

would serve the public interest, convenience, and necessity.

5. The Commission has further placed Mr. Breen on notice that the presiding administrative law judge may find that Mr. Breen has misrepresented facts to the Commission or lacked candor before the Commission and therefore, may impose upon him a forfeiture up to the statutory maximum.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97-27150 Filed 10-14-97; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### Auction of Local Multipoint Distribution Service; Auction Notice and Filing Requirements for 986 Basic Trading Area ("BTA") Licenses in the 28 GHz and 31 GHz Bands, Scheduled for December 10, 1997

[DA 97-2081]

Released September 25, 1997

#### I. Introduction

*Local Multipoint Distribution Service ("LMDS") Licenses to Be Auctioned:* The Federal Communications Commission ("FCC" or "Commission") will hold an auction for 986 licenses to provide LMDS in the 28 GHz and 31 GHz bands. Two licenses will be offered in each of 493 BTAs and BTA-like areas in the United States. One license, in frequency block A, will authorize service on 1,150 megahertz of spectrum in both the 28 GHz and 31 GHz bands. The second license, frequency block B, will authorize service on 150 megahertz of spectrum in the 31 GHz band. Each frequency block encompasses the following spectrum:

Block A (1,150 megahertz): 28 GHz band: 27,500-28,350 MHz and 29,100-29,250 MHz and 31 GHz band: 31,075-31,225 MHz

Block B (150 megahertz): 31 GHz band: 31,000-31,075 MHz and 31,225-31,300 MHz

**Note:** Operations to take place in the 29,100-29,250 MHz band are governed by 47 CFR 101.103(g) and (h), 101.113(c), 101.133(d), and 101.147(t), which are new provisions designed to facilitate the sharing of this spectrum by LMDS, GSO/FSS gateways, and MSS feeder link licensees. These provisions allow only hub-to-subscribers transmissions by LMDS licensees in this band.

**Auction Date:** The auction will commence on December 10, 1997. 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:** LMDS—Auction No. 17.

**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—October 30, 1997
  - Short-Form Application (FCC Form 175) November 17, 1997, 5:30 p.m. ET (Applications are not due on November 10 as previously announced on July 30, 1997)
  - Upfront Payments (via wire transfer)—December 1, 1997, 6:00 p.m. ET (Payments are not due on November 24 as previously announced on July 30, 1997)
  - Orders for Remote Bidding Software—December 1, 1997, 5:30 p.m. ET
  - Mock Auction—December 8, 1997
- 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)

FCC Technical Support Hotline—202-414-1250

**Participation:** Those wishing to participate in the auction must:

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

**Prohibition of Collusion:** To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same BTA 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 when winning bidders submit their first down payments. The only 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 CFR 1.2105(c).

**Bidder Information Package:** More complete details about this auction are contained in a 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). Prospective bidders who have already contacted the FCC expressing an interest in this auction will receive a Bidder Information Package in two to three weeks, and need not call again unless they wish to order additional copies.

**Relevant Authority:** Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to LMDS, contained in title 47, part 101 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 the *Second Report and Order* in PP Docket No. 93-253, 59 FR 22980 (May 4, 1994); the *Second Memorandum Opinion and Order* in PP Docket No. 93-253, 59 FR 44272 (August 26, 1994); the *Erratum to the Second Memorandum Opinion and Order* in PP Docket No. 93-253 (released October 19, 1994); the First Report and Order, 61 FR 44177 (August 28, 1996), and *Fourth Notice of Proposed Rule Making* in CC Docket No. 97-297, 61 FR 39425 (July 29, 1996); the *Second Report and Order*, 62 FR 23148 (April 29, 1997), *Order on Reconsideration*, 62 FR 28373 (May 23, 1997), and *Fifth Notice of Proposed Rule Making* in CC Docket No. 96-297, 62 FR 16514 (April 7, 1997) ("*LMDS Second R&O*"); and the *Second Order on Reconsideration* in CC Docket No. 97-297, 62 FR 48787 (September 17, 1997) (collectively referred to as the "Relevant Orders").

The Terms contained in the Commission's rules, Relevant Orders, Public Notices and Bidder Information Package 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.

Potential bidders should also be aware that petitions for reconsideration of the Commission's actions in the *LMDS Second R&O* have been filed; that several, but not all, matters raised in petitions for reconsideration have been

addressed in the *Second Order on Reconsideration*; and that the Terms adopted therein are therefore subject to change upon reconsideration or appeal. There are also petitions for reconsideration filed against the Commission's actions in the *First Report and Order*, these petitions are pending an order on reconsideration.

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. Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc., at 202-857-3800.

**Incumbent Licensees:** Although LMDS operations are permitted in the 31,000—31,075 MHz and 31,225—31,300 MHz bands, incumbent city licensees and private business users operating in these two segments are entitled to protection against harmful interference from any LMDS operation in these blocks. LMDS service providers will be entitled to interference protection from any other presently-authorized primary users in the 31,075—31,225 MHz bands.

Block A of the New York BTA is encumbered by a pre-existing licensee in the New York Primary Metropolitan Statistical Area. The incumbent licensee, CellularVision of New York, is entitled to interference protection.

**Reminder to potential Non-geostationary Mobile Satellite Service applicants/licensees:** Section 101.103(h) of the Commission's rules requires that no more than 15 days after the release of this Public Notice, NGSO-MSS feeder link earth station complex applicants/licensees planning to operate in the 29,100—29,250 MHz band pursuant to § 25.257 of the Commission's rules, file with the Commission a set of geographical coordinates consistent with section 101.103(h)(2) of the Commission's rules. This information should be directed to the attention of: Robert James, Federal Communications Commission, Wireless Telecommunications Bureau 1919 M Street, NW, Room 8102, Washington, D.C. 20554.

**Other Proceedings:** Currently pending in the U.S. Court of Appeals for the D.C.

Circuit is a consolidated petition for review of the *LMDS Second R&O and Order on Reconsideration*. See *James L. Melcher v. Federal Communications Commission and United States of America*, Case No. 93-110 (and consolidated cases) dealing with two issues: eligibility restrictions for incumbent local exchange carriers ("ILECs") to own LMDS licenses "in-region," and the denial of petitions for reconsideration of the 971 waiver applications for service in the 28 GHz band which were previously dismissed. Also pending before the Commission are several petitions for reconsideration of the *LMDS Second R&O and Order on Reconsideration* dealing with the issues of: the eligibility restriction on ILECs; the allocation of the 31 GHz band to LMDS; the reinstatement of dismissed applications in the 31 GHz band; the application of a new frequency tolerance to the 31 GHz band; and further reconsideration of the 971 waiver applications for service in the 28 GHz band which were previously dismissed; as well as petitions for clarification of certain technical and service rules. A memorandum opinion and order on reconsideration responding to these petitions will be released in the near future.

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

## II. Bidder Eligibility and Small Business Provisions

### A. General Eligibility Criteria

As described above, this auction offers two licenses: one license for 1,150 megahertz of spectrum in the 28 GHz and 31 GHz bands; and one license for 150 megahertz of spectrum in the 31 GHz band; in each of 493 BTA and BTA-like areas, for a total of 986 licenses. General eligibility to provide LMDS service, subject to certain restrictions outlined below, is afforded to entities which are not precluded under 47 CFR 101.7, 101.1001, and 101.1003.

#### (1) Eligibility Restrictions

- (a) 1,150 megahertz licenses. ILECs and cable television companies are subject to certain restrictions on their eligibility to own an attributable interest in the 1,150 megahertz LMDS

license in their authorized or franchised service areas ("in-region"). An incumbent is defined as "in-region" if its authorized service area represents 10 percent or more of the population of the BTA. A 20 percent or greater ownership level constitutes an attributable interest in a license. ILECs and cable companies are permitted to participate fully in the auction of the 1,150 megahertz LMDS licenses, but are required to divest any overlapping interests within 90 days if they win a license at the auction. The eligibility restrictions terminate on the third anniversary of the effective date of the LMDS rules. These restrictions may be extended beyond the three-year period, if, upon a review at the end of this period, the Commission determines that sufficient competition has not developed. The Commission may waive the restriction in individual cases upon a showing of good cause.

(b) 150 megahertz licenses.

All entities that meet the Commission's general eligibility criteria, including ILECs and cable television companies, are eligible to own attributable interests in the 150 megahertz license in any BTA.

(2) Determination of Revenues

For purposes of determining which entities qualify as very small businesses, small businesses, and entrepreneurs, the Commission will attribute to the applicant the gross revenues of all of its controlling principals and affiliates. For purpose of this auction, the Commission will not impose specific equity requirements on controlling principals. However, in order to qualify as a very small business, small business, or entrepreneur 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.

(3) Application Showing

Applicants should note that they will be required to file supporting documentation to establish that they satisfy the eligibility requirements for

this auction. See 47 CFR 1.2105 and 101.1109.

*B. Bidding Credits*

Qualifying LMDS applicants are eligible for bidding credits. The size of an LMDS 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 45 percent discount on its winning bids for LMDS licenses;
- A bidder with gross annual revenues of more than \$15 million but not more than \$40 million receives a 35 percent discount on its winning bids for LMDS licenses; and
- A bidder with gross annual revenues of more than \$40 million but not more than \$75 million receives a 25 percent discount on its winning bids for LMDS licenses.

Bidding credits are not cumulative: applicants that qualify receive either the 25 percent, the 35 percent, or the 45 percent bidding credit, but not all. The definitions of very small business, small business, and entrepreneur (including calculation of gross annual revenue) are set forth in 47 CFR 101.1112.

LMDS bidders should note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their BTA licenses to an entity not qualifying for the same levels of bidding credits. See 47 CFR 101.1107(e).

**III. Pre-Auction Procedures**

*A. Short-Form Application (FCC Form 175)—Due November 17, 1997*

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 17, 1997. 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 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 acknowledgement

that the FCC Form 175 has been submitted for filing. In addition, only those applicants who 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 who 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 October 27, 1997. All the information required to file the FCC Form 175 electronically (*i.e.*, software and help files) will be available over both the Internet and the FCC's Bulletin Board System ("BBS").

(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 September 1997 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. 17, Federal Communications Commission, Auctions & Industry Analysis Division, 1270 Fairfield Road, Gettysburg, PA 17325-7245.

**Note:** Manual applications delivered to any other locations will not be accepted.

(2) Completion of the FCC Form 175

Applicants should carefully review 47 CFR 1.2105 and 101.1104, and must complete all items on the FCC Form 175 (and 175-S, if applicable).

Failure to sign a manually filed FCC Form 175 or failure to submit the required ownership information (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 who file electronically may review their own completed FCC Forms 175. Applicants also have access to view other applicants' completed FCC Forms 175, 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.

*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 that 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 17, 1997, 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 CFR 1.2105.

*C. Upfront Payments—Due December 1, 1997*

In order to be eligible to bid in the auction, applicants must submit an

upfront payment accompanied by an FCC Remittance Advice (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, Pennsylvania, by 6:00 p.m. ET on December 1, 1997.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer. No other form of payment will be accepted.
- Upfront payments for Auction No. 17 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 December 1, 1997 deadline will result in dismissal of the application and disqualification from participation in the auction.

(1) Wire Transfers

For this auction, the FCC requires applicants to make their upfront payments by wire transfer, which experience has shown provides the greatest reliability and efficiency. Wire transfer payments must be received by 6:00 p.m. ET on December 1, 1997. 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—9100180

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

TAXPAYER IDENTIFICATION NO. (same as FCC Form 175, block 7)

PAYMENT TYPE CODE (enter "AWLU")

FCC CODE (same as FCC Form 159, Block 23A: "17")

PAYER NAME (same as FCC Form 175, Block 1)

LOCKBOX NO. 358420

**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. 17."

(2) FCC Form 159

Each upfront payment must be accompanied by a completed FCC Remittance Advice (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 will be included in the Bidder Information Package.

(3) Amount of Upfront Payment

The amount of the upfront payment required to bid on a particular license(s) in Auction No. 17 has been calculated in three tiers, based on the population ("pop") figures for the BTA(s), and adjusted to take into account the spectrum bandwidth that is being licensed in frequency block A and in frequency block B.

The formula utilized to calculate upfront payments is as follows:

FREQUENCY BLOCK A

BTA population	×	Per pop multiple*	×	Frequency block B*
Over 1,000,000 .....	×	\$0.90	×	10%
100,000–1,000,000 .....	×	\$0.60	×	10%
Under 100,000 .....	×	\$0.30	×	10%

\* All upfront payments are rounded up to the nearest dollar. A minimum upfront payment amount has been set at \$2,500 per license.

Please note that upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define the bidder's maximum bidding eligibility. Thus, an applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied. Rather, 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. 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.

**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. As explained in Parts 4.A(2) and 4.A(4), *infra*, bidders will be required to remain active in each round of the auction on a specified percentage of the bidding units reflected in their upfront payments in order to retain their current eligibility.

#### (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 plans to use wire transfers for all Auction No. 17 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 (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Part 5.D, *infra*.

#### D. Auction Registration

Approximately five business 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 who 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 who do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant who has not received both

mailings by noon on Monday, December 8, 1997 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 who file or amend the FCC Form 175 electronically are allowed to bid electronically, but must purchase remote electronic bidding software for \$175.00, including shipping and handling, by December 1, 1997. (Auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 17.) Bidders who order remote bidding software by the ordering deadline will receive it with the registration mailings. A software order form will appear in a subsequent public notice.

#### F. Auction Seminar

On October 30, 1997 the FCC will sponsor a seminar for the LMDS auction. This seminar will be held at the Renaissance Hotel, 999 9th 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 LMDS service and auction rules. Additionally, there will be an opportunity for interested parties to display equipment at this event. If interested, please contact the FCC at 888-CALL-FCC (888-225-5322, press option #2 at the prompt).

Please note that a maximum of two representatives from each company may attend, first-come first-served, on a reservation basis until room capacity is filled. To register, complete the registration form included in the Bidder Information Package.

#### G. Mock Auction

All applicants whose FCC Forms 175 have been accepted for filing will be eligible to participate in a mock auction beginning December 8, 1997. 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 LMDS auction from previous Commission auctions, participation by all bidders is strongly recommended. Details will be announced by public notice.

#### IV. Auction Event

The first round of the auction will begin on December 10, 1997.

##### A. Auction Structure

###### (1) Simultaneous Multiple Round Auction

The 986 LMDS BTAs 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 explained in Part 3.C(3), *supra*, the amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. 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 percentage of their maximum eligibility during each round of the auction. Details of the specific percentages for each stage are set forth under *Auction Stages* in Part 4.A(4), *infra*. A bidder that does not satisfy the activity rule will either lose bidding eligibility or use an activity rule waiver, as explained by *Activity Rule Waivers and Reducing Eligibility* in Part 4.A(3), *infra*.

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 period and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (see *Minimum Acceptable Bids* in Part 4.B(2), *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. The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases as the auction progresses, as set forth under *Auction Stages* in Parts 4.A(4) and 4.A(5), *infra*.

###### (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 bidding period 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 who wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding period 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), *infra*. 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 bidding period 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 will not keep the auction open.

#### (4) Auction Stages

The auction is 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 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 60 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-thirds (5/3).

**Stage Two:** In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 80 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 five-fourths (5/4).

**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 period of the first round following a stage transition. This is especially critical for bidders who have standing high bids and do not plan to submit new bids. In past auctions, some bidders 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. 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 FCC retains the discretion to accelerate 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 (measured in terms of 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 FCC 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 FCC 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 FCC 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 FCC, 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 FCC to delay or suspend the auction.

### 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 period 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 performance and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

#### (2) Minimum Opening Bid/Reserve Prices

When FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive) the recently enacted Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price is required or minimum opening bid established, unless it determines that such an assessment is not in the public interest. Balanced Budget Act of 1997, Public Law 105-33, 111 Stat. 251 (1997); 47 U.S.C. § 309(j)(4)(F). In light of the Balanced Budget Act, the Commission will release a subsequent Public Notice which will seek comment on a proposal that a reserve price and/or minimum opening bid be established for the LMDS auction.

#### (3) Minimum Acceptable 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. The Commission will use its exponential smoothing methodology to calculate minimum bid increments. The exponential smoothing formula calculates the bid increment 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. A detailed description of the exponential smoothing bid increment will be included in the forthcoming Bidder Information Package.

#### (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. Each bid is date-and time-stamped according to when it was submitted. Thus, 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 period, a bidder may submit bids for as many licenses as it is eligible, as well as withdraw high bids from previous bidding periods, remove bids placed in the same bidding period, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding period, and will not have a separate period to withdraw bids. If a bidder enters 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 entered.

A bidder's maximum eligibility in the first round of the auction is determined by: (a) the licenses applied for on FCC Form 175; and (b) 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 period using the FCC Account Number, Bidder Identification Number, and confidential security codes provided in the registration materials. Bidders are encouraged to download and print bid confirmations after they submit their bids.

In Auction No. 17, the screen will display a "Click on Check Box to Bid" column that provides a check box for each Minimum Bid Accepted amount in place of the bid entry field. To place a bid at the minimum acceptable bid amount for a license, a bidder must click the appropriate box to put a check mark in it and then press submit to enter the bid into the auction system. Bidders may not type in a bid for any license.

Once the click box is checked, the Bid Submission screen updates the Group Total (total dollars bid), Bid-Units, and Activity amounts, as if a bid amount had been typed. However, by using the check boxes, there is no risk of mistyping bids. Other auction screens are unchanged, as are the reports.

#### (6) Bid Withdrawal and Bid Removal

##### (a) Procedures.

Before the close of a bidding period, 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. Note that 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. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payments specified in 47 CFR 101.1103(f), 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 *Bidding*, Part 4.B(4), *supra*.

The FCC will limit the number of rounds in which bidders may place withdrawals to 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 CFR 101.1103(f), 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.

##### (b) Calculation.

Generally, a bidder who 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 CFR 101.1103(f), 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 bidding period are not published until the conclusion of that bidding period. After a bidding period 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. 17 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 Part 3.B, *supra*, 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 Kathleen O'Brien Ham, 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 Matthew Moses, Auctions and Industry Analysis Division), briefly summarizing the changes. Questions about other changes should be directed to the FCC Auctions and Industry Analysis Division at 202-418-0660.

### V. 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 five business days after release of this 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 CFR 101.1102(b). In addition, by the same deadline all bidders must pay any withdrawn bid

amounts due under 47 CFR 1.2104(g), as discussed in Part 4.B(5), *supra*. (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 LMDS license won through the auction. Winning very small businesses, small businesses, and entrepreneurs must include an exhibit demonstrating their eligibility for bidding credits. See 47 CFR 101.1109(b). 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 CFR 1.2104(g)(2). In such event the Commission may re-auction the license to existing or new applicants or offer it to the next highest bidders (in descending order) at their final bids. See 47 CFR 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 CFR 1.2109(d).

#### D. Refund of Remaining Upfront Payment Balance

All applicants who submitted upfront payments but were not winning bidders for any LMDS 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 who drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders who 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 who have exhausted all 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 Regina Dorsey or Linwood Jenkins at 202-418-1995.

*Media Contact:* Audrey Spivack at (202) 418-0654.

*Public Safety and Private Wireless Division:* Susan Magnotti or Bob James at (202) 418-0680; Auctions and Industry Analysis Division: Mark Bollinger, Matthew Moses, or Louis Sigalos at (202) 418-0660.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

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## FEDERAL COMMUNICATIONS COMMISSION

### Deletion of Agenda Items From October 9th Open Meeting

The following items have been deleted from the list of agenda items scheduled for consideration at the October 9, 1997, Open Meeting and previously listed in the Commission's Notice of October 2, 1997.

#### *Item No., Bureau, Subject*

1—Wireless Telecommunications—  
Title: Service Rules for the 746-806 MHz Band, and Revisions to Part 27 of the Commission's Rules and The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010 -- Establishment of Rules and Requirements for Priority Access Service (WT Docket No. 96-86).  
Summary: The Commission will consider action concerning service rules for the 746-806 MHz band and