



# PUBLIC NOTICE

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## AUCTION OF MULTICHANNEL VIDEO DISTRIBUTION AND DATA SERVICE LICENSES

### Status of FCC Form 175 Applications to Participate in Auction No. 63

#### Report No. AUC-05-63-D (Auction No. 63)

The Federal Communications Commission (“Commission”) has received six short-form applications (FCC Form 175) to participate in the upcoming auction of 22 Multichannel Video Distribution and Data Service (“MVDDS”) licenses (Auction No. 63) scheduled to begin on Wednesday, December 7, 2005. The applications have been reviewed for completeness and compliance with the Commission’s rules, and have been classified into the categories listed below.

#### Application Categories:

ACCEPTED FOR FILING ..... 2 applications

INCOMPLETE ..... 4 applications

**Accepted:** Applications accepted for filing are listed alphabetically in Attachment A. **These applicants will become qualified bidders upon receipt of the required upfront payment due before 6:00 p.m. Eastern Time (ET) on November 7, 2005.**<sup>1</sup> With respect to the FCC Form 175 application, these applicants need take no further action except as may be necessary to maintain the accuracy of their applications.<sup>2</sup> Attachment A also indicates the licenses selected by each such applicant on its FCC Form 175 filing.

**Incomplete:** Applications found to be incomplete or deficient are listed alphabetically in Attachment B. Applicants whose FCC Form 175 applications have been deemed incomplete or deficient will receive overnight correspondence indicating what information is required to make the applications acceptable for filing. **These applicants may become qualified bidders only if they: (1) make the required upfront payments before 6:00 p.m. ET on Monday, November 7, 2005; and (2) resubmit their applications before 6:00 p.m. ET on Monday, November 7, 2005, having corrected the deficiencies.** Applicants

<sup>1</sup> See 47 C.F.R. § 1.2106.

<sup>2</sup> See 47 C.F.R. § 1.65. See also “Auction of Multichannel Video Distribution and Data Service Licenses Scheduled for December 7, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 63,” *Public Notice*, DA 05-2188 at 5 (August 10, 2005) (“*Auction No. 63 Procedures Public Notice*”).

also must maintain the accuracy of their FCC Form 175 applications as required by the Commission's rules.<sup>3</sup>

The filing window for resubmitting FCC Form 175 applications is now open. Corrected applications must be filed before **6:00 p.m. ET on Monday, November 7, 2005**. This will be the only opportunity to cure specified FCC Form 175 defects; late resubmissions will not be accepted. In addition, if an application remains incomplete or otherwise deficient after the resubmission deadline has passed, the application will be dismissed.

#### **UPFRONT PAYMENT DEADLINE**

Upfront payments and accompanying FCC Remittance Advice (FCC Form 159) for Auction No. 63 are due in the proper account at Mellon Bank, Pittsburgh, Pennsylvania, before **6:00 p.m. ET on Monday, November 7, 2005**. **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>4</sup> Payments must be made by wire transfer in accordance with the instructions provided in the *Auction No. 63 Procedures Public Notice*.<sup>5</sup> No other payment method is acceptable for this auction. Applicants are reminded to provide their FCC Registration Number ("FRN") on the FCC Form 159. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must send by facsimile a completed FCC Form 159 (revised February 2003) to Mellon Bank at (412) 209-6045.

Applicants that have filed applications deemed to be incomplete, as noted in this public notice, must submit timely and sufficient upfront payments before the Commission will review their submitted applications. **If no upfront payment is made, or the application remains incomplete or deficient following its resubmission, the application will be dismissed, and the applicant will not be permitted to participate in Auction No. 63.** If the applicant has provided its FRN and wire transfer instructions from the payor of record, any upfront payment made prior to dismissal will be refunded in a timely manner upon request.

**Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.** We remind applicants that to avoid untimely upfront payments they should discuss arrangements (including transfer times and bank closing schedules) with their financial institution several days before making the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Detailed information regarding upfront payments including additional requirements for "former defaulters" can be found in the *Auction No. 63 Procedures Public Notice* under Section II.F and Section III.D.<sup>6</sup>

**Note:** Applicants are reminded to submit the same FRN with all future payments for Auction No. 63.

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<sup>3</sup> See 47 C.F.R. § 1.65 (an applicant must maintain the accuracy and completeness of information furnished in its pending application and notify the Commission within 30 days of any substantial change that may be of decisional significance to that application), 47 C.F.R. § 1.2105(c)(6) (any applicant that makes or receives a prohibited communication must report such communication in writing to the Commission no later than five business days after the communication occurs).

<sup>4</sup> See Letter from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Patrick Shannon, Esq., Counsel for Lynch 3G Communications Corporation, 18 FCC Rcd 11552 (2003).

<sup>5</sup> See *Auction No. 63 Procedures Public Notice* at 18-19.

<sup>6</sup> See *Auction No. 63 Procedures Public Notice* at 15-16, 18-21.

## OTHER IMPORTANT INFORMATION

**Qualified Bidders:** Approximately two weeks after the upfront payment deadline, following Commission review of resubmitted FCC Form 175 applications, and correlation of payments and applications, a public notice listing all applicants qualified to bid in the auction will be released (Qualified Bidders Public Notice). The Qualified Bidders Public Notice will also include instructions for participating in the mock auction and bidding schedules for both the mock auction and the first day of the auction.

**Due Diligence:** Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses being offered in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction No. 63 in order to determine the existence of pending proceedings, pleadings, applications or authorizations that might affect their decisions regarding participation in the auction. Participants in Auction No. 63 are strongly encouraged to continue such research during the auction. For further details regarding due diligence, please refer to the *Auction No. 63 Procedures Public Notice* under Section I.B.4.

**Prohibition of Collusion:** Applicants are reminded that Section 1.2105(c) of the Commission's rules prohibits applicants for any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless they have identified each other as parties with which they have entered into agreements under Section 1.2105(a)(2)(viii).<sup>7</sup> For Auction No. 63, this prohibition became effective at the short-form application filing deadline on Friday, October 7, 2005, and will end on the post-auction down payment deadline, which will be announced in a future public notice.<sup>8</sup> **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**<sup>9</sup> For purposes of this prohibition, Section 1.2105(c)(7)(i) defines "applicant" as including all controlling interests in the entity submitting a short-form application to participate in the auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity.<sup>10</sup> If parties had agreed in principle on all material terms of a bidding agreement(s), those parties must have been identified on the short-form application under Section 1.2105(c), even if the agreement had not been reduced to writing. If parties had not agreed in principle by the filing deadline, an applicant should not have included the names of those parties on its application, and must not have continued negotiations.<sup>11</sup>

Bidders competing for licenses for any of the same designated markets must not communicate indirectly

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<sup>7</sup> 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1), 73.5002(d). See also Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001) (*Part I Seventh Report and Order*); *Part I Fifth Report and Order*, 15 FCC Rcd at 15297-98 ¶¶ 7-8.

<sup>8</sup> 47 C.F.R. § 1.2105(c)(1).

<sup>9</sup> See, e.g., Northeast Communications of Wisconsin, LLC, *Forfeiture Order*, 19 FCC Rcd 18635 (2004) (imposing forfeiture in the amount of \$100,000 for violation of the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder); Letter to Robert Pettit, Esquire, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 16 FCC Rcd 10080 (2000) (declining to exempt an applicant's controlling interest from coverage by the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

<sup>10</sup> 47 C.F.R. § 1.2105(c)(7)(i).

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

about bids or bidding strategy.<sup>12</sup> Accordingly, such bidders are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction.<sup>13</sup> Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm), a violation could likewise occur. 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>14</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>15</sup>

In addition, Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.<sup>16</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>17</sup>

Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.<sup>18</sup> Any applicant found to have violated the anti-collusion rule may be subject to sanctions.<sup>19</sup> In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions.<sup>20</sup>

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<sup>12</sup> *Part I Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

<sup>13</sup> *See Auction No. 63 Procedures Public Notice* at 3-5.

<sup>14</sup> *See Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A, Memorandum Opinion and Order*, 13 FCC Rcd 11973, 11977 ¶ 11 (1998).

<sup>15</sup> *Id.*, 13 FCC Rcd at 11978 ¶ 13.

<sup>16</sup> 47 C.F.R. § 1.65.

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

<sup>18</sup> 47 C.F.R. § 1.2107(d).

<sup>19</sup> *See* 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

<sup>20</sup> 47 C.F.R. § 1.2109(d).

**Ex Parte Rule:** Applicants should also be aware that the Commission has generally exempted auction proceedings from the strict requirements of the *ex parte* rule found in Section 1.1208 of the Commission's rules.<sup>21</sup>

**Mock Auction:** All applicants found to be qualified bidders will be eligible to participate in a mock auction on Monday, December 5, 2005. We encourage all qualified bidders to take advantage of this mock auction to become familiar with the FCC's Integrated Spectrum Auction System ("FCC Auction System" or "ISAS").<sup>22</sup> In the Qualified Bidders Public Notice, the Bureau will announce the bidding schedule for the mock auction and give details about participation. The mock auction will be conducted over the Internet, and telephonic bidding will be available as well.

**Electronic Bidding:** Applicants are reminded that qualified bidders are eligible to bid either electronically or telephonically. Applicants should specify their bidding preference on the FCC Form 175.

Bidders can access the FCC Auction System over the Internet. Access to the system via the Internet requires, at a minimum, the following software:

- Web Browser, either of the following:
  - ◆ Microsoft® Internet Explorer 6.0 or higher (recommended). Your browser must have either Microsoft VM or Java Plug-In Version 1.4.2\_05 installed.
  - ◆ Netscape® Communicator™ 6.0 or higher, with Java Plug-In Version 1.4.2\_05.

**Other browsers are not supported.**

Java Plug-In Version 1.4.2\_05 is available for downloading at [http://java.sun.com/products/archive/j2se/1.4.2\\_05/index.html](http://java.sun.com/products/archive/j2se/1.4.2_05/index.html) (choose the JRE version).

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

**Long-Form Applications:** All applicants should be aware that at the long-form application stage, they will be subject to the more extensive reporting requirements contained in the Commission's Part 1 ownership disclosure rule.<sup>23</sup>

## CONTACT INFORMATION

For questions about payment or instructions for wiring upfront payments, contact Gail Glasser, Auctions Accounting Group, at (202) 418-0578.

For specific questions about an applicant's incomplete status, the applicant should contact the staff reviewer identified in the correspondence sent to the applicant by overnight mail.

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<sup>21</sup> 47 C.F.R. § 1.1208. See "Commission Announces that Mutually Exclusive 'Short-Form' Applications (Form 175) to Participate in Competitive Bidding Process ('Auctions') Are Treated as Exempt for *Ex Parte* Purposes," *Public Notice*, 9 FCC Rcd 6760 (1994).

<sup>22</sup> For additional information regarding the FCC's Integrated Spectrum Auction System, including sample screen shots, visit the "About ISAS" web page at [http://wireless.fcc.gov/auctions/about\\_isas](http://wireless.fcc.gov/auctions/about_isas).

<sup>23</sup> See 47 C.F.R. § 1.2112(b)(2).

For technical assistance with using the FCC Auction System, contact the FCC Technical Support Hotline at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY). The FCC Technical Support Hotline is generally available Monday through Friday from 8:00 a.m. to 6:00 p.m. ET. All calls to the FCC Technical Support Hotline are recorded.

For further information concerning this auction proceeding, contact:

Auctions and Spectrum Access Division, Wireless Telecommunications Bureau:

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

For bidding and auction procedures questions: Debbie Smith or Roy Knowles at (717) 338-2888

For bidding and general filing status questions: Barbara Sibert at (717) 338-2888

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