

AUCTION PROCEDURES, TERMS AND CONDITIONS

1. INTRODUCTION

The Phase II 220 MHz Service Licenses to Be Auctioned:

The Federal Communications Commission ("FCC" or "Commission") will hold an auction for 908 licenses to operate in the 220-222 MHz band. These licenses encompass the United States, the Northern Mariana Islands, Guam, American Samoa, the United States Virgin Islands and Puerto Rico. Specifically, the licenses include: (1) five licenses in each of 172 geographic areas known as Economic Areas (EAs) and three EA-like areas; (2) five licenses in six Economic Area Groupings (EAGs);¹ and (3) three Nationwide licenses which encompass the same territory as all of the EAGs combined (*see* Tab A for a complete listing of licenses). The licenses include the following channels:

(1) <u>EA Block</u>	<u>Channels</u>
A: Channel Groups ² 2, 13	10
B: Channel Groups 3, 16	10
C: Channel Groups 5, 18	10
D: Channel Groups 8, 19	10
E: Channels 171-180	10

(2) <u>EAG Block</u>	<u>Channels</u>
F: Channel Groups 1, 6, 11	15
G: Channel Groups 4, 9, 14	15
H: Channel Groups 7, 12, 17	15
I: Channel Groups 10, 15, 20	15
J: Channels 186-200	15

¹As we noted in the *220 MHz Public Notice*, the geographic area encompassed within a 220 MHz REAG differs from the geographic area encompassed within REAGs in prior auctions. 13 FCC Rcd. at 708, note 5. In order to avoid confusion and for purposes of administrative convenience, therefore, we will use EAGs in the 220 MHz auction.

²The Channel Groups indicated in the allocation plan are the 5-channel, non-contiguous assignments identified as "Group Nos. 1, 2, 3," etc., in Section 90.721 of the Commission's Rules, 47 C.F.R. § 90.721.

(3) Nationwide Block³ Channels

K: Channels 51-60 10
L: Channels 81-90 10
M: Channels 141-150 10

Auction Date: The auction will commence on September 15, 1998. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding will be conducted on each business day until bidding has stopped on all licenses.

Auction Title: The Phase II 220 MHz Service - Auction No. 18.

Bidding Methodology: Simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

Pre-Auction Deadlines:

- Auction Seminar August 6, 1998
- Short Form Application (FCC Form 175) August 17, 1998; 5:30 p.m. ET
- Upfront Payments (via wire transfer) August 31, 1998; 6:00 p.m. ET
- Orders for Remote Bidding Software September 1, 1998; 5:30 p.m. ET
- Mock Auction September 11, 1998

Telephone Contacts:

- FCC National Call Center (888) CALL-FCC [(888) 225-5322]
For Bidder Information Packages, General Auction Information, and Seminar Registration, press option #2 at the prompt. Hours of service: 8 a.m. - 5:30 p.m. ET.
- FCC Technical Support Hotline (202) 414-1250 (V), (202) 414-1255 (TTY)
Hours of service: 8 a.m. - 6 p.m. ET, Monday - Friday; 9 a.m. - 5 p.m. ET, weekend of August 15-16.

Background: In March 1997, the Commission restructured the licensing framework that governs the 220 MHz Service. Site-specific licensing, used in the Phase I 220 MHz Service, is to be replaced with a geographic-based system in the Phase II 220 MHz Service which is the subject of the upcoming auction. This geographic-based licensing methodology is similar to that used in other commercial mobile radio services ("CMRS"). The geographic areas for the licenses were created based upon Economic Areas (EAs), developed by the Bureau of Economic Analysis of the U.S. Department of Commerce. The Economic Area Groupings (EAGs), developed by the Commission, include groupings of EAs and encompass the sum total of all EAs. Three

³For the purpose of the auction, the Bureau is designating Nationwide channels 51-60 as Block K; Nationwide channels 81-90 as Block L; and Nationwide channels 141-150 as Block M.

Nationwide licenses, including all of the EAGs, are also to be offered in the Phase II 220 MHz Service auction. Service and operational requirements for the Phase II 220 MHz Service are contained in Part 90 of the Commission's Rules, 47 C.F.R. Part 90.

On May 21, 1998, the Commission released a *Memorandum Opinion and Order on Reconsideration* in PR Docket No. 89-552. Among other things the Commission removed the spectrum efficiency standard that applied to equipment operating in the 220-222 MHz band, eliminated installment payments for small businesses and very small businesses, and increased bidding credits for such entities.

Participation: Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) by the above-listed deadline.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by the above-listed deadline.
- Comply with all provisions outlined in this Bidders Package.

Prohibition of Collusion: The Commission's Rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins with the filing of short-form applications, and ends on the down payment due date. In the 220 MHz Service auction, for example, the rule would apply to an applicant bidding for an EAG and an applicant bidding for an EA within that EAG. Applicants that apply to bid for "all markets" or a nationwide license would be precluded from communicating with all other applicants. An exception is where applicants enter into a bidding agreement before filing their short-form applications, and disclose the existence of the agreement in their short-form applications. *See* 47 C.F.R. § 1.2105(c). We note that 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.⁴ Thus, Section 1.65 requires an auction applicant to bring to the Commission's attention any communication not permissible under the applicant's certification of compliance with Section 1.2105(c).⁵ In addition, auction participants are strongly encouraged to notify the Commission promptly and directly upon learning of communications that they reasonably believe may violate Section 1.2105(c) of the Commission's Rules. The Commission has stated that "honesty and reliability are fundamental obligations of a licensee." *In re Chameleon Radio Corp.*, MM Docket 96-173, ¶ 22 (rel. April 22, 1998) (Commission affirmed the Initial Decision of Administrative Law Judge Joseph Chachkin, *Chameleon Radio Corp.*, 12 FCC Rcd 19348 (I.D. 1997)). The Commission takes these

⁴ 47 C.F.R. § 1.65.

⁵ *See* In the Matter of Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd. 374, 467 (1997), ¶ 162, n. 455 ("Part 1 Third Report and Order"); Letter to Jonathan D. Blake and Robert J. Rini from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, DA 95-2404 (released November 28, 1995).

obligations seriously and expects applicants, in their dealing with the Commission, to comply with the letter and spirit of Section 1.2105(c).

Additional Copies of this Bidder Information Package: The Commission will provide one copy to each company free of charge. Additional copies may be ordered at a cost of \$16.00 each, including postage, payable by Visa or Master Card, or by check payable to "Federal Communications Commission" or "FCC." To place an order, contact the FCC National Call Center at (888) CALL-FCC ((888) 225-5322, press option #2 at the prompt).

Relevant Authority: Prospective bidders must familiarize themselves thoroughly with the Commission's Rules relating to the Phase II 220 MHz Service, contained in Title 47, Part 90 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in Title 47, Part 1 of the Code of Federal Regulations.

Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89-552, RM-8506, GN Docket No. 93-252, PP Docket No. 93-253, *Third Report and Order and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 10943 (1997) ("220 MHz Third Report and Order"). The Commission resolved petitions for reconsideration of the *220 MHz Third Report and Order* in Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, FCC 98-93, *Memorandum Opinion and Order on Reconsideration* (rel. May 21, 1998) ("220 MHz MO&O").

For general background on the Phase I 220 MHz Service, see, among other materials: Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, PR Docket No. 89-552, *Report and Order*, 6 FCC Rcd 2356 (1991); Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, PR Docket No. 89-552, *Memorandum Opinion and Order*, 7 FCC Rcd 4484 (1992).

For further information about the 220 MHz Service, see Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89-552, GN Docket No. 93-252, *Second Report and Order*, 11 FCC Rcd 3668 (1996) ("220 MHz Second Report and Order"); Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89-552, *Fourth Report and Order*, 12 FCC Rcd 13453 (1997).

The Terms contained in the Commission's Rules, relevant orders, public notices and bidder information package are not negotiable. Potential bidders are reminded that the *220 MHz MO&O*, released May 21, 1998, which resolved petitions for reconsideration filed in response to

the 220 MHz *Second Report and Order* and the 220 MHz *Third Report and Order* altered some of the decisions and rules adopted in those orders. In addition, the decisions reached in the 220 MHz proceeding are the subject of a judicial appeal and may be the subject of additional reconsideration or appeal. *See, e.g., PLMRS Narrowband Corp., et al. v. Federal Communications Commission*, No. 92-1432, *et al.* (D.C. Cir., filed September 18, 1992).

The Commission may amend or supplement the information contained in our public notices or the bidder information package at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission Rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp @ftp.fcc.gov or the FCC World Wide Web site at <http://www.fcc.gov/wtb/auctions>. Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc., at (202) 857-3800.

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 Phase II 220 MHz Service 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.
- ☞ 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 Phase II 220 MHz Service proposals may also call the FCC National Call Center at (888) CALL-FCC ((888) 225-5322).

2. BIDDER ELIGIBILITY AND SMALL BUSINESS PROVISIONS

A. General Eligibility Criteria

As described above, this auction offers: (1) five licenses in each of 172 geographic areas known as Economic Areas (EAs) and three EA-like areas; (2) five licenses in six Economic Area Groupings (EAGs); and (3) three Nationwide licenses which encompass the same territory as all of the EAGs combined (*see* Tab A for a complete listing of licenses).

(1) Determination of Revenues

For purposes of determining which entities qualify as very small businesses or small businesses, the Commission will attribute to the applicant the gross revenues of all of its controlling principals and affiliates. For purposes of this auction, the Commission will not impose specific equity requirements on controlling principals. However, in order to qualify as a very small business or small business, an applicant's qualifying principals must maintain control of the applicant. The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, *de jure* control is evidenced by ownership of at least 50.1 percent of an entity's voting stock. *De facto* control is determined on a case-by-case basis. The following are some common indicia of control:

- the entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- the entity plays an integral role in management decisions.

(2) Application Showing

Applicants should note that they will be required to file supporting documentation to establish that they satisfy the eligibility requirements to qualify as a very small business or small business for this auction. *See* 47 C.F.R. §§ 90.1009 and 1.2105.

B. Bidding Credits

Qualifying Phase II 220 MHz applicants are eligible for bidding credits. The size of a Phase II 220 MHz bidding credit depends on the annual gross revenues of the bidder and its controlling principals and affiliates, as averaged over the preceding three years:

- A bidder with gross annual revenues of not more than \$15 million receives a 25 percent discount on its winning bids for Phase II 220 MHz Service licenses; and,
- A bidder with gross annual revenues of not more than \$3 million receives a 35 percent discount on its winning bids for Phase II 220 MHz Service licenses.

Bidding credits are not cumulative: applicants that qualify receive either the 25 percent or the 35 percent bidding credit, but not both. The definitions of very small business and small business (including calculation of gross annual revenue) are set forth in 47 C.F.R. § 90.1021(b).

Phase II 220 MHz Service bidders should note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their EA, EAG or Nationwide licenses to an entity not qualifying for the same levels of bidding credits. *See* 47 C.F.R. § 90.1017(b). Finally, Phase II 220 MHz Service bidders should also note that there are no installment payment plans in the 220 MHz Service auction.

3. PRE-AUCTION PROCEDURES

A. Short-Form Application (FCC Form 175) -- Due August 17, 1998

In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. **This application must be received at the Commission by 5:30 p.m. ET on August 17, 1998.** Late applications will not be accepted.

There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* "Upfront Payments," Part 3.C., *infra*.

(1) Filing Options

Auction applicants are strongly encouraged to file their applications electronically in order to take full advantage of the greater efficiencies and convenience of electronic filing, bidding and access to bidding data. For example, electronic filing enables the applicant to: (a) receive interactive feedback while completing the application; and (b) receive immediate acknowledgment that the FCC Form 175 has been submitted for filing. In addition, only those applicants that file electronically will have the option of bidding electronically. However, manual filing (via hard copy) is also permitted. **Please note that manual filers will not be permitted to bid electronically and must bid telephonically, unless the FCC Form 175 is amended electronically prior to the resubmission date for incomplete or deficient applications. Applicants that file electronically may make amendments to their applications until the filing deadline.** The following is a brief description of each filing method.

(a) Electronic Filing

Applicants wishing to file electronically may generally do so on a 24-hour basis beginning July 20, 1998. The window for filing the FCC Form 175 electronically will remain open until 5:30 p.m. ET on August 17, 1998. Information about installing and running the FCC Form 175 application software is included in Tab C.

Technical support is available at (202) 414-1250 (V) or (202) 414-1255 (TTY); the hours of service are 8 a.m. - 6 p.m. ET, Monday - Friday, and 9 a.m. - 5 p.m. ET, the weekend of August 15-16.

(b) Manual Filing

Auction applicants will be permitted to file their FCC Form 175 applications in hard copy. When any manually filed FCC Form 175 and 175-S exceeds five pages in length, the FCC additionally requires that all attachments be submitted on a 3.5-inch diskette, or the entire application be filed in a microfiche version. **Manual filers must use the May 1998 version of FCC Form 175 and the October 1995 edition of the 175-S (if applicable). Earlier versions of the FCC Form 175 will not be accepted for filing.** Copies of FCC Forms 175 and 175-S can be obtained by calling (202) 418-FORM.

Manual applications may be submitted by hand delivery (including private "overnight" courier) or by U.S. mail (certified mail with return receipt recommended), addressed to:

FCC Form 175 Filing, Auction No. 18
Federal Communications Commission
Wireless Telecommunications Bureau
Auctions & Industry Analysis Division
1270 Fairfield Road
Gettysburg, PA 17325-7245

NOTE: Manual applications delivered to any other location will not be accepted.

(2) Completion of the FCC Form 175

Applicants should carefully review 47 C.F.R. §§ 90.1009 and 1.2105, and must complete all items on the FCC Form 175 (and Form 175-S, if applicable). Instructions for completing the FCC Form 175 are in Tab C.

Failure to sign a manually filed FCC Form 175 (for both electronic and manual filers) will result in dismissal of the application and loss of the ability to participate in the auction. **Only original signatures will be accepted for manually filed applications.**

(3) Electronic Review of FCC Form 175

The FCC Form 175 review software may be used to review and print applicants' FCC Form 175 applications. In other words, applicants that file electronically may review their own completed FCC Form 175. Applicants also have access to view other applicants' completed FCC Form 175s, after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. There is a fee of \$2.30 per minute for accessing this system. *See* Tab C for details.

B. Application Processing and Minor Corrections

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

As described more fully in the Commission's Rules, after the August 17, 1998, short form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official or change control of the applicant). *See* 47 C.F.R. §§ 90.1009 and 1.2105.

C. Upfront Payments -- Due August 31, 1998

In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). **Manual filers must use the July 1997 version of FCC Form 159. Earlier versions of this form will not be accepted.** All upfront payments must be received at Mellon Bank in Pittsburgh, PA, by 6:00 p.m. ET on August 31, 1998.

Please note that:

- **All payments must be made in U.S. dollars.**
- **All payments must be made by wire transfer.**
- **Upfront payments for Auction No. 18 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.**
- **Failure to deliver the upfront payment by the August 31, 1998 deadline will result in dismissal of the application and disqualification from participation in the auction.**

(1) Making Auction Payments by Wire Transfers

Wire transfer payments must be received **by 6:00 p.m. ET on August 31, 1998**. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261

Receiving Bank: Mellon Pittsburgh

BNF: FCC/AC 910-0171

OBI Field: (Skip one space between each information item)

"AUCTIONPAY"

TAXPAYER IDENTIFICATION NO. (same as FCC Form 159, block 26)

PAYMENT TYPE CODE (enter "A22U")

FCC CODE 1 (same as FCC Form 159, block 23A: "18")

PAYER NAME (same as FCC Form 159, block 2)

LOCKBOX NO. 358430

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

Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 236-5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer - Auction Payment for Auction Event No. 18." Bidders may confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

(2) FCC Form 159

Each upfront payment must be accompanied by a completed FCC Remittance Advice Form (FCC Form 159). Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Tab C.

(3) Amount of Upfront Payment

For the Phase II 220 MHz Service auction the upfront payment amount will be one cent per MHz*POP with no amount less than \$2,500. This upfront payment amount, listed in Tab A, will be the amount required to purchase eligibility (as measured in bidding units) sufficient to place a bid on a particular license(s) in Auction No. 18.

Please note that upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define each bidder's maximum bidding eligibility. For Auction No. 18, the total number of bidding units assigned to each bidder is equal to the amount of the upfront payment, *e.g.*, a \$25,000 upfront payment provides the bidder with 25,000 bidding units. The total upfront payment defines the maximum amount of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied, but rather to cover the maximum number of bidding units associated with licenses the bidder wishes to place bids on and hold high bids on at any given time.

In order to be able to place a bid on a license, in addition to having specified that license on FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on FCC Form 175, or else the applicant will not be eligible to participate in the auction.

In calculating the upfront payment amount, an applicant should determine the maximum number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units. Bidders should check their calculations carefully as there is no provision for increasing a bidder's maximum eligibility during the course of an auction.

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

(4) Applicant's Wire Transfer Information for Purposes of Refunds

Because experience with prior auctions has shown that in most cases wire transfers provide quicker and more efficient refunds than paper checks, the Commission will use wire transfers for all Auction No. 18 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: Linwood Jenkins or Geoffrey Idika, at (202) 418-2843. **Please include the following information:**

Name of Bank
ABA Number
Account Number to Credit
Correspondent Bank (if applicable)
ABA Number
Account Number
Contact and Phone Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in "Post-Auction Procedures," Part 5.D., *infra*.

D. Auction Registration

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

All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. **These mailings will be sent only to the contact person at the applicant address listed in the FCC Form 175.**

Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings **by noon on Thursday, September 10, 1998** should contact the FCC National Call Center at (888) CALL-FCC ((888) 225-5322, press option #2 at the prompt). Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing in person at the FCC Auction Headquarters located at 2 Massachusetts Avenue, N.E., Washington, D.C. 20002. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes.

E. Remote Electronic Bidding Software

Qualified bidders that file or amend the FCC Form 175 electronically are allowed to bid electronically, but must purchase remote electronic bidding software for \$175.00 **by September 1, 1998**. (Auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 18.) A software order form is included in Tab A.

F. Auction Seminar

On August 6, 1998, the FCC will sponsor a seminar for the Phase II 220 MHz Service auction in Washington, D.C. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the 220 MHz Service and auction rules.

To register, complete the registration form in Tab A. Registrations are accepted on a first-come, first-served basis.

G. Mock Auction

All applicants whose FCC Form 175 and 175-S have been accepted for filing will be eligible to participate in a mock auction beginning **September 11, 1998**. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Due to different bidding procedures in the Phase II 220 MHz Service auction from previous Commission auctions, participation by all bidders is strongly recommended. Details will be announced by public notice.

4. AUCTION EVENT

The first round of the auction will begin on September 15, 1998. The initial round schedule will be announced in a Public Notice listing the qualified bidders, to be released approximately 10 days before the start of the auction.

A. Auction Structure

(1) Simultaneous Multiple Round Auction

The 908 Phase II 220 MHz Service licenses, including EA, EAG and Nationwide licenses, will be awarded through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction.

(2) Maximum Eligibility and Activity Rules

As noted in "Amount of Upfront Payment," Part 3.C.3., *infra*, the amount of the upfront payment submitted determines the initial maximum eligibility (in bidding units) for each bidder. Upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will initially be permitted to bid. There is no provision for increasing a bidder's maximum eligibility during the course of an auction, though, as explained below, eligibility can be permanently reduced.

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

A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (see "Minimum Accepted Bids" in Part 4.B.(3), *infra*). A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. As explained fully below, the minimum required activity level for each round is expressed as a percentage of the bidder's maximum bidding eligibility, and increases as the auction progresses.

(3) Activity Rule Waivers and Reducing Eligibility

Each bidder will be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license.

The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system

will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages," Part 4.A.(4). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

(4) Auction Stages

The auction will be composed of three stages, which are each defined by an increasing activity rule. Below are the proposed activity levels for each stage of the auction. The FCC reserves the discretion to alter the activity percentages before and/or during the auction.

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths ($5/4$).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths ($10/9$).

Stage Three: In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty-fortyninths ($50/49$).

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

activity level by using the bidding software's bidding module.

(5) Stage Transitions

The auction will start in Stage One, and under the FCC's general guidelines it will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 10 percent or less of the licenses being auctioned (as measured in bidding units). However, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue.

(6) Auction Stopping Rules

Barring extraordinary circumstances, bidding will remain open on all licenses until bidding stops on every license. Thus, the auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid.

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

Further, in its discretion, the Bureau reserves the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the FCC invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The FCC intends to exercise this option only in extreme circumstances, such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the FCC is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity.

(7) Auction Delay, Suspension, or Cancellation

By public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We

emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

(1) Round Structure

The initial bidding schedule will be announced by public notice at least one week before the start of the auction, and will be included in the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results.

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

(2) Reserve Price or Minimum Opening Bid

There are minimum opening bids for each of the licenses in the Phase II 220 MHz Service auction that are reducible at the discretion of the Bureau. The levels will be set as follows:

- | | |
|------------------------|------------------------|
| 1. EA Licenses | \$0.015 per MHz * POP |
| 2. EAG Licenses | \$0.0125 per MHz * POP |
| 3. Nationwide Licenses | \$0.0175 per MHz * POP |

with a minimum of no less than \$2,500 per license.

The discretion to reduce minimum opening bids will be exercised sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose eligibility. During the course of the auction, the Bureau will not entertain any bidder requests to reduce the minimum opening bid on specific licenses.

(3) Minimum Accepted Bids

Once there is a standing high bid on a license, a bid increment will be applied to that license to establish a minimum acceptable bid for the following round. For the Phase II 220 MHz Service auction, we will utilize, as described immediately below, an exponential smoothing methodology to calculate minimum bid increments. The Bureau retains the discretion to change the minimum bid increment if it determines that circumstances so dictate. The exponential smoothing methodology has been used in previous auctions, including the WCS auction, the 800 MHz SMR auction, and the LMDS auction.

Exponential Smoothing

The exponential smoothing formula calculates the bid increment for each license based on a weighted average of the activity received on each license in the current and all previous rounds. This methodology will tailor the bid increment for each license based on activity, rather than setting a global increment for all licenses. For every license that receives a bid, the bid increment for the next round for that license will be established using the exponential smoothing formula.

Using exponential smoothing, the calculation of the percentage bid increment for each license will be based on an activity index, which is calculated as the weighted average of the current activity and the activity index from the previous round. The activity index at the start of the auction (round 0) will be set at 0. The current activity index is equal to a weighting factor times the number of new bids received on the license in the current bidding round plus one minus the weighting factor times the activity index from the previous round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.05, and the maximum percentage increment at 0.15.

Equations

$$A_i = (C * B_i) + ((1-C) * A_{i-1})$$

$$I_i = \text{smaller of } ((1 + A_i) * N) \text{ and } M$$

where,

A_i = activity index for the current round (round i)

C = activity weight factor

B_i = number of bids in the current round (round i)

A_{i-1} = activity index from previous round (round i-1), A_0 is 0

I_i = percentage bid increment for the current round (round i)

N = minimum percentage increment

M = maximum percentage increment

Under the exponential smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the new high bid plus the dollar amount associated with the percentage increment (variable I_i from above times the high bid). This result will be rounded to the nearest thousand if it is over ten thousand or to the nearest hundred if it is under ten thousand.

Examples

License 1

$C=0.5$, $N = 0.05$, $M = 0.15$

Round 1 (2 new bids, high bid = \$1,000,000)

1. Calculation of percentage increment using exponential smoothing:

$$A_1 = (0.5 * 2) + (0.5 * 0) = 1$$
$$I_1 = (1 + 1) * 0.05 = 0.1$$

2. Minimum bid increment using the percentage increment (I_1 from above)
 $0.1 * \$1,000,000 = \$100,000$

3. Minimum acceptable bid for round 2 = 1,100,000

Round 2 (3 new bids, high bid = 2,000,000)

1. Calculation of percentage increment using exponential smoothing:

$$A_2 = (0.5 * 3) + (0.5 * 1) = 2$$
$$I_2 = (1 + 2) * 0.05 = 0.15$$

2. Minimum bid increment using the percentage increment (I_2 from above)
 $0.15 * \$2,000,000 = \$300,000$

3. Minimum acceptable bid for round 3 = 2,300,000

Round 3 (1 new bid, high bid = 2,300,000)

1. Calculation of percentage increment using exponential smoothing:

$$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$$
$$I_3 = (1 + 1.5) * 0.05 = 0.125$$

2. Minimum bid increment using the percentage increment (I_3 from above)
 $0.125 * \$2,300,000 = \$287,500$

3. Minimum acceptable bid for round 4 = 2,588,000

(4) High Bids

Each bid will be date- and time-stamped when it is entered into the computer system. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which bids are received by the Commission, starting with the earliest bid. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date- and time-stamp than bids submitted later in a round.

(5) Bidding

During a bidding round, a bidder may submit bids for as many licenses for which it is eligible, as well as withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round, and will not have a separate period to withdraw bids. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round, and the date- and time-stamp

of that bid reflect the latest time the bid was submitted.

Please note that all bidding will take place either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when handling bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid, by placing their calls well in advance of the close of a round, because four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 18.

A bidder's maximum eligibility in the first round of the auction is determined by two factors: (1) the licenses applied for on FCC Form 175; and (2) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of licenses.

The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials. Bidders are strongly encouraged to download and print bid confirmations after they submit their bids.

The bid entry screen of the Automated Auction System software for the Phase II 220 MHz Service auction allows bidders to place multiple increment bids which will let bidders increase high bids from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a license.

To place a bid on a license, the bidder must enter a whole number between **1** and **9** in the bid increment multiplier (Bid Mult) field. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the high bid amount according to the following formula:

$$\text{Amount Bid} = \text{High Bid} + (\text{Bid Mult} * \text{Bid Increment})$$

Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder will enter "1" in the bid increment multiplier column and press submit.

For any license on which the FCC is designated as the high bidder (*i.e.*, a license that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases no increment exists for the licenses, and bidders should enter "1" in the Bid Mult field. Note that any whole number between **1** and **9** entered in the multiplier column will result in a bid value at the minimum acceptable bid amount. Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

(6) Bid Removal and Bid Withdrawal

Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the remove bid function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed.

Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payments specified in 47 C.F.R. §§ 90.1007, 1.2104(g), and 1.2109. The procedure for withdrawing a bid and receiving a withdrawal confirmation is essentially the same as the bidding procedure described in "High Bids," Part 4.B.(4).

Bidders are limited to placing withdrawals in two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals will still be subject to the bid withdrawal payments specified in 47 C.F.R. §§ 90.1007, 1.2104(g), and 1.2109. **Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.**

If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The FCC will serve as a "place holder" on the license until a new acceptable bid is submitted on that license.

Generally, a bidder that withdraws a standing high bid during the course of an auction will be subject to a payment equal to the lower of: (1) the difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid for that license. *See* 47 C.F.R. §§ 90.1007, 1.2104(g), and 1.2109. No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid.

(7) Round Results

The bids placed during a round are not published until the conclusion of that bidding period. After a round closes, the FCC will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

Reports reflecting bidders' identities and bidder identification numbers for Auction No. 18 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

(8) Auction Announcements

The FCC will use auction announcements to announce items such as schedule changes and

stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as the Internet and the FCC Bulletin Board System.

(9) Other Matters

As noted in "Pre-Auction Procedures," Part 3.B., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Filers should make these changes on-line, and submit a letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, N.W., Room 5202, Washington, D.C. 20554 (and mail a separate copy to Frank Stilwell, Auctions and Industry Analysis Division), briefly summarizing the changes. Questions about other changes should be directed to Frank Stilwell of the FCC Auctions and Industry Analysis Division at (202) 418-0660.

5. POST-AUCTION PROCEDURES

A. Down Payments and Withdrawn Bid Payments

After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each license, and listing withdrawn bid payments due.

Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credits). *See* 47 C.F.R. § 90.1011(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 C.F.R. § 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," Part 4.B.(6). (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Long-Form Application

Within ten business days after release of the auction closing notice, winning bidders must submit a properly completed long-form application and required exhibits for each Phase II 220 MHz Service license won through the auction. Winning bidders that are small businesses or very small businesses must include an exhibit demonstrating their eligibility for bidding credits. *See* 47 C.F.R. § 90.1013. Further filing instructions will be provided to auction winners at the close of the auction.

C. Default and Disqualification

Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 C.F.R. § 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidders (in descending order) at their final bids. *See* 47 C.F.R. § 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 C.F.R. § 1.2109(d).

D. Refund of Remaining Upfront Payment Balance

All applicants that submitted upfront payments but were not winning bidders for any Phase II 220 MHz Service license may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders that reduce their eligibility

and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request which includes wire transfer instructions, a Taxpayer Identification Number ("TIN"), and a copy of their bidding eligibility screen print, to:

Federal Communications Commission
Billings and Collections Branch
Attn: Regina Dorsey or Linwood Jenkins
1919 M Street, N.W., Room 452
Washington, D.C. 20554

Bidders can also fax their request to the Billings and Collections Branch at (202) 418-2843. Once the request has been approved, a refund will be sent to the address provided on the FCC Form 159.

NOTE: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Linwood Jenkins or Geoffrey Idika at (202) 418-1995.