline for down payments on licenses won in the auction.* 47 C.F.R. § 1.2105(c).

**Exhibit C — Information Required of All Applicants Regarding Prior Defaults and Prior Delinquencies:** Each applicant must include at Exhibit C a statement made under penalty of perjury indicating whether the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interest have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, for each of its controlling interests and affiliates, and for each affiliate of its controlling interests as defined by Section 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*).

**Exhibit D — Information Requested of Designated Entities:** Applicants owned by minorities or women, as defined in 47 C.F.R. § 1.2110(c), or that are rural telephone companies, may attach an exhibit regarding this status. This information, in conjunction with the information requested on the FCC Form 175, will assist the Commission in monitoring the participation of these “designated entities” in its auctions.

**Exhibit E — Miscellaneous Information:** Applicants wishing to submit additional information should include it in Exhibit E.

**Waivers:** Applicants requesting waiver of any rules must submit a statement of reasons sufficient to justify the waiver sought. *See* 47 C.F.R. §§ 1.3, 1.925.

**Certifications:** Applicants should carefully read the list of certifications on the FCC Form 175. These certifications help to ensure a fair and competitive auction and require, among other things, disclosure to the Commission of certain information on applicant ownership and agreements or arrangements concerning the auction. Submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

**Completeness:** Applicants must submit all information required by the FCC Form 175 and by applicable rules. Failure to submit required information by the resubmission date will result in dismissal of the application and inability to participate in the auction. *See* 47 C.F.R. § 1.2105(b).

**NOTE: Applicants must press the “SUBMIT Application” button on the “Submission” page to successfully submit their FCC Form 175.**

**Continuing Accuracy:** Each applicant is responsible for the continuing accuracy and completeness of information furnished in the FCC Form 175 and its exhibits. *See* 47 C.F.R. § 1.65. It is the FCC’s position that during the conduct of an auction, thirty business days from a reportable change is a reasonable period of time. Applicants are reminded that they consent to be audited in the certification section of the FCC Form 175 (see certification item number 6).

Applicants are reminded that all information required in connection with applications to participate in spectrum auctions is necessary to determine the applicants’ qualifications, and as such will be available for public inspection. Required proprietary information may be redacted, or confidentiality may be requested, following the procedures set forth in 47 C.F.R. § 0.459. Such requests must be submitted by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction52@fcc.gov](mailto:auction52@fcc.gov), in which case the applicant must indicate in Exhibit E that it has filed a confidentiality request. Because the required information bears on applicants’ qualifications, the FCC envisions that confidentiality requests will not be routinely granted.

The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 52. The Bureau requests that parties format any attachments to electronic mail as Adobe<sup>®</sup> Acrobat<sup>®</sup> (pdf) or Microsoft<sup>®</sup> Word documents.

**A separate copy of the letter should be faxed to the attention of Kathryn Garland at 717-338-2850.**

## X. ATTACHMENT E

### AUCTION-SPECIFIC INSTRUCTIONS FOR FCC REMITTANCE ADVICE (FCC FORM 159-February 2003 Edition)

#### A. Upfront Payments

The following information supplements the standard instructions for FCC Form 159 (Revised 2/03), and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction No. 52. Applicants need to complete FCC Form 159 carefully, since:

- **Mistakes may affect their bidding eligibility; and**
- **Lack of consistency between information set forth in FCC Form 159 (Revised 2/03), FCC Form 175, long-form application, and correspondence about an application may cause processing delays.**

Therefore appropriate cross-references between the FCC Form 159 Remittance Advice and the FCC Form 175 Short Form Application are described below:

Block Number	Required Information
1	LOCKBOX # - Enter "358430"
2	Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as FCC Form 175.
3	Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/03).
4-8	Street Address, City, State, ZIP Code - Enter the street mailing address ( <b>not Post Office box number</b> ) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section.
9	Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
11	Payer FRN – Enter the payer’s ten-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).
12	Payer TIN – Enter the payer’s nine-digit Taxpayer Identification Number (TIN).
24A	Payment Type Code - Enter "A52U"

- 25A Quantity - Enter the number "1"
- 26A Fee Due - Amount of Upfront Payment
- 27A Total Fee - Will be the same amount as 26A.
- 28A FCC Code 1 - Enter the number "52" (indicating Auction No. 52).

NOTES:

- Do not use Remittance Advice (Continuation Sheet), FCC Form 159-C, for upfront payments.
- If applicant is different from the payer, complete blocks 13 through 22 for the applicant, using the same information shown on FCC Form 175. Otherwise leave them blank.
- Since credit card payments will not be accepted for this auction, leave Section E blank.

**B. Winning Bidder Requirements, Down Payments and Final Payments**

Specific information regarding down payments and final payments will be included in a post-auction public notice announcing the winning bidders.

## XI. ATTACHMENT F

### SUMMARY LISTING OF COMMISSION AND BUREAU DOCUMENTS ADDRESSING APPLICATION OF THE ANTI-COLLUSION RULE

#### A. Commission Decisions:

*Second Report and Order* in PP Docket No. 93-253, FCC 94-61, 9 FCC Rcd. 2348, 2386-2388 (1994), paragraphs 221-226.

*Fifth Report and Order* in PP Docket No. 93-253, FCC 94-178, 9 FCC Rcd. 5532, 5570-5571 (1994), paragraphs 91-92.

*Fourth Memorandum Opinion and Order* in PP Docket No. 93-253, FCC 94-264, 9 FCC Rcd. 6858, 6866-6869 (1994), paragraphs 47-60.

*Second Memorandum Opinion and Order* in PP Docket No. 93-253, FCC 94-215, 9 FCC Rcd. 7245, 7253-7255 (1994), paragraphs 48-55.

*Memorandum Opinion and Order* in PP Docket No. 93-253, FCC 94-295, 9 FCC Rcd. 7684, 7687-7689 (1994), paragraphs 8-12.

In re Commercial Realty St. Pete, *Notice of Apparent Liability for Forfeiture*, 10 FCC Rcd. 4277 (1995),  
In re Commercial Realty St. Pete, *Memorandum Opinion and Order*, 11 FCC Rcd. 15,374 (1996).

In re Applications of Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd. 17,970 (1997); Application of Mercury PCS II, L.P. for Facilities in the Broadband PCS D, E and F Blocks, *Memorandum Opinion and Order*, 13 FCC Rcd. 23,755 (1998).

Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, FCC 97-413, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd. 374, 463-469 (1997), paragraphs 155-166.

In re Application of US West Communications, Inc., *Notice of Apparent Liability for Forfeiture*, 13 FCC Rcd 8286 (1998); Notice of Apparent Liability for Forfeiture of US West Communications, Inc., *Order*, FCC 99-90 (May 7, 1999).

In re Application of Western PCS BTA I Corporation, *Notice of Apparent Liability for Forfeiture*, FCC 98-42 (March 16, 1998); Notice of Apparent Liability for Forfeiture of Western PCS BTA 1 Corporation, *Memorandum Opinion and Order*, 14 FCC Rcd 21571, 21577-78, ¶ 20 (1999).

Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001).

## **B. Wireless Telecommunications Bureau Decisions:**

Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, *Order*, 11 FCC Rcd. 9655 (Wireless Tel. Bur. 1995).

In re Applications of GWI PCS, Inc. For Authority to Construct and Operate Broadband PCS Systems Operating on Frequency Block C, *Memorandum Opinion and Order*, 12 FCC Rcd. 6441 (Wireless Tel. Bur. 1997).

In re Applications of Mercury PCS II, LLC, For Facilities in the Broadband Personal Communications Services in the D, E, and F Blocks, *Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd. 18,093 (Wireless Tel. Bur. 1997).

Applications of High Plains Wireless, L.P., For Authority to Construct and Operate Broadband PCS Systems on Frequency Blocks D, E, and F, *Memorandum Opinion and Order*, 12 FCC Rcd. 19,627 (Wireless Tel. Bur. 1997).

Applications of Mercury PCS II, LLC, For Authority to Construct and Operate Broadband PCS Systems on Frequency Blocks D, E, and F, *Memorandum Opinion and Order*, 13 FCC Rcd. 5756 (Wireless Tel. Bur. 1997).

### **1. Public Notices:**

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

FCC Staff Clarifies Application of Anti-Collusion Rule to Broadband PCS 'C' Block Reauction, *Public Notice*, 11 FCC Rcd. 7031 (1996).

Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders, *Public Notice*, 11 FCC Rcd. 10,134 (1996).

Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, DA 98-37 (rel. January 9, 1998).

### **2. Letters from the Office of General Counsel and the Wireless Telecommunications Bureau:**

*Letter to Gary M. Epstein and James H. Barker from William E. Kennard, General Counsel, Federal Communications Commission* (released October 25, 1994).

*Letter to Alan F. Ciamporcero from William E Kennard, General Counsel, Federal Communications Commission* (released October 25, 1996).

*Letter to R. Michael Senkowski from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau* (released December 1, 1994).

*Letter to Leonard J. Kennedy from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau* (released December 14, 1994).

*Letter to Jonathan D. Blake and Robert J. Rini from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, DA 95-2404* (released November 28, 1995).

*Letter to Mark Grady from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, 11 FCC Rcd. 10,895* (1996).

*Letter to David L. Nace from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, 11 FCC Rcd. 11,363* (1996).

*Letter to Elliott J. Greenwald from Christopher J. Wright, General Counsel, Federal Communications Commission* (released April 6, 1998).

*Letter to Robert Pettit, Wiley, Rein & Fielding from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 00-2905* (released December 26, 2000).

### **C. Enforcement Bureau Decisions:**

In re Application of Star Wireless, LLC for C Block Facilities in the 710-716 and 740-746 MHz Bands, *Notice of Apparent Liability for Forfeiture, DA 03-2722* (released August 27, 2003) (recon. pending).

In re Application of Northeast Communications of Wisconsin, Inc. for C Block Facilities in the 710-716 and 740-746 MHz Bands, *Notice of Apparent Liability for Forfeiture, DA 03-2723* (released August 27, 2003) (recon. pending).

### **D. Civil Actions Initiated by U.S. Department of Justice:**

*U.S. v. Omnipoint Corp.*, Proposed Final Judgements and Competitive Impact Statements, Department of Justice, 63 FR 65,228 (November 25, 1998).

“Justice Department Sues Three Firms Over FCC Auction Practices,” *Press Release, U.S. Department of Justice* (November 10, 1998).

Complaint, *U.S. v. Omnipoint Corp.*, No. 1:98CV02750 (D.D.C. November 10, 1998).

Complaint, *U.S. v. Mercury PCS II, L.L.C.*, No. 1:98CV02751 (D.D.C. November 10, 1998).

Complaint, *U.S. v. 21st Century Bidding Corp.*, No. 1:98CV02752 (D.D.C. November 10, 1998).

### **How to Obtain Copies of the Anti-Collusion Decisions:**

Many of the documents listed in this attachment can be retrieved from the following Commission web site: <http://wireless.fcc.gov/auctions/anticollusion>

The documents may be located by using our search engine (select the link “search”). Documents retrieved from the web site are available in various formats including Word, WordPerfect, Acrobat

Reader, Excel, and ASCII Text. To review a document in its entirety, including footnotes, it is necessary to access the document in WordPerfect, MS Word, or Acrobat Reader.

Additionally, all of the documents can be ordered in hard copy for a fee from the Commission's contractor, Qualex International at (202) 863-2893.