



PUBLIC NOTICE

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DUE DILIGENCE ANNOUNCEMENT FOR THE UPCOMING AUCTION OF DIRECT BROADCAST SATELLITE SERVICE LICENSES SCHEDULED FOR JULY 14, 2004

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

This Public Notice provides due diligence information, as of February 24, 2004, in connection with the auction of three Direct Broadcast Satellite (“DBS”)¹ licenses scheduled to commence on July 14, 2004 (Auction No. 52).² The information provided in this Public Notice is intended to aid potential bidders with their research and evaluation of these three licenses to use channels and orbit locations in the DBS service in the 12.2-12.7 GHz frequency band. Potential bidders should be aware of certain proceedings that may relate to Auction No. 52, including the Commission’s Part 100 proceeding, its Multichannel Video Distribution and Data Service (“MVDDS”) proceeding, court proceedings, and International Telecommunication Union (“ITU”) filings.

On June 13, 2002, the Commission released the *Part 100 R&O*, in which it revised its rules and policies governing the DBS service.³ In particular, the *Part 100 R&O* moved the DBS service rules out of Part 100 and consolidated them in Part 25 of the Commission’s rules. With respect to competitive bidding, in 2002 the Wireless Telecommunications Bureau (“WTB”), acting under delegated authority, applied the general competitive bidding rules in Part 1 of the Commission’s rules to DBS, eliminated certain service-specific DBS auction rules, and retained other service-specific DBS auction rules.⁴ In the *Part 100 R&O*, the Commission amended the service-specific rules that had been retained and moved them to Part 25.⁵

¹ DBS is the acronym used in the United States to describe the domestic implementation of the satellite service known internationally as the broadcasting satellite service (“BSS”) that is subject to the International Radio Regulations BSS and feeder-link Plans contained in Appendices 30 and 30A.

² See Auction of Direct Broadcast Satellite Service Licenses Rescheduled for July 14, 2004, Public Notice, DA 04-278 (rel. February 6, 2004) (“*Auction No. 52 Procedures Public Notice*”). See also Auction of Direct Broadcast Satellite Licenses, *Order*, FCC 04-8 (rel. January 15, 2004); 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).

³ *Part 100 R&O*, 17 FCC Rcd 11331 (2002).

⁴ Amendment of Parts 21, 22, 24, 25, 26, 27, 73, 80, 90, 95, 100, and 101 of the Commission Rules - Competitive Bidding, 2001 Biennial Regulatory Review, *Order*, 17 FCC Rcd 6534 (WTB 2002).

⁵ *Part 100 R&O*, 17 FCC Rcd at 11342, 11376-11379.

We remind all potential bidders that they must operate in accordance with Appendices 30 and 30A of the ITU Radio Regulations and Part 25 of the Commission's rules.⁶ Potential bidders should also be aware that DBS licensees at the same orbit location may be required to coordinate among themselves to arrive at a mutually acceptable solution to any potential or existing interference between their operations.⁷ The close proximity of satellites located at the same orbit location increases the potential for interference between adjacent channels. In the *Part 100 R&O*, the Commission stated that in situations involving U.S. licensees with channels assigned at the same orbit position, allowing DBS operators to coordinate among themselves in order to arrive at a mutually acceptable solution regarding the location of their satellites and use of their associated frequency assignments, including Telemetry, Tracking and Command frequencies, will result in maximum flexibility and efficient use of the orbit and spectrum resource.⁸ In the *Auction No. 52 Procedures Public Notice*, WTB provided information regarding channels at the 157° W.L. orbit location that have been assigned to and are being used by an incumbent DBS operator, EchoStar Satellite Corporation.⁹

In addition, potential bidders may research the International Bureau's ("IB") licensing database on the World Wide Web in order to determine which channels at particular orbit locations are already licensed to incumbent DBS licensees. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. **In addition, potential bidders are strongly encouraged to research the ITU Space Network List and other relevant ITU databases.**¹⁰

Potential bidders may also obtain information about channels and orbit locations available in Auction No. 52 on the Internet through the International Bureau Filing System ("IBFS") at <http://www.fcc.gov/ib/> (by using the IB shortcut on the left side by selecting "IBFS-IB's Filing System-Online" located under the section entitled "Applications"). This application allows the user to search for current authorizations by call signs, current authorizations by licensee, current authorizations by file numbers, and a pending applications list. Detailed instructions on using the IBFS is available online at http://gullfoss2.fcc.gov/prod/ib/forms/getting_started.htm or by going directly to the Search Tool at <http://svartifoss2.fcc.gov/prod/ib/forms/index.html>.

Potential bidders should be aware that, on December 16, 2003, IB released a Public Notice requesting comment on the technical feasibility of permitting the licensing of U.S. DBS satellites at less than nine-degree spacing.¹¹ In addition, potential bidders should be aware that several parties have asked the

⁶ See ITU Radio Regulations, Appendices 30 and 30A, and 47 C.F.R. Part 25.

⁷ Section 2 of Annex 1 to Appendix 30.

⁸ See *Part 100 R&O*, 17 FCC Rcd at 11386-11387.

⁹ See *Auction No. 52 Procedures Public Notice*, DA 04-278, Appendix A.

¹⁰ See the Region 2 BSS and feeder-link Plans, contained in Article 10 of Appendix 30 and Article 9 of Appendix 30A of the ITU Radio Regulations, Edition of 2000. The web address for ITU Filings (ITU database) is <http://www.itu.int/sns/specquery.html>; information on accessing a "Ties Account" (required to access ITU database) can be found at <http://www.itu.int/TIES/>.

¹¹ See Public Notice, International Bureau Seeks Comment on Proposals to Permit Reducing Orbital Spacings Between U.S. Direct Broadcast Satellites, Report No. SPB-196, DA 03-3903 (rel. December 16, 2003).

Commission to consider various proposals to allow DBS operators to provide service in the United States from orbit locations at less than the current nine-degree spacing.¹²

Potential bidders should also be aware that, on March 21, 2003, Advanced Communications Corp. (“Advanced”) filed an appeal of a Commission order dismissing a petition submitted to the Commission by Advanced on April 3, 2002, requesting that the Commission reopen the record in a case involving the Commission’s 1995 cancellation of Advanced’s DBS construction permit at the 119° W.L. and 148° W.L. orbit locations.¹³ In its petition, Advanced had requested that the Commission reopen the record to permit what it stated was “recently obtained, previously unavailable evidence.”¹⁴

On December 8, 2000, the Commission released the *First Report and Order and Further Notice of Proposed Rule Making* in ET Docket No. 98-206, which allocated the 12.2-12.7 GHz band for non-geostationary satellite orbit fixed-satellite service downlinks on a primary basis and authorized MVDDS as a new service under the existing primary status fixed service allocation in the 12.2-12.7 GHz band.¹⁵ On May 23, 2002, the Commission released the *Second Report and Order* in this proceeding, which adopted technical, service, and competitive bidding rules for MVDDS.¹⁶ An appeal of the *Second Report and Order* is currently pending in the U.S. Court of Appeals for the D.C. Circuit.¹⁷ The Commission concluded an auction of MVDDS licenses on January 27, 2004.¹⁸

¹² See Petition of SES AMERICOM, Inc. for Declaratory Ruling to Serve the U.S. Market Using BSS Spectrum from the 105.5° W.L. Orbital Location, filed April 25, 2002, File Number SAT-PDR-20020425-0071. A pleading cycle was established and closed July 2002. See also Applications of EchoStar Satellite Corporation for Authority to Construct, Launch and Operate a Direct Broadcast Satellite in the 12.2-12.7 GHz and 17.3-17.8 GHz Frequency Bands at the 123.5° W.L., 96.5° W.L., and 86.5° W.L. Orbital Locations, File Nos. SAT-LOA-20030606-00107, SAT-LOA-20030605-00109, and SAT-LOA-20030609-00113, filed respectively on June 6, June 5 and June 9, 2003. These applications have not yet been accepted for filing but are available for public review in the FCC Public Reference Room. See also Petition of DIRECTV Enterprises, LLC for a Rulemaking on the Feasibility of Reduced Orbital Spacing in the U.S. Direct Broadcast Satellite Service, filed Sept. 5, 2003.

¹³ See *Advanced Communications Corp. v. FCC*, Case No. 03-1082 (D.C. Cir. filed March 21, 2003).

¹⁴ See *Advanced Communications Corp.*, File Nos. DBS 94-11EXT, DBS 94-15ACP, DBS 94-16MP, *Memorandum Opinion and Order*, FCC 03-2 (rel. February 21, 2003).

¹⁵ 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).

¹⁶ 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 (2002). See also 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, *Third Report and Order*, 18 FCC Rcd 13468 (2003) (amending the MVDDS geographic service areas and build-out requirements).

¹⁷ *Northpoint Technology, Ltd., et al. v. FCC*, No. 02-1194 (D.C. Cir. filed June 21, 2002). Petitions for Review of the *Fourth Memorandum Opinion and Order* in ET Docket No. 98-206 (see Amendment of Parts 2 and 25 of the

Potential bidders should also be aware that petitions for rulemaking or judicial proceedings other than those cited above that may relate to particular applicants or incumbent licensees, or that may relate to the assignment of channels and orbit locations available in Auction No. 52, may be pending, may be commenced, or may be subject to further review. The resolution of such matters could have an impact on the availability of spectrum in Auction No. 52 or other DBS spectrum.

In addition, certain applications (including those for modification), requests for special temporary authority (“STA”), waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or incumbent licensees. Currently, such filings include, but are not necessarily limited to, EchoStar Satellite Corporation’s application to modify its DBS authorization at the 157° W.L. orbit location in order to use channels 1, 7, and 11 instead of channels 1, 3, and 5;¹⁹ and Compass Systems, Inc.’s application for review of the dismissal of its application for authority to construct a DBS system at the 157° W.L. and 166° W.L. orbit locations.²⁰ The resolution of such matters could have an impact on the availability of spectrum in Auction No. 52. Moreover, although the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved before the commencement of Auction No. 52.

To aid potential bidders, attached to this Public Notice is a list of matters that are known to be pending before the Commission, as of February 24, 2004, and that may relate to the assignment of channels and orbit locations in the 12.2-12.7 GHz band (*see* Attachment A). The Commission makes no representations or guarantees that the listed matters are the only pending matters that could affect the availability of DBS licenses in the 12.2-12.7 GHz band. Any petitions for reconsideration that may be filed will be publicly available on the Commission’s Electronic Comment Filing System (“ECFS”) database on the Internet at <http://www.fcc.gov/e-file/ecfs.html>. Any comments, oppositions and/or replies to such petitions will also be available through ECFS.

Copies of pleadings from pending cases relating to those identified in Attachment A are available for public inspection and copying during normal reference room hours at: FCC Public Reference Room, Room CY-A257, 445 12th Street, SW, Washington, DC 20554 or from the Commission’s duplicating contractor, Qualex International, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, or from

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, *Fourth Memorandum Opinion and Order*, 18 FCC Rcd 8428 (2003)), in which the Commission addressed petitions for reconsideration of the *Second Report and Order*, were also filed. That case has been consolidated with the appeal of the *Second Report and Order*. The consolidated case presents two separate principal challenges to the decisions made in the *Second Report and Order* and the *Fourth Memorandum Opinion and Order*. One challenge is to the Commission's decision to allow MVDDS usage in the 12 GHz band, and the other challenge is to the Commission's decision to assign MVDDS licenses by auction.

¹⁸ Multichannel Video Distribution and Data Service Spectrum Auction Closes; Winning Bidders Announced, Public Notice, DA 04-215 (rel. February 2, 2004).

¹⁹ *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).

²⁰ *See* Compass Systems, Inc., Application of Compass Systems, Inc. for Authority to Construct an International Direct Broadcast Satellite System, Application for Review (filed April 2, 2003).

the Office of Public Affairs, Wireless Telecommunications Bureau, 445 12th Street, SW, Room CY-C314, Washington, DC 20554. Interested parties may also identify relevant pending satellite applications from the International Bureau Filing System.²¹

Potential bidders are solely responsible for identifying associated risks, and 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.

For further information, contact Selina Khan, at (202) 418-7282, Room 6B-549, Policy Branch, Satellite Division, International Bureau, 445 12th Street, SW, Washington, DC 20554; or Robert Nelson, at (202) 418-2341, Room 6B-554, Satellite Engineering Branch, International Bureau, 445 12th Street, SW, Washington, DC 20554; or Brian Carter, at (202) 418-0660, Room 6416, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, 445 12th Street, SW, Washington, DC 20554.

²¹ <http://gulfoss2.fcc.gov/prod/ib/forms/>

**Attachment A
Due Diligence Report
Auction No. 52**

Petitioner/Applicant	File No.	Type	Received Date
EchoStar Satellite Corporation	SAT-PDR-19991217-00128	PDR	December 17, 1999
Compass Systems, Inc.	DBS-88-01	AFR	June 17, 2002
Compass Systems, Inc.	SAT-MS-C-20020325-0054	AFR	April 2, 2003
EchoStar Satellite Corporation	SAT-MOD-20031219-00372	MOD	December 19, 2003

Legend: Type = PDR (Petition for Declaratory Ruling); AFR (Application for Review); MOD (Application for License Modification)

Note: The above-referenced petitions, applications, comments and reply comments are publicly available in the FCC Public Reference Room, Room CY-A257, 445 12th Street, SW, Washington, DC 20554.

The documents listed above are not available electronically.