

PRE-AUCTION PROCEDURES

A. Auction Seminar

On October 30, 1998, the FCC will sponsor a seminar for the LMS auction at the ANA Hotel, located at 2401 M Street, N.W., Washington, D.C. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the LMS and auction rules.

To register, complete the registration form in Tab F and submit by October 27, 1998. Registrations are accepted on a first-come, first-served basis.

B. Prohibition of Collusion

To ensure the competitiveness of the auction process, 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. To comply with this rule, bidders competing for the same license(s) should not use the same individual authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firms or consulting firm), a violation could similarly occur. In such instances, the Bureau **strongly encourages** applicants to certify on their applications that precautionary steps (e.g., establishing a "Chinese wall") have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.¹ The Bureau, however, cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred nor will it preclude the initiation of an investigation when warranted.² In the LMS auction, for example, the rule would apply to any applicants bidding for the same EA. Therefore, applicants that apply to bid for "all markets" would be precluded from communicating with all other applicants after filing the FCC Form 175. However, applicants may enter into bidding agreements before filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their Form 175 short-form applications.³ By signing their FCC Form 175 short form applications, applicants are certifying their compliance with Section 1.2105(c). In addition, Section 1.65 of the Commission's Rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.⁴ Thus, Section 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

¹ See, e.g., "Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction," *Public Notice*, 13 FCC Rcd 341 (1998); In re Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A, *Memorandum Opinion and Order*, 13 FCC Rcd 11973, 11977, ¶ 11 (1998) ("Nevada Wireless").

² See Nevada Wireless, 13 FCC Rcd at 11978, ¶ 13 (1998).

³ See C.F.R. § 1.2105(c).

⁴ See C.F.R. § 1.65.

C. Short-Form Application (FCC Form 175) -- Due November 16, 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 November 16, 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," page 64 in this Tab.

(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 therefore must bid telephonically, unless the FCC Form 175 is amended electronically prior to the resubmission date for incomplete or deficient applications.** 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 October 26, 1998. The window for filing the FCC Form 175 electronically will remain open until 5:30 p.m. ET on November 16, 1998.

Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications until the filing deadline of November 16, 1998. Applicants who file electronically must press the "Submit Form 175" button on the "Submit" page of the electronic form to successfully submit their FCC Form 175s. Information about installing and running the FCC Form 175 application software is included in Tab F. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (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 November 14-15.

(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 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 August 1998 version of FCC Form 175 and FCC Form 175-S (if necessary). Earlier versions of the FCC Form 175 will not be accepted for filing.** Copies of each form along with instructions are included in Tab F. Additional copies of the FCC Form 175 can be obtained by calling the Commission's Forms Distribution Center at (800) 418-FORM ((800) 418-3676) (outside Washington, D.C.) or (202) 418-FORM ((202) 418-3676) (in the Washington area). Copies of the FCC Form 175 can also be obtained via Fax-On-Demand at (202) 418-0177 (the document retrieval number for the FCC Form 175 is 000175, and 001751 for the FCC Form 175-S), or downloaded from the Commission's World Wide Web site at <http://www.fcc.gov/formpage.html>. If applicants have any questions concerning availability of the FCC Form 175, they should call the FCC Records Management Branch at (202) 418-0210.

Manual applications must 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. 21
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 or applications sent via facsimile will not be accepted.

(2) Completion of the FCC Form 175

Applicants should carefully review 47 C.F.R. § 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 F. Note again that applicants who file electronically must press the "Submit Form 175" button on the "Submit" page to successfully submit their FCC Form 175.

Failure to sign a manually filed FCC Form 175 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 may also 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. **For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any Exhibits to their FCC Form 175 applications.** There is a fee of \$2.30 per minute for accessing this system. *See* Tab F for details.

D. Application Processing and Minor Corrections

After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted 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 November 16, 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. §§ 1.2105.

E. Upfront Payments -- Due November 30, 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, included in Tab F). **Manual filers must use the July 1997 version of FCC Form 159. Electronic filers of the FCC Form 175 will have access to an electronic version of Form 159 after completing the FCC Form 175. 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 November 30, 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. 21 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 November 30, 1998 deadline will result in dismissal of the application and disqualification from participation in the auction.**

(1) Making Auction Payments by Wire Transfer

Wire transfer payments must be received **by 6:00 p.m. ET on November 30, 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 910-0198

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

"AUCTIONPAY"

TAXPAYER IDENTIFICATION NO. (same as FCC Form 159, block 25)

PAYMENT TYPE CODE (enter "ALMU")

FCC CODE 1 (same as FCC Form 159, block 23A: "21")

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

LOCKBOX NO. 358410

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. 21." 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 F.

(3) Amount of Upfront Payment

For the LMS Auction the upfront payment amounts will be:

Block A $$.00075 * \text{MHz} * \text{Pop}$ (rounded up to the next dollar and no less than \$2,850 per license)

Block B $$.00075 * \text{MHz} * \text{Pop}$ (rounded up to the next dollar and no less than \$2,500 per license)

Block C $$.00075 * \text{MHz} * \text{Pop}$ (rounded up to the next dollar and no less than \$2,800 per license)

These upfront payment amounts have been calculated and are listed in Tab A. These amounts represent the deposits required to qualify to bid on LMS licenses in Auction No. 21. We find that upfront payments higher than these might serve as a barrier to participation in the auction, and that upfront payments lower than these might encourage frivolous auction participation and insincere bidding.

Please note that upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define a bidder's maximum bidding eligibility. For Auction No. 21, the amount of the upfront payment will be translated into bidding units on a one-to-one basis, *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 selected on FCC Form 175, but rather to cover the maximum number of bidding units that are 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 the 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 the 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 after the upfront payment deadline.**

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. 21 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," under Tab E.

F. 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 Wednesday, December 9, 1998** should contact the FCC at (717) 228-2888. 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.

G. 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 December 1, 1998**. (Auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 21.) A software order form is included in Tab F.

H. 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 **December 10, 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. Participation by all bidders is strongly recommended. Details will be announced by public notice.

