



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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DA 99-375
February 24, 1999

AUCTION OF C, D, E, AND F BLOCK BROADBAND PCS LICENSES

Status of Applications to Participate in the Auction

Clarification of Payment Issue Relating to Licenses Subject to Pending Proceedings

Report No. AUC-22-F (Auction No. 22)

The Federal Communications Commission ("FCC") has received **105** FCC Form 175 applications to participate in Auction No. 22, which is scheduled to begin on Tuesday, March 23, 1999. Auction No. 22 will make available 356 C, D, E, and F block broadband PCS licenses.¹ The applications for participation in the auction have been reviewed for completeness and compliance with the Commission's Rules, and have been grouped into the following three categories:

ACCEPTED FOR FILING.....	52 Applications
INCOMPLETE.....	50 Applications
REJECTED.....	3 Applications

¹ The **356** licenses to be auctioned include: **134** 15 MHz and **208** 30 MHz C block licenses, **three** 10 MHz D, **six** 10 MHz E, and **five** 10 MHz F block licenses.

Accepted: Applications classified as accepted for filing are listed in Attachment A.² **These applicants will become qualified bidders upon receipt of the required upfront payment by 6:00 p.m. ET on Monday, March 1, 1999, as discussed below.** With respect to their applications, these applicants need take no further action except as may be necessary to keep their applications up-to-date.³ Applicants are also advised that Attachment A includes FCC account numbers for each applicant. FCC account numbers are applicable for bidding only.

Incomplete: Applications classified as incomplete are listed alphabetically in Attachment B. Applicants whose applications have been classified as incomplete will receive correspondence indicating what information is required to make the applications acceptable for filing. **These applicants will become qualified bidders only if they: (1) make the required upfront payments by 6:00 p.m. ET on Monday, March 1, 1999, as discussed below; and (2) resubmit their applications by 5:30 p.m. ET on Wednesday, March 3, 1999, to correct the minor deficiencies indicated.** They must also keep their applications up-to-date as required.⁴ Applicants are also advised that Attachment B includes FCC account numbers for each applicant. FCC account numbers are applicable for bidding only.

Rejected: Applications classified as rejected are listed alphabetically in Attachment C. Applicants whose applications have been classified as rejected are disqualified from participation in Auction No. 22.

RESUBMISSION FILING DEADLINE

The FCC Form 175 applications must be corrected via the electronic filing system by no later than **5:30 p.m. ET on Wednesday, March 3, 1999.** This will be the only opportunity to cure FCC Form 175 defects; late resubmissions will not be accepted.

UPFRONT PAYMENT DEADLINE

² We note, however, that the short-form application (FCC Form 175) filed by Leap Wireless International, Inc., ("Leap") is accepted only conditionally until the Wireless Telecommunications Bureau (the "Bureau") resolves a pending assignment application filed by a subsidiary of Leap and AirGate Wireless, L.L.C. The Bureau expects to resolve this matter prior to the commencement of Auction No. 22 on March 23, 1999 and reserves the right to reject Leap's short-form application based on its decision therein.

³ See 47 C.F.R. §§ 1.65 and 1.2106.

⁴ See 47 C.F.R. §§ 1.65 and 1.2106.

Upfront payments and accompanying FCC Remittance Advice (FCC Form 159) for this auction are due at Mellon Bank, Pittsburgh, Pennsylvania, **by 6:00 p.m. ET on Monday, March 1, 1999**. Payments must be made by wire transfer and applicants must include their Taxpayer Identification Numbers (TIN). No other payment method is acceptable for this auction.⁵ **Applicants are reminded to use their TIN numbers, not their FCC Account Numbers, on the FCC Remittance Advice (FCC Form 159).**

Applicants that have filed applications classified by this Public Notice as incomplete must submit timely and sufficient upfront payments before the Commission will review their resubmitted applications. If such an application remains incomplete following its resubmission, it will be rejected. The upfront payments of applicants whose applications have been rejected after resubmission will be refunded automatically if the applicant has provided its Taxpayer Identification Number (TIN) and wire transfer instructions.

Detailed information regarding upfront payments can be found at Tab C of the broadband PCS Bidder Information Package on pages 111-114 (how to make payment by wire transfer), and at Tab F on pages 165-177 (how to complete the FCC Remittance Advice (FCC Form 159)).

DUE DILIGENCE

Pending Proceedings Regarding C, D, E, or F Block Broadband PCS Licenses

Potential bidders should be aware that the Commission recently received the following filings:

Notice of Pendency of Claims, filed by National Telecom PCS, Inc., January 11, 1999.

In re Urban Comm-North Carolina, Inc., No. 98-B-10086 (Bankr. S.D.N.Y.).

In re Urban Comm-North Carolina, Inc., No. 98-B-10086, Chapter 11, Adv. Pro. 99-8125A (Bankr. S.D.N.Y.).

Previously, in the broadband PCS Bidder Information Package (Tab B, pages 106-107), the Commission notified bidders of various pending proceedings regarding C, D, E, and F block broadband PCS licenses. In addition, on February 3, 1999, at the pre-auction seminar, the

⁵ See "Auction of C, D, E, and F Block Broadband PCS Licenses; Notice and Filing Requirements for Auction of C, D, E, and F Block Broadband Personal Communications Services Licenses Scheduled for March 23, 1999; Minimum Opening Bids and Other Procedural Issues," *Public Notice*, DA 98-2604 (rel. December 23, 1998); see also "Correction to Attachment A; Auction of C, D, E, and F Block Broadband PCS Licenses; Notice and Filing Requirements for Auction of C, D, E, and F Block Broadband Personal Communications Services Licenses Scheduled for March 23, 1999; Minimum Opening Bids and Other Procedural Issues," *Public Notice* (rel. January 21, 1999) and "Supplement to Attachment B; Auction of C, D, E, and F Block Broadband PCS Licenses; Notice and Filing Requirements for Auction of C, D, E, and F Block Broadband Personal Communications Services Licenses Scheduled for March 23, 1999; Minimum Opening Bids and Other Procedural Issues," *Public Notice*, DA 99-302 (rel. February 8, 1999) for detailed remittance and upfront payment instructions.

Commission distributed a handout supplementing the list of pending proceedings contained in the Bidder Information Package to include the following proceedings:

Request for Rule Waiver [47 C.F.R. § 24.712] filed by Omnipoint Corporation, January 29, 1999. This request was denied by *Letter to Mark J. Tauber from Amy J. Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau*, DA 99-332 (rel. February 12, 1999).

Auction of C, D, E, and F Block Broadband PCS Licenses; Notice and Filing Requirements for Auction of C, D, E, and F Block Broadband Personal Communications Services Licenses Scheduled for March 23, 1999; Minimum Opening Bids and Other Procedural Issues," *Public Notice*, DA 98-2604 (rel. December 23, 1998), *correction* (rel. January 21, 1999): *Application for Review* filed by DiGiPH PCS, Inc., January 22, 1999; *Application for Review* filed by Mountain Solutions Ltd., Inc., January 22, 1999.

Additional Information Regarding Broadband PCS Spectrum Included in the Auction Scheduled for March 23, 1999; Comment Sought on Auction Procedural Issues," *Public Notice*, DA 98-2337 (rel. November 19, 1998), 63 FR 66,176 (December 1, 1998): *Application for Review* filed by Gloria Borland Hawaii PCS, Inc., December 21, 1998.

Potential bidders are reminded that the Commission makes no representation that the proceedings it has cited include every proceeding pending as of February 24, 1999 relevant to C, D, E, or F block broadband PCS licenses or licensees. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 22 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 22 are strongly encouraged to continue such research during the auction.

CLARIFICATION OF PAYMENT ISSUE RELATING TO LICENSES SUBJECT TO PENDING PROCEEDINGS

Potential bidders have been informed that several of the licenses included in Auction No. 22 are the subject of Commission or judicial proceedings initiated by parties claiming to have continuing interests in the licenses, despite their failure to meet payment obligations. This Public Notice clarifies that the Commission will return the payments made by winning bidders of licenses in Auction No. 22 in the event that such bidders are subsequently required to surrender their licenses to prior applicants or license holders as a result of final determinations reached in pending proceedings. The Commission, however, will not pay interest on the returned payments.

In a Public Notice released on December 23, 1998,⁶ the Wireless Telecommunications Bureau (the "Bureau") addressed comments filed in response to its requests for comments on proposed auction procedures.⁷ Specifically, the Bureau advised auction participants that, in formulating their business strategies, they must take into account the risk that a pending proceeding might ultimately displace a winning bidder.⁸ The Bureau, however, left open the question of whether the Commission would return the payments of bidders that win licenses in Auction No. 22 if those bidders subsequently lose their licenses to former licensees or applicants.⁹

Including contested C, D, E, and F block licenses in the auction helps to fulfill the Commission's statutory mandate to hasten the development and deployment of new technologies and services and to promote competition for the benefit of the public.¹⁰ Returning payments to bidders that are forced to surrender their licenses to prior applicants or license holders furthers these vital public interest goals by reducing uncertainty in the licensing process and encouraging auction participants to bid on licenses regardless of whether they are subject to pending proceedings. Retaining payments under the circumstances could have a chilling effect on participation in Auction No. 22 and would therefore undermine our efforts to encourage more efficient use of the spectrum. We note that winning bidders of licenses subject to pending proceedings are still required to meet the normal payment and construction schedules established by the Commission.¹¹

OTHER IMPORTANT INFORMATION

⁶ See "Auction of C, D, E, and F Block Broadband PCS Licenses; Notice and Filing Requirements for Auction of C, D, E, and F Block Broadband Personal Communications Services Licenses Scheduled for March 23, 1999; Minimum Opening Bids and Other Procedural Issues," *Public Notice*, DA 98-2604 (rel. December 23, 1998).

⁷ See "C Block PCS Spectrum Auction Scheduled for March 23, 1999; Comment Sought on Auction Procedural Issues," *Public Notice*, DA 98-2318 (rel. November 12, 1998) and "Additional Information Regarding Broadband PCS Spectrum Included in the Auction Scheduled for March 23, 1999; Comment Sought on Auction Procedural Issues," *Public Notice*, DA 98-2337 (rel. November 19, 1998).

⁸ See "Auction of C, D, E, and F Block Broadband PCS Licenses; Notice and Filing Requirements for Auction of C, D, E, and F Block Broadband Personal Communications Services Licenses Scheduled for March 23, 1999; Minimum Opening Bids and Other Procedural Issues," *Public Notice*, DA 98-2604, at 6 (rel. December 23, 1998).

⁹ *Id.*

¹⁰ 47 U.S.C. § 309(j)(3).

¹¹ See "Auction of C, D, E, and F Block Broadband PCS Licenses; Notice and Filing Requirements for Auction of C, D, E, and F Block Broadband Personal Communications Services Licenses Scheduled for March 23, 1999; Minimum Opening Bids and Other Procedural Issues," *Public Notice*, DA 98-2604, at 6 (rel. December 23, 1998).

Qualified Bidders: A Public Notice listing all applicants qualified to bid in the auction will be released after upfront payments have been received, resubmitted FCC Form 175 applications have been processed and reviewed, and payments and applications have been correlated. The Public Notice will also include, among other things, the bidding schedule for the first two days of the auction as well as instructions on how to monitor the auction on-line and how to access the bid tracking tool software.

Reserve Price or Minimum Opening Bid: The Wireless Telecommunications Bureau has established minimum opening bid requirements for the broadband PCS auction.¹²

Prohibition of Collusion: To ensure the competitiveness of the auction process, Section 1.2105(c) of the Commission's Rules prohibits applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. For the C, D, E, and F block auction, this prohibition became effective at the filing deadline of short-form applications on Friday, February 12, 1999, and will end on the post-auction down payment due date to be announced in a future Public Notice. To comply with this rule, bidders competing for the same license(s) are encouraged not to use the same individual 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/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm), a violation could similarly occur. At a minimum, in such a case, applicants should certify 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.¹³ 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.¹⁴ In the

¹² For general information about how the minimum opening bids for the broadband PCS auction were calculated, see "Auction of C, D, E, and F Block Broadband PCS Licenses; Notice and Filing Requirements for Auction of C, D, E, and F Block Broadband Personal Communications Services Licenses Scheduled for March 23, 1999; Minimum Opening Bids and Other Procedural Issues," *Public Notice*, DA 98-2604 (rel. December 23, 1998) or Tab D, pages 121-123 of the broadband PCS Bidder Information Package. To find out the minimum opening bid for each of the 356 broadband PCS licenses to be auctioned, see "Auction of C, D, E, and F Block Broadband PCS Licenses; Notice and Filing Requirements for Auction of C, D, E, and F Block Broadband Personal Communications Services Licenses Scheduled for March 23, 1999; Minimum Opening Bids and Other Procedural Issues," *Public Notice*, DA 98-2604 (rel. December 23, 1998) and "Correction to Attachment A; Auction of C, D, E, and F Block Broadband PCS Licenses; Notice and Filing Requirements for Auction of C, D, E, and F Block Broadband Personal Communications Services Licenses Scheduled for March 23, 1999; Minimum Opening Bids and Other Procedural Issues," *Public Notice* (rel. January 21, 1999). These documents are available on the FCC Web Site at <http://www.fcc.gov/wtb/auctions>.

¹³ See, e.g., "Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction," *Public Notice*, 13 FCC Rcd 341 (1998); 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) ("*Nevada Wireless*").

¹⁴ See *Nevada Wireless*, 13 FCC Rcd at 11978, ¶ 13 (1998).

broadband PCS auction, for example, the rule would apply to any applicants bidding for the same broadband PCS license. Therefore, applicants that apply to bid for "all markets" would be precluded from communicating with all other applicants after filing the FCC Form 175. However, applicants may enter into bidding agreements *before* filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their Form 175 short-form applications.¹⁵ 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.¹⁶ Thus, Section 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. 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. Bidders found to have violated the anti-collusion rule may be subject to sanctions.¹⁷

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 (47 C.F.R. § 1.1208).¹⁸ Because the short-form application (FCC Form 175) for Auction No. 22 of Leap raises issues that are also raised in an assignment application pending before the Bureau, which is a restricted proceeding under the *ex parte* rule, the Commission will treat Leap's short-form application as a restricted proceeding for purposes of *ex parte* communications.¹⁹

Mock Auction: All applicants found to be qualified bidders are eligible to participate in a mock electronic auction on **Thursday, March 18, 1999**. The Bureau will issue a Public Notice announcing when software for the mock auction is posted on the World Wide Web and BBS.

¹⁵ See 47 C.F.R. § 1.2105(c).

¹⁶ See 47 C.F.R. § 1.65.

¹⁷ See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

¹⁸ See 47 C.F.R. § 1.1202(d) note (1); *see also* "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).

¹⁹ See 47 C.F.R. § 1.1200.

Remote Bidding Software: Applicants are reminded that qualified bidders are eligible to bid either electronically or telephonically. To order the remote bidding software, applicants should complete the software order form attached to this Public Notice as Attachment D. To ensure timely delivery of remote bidding software before the auction begins, the Commission requests receipt of software orders by 5:30 p.m. ET on Tuesday, March 9, 1999. Attachment E to this Public Notice sets out the hardware and software specifications required for the FCC remote bidding system. This information is also contained in Tab F of the broadband PCS Bidder Information Package.

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.²⁰

Bidder Alerts: 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 not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders 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.

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 should perform their individual 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 the broadband PCS auction 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.
- 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 the minimum investment is less than \$25,000.

²⁰ See 47 C.F.R. § 1.2112(b).

- 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 broadband PCS proposals may also call the FCC National Call Center at (888) CALL-FCC ((888) 225-5322).

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS

Licenses must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a wireless antenna facility is a federal action and licenses must comply with the Commission's NEPA rules for each wireless facility.²¹ The Commission's NEPA rules require that, among other things, licenses consult with expert agencies having NEPA responsibilities including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). Licenses must prepare environmental assessments for wireless facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. Licenses must also prepare environmental assessments for wireless facilities that include high intensity white lights in residential neighborhoods or excessive radiofrequency emission.

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CONTACT INFORMATION

For questions about payment or instructions for wiring upfront payments, contact Gail Glasser or Linwood Jenkins, Billing and Collections Branch, at (202) 418-1995. For specific questions about an applicant's incomplete status, the applicant should contact the designated attorney identified in the correspondence sent to the applicants by overnight mail. For additional information, contact: Audrey Bashkin, Legal Branch at (202) 418-0660 (regarding legal questions); Jeff Garretson, Auctions Operations at (202) 418-0660 (regarding bidding and

²¹ See 47 C.F.R. 1.1305-1.1319.

general filing status); and Bob Reagle, Auctions Operation at (202) 418-0660 (regarding bidding and auction design). For information regarding FCC rules concerning compliance with the National Environmental Policy Act (NEPA), please contact Robert Cannon or Rose Crellin, at (202) 418-0569. For technical questions regarding filing software, call FCC technical support at (202) 414-1250.

- FCC -

Attachment D

**FCC REMOTE BIDDING SOFTWARE ORDER FORM:
C, D, E, & F Broadband PCS Auction**

Bidders are free to copy the software for use by authorized bidders at different locations, but the FCC auction system will accept electronic bids only from bidders who have purchased the software. Since bidding software is tailored to a specific auction, software from prior auctions will not work for Auction No. 22.

The price of the FCC Remote Bidding Software is **\$175.00**, including a user manual and shipping. To order, complete the form below and return no later than 5:30 p.m. ET on **Tuesday, March 9, 1999**, to:

FCC Bidding Software, Auction No. 22
Auction Operations Branch
1270 Fairfield Road
Gettysburg, PA 17325-7245
FAX: 717-338-2850

For security purposes, software packages will be sent with other registration materials only to the contact person at the applicant address specified on the FCC Form 175.
NO EXCEPTIONS.

Auction applicant: _____
FCC Assigned Account No.: _____
Phone: _____
Fax: _____
Fax Modem No.: _____

Payment of \$ **175.00** US (payable to "FCC") by:

check enclosed Visa MasterCard

Type: 3.5 diskette CD-Rom

Note that an Operating System of Win 95 or above is required.

Credit card number _____ Expiration date _____

Name on card _____

Authorized signature _____ Date _____

Attachment E

FCC Remote Bidding System Hardware and Software Requirements

At a minimum, bidders need the following hardware and software:

- CPU: Intel® Pentium or above
- RAM: 16 MB (more recommended if you have multiple applications open)
- Hard Disk: 33 MB available disk space
- 1.44 MB Floppy Drive or CD-ROM Drive (to install the Remote Bidding System)
- Modem: v.32bis 14.4 kbps Hayes© compatible modem or faster
- Monitor: VGA or above
- Mouse or other pointing device
- Microsoft® Windows 95™ or Microsoft® Windows 98™
- Netscape® Communicator™ 4.5 is recommended. However, you can also use Netscape Communicator 4.08, 4.07, 4.06 or 4.05 with JDK 1.1. Note: To download Netscape Communicator 4.5 free of charge, access the Netscape download site at <http://home.netscape.com/download/>

For questions regarding the above, please contact Technical Support at (202) 414-1250.