



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET NW
WASHINGTON DC 20554

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News media information (202) 418-0500. Recorded listing of releases and texts (202) 418-2222.
DA 97-477
March 6, 1997

FCC ANNOUNCES AUCTION OF SATELLITE DIGITAL AUDIO RADIO SERVICE

AUCTION NOTICE AND FILING REQUIREMENTS FOR 2 DARS LICENSES
SCHEDULED FOR APRIL 1, 1997

Report No. AUC 97-01, Auction No. 15

Auction Date: 9:00 a.m., Eastern Time, April 1, 1997. The precise schedule for bidding will be announced by Public Notice prior to the start of the auction.

Auction Methodology: Simultaneous multiple round auction. Bidding will be permitted only at the FCC Auction site, 2 Massachusetts Avenue, N.E., Washington, D.C. (adjacent to Union Station; entrance on North Capitol Street). Telephonic bids and electronic bids from remote locations will not be accepted.

Licenses to be Auctioned: Two nationwide licenses will be auctioned in the satellite Digital Audio Radio Service ("DARS"). Licenses will authorize service on 12.5 MHz of spectrum over the continental United States located in the S-band of 2320-2354 MHz.

<u>License Number</u>	<u>Spectrum Authorized</u>
EBN001	2320-2332.5 MHz
EBN002	2332.5-2345 MHz

In addition to the Supplemental Information described below, applicants must indicate to the FCC the license(s) on which they intend to bid.

Closed Auction: Participation in this auction will be limited to the following four entities: American Mobile Radio Corporation, Digital Satellite Broadcasting Corporation, Primosphere Limited Partnership, and Satellite CD Radio, Inc.

Pre-Auction Deadlines:

- Supplemental Information 5:30 p.m., ET, on the fifth day from publication of the DARS rules in the Federal Register. This day will be specified in a subsequent Public

Notice.

- Upfront Payment of **\$3 million** (by Wire Transfer) 3:00 p.m., ET, Fri., March 28, 1997
- Auction Registration 2:00 p.m.-3:00 p.m., ET, March 31, 1997
- Mock Auction 3:00 p.m.-5:00 p.m., ET, March 31, 1997

Prohibition of Collusion: To ensure the competitiveness of the auction process, the FCC's rules prohibit all applicants from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins with the filing deadline of the Supplemental Information and ends when bidders submit down payments.

Telephone Contacts:

- FCC Technical Support Hotline (202) 414-1250
- Wireless Bureau - Auctions Division
 - Amy Zoslov (202) 418-0660
 - Ruby Hough (202) 418-0660
 - Christina Clearwater (202) 418-0660
- International Bureau
 - Rosalee Chiara (202) 418-0754
 - Ron Repasi (202) 418-0768

List of Attachments:

- Attachment A: Federal Communications Commission DARS Licenses Auction; Auction Specific Instructions, FCC Remittance Advice, FCC Form 159
- Attachment B: FCC Remittance Advice (FCC Form 159) and Instructions for Using FCC Form 159 (Remittance Advice)

I. Introduction

Those wishing to participate in the DARS auction must submit certain supplemental information ("Supplemental Information") in accordance with the Commission's rules and the instructions in this Public Notice. The FCC will not issue a Bidder Information Package for this auction. All information necessary to participate in this auction will be available through this Public Notice, subsequent Public Notices, or the Commission's Rules. See 47 C.F.R. §§ 1.2101-1.2103, 1.2104(a) through (f), (h) and (i), and 25.401-25.406; Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, *Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, FCC 97-70 (released March 3, 1997) ("DARS Report and Order").

The Supplemental Information must be received no later than 5:30 p.m. Eastern Time on the fifth day from the publication of the DARS rules in the Federal Register. This

date will be specified in a subsequent Public Notice. Applicants for the DARS auction must file their Supplemental Information manually pursuant to the instructions set forth in this Public Notice.

Applicants will be required to submit an upfront payment (in U.S. dollars) to be eligible to participate in the auction. The upfront payment shall be made by wire transfer and must be received by 3:00 p.m. Eastern Time on March 28, 1997, at the Mellon Bank in Pittsburgh, Pennsylvania.

Prospective bidders must familiarize themselves thoroughly with the procedures, terms and conditions contained in this Public Notice. **The rules contained in the DARS Report and Order in IB Docket No. 95-91 and GEN Docket No. 90-357, FCC 97-70 (released March 3, 1997), this Public Notice, and subsequent Public Notices are not negotiable.** Prospective bidders should review these auction documents thoroughly prior to the auction to make certain that they understand all of the provisions and are willing to be bound by all of the terms before participating in the auction.

The information contained in this Public Notice may be subsequently amended or supplemented by the FCC or the Wireless Telecommunications Bureau at any time. The Wireless Telecommunications Bureau will issue Public Notices to convey new or supplemental information to prospective bidders. It is the responsibility of all prospective bidders to remain fully informed regarding all FCC rules and Public Notices pertaining to this auction. FCC Public Notices and other FCC documents may be obtained for a fee by calling the FCC duplication contractor, International Transcription Services, Inc., at (202) 857-3800. Additionally, prospective bidders may retrieve some of these documents from the FCC Internet site using ftp to connect as anonymous@ftp.fcc.gov, or via the world wide web at www.fcc.gov.

II. Bidder Eligibility and Pre-Auction Procedures

In order to be eligible to bid in the DARS auction, bidders must: (1) satisfy the Commission's eligibility requirements, (2) submit the Supplemental Information, and (3) remit an upfront payment in compliance with applicable FCC rules and regulations.

A. Eligibility Requirements

Eligibility to participate in this auction is reserved for those four parties who filed DARS applications by the December 15, 1992 cut-off date. They are as follows:

1. American Mobile Radio Corporation
2. Digital Satellite Broadcasting Corporation
3. Primosphere Limited Partnership
4. Satellite CD Radio, Inc.

Bidders may win only one license, and as such will be permitted to be active on only one

license at a time. However, bidders will be permitted to bid on either license during the course of the auction provided they indicate this intention in their Supplemental Information (see below).

B. Supplemental Information

In order to be eligible to bid, applicants must submit Supplemental Information to the Commission. For this auction, the Supplemental Information will replace the FCC Form 175 that we have used in previous auctions. **This information must be received by the FCC no later than 5:30 p.m. Eastern Time on the fifth day from the publication of the DARS rules in the Federal Register.** This date will be specified in a subsequent Public Notice. Late Supplemental Information will not be accepted. This supplemental information must be submitted by hand delivery, by certified U.S. mail, or by private courier. Electronic submissions will not be accepted. Applicants should carefully review 47 C.F.R. §§ 1.2101-1.2103, 1.2104(a) through (f), (h) and (i), and 25.401-25.406 of the Commission's Rules before submitting the Supplemental Information.

Required Supplemental Information

Because the FCC Form 175 is not required, bidders must submit the following supplemental information in printed form:

a. Applicant Name

b. Mailing Address: Give a street address (not a Post Office box number) for the applicant, suitable for mail or private parcel delivery. The FCC will send all registration materials and other written communications to the contact person (specified in item j. below) at this address.

c. City

d. State

e. Zip Code

f. Auction Number 15

g. FCC Account Number: Applicants must create a ten-digit FCC Account Number, which the Commission will use to identify and track applicants:

- A bidder that has a taxpayer identification number (TIN) must create this FCC account number by using its TIN, plus the prefix of "0" (*i.e.*, 0123456789). A TIN is either the Employer Identification Number (EIN) in the case of a business, or the Social Security Account Number (SSAN) in the case of an individual.

- If -- and only if -- an applicant does not have a taxpayer identification number, the applicant should use its ten-digit area code and telephone number (*i.e.*, 2025551234) on an interim basis. However, the FCC must have a TIN before it will be able to issue a license or refund upfront payments.

Each applicant must include its FCC Account Number when submitting amendments, additional information, or other correspondence or inquiries regarding its application, and must include this same number on each FCC Form 159 (FCC Remittance Advice) accompanying required auction deposits or payments.

h. Authorized Bidder(s): 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 Supplemental Information filing will be authorized to place or withdraw bids for the applicant during the auction.

i. Name and Title of Person Certifying: Applicants should carefully read the following list of certifications. 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. The applicant must indicate the name and title of the certifying official. Submission of the Supplemental Information constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read this Public Notice's instructions and certifications, and that the contents of the Supplemental Information 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. Applicants must certify the following:

(a) The applicant is legally, technically, financially and otherwise qualified pursuant to 308(b) of the Communications Act and the Commission's Rules and, to the extent that it applies, is in compliance with the foreign ownership provisions contained in Section 310 of the Communications Act;

(b) The applicant is the real party-in-interest in this application and that there are no agreements or understandings other than those specified in the Supplemental Information, which provide that someone other than the applicant shall have an interest in the license;

(c) The applicant is aware that, if upon Commission inspection, this Supplemental Information is shown to be defective, the application may be dismissed without further consideration, and certain fees forfeited. Other penalties may also apply;

(d) The applicant, upon the deadline for filing the Supplemental Information, will not cooperate, collaborate, discuss, or disclose in any manner the substance of its bids or bidding strategies, or discuss or negotiate settlement agreements with other applicants until after the high bidder makes the required down payment;

(e) The applicant, or any party to this Supplemental Information, is not subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988; and

(f) The applicant is and will, during the pendency of its application and Supplemental Information, remain in compliance with any service-specific qualifications applicable to the license on which the applicant intends to bid including, but not limited to, financial qualifications.

(g) The applicant is not in default on any Commission authorizations and it is not delinquent on any extension of credit from any federal agency.

j. Contact Person: 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 Supplemental Information. Please provide a telephone number, fax number, and e-mail address (if available). All written communications and registration information will be directed to the applicant's contact person at the address specified on the Supplemental Information. Applicants must provide a street address; no Post Office Box addresses may be used.

k. Signature and Date: The Supplemental Information must bear an original signature of the certifying official. Absence of an original signature will result in dismissal of the application and disqualification from participation in the auction.

**** In addition to this Supplemental Information, applicants must indicate the license(s) on which they intend to bid (i.e., EBN001 and/or EBN002).**

After the submission deadline for the supplemental information, the Commission will issue a Public Notice which will identify qualified and non-qualified applicants and the licenses for which each qualified applicant has applied. **All applications are still subject to FCC approval.**

C. Filing of Supplemental Information

Auction applicants must file their Supplemental Information in hard copy. Whether the Supplemental Information is mailed, hand delivered or sent by private courier, it must be sent to:

Office of the Secretary
Attn: Auction 15 Supplemental Information Processing
Federal Communications Commission
1919 M. Street, N.W., Room 222
Washington, D.C. 20554

Failure to sign Supplemental Information will result in dismissal of the application and inability to participate in the auction. Only original signatures will be accepted.

D. Application Fee

There is no application fee required when filing Supplemental Information. However, to be eligible to bid, an applicant must submit an upfront payment. See Section E below.

E. Upfront Payments

In order to be eligible to bid in the auction, applicants must submit an upfront payment together with an FCC Remittance Advice Form (FCC Form 159) to Mellon Bank.

All payments must be made in U.S. dollars and must be in the form of a wire transfer. Payments must be received by 3:00 p.m. Eastern Time, Friday, March 28, 1997. Failure to deliver the upfront payment in a timely manner will result in dismissal of the application and inability to participate in the auction.

1. Amount of Upfront Payments

The upfront payment required to participate in the auction is \$3 million. This fully qualifies bidders to participate on either license. See DARS Report and Order.

2. Making Auction Payments by Wire Transfer

To make an auction payment by wire transfer, an applicant must fax a completed FCC Remittance Advice Form (FCC Form 159) to Mellon Bank at (412) 236-5702 **at least one hour prior to placing the order for the wire transfer** (but on the same business day). On the cover sheet of the fax, the applicant should write "Wire Transfer - Auction Payment for Auction Event #15". To submit funds by wire transfer, you will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/AC--910-0198
OBI Field: (Skip one space between each information item)
"AUCTIONPAY"
FCC ACCOUNT NO. (SAME AS ITEM (g) ON SUPPLEMENTAL INFORMATION)
PAYMENT TYPE CODE (ADAU)
FCC CODE ("15" INDICATING AUCTION 15)
PAYOR NAME (SAME AS ITEM (a) ON SUPPLEMENTAL INFORMATION)
LOCKBOX NO. 358410

Given the abbreviated time period in which the Wireless Telecommunications Bureau must confirm receipt of upfront payments, **the Bureau will require applicants to bring to the registration a wire transfer confirmation receipt from their bank certifying that the upfront payment funds have been transferred to the FCC account.** This confirmation will serve as a

reserve method to confirm that the required funds have been transferred to the FCC if there is any delay in obtaining electronic confirmation.

Detailed directions for completing the FCC Form 159 and a sample form are attached to this Public Notice.

III. Registration for the Auction

Only qualified applicants who have submitted timely upfront payments will be permitted to register for the auction. Registration will occur on March 31, 1997, from 2:00 p.m. ET to 3:00 p.m. ET at the FCC auction site. At least one authorized representative as stated in the applicant's Supplemental Information must register. This representative must have two forms of identification, one of which must be a photo identification. At the end of the registration process, bidders will be in possession of the following information:

- FCC Account Number (self-assigned in the Supplemental Information)
- Bidder Identification Number
- Login Name
- Login Password

All applicants will be pre-registered prior to the auction event.

Qualified bidders must be aware that lost login codes, passwords or bidder identification numbers can be replaced and/or distributed only at the FCC auction site located at 2 Massachusetts Avenue, NE, Washington, D.C. 20002. Please be advised that an authorized representative or certifying official, as designated on an applicant's Supplemental Information, must appear in person at the auction site with two forms of identification (one of which must be a photo identification) in order to receive replacement codes.

The FCC will allow qualified bidders an opportunity to use the bidding software following registration on March 31, 1997 from 3:00 p.m. ET to 5:00 p.m. ET. Specific instructions for the mock auction will be provided at registration.

IV. Auction Event and Bidding Rounds

The DARS auction will begin at 9:00 a.m. Eastern Time on Tuesday, April 1, 1997. Initially, bidding rounds are expected to last 30 minutes to allow bidders to become familiar with the bid submission process. We expect the length of the bidding rounds to decrease as the auction progresses. The Commission will adjust the pace of the auction based on its monitoring of the bidding and assessment of auction progress. The precise schedule for bidding will be included in the registration package.

V. Auction Procedures

The two DARS licenses will be auctioned simultaneously. The high bid amount will be posted after the end of the bidding period. Information regarding all valid bids submitted in each round also will be posted.

A. Bid Submission and Withdrawal Procedures

1. Bid Submission

Bidders must place their bids electronically at the FCC auction site. Each bidder will be required to log in to the FCC auction computer system, using a login name and login password unique to that bidder, and in addition must provide its Bidder Identification Number and FCC Account Number in order to place or withdraw a bid.

All accepted bids and the minimum valid bid amount for the next round will be announced after the conclusion of each bidding period. Bidders may receive a hard copy bid confirmation after they have submitted their bids by pressing the Print Bid Verification button on the Options screen.

Bidders will have the option of making multiple submissions in each bidding period. **This is a change in the procedures from previous auctions.** If a bidder enters multiple bids for a license in the same round, the system takes the last bid entered as that bidder's bid for the round. A bidder changing or removing a bid placed in the same round is not subject to bid withdrawal payments.

Only persons authorized in the applicant's Supplemental Information to make or withdraw a bid will be allowed to enter the bidding booth. Each authorized representative will be required to show photo identification to enter the bidding booth.

2. Bid Withdrawals

A high bidder that withdraws its standing high bid is subject to the bid withdrawal payment specified in Section 1.2104(g)(1) of the Commission's Rules. Bid withdrawal will be permitted only after a round in which there have been no new bids or proactive waivers. After a round with no new bids or proactive waivers, the Commission will specify a bid withdrawal period. If one or both of the standing high bids from a previous round are withdrawn, the Commission will reoffer the license or licenses in the next round. To prevent multiple withdrawals by the same party in the same auction, the Commission will bar a bidder who withdraws a bid from continued participation in that auction.

The offer price for a withdrawn license will be the highest price at or above which bids were made by four distinct bidders in any previous round and on any license. If there is no price at or above which bids were made in previous rounds by four bidders, then the Commission will

reoffer the license in the next round at the minimum opening bid for the license. The Commission may at its discretion reduce the offering price in subsequent rounds if it receives no bids at this price. Prior to restarting the auction, the Commission will also restore the eligibility of all bidders who have not withdrawn. If eligibility is not restored, it is possible, given the activity rules, that no bidders would be eligible to bid when a license is reoffered after a bid withdrawal. Restoring eligibility of all but those who withdrew will ensure the maximum number of sincere bidders for the license when the auction is restarted. After a withdrawal, the Commission will also issue each eligible bidder one activity rule waiver in addition to any remaining waivers, subject to a maximum of three, to provide additional time for bid preparation and to avoid accidental disqualification.

B. Minimum Opening Bid, Bid Increments, and Tie Bids

1. Minimum Opening Bid

The FCC believes that it is useful to have a minimum opening bid to help move the auction along. Therefore, the Commission has established a minimum opening bid of \$8 million each for these licenses. Based on our observations of the market, we believe this minimum opening bid is high enough to move the auction along at a rapid pace, but significantly below the expected final bid for the spectrum. See DARS Report and Order, ¶ 159.

2. Bid Increments

The minimum bid increment is the amount or percentage by which a bid must be raised above the previous high bid in order to be accepted as a valid bid in the current round. The amount of the minimum valid bid for each license (generally, the sum of the minimum bid increment and the high bid from the previous round) will be announced at the beginning of each round. See 47 C.F.R. § 25.402.

Once a bid has been received for a license, the minimum bid increment will be ten (10) percent of the previous high bid on that license. The Commission retains the discretion to establish, raise and lower minimum bid increments in the course of the auction. This discretion is necessary to ensure that the Commission can efficiently control the pace of the auction.

3. Tie Bids

Each bid will be date and time stamped when it is entered into the computer system. In the event of tie bids, the Wireless Telecommunications Bureau will identify the high bidder on the basis of the order in which bids are received, starting with the earliest bid. See 47 C.F.R. § 25.402.

C. Activity Rules

In order to ensure that the auction closes within a reasonable period of time, the Commission will impose an activity rule to discourage bidders from waiting until the end of the auction before participating. See generally 47 C.F.R. § 25.402.

1. Activity Requirements

Bidders must be active on one license in each round of the auction or use an activity rule waiver, as defined below. Bidders will not be permitted to be active on more than one license in a single round. To be active in the current round, a bidder must submit a valid bid in the current round or have the high bid from the previous round. A bidder who is not active in a round and has no remaining activity rule waivers will no longer be eligible to bid on the licenses being auctioned. However, as discussed above, in the event of a bid withdrawal, the eligibility of all bidders who have not withdrawn will be restored.

2. Activity Rule Waivers

Bidders will be provided three activity rule waivers that may be used in any round during the course of the auction. A waiver will preserve eligibility in the next round. Waivers may be applied automatically by the Commission or invoked proactively by bidders. If a bidder is not active in a round, a waiver will be applied automatically if any waivers remain. **An automatic waiver applied in a round in which there are no new valid bids will not keep the auction open.** A proactive activity rule waiver is a waiver invoked by a bidder during the bidding period. If a bidder submits a proactive waiver in a round in which no other bidding activity occurs, the auction will remain open. Therefore, if a bidder does not intend to bid but wants to ensure that the auction does not close, it should enter a proactive waiver in place of a bid.

The Commission retains the discretion to issue additional waivers during the course of the auction for circumstances beyond a bidder's control or in the event of a bid withdrawal, as discussed above.

D. Stopping Rules

A stopping rule specifies when an auction is over. The auction will close after one round passes in which no new valid bids or proactive waivers are submitted on both licenses, subject to the following two qualifications. First, if a high bidder withdraws its bid during the bid withdrawal period the Commission will reoffer the license in the next round as specified in Section A.2 above. Second, the Commission retains the discretion to keep an auction open even if no new valid bids and no proactive waivers are submitted. In the event that the Commission exercises this discretion, the effect will be the same as if a bidder had submitted a proactive waiver. See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2369 (1994).

VI. Delay, Suspension or Cancellation of the Auction

The Commission may, by Public Notice or by announcement during the auction, delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of auction security breach, unlawful bidding activity, administrative necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Commission may, in its sole discretion, resume the auction starting from the beginning of the current or some previous round or cancel the auction in its entirety.

VII. Default and Disqualification Payments

A default payment will be assessed if a winning bidder fails to pay the full amount of its 20 percent down payment or the balance of its winning bid in a timely manner, or is disqualified after the close of an auction. The amount of this default payment will be equal to the difference between the defaulting auction winner's "winning" bid and the amount of the winning bid the next time the license is offered for auction by the Commission, if the latter bid is lower. In addition, the defaulting auction winner will be required to submit a payment of three percent of the subsequent winning bid or three percent of its own "winning" bid, whichever is less. See 47 C.F.R. § 25.406. In the event that the amount of those payments cannot be determined (i.e., until the license has been reaucted), the FCC can require a "deposit" of at least three (3) percent, and at most twenty (20) percent, of the defaulted bid amount. See In Re C. H. PCS, Inc., BTA No. B347 Frequency Block C, *Order*, DA 96-1825 (released November 4, 1996). See also Wireless Telecommunications Will Strictly Enforce Default Payment Rules, *Public Notice*, DA 96-41 (April 4, 1996).

If withdrawal, default or disqualification involves gross misconduct, misrepresentation or bad faith by an applicant, the Commission retains the option to declare the applicant and its principals ineligible to bid in future auctions, or take any other actions the Commission deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2383 (1994).

VIII. Releasing Bidder Identities

Bidders' identities and FCC account numbers will be disclosed prior to the auction. Thus, bidders will know in advance of the auction the identities of the bidders against whom they are bidding.

IX. Collusion

To prevent collusion, Section 25.405 of the Commission's rules prohibits applicants, after the deadline for filing Supplemental Information and before down payments are submitted, from cooperating, collaborating, discussing, or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements with other applicants. See

X. Post-Auction Procedures

A. Down Payment

The winning bidder for each license must submit sufficient additional funds (a "down payment") to bring the amount of money on deposit (not including upfront payments applied to satisfy bid withdrawal or default payments) with the government to 20 percent of its winning bid within ten (10) business days after the high bidder is announced. See 47 C.F.R. § 25.404.

Specific information regarding the submission of down payments will be included in the Public Notice announcing the winning bidders.

B. Submission of License Application and Award of Licenses

The winning bidder for each license also will be required to file information in conformance with Part 25 of the Commission's Rules. This procedure will constitute the "long-form application" process referred to in our general auction rules. Winning bidders must file this information with the Commission within 30 days of the publication of the Public Notice announcing the winning bidders. Winning bidders must submit, as part of this post-auction application process, a signed statement describing their efforts to date and future plans to come into compliance with any applicable spectrum limitations, if they are not already in compliance. See 47 C.F.R. § 25.404.

After reviewing a winning bidder's information supplied in conformance with Part 25 and determining that the bidder is qualified to be a licensee, and after verifying receipt of the bidder's 20 percent down payment, the Commission will announce the application's acceptance for filing in a Public Notice, thus triggering the filing window for petitions to deny. If, pursuant to Section 309(d) of the Communications Act, the Commission dismisses or denies any and all petitions to deny, the Commission will issue a Public Notice announcing this, and the winning bidder will then have ten business days to submit the balance of its winning bid. If the bidder does so, the license will be granted subject to a condition, if necessary, that the permittee come into compliance with any applicable spectrum limitations within 12 months of the final grant. The licensee may come into compliance with this spectrum cap by either surrendering to the Commission its excess channels or filing an application that would result in divestiture of the excess channels. If the bidder fails to submit the balance of the winning bid or the license is otherwise denied, we will assess a default payment as set forth above and reactivate the license. See Section VII of this Public Notice.

C. Refund of Upfront Money

All applicants who submitted upfront payments, yet were not winning bidders, may be entitled to a refund of their upfront payments after the conclusion of the auction. Any refund will be conditioned upon the existence of excess funds on deposit after any applicable bid withdrawal payments have been deducted.

Because experience with prior auctions has shown that in most cases wire transfers provide quicker and more efficient refunds than paper checks, the FCC currently intends to use wire transfers for all Auction 15 refunds. To avoid delays in processing refunds, applicants should include wire transfer instructions with any refund request they file; they may also provide this information in advance by faxing it to the FCC Billings and Collections Branch, ATTN: Regina Dorsey or Linwood Jenkins, at 202-418-2843. (Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number before it can disburse funds.) In lieu of faxing, please mail the information to:

Federal Communications Commission
ATTN: Linwood Jenkins
1919 M Street, N.W., Room 450
Washington, D.C. 20554

D. Construction Requirements

Licenses in satellite DARS must begin construction of or complete contracting for construction of their space stations within one year of license grant; launch and begin operating their first satellite within four years; and begin operating their entire system within six years. Failure to meet these milestone requirements will result in forfeiture of the license, and the licensee will be ineligible to regain it. See 47 C.F.R. § 25.214(b).

XI. Bidder Alert

The terms contained in the Commission's Rules, Reports, Orders, and Public Notices are not negotiable. Prospective bidders should review these auction documents thoroughly prior to the auction to make certain that they understand all of the provisions and are willing to be bound by all of the terms before making any bid.

All applicants must certify under penalty of perjury on their Supplemental Information that they are legally, technically, financially and otherwise qualified to hold a DARS license. 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, being barred from participating 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.

Attachment A

FEDERAL COMMUNICATIONS COMMISSION DARS LICENSES AUCTION

Auction Specific Instructions FCC Remittance Advice, FCC FORM 159

UPFRONT PAYMENTS

The following instructions are specifically written for the auction of DARS licenses. These instructions are intended as a supplement to the standard instructions issued by the FCC's Billings and Collections Branch, at telephone number (202) 418-1995. Bidders should ensure that they complete the FCC Form 159 accurately, since mistakes may affect their bidding eligibility. Please note that it is vital that all forms, applications, correspondence, etc. submitted to the Commission by an applicant contain identical information necessary for verification purposes. To this end, appropriate references between the FCC Form 159 Remittance Advice and the Supplemental Information have been provided below:

<u>Block Number</u>	<u>Required Information</u>
1	<u>FCC Account Number</u> - Same as Supplemental Information item "g". A bidder that has a taxpayer identification number (TIN) must create this FCC account number by using its TIN, plus the prefix of "0" (<i>i.e.</i> , 0123456789). A TIN is either the Employer Identification Number (EIN) in the case of a business, or the Social Security Account Number (SSAN) in the case of an individual.
2	<u>Total Amount Paid</u> - Enter the total remittance based on the payment amount. To bid in this auction, the upfront payment is \$3,000,000.
3	<u>Payor Name</u> - Enter the full name of the person or company (<i>i.e.</i> , maker of the check) responsible for payment.
4	<u>Street Address (Line 1)</u> - Same as Supplemental Information item "b". The street address to which correspondence should be sent.
5	<u>Street Address (Line 2)</u> - Same as Supplemental Information item "b". This line may be used if further identification of the address is required.
6	<u>City</u> - Same as provided in Supplemental Information item "c". The

name of the city associated with the street address given in block (4) of the FCC Form 159.

- 7 State - Same as provided in Supplemental Information item "d". Enter the appropriate two-character abbreviation here.
- 8 Zip Code - Same as provided in Supplemental Information item "e". Enter the appropriate five-digit or nine-digit code here.
- 9 Daytime Telephone Number - Same as provided in Supplemental Information item "j". Enter the "payor's" ten-digit telephone number here.
- 10 Country Code - Used for payors who have addresses outside the U.S. Proper codes may be obtained from the Mailing Requirements Dept. of the U.S. Postal Service.

NOTE - IF APPLICANT, LICENSEE, REGULATEE OR DEBTOR IS THE SAME AS THE PAYOR, DO NOT COMPLETE BLOCKS 11, 13, 18, 19, 20, & 21. THIS AUCTION DOES NOT INVOLVE MULTIPLE APPLICATIONS OR FILINGS, SO WE ARE CONCERNED ONLY WITH THE REMAINING BLOCKS 12A, 14A, 15A, 16A & 17A.

ITEM # "1" INFORMATION

- 12A FCC Call Sign/Other Identifier - Leave blank.
- 14A Payment Type Code - Enter A D A U
- 15A Quantity - Enter the number "1".
- 16A Amount Due - Enter total upfront payment indicated in block (2).
- 17A FCC Code 1 - Enter the number "15"

NOTE - IN THE UPPER LEFT HAND CORNER OF THE FCC FORM 159 IS A RECTANGLE WITH THE WORD "(RESERVED)" TYPED IN THE MIDDLE OF IT. PLEASE ENTER THE NUMBER "358410" SOMEWHERE IN THIS RECTANGLE.

Attachment B

FCC Remittance Advice (FCC Form 159) and Instructions for Using FCC Form 159 (Remittance Advice)

The FCC Form can be obtain by calling 202-418-FORM or by downloading from the FCC Web site at URL <http://www.fcc.gov/formpage.html>