

issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

#### C. Executive Order 13084

Under Executive Order 13084, entitled "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

**Authority:** 15 U.S.C. 2682, 2684.

#### List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: April 7, 1999.

**A. Stanley Meiburg,**

*Regional Administrator, Region IV.*

[FR Doc. 99-10003 Filed 4-20-99; 8:45 am]

BILLING CODE 6560-50-F

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 14, 1999.

**SUMMARY:** The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before June 21, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number: 3060-0859.*

**Title:** Suggested Guidelines for Petitions for Ruling Under Section 253 of the Communications Act.

**Form Number:** N/A.

**Type of Review:** Extension of a currently approved collection.

**Respondents:** Business or other for-profit entities; and State, local or tribal government.

**Number of Respondents:** 80.

**Estimated Time per Response:** 78.5 hours (avg).

**Frequency of Response:** On occasion reporting requirement.

**Total Annual Burden:** 6,280 hours.

**Total Annual Costs:** None.

**Needs and Uses:** Section 253 of the Communications Act of 1934, as amended requires the Commission, with certain important exceptions, to preempt the enforcement of any state or local statute or regulation, or other state or local legal requirement (to the extent necessary) that prohibits or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. The Commission's consideration of preemption begins with the filing of a petition by an aggrieved party. The petition is placed on public notice and commented on by others. The Commission issued a Public Notice that establishes guidelines relating to its consideration of preemption petitions. The Commission expects petitioners and commenters to provide it with relevant information sufficient to describe the legal regime involved in the controversy and to establish the factual basis necessary for decision. The Commission will use the information to discharge its statutory mandate relating to the preemption of state or local statutes or other state or local legal requirements.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 99-9900 Filed 4-20-99; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

[DA 99-474; Report No. AUC-99-24-B (Auction No. 24)]

**Phase II 220 MHz Service Spectrum Auction; Notice and Filing Requirements for Auction of Phase II 220 MHz Service Spectrum Scheduled for June 8, 1999; Minimum Opening Bids and Other Procedural Issues**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This is a summary of a Public Notice (DA 99-474) released on March 8, 1999, establishing minimum opening bids and procedures for the upcoming auction of Phase II 220 MHz Service Spectrum (Auction No. 24), in accordance with the Balanced Budget Act of 1997.

**DATES:** Auction No. 24 is scheduled to begin on June 8, 1999.

**ADDRESSES:** See the text of the Public Notice and attachments for information regarding important addresses.

**FOR FURTHER INFORMATION CONTACT:**

*Media Contact:* Meribeth McCarrick, (202) 418-0654.

*Auctions Division:* Ruby Hough, Operations; Bob Reagle, Auctions Analysis; or Anne Napoli, Legal, (202) 418-0660.

*Commercial Wireless Division:* Scott Mackoul, (202) 418-0620.

**SUPPLEMENTARY INFORMATION:** The complete text of this Public Notice, including nine attachments that do not appear in this summary, is available for inspection and copying Monday through Thursday from 9 a.m. to 4 p.m., and Friday from 9 a.m. to 2 p.m., in the Wireless Telecommunications Bureau's Public Reference Room (Room 5608), 2025 M Street, N.W., Washington, D.C. 20554, and on the Commission's World Wide Web page, located at: <http://www.fcc.gov/wtb/auctions/auc24/auc24.html>. Please note that the Wireless Telecommunications Bureau's Public Reference Room will cease operations at the M Street location on Monday, April 26, 1999, and will reopen on Monday, May 3, 1999 at the Commission's new headquarters, located at 445 Twelfth Street, S.W., Room CY-A257, Washington, D.C. 20554. Copies also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS), 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857-3800. The nine attachments that do not appear in this summary, but are available as described above, are: Attachment A (Summary of Licenses to be Auctioned, Upfront Payments, Minimum Opening Bids); Attachment B (List of Cases Pending Before the Commission Involving Non-Nationwide Phase I 220 MHz Licenses); Attachment C (Guidelines for Completing FCC Forms 175 and 159 and Exhibits); Attachment D (Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159)); Attachment E (Electronic Filing and Review of FCC Form 175); Attachment F (Accessing the FCC Network Using Windows 95/98); Attachment G (FCC Remote Bidding Software Order Form);

Attachment H (Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing Application of the Anti-Collusion Rules); and Attachment I (Auction Seminar Registration Form).

**Synopsis**

**I. Introduction**

1. The Federal Communications Commission ("FCC" or "Commission") will hold an auction of 225 licenses to operate in the 220-222 MHz band. This auction offers 216 100-kHz licenses in 87 Economic Areas (EAs), and nine 150-kHz licenses in four Economic Area Groups (EAGs) designated for the Phase II 220 MHz auction. The number of 100-kHz licenses available in each EA varies from one to five, while the number of 150-kHz licenses available in each EAG varies from two to three. No nationwide licenses are available in this auction. A list of each license that will be available in Auction No. 24, along with its upfront payment and minimum opening bid, is included in the full text of this Public Notice as Attachment A (see "Supplementary Information," *supra*, for further details).

2. *Auction Date:* The auction will commence on June 8, 1999. 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.

3. *Bidding Methodology:* Simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically. Pre-Auction Dates and Deadlines:

- Auction Seminar: April 21, 1999.
  - Short Form Application (FCC Form 175): May 10, 1999; 5:30 p.m. ET.
  - Upfront Payments (via wire transfer): May 24, 1999; 6:00 p.m. ET.
  - Orders for Remote Bidding Software: May 25, 1999.
  - Mock Auction June 4, 1999.
- Telephone Contacts:
- FCC National Call Center: (888) CALL-FCC ((888) 225-5322) or (717) 338-2888 (direct dial). For general auction information and seminar registration, press option #2 at the prompt. Hours: 8 a.m.-5:30 p.m. ET, Monday through Friday.
  - FCC Technical Support Hotline: (202) 414-1250 (voice), (202) 414-1255 (text telephone (TTY)). Hours of service: 8 a.m.-6 p.m. ET, Monday through Friday.

**A. Background**

4. In the *220 MHz Third Report and Order* (62 FR 15978, April 3, 1997), the

Commission restructured the licensing framework that governs the 220 MHz Service. Site-specific licensing, used in the Phase I 220 MHz Service, was 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 Commission developed three types of geographic area licenses for the Phase II 220 MHz Service. The first type of license was based upon Economic Areas (EAs), developed by the Bureau of Economic Analysis of the U.S. Department of Commerce (60 FR 13114, March 10, 1995). In addition, the Commission created three EA-type license areas to cover the following United States territories: American Samoa; the U.S. Virgin Islands and Puerto Rico; and Guam and the Northern Mariana Islands. The second type of license, known as Economic Area Groupings (EAGs), included 6 groups of EAs, which collectively encompassed all of the EA and EA-type licenses. Finally, the Commission designed three nationwide licenses, each of which encompassed all six EAGs. Service and operational requirements for the Phase II 220 MHz Service are contained in Part 90 of the Commission's Rules, 47 CFR Part 90.

Pursuant to the rules adopted in the *220 MHz Third Report and Order* (62 FR 15978, April 3, 1997) and the *220 MHz Memorandum Opinion and Order on Reconsideration* (63 FR 30661, June 12, 1998), the Commission commenced the auction of 908 Phase II 220 MHz licenses on September 15, 1998. This auction closed on October 22, 1998. Forty-four winning bidders won a total of 693 licenses. On November 24, 1998, the Bureau released a Public Notice (DA 98-2386) (63 FR 67685, December 12, 1998) ("Phase II 220 MHz Service Public Notice"), announcing that 225 licenses now available for auction will be included in Auction No. 24.

**B. Due Diligence**

5. Potential bidders are reminded that there are a number of incumbent Phase I 220 MHz licensees already licensed and operating on frequencies that will be subject to the upcoming auction. Such incumbents must be protected from harmful interference by Phase II 220 MHz licensees in accordance with the Commission's Rules. See 47 CFR 90.763. These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide

service to certain areas in their geographic license areas.

6. In addition, potential bidders seeking licenses for geographic areas that are near the Canadian border should be aware that the use of some or all of the channels they acquire in the auction could be restricted as a result of a future agreement with Canada on the use of 220–222 MHz spectrum in the border area.

7. Potential bidders should also be aware that certain applications (including those for modification), waiver requests, petitions for reconsideration and applications for review are pending before the Commission that relate to particular incumbent non-nationwide 220 MHz licenses. 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, (D.C. Cir., filed September 18, 1992). We note that resolution of these matters could have an impact on the availability of spectrum for EA and EAG licensees. In addition, while the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction.

8. Potential bidders are solely responsible for investigating and evaluating the degree to which such pending matters may affect spectrum availability in areas where they seek EA or EAG licenses.

9. To aid potential bidders, Attachment B to this Public Notice lists matters pending before the Commission that relate to licenses or applications for the 220 MHz service. The Commission makes no representations or guarantees that the listed matters are the only pending matters that could affect spectrum availability in the 220–222 MHz band.

10. Parties may submit additions or corrections to the list, provided such additions or corrections are filed with the Commission within ten (10) business days from release of this Public Notice. Such submissions should be limited to identifying pleadings or papers previously filed with the Commission. No new pleadings or arguments on the merits will be accepted as explicitly provided by Commission Rules.

11. Corrections and additions must be filed with the Office of the Secretary, Federal Communications Commission, 445 12th St., S.W., Washington, D.C. 20554. One copy of each submission should also be sent to International

Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, while an additional courtesy copy should be sent to Scott A. Mackoul, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4–A230, Washington, D.C. 20554. Parties filing additions or corrections should include the internal reference number of this Public Notice (DA 99–474) on their submissions. Parties are also reminded that some of the proceedings are restricted proceedings governed by the Commission's ex parte rules. Accordingly, any submission filed pursuant to this Public Notice that is directed to the merits or outcome of any restricted proceeding must be served on all parties to that restricted proceeding. *See generally* 47 CFR 1.1200–1.1216.

12. Additional information regarding matters identified in Attachment B is available to the public. Licensing information is contained in the Commission's licensing database, which is available for inspection in the Wireless Telecommunications Bureau's Public Reference Rooms, located at 2025 M Street, N.W., Room 5608, Washington, D.C. 20554, and 1270 Fairfield Road, Gettysburg, PA 17325. In a future Public Notice, the Bureau will provide the new location of the Commission's licensing database in the Portals building. In addition, copies of the pleadings are available for public inspection only in the Gettysburg Public Reference Room.

13. In addition, potential bidders may search for information (but not the pleadings) regarding incumbent 220 MHz licensees on the World Wide Web at <http://www.fcc.gov/wtb>. In particular, information can be accessed by downloading databases by selecting "WTB Database Files" (<http://www.fcc.gov/wtb/databases.html>), or searching on-line by selecting "Search WTB Databases" (<http://gullfoss.fcc.gov:8080/cgi-bin/ws.exe/beta/genmen/index.htm>). Any telephone inquires regarding these matters should be directed to the Technical Support Hotline at (202) 414–1250 (V) or (202) 414–1255 (text telephone (TTY)).

14. The Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. Potential bidders are strongly encouraged to physically inspect any sites located in or near the geographic area for which they plan to bid.

### C. Participation

15. Those wishing to participate in the auction must:

- Electronically submit a short form application (FCC Form 175) by May 10, 1999.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by May 24, 1999.
- Comply with all provisions outlined in the Bidder Information Package.

### D. Prohibition of Collusion

16. To ensure the competitiveness and integrity 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. Bidders competing for the same license(s) are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm), a violation could similarly occur. At a minimum, in such a case, applicants should certify that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. 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. In Auction No. 24, for example, the rule would apply to any applicants bidding for the same EA or EAG. 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. 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. 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.

#### E. Bidder Information Package

17. No Bidder Information Package will be provided for Auction No. 24. The Commission provided a Bidder Information Package for Auction No. 18, the initial auction of Phase II 220 MHz Service spectrum. Although the majority of the specific software and technical information contained therein is no longer applicable (e.g., Tabs A through D), other information, including the auction rules and some (but not all) of the relevant rulemakings, can be found in Tab E of the Auction No. 18 Bidder Information Package. Upon request, the Commission will provide one free copy of that Bidder Information Package to each Auction No. 24 applicant. 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 that have already contacted the FCC at this number expressing an interest in Auction No. 24 will receive a Bidder Information Package in approximately four weeks, and need not call again unless they wish to order additional copies. In addition, applicants may access updated information about Auction No. 24 at the following address on the Bureau's web site:

<http://www.fcc.gov/wtb/auctions/auc24/auc24.html>

Applicants are strongly encouraged to check this site regularly for complete information regarding Auction No. 24.

#### F. Relevant Authority

18. 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. Prospective bidders must

also be thoroughly familiar with the procedures, terms and conditions contained in the *220 MHz Third Report and Order* (62 FR 15978, April 3, 1997); *220 MHz Memorandum Opinion and Order on Reconsideration* (63 FR 306611, June 12, 1998); *220 MHz Fourth Report and Order* (62 FR 46211, September 2, 1997); and *220 MHz Fifth Report and Order* (63 FR 49291, September 15, 1998). Potential bidders must also familiarize themselves with Part 1, Subpart Q of the Commission's Rules concerning Competitive Bidding Proceedings.

19. The terms contained in the Commission's Rules, relevant orders, Public Notices and bidder information package are not negotiable. 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. (ITS), at (202) 857-3800. When ordering documents from ITS, please provide the appropriate FCC number (e.g., FCC 98-93 for the Memorandum Opinion and Order on Reconsideration and FCC 97-57 for the 220 MHz Second Report and Order).

20. Bidder Alerts: 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.

21. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 22 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.

22. 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 proposals regarding Auction No. 22 may also call the FCC National Call Center at (888) CALL-FCC ((888) 225-5322).

#### G. National Environmental Policy Act (NEPA) Requirements

23. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a wireless antenna facility is a federal action and licensees must comply with the Commission's NEPA rules for each wireless facility. See 47 CFR 1.1305-1.1319. These rules require that, among other things, licensees consult with expert agencies having NEPA responsibilities including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). Licensees must prepare environmental assessments for wireless facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or

endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. Licensees must also prepare environmental assessments for wireless facilities that include high intensity white lights in residential neighborhoods or excessive radiofrequency emission.

## II. Eligibility

### A. General Eligibility Criteria

24. For the Phase II 220 MHz Service, the Commission adopted small business provisions to promote and facilitate the participation of small businesses in the auction, and in the provision of this and other commercial mobile radio services.

#### (1) Determination of Revenues

25. For purposes of determining which entities qualify as very small businesses or small businesses, the Commission will consider the gross revenues of the applicant, its controlling principals, and the affiliates of the applicant and its controlling principals. Therefore, the gross revenues of all of the above entities must be disclosed *separately and in the aggregate* as Exhibit C to an applicant's FCC Form 175. The Commission does not impose specific equity requirements on controlling principals. The term "controlling principal" 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 person/entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The person/entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The person/entity plays an integral role in management decisions.

#### (2) Very Small or Small Business Consortia

26. A consortium of small businesses or very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which *individually* satisfies the definition of small or very small business in Section 90.1021(b) (1) or (2). Thus, each consortium member must disclose its gross revenues along with those of its affiliates, controlling principals, and controlling principals'

affiliates. We note that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for very small or small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

#### (3) Application Showing

27. Applicants should note that they will be required to file supporting documentation as Exhibit C to their FCC Form 175 short form applications to establish that they satisfy the eligibility requirements to qualify as a very small business or small business (or consortia of very small or small businesses) for this auction. Specifically, for the Phase II 220 MHz Service auction, applicants applying to bid as very small or small businesses (or consortia of very small or small businesses) will be required to file all information required under Sections 1.2105(a) and 1.2112(a) of the Commission's Rules. See 47 CFR 90.1009. In addition, these applicants must disclose, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (1) the applicant; (2) the applicant's affiliates; (3) the applicant's controlling principals; and (4) the affiliates of the applicant's controlling principals. Certification that the average gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, and its controlling principals, a schedule of gross revenues for each of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying to bid as a consortium of very small or small businesses, this information must be provided for each consortium member.

#### B. Bidding Credits

28. Applicants that qualify under the definitions of very small business and small business (or consortia of very small or small businesses), as set forth in 47 CFR 90.1021(b), are eligible for a bidding credit that represents the amount by which a bidder's winning bids are discounted. The size of a Phase II 220 MHz Service bidding credit depends on the average gross revenues for the preceding three years of the bidder, its controlling principals, and the affiliates of both the bidder and its controlling principals:

- A bidder with average gross revenues of not more than \$15 million

for the preceding three years receives a 25 percent discount on its winning bids for Phase II 220 MHz Service licenses; and,

- A bidder with average gross revenues of not more than \$3 million for the preceding three years receives a 35 percent discount on its winning bids for Phase II 220 MHz Service licenses.

29. Bidding credits are not cumulative: qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Guidance on calculating gross revenues is contained in 47 CFR 90.1021(c).

30. 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 licenses to an entity not qualifying for the same level of bidding credit. Finally, Phase II 220 MHz Service bidders should also note that there are no installment payment plans in the Phase II 220 MHz Service auction.

## III. Pre-Auction Procedures

### A. Short-Form Application (FCC Form 175)—Due May 10, 1999, 5:30 p.m. ET

31. 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 May 10, 1999. 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 III.C., *infra*.

#### (1) Electronic Filing

32. As of January 1, 1999, applications to participate in FCC auctions must be filed electronically, unless it is not operationally feasible. Applicants will be permitted to file their FCC Form 175 applications in hard copy form only in the event the FCC experiences technical difficulties with its electronic systems. In such an event, the FCC will announce the procedure for submitting manual applications.

33. For Auction No. 24, applicants may file applications electronically beginning April 16, 1999. The system will generally be open for filing on a 24-hour basis. The filing window will remain open until 5:30 p.m. ET on May 10, 1999. 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 multiple times until the filing deadline of May 10, 1999. Information about installing and

running the FCC Form 175 application software will be included in a future Public Notice. 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.

(2) Completion of the FCC Form 175

34. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment B of this Public Notice. Applicants should not consider their form submitted to the FCC until they press the "Submit Form 175" button on the "Submit" page and receive confirmation from the filing system that the form has been received by the Commission.

(3) Electronic Review of FCC Form 175

35. The FCC Form 175 review software may be used to review and print applicants' FCC Form 175 applications. 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. For details, see Attachment E of the full text of the Public Notice (see **SUPPLEMENTARY INFORMATION** above).

*B. Application Processing and Minor Corrections*

36. 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 that have minor defects that may be corrected, and the deadline for filing such corrected applications.

37. As described more fully in the Commission's Rules, after the May 10, 1999, 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 May 24, 1999*

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). Applicants will have access to an electronic version of the FCC Form 159 (July 1997 version) after completing the electronic 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 p.m. ET on May 24, 1999.

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. 24 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 May 24, 1999 deadline will result in dismissal of the application and disqualification from participation in the auction.

(1) Making Auction Payments by Wire Transfer

39. Wire transfer payments must be received by 6:00 p.m. ET on May 24, 1999. 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 159, block 26)  
Payment Type Code: (enter "A24U")  
FCC Code: 1 (same as FCC Form 159, block 23A: "24")  
Payer Name: (same as FCC Form 159, block 2)  
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. 24." Bidders may confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

(2) FCC Form 159

41. 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 will be included in a future Public Notice.

(3) Amount of Upfront Payment

42. As proposed in the *Phase II 220 MHz Service Public Notice*, the following upfront payments will apply in Auction No. 24:

- (1) EAG Licenses: \$0.01 \* 0.15 MHz \* License Population (the result rounded up to the next dollar).
- (2) EA Licenses: \$500 per license.

The upfront payment amount for each license has been calculated and is listed in Attachment A. 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. 24, 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 associated with licenses on which the bidder wishes to place bids and hold high bids on at any given time.

43. 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.

44. 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.

45. **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

46. 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. 24 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 an applicant's Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Part V.D., *infra*.

#### D. Auction Registration

47. Approximately ten days before the auction, the FCC will issue a Public Notice announcing all qualified bidders for Auction No. 24. 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.

48. 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.

49. 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 June 3, 1999 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.

50. 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

51. Qualified bidders must purchase remote electronic bidding software for \$175.00 by May 25, 1999. (Auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 24.) A software order form is included in this Public Notice.

#### F. Auction Seminar

52. On April 21, 1999, the FCC will sponsor a seminar for the Phase II 220 MHz Service auction at the Park Hyatt Washington, 1201 24th Street, N.W., Washington, D.C. 20037. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the Phase II 220 MHz Service service and auction rules.

53. To register, complete the registration form included as Attachment I to this Public Notice. The registration form includes details about the time and location of the seminar. Registrations are accepted on a first-come, first-served basis.

#### G. Mock Auction

54. All applicants whose FCC Form 175 and 175-S have been accepted for filing will be eligible to participate in a mock auction on June 4, 1999. 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.

#### IV. Auction Event

55. The first round of the auction will begin on June 8, 1999. 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

56. As proposed in the *Phase II 220 MHz Service Public Notice*, the 225 Phase II 220 MHz Service 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. This approach, we believe, allows bidders to take advantage of any synergies that exist among licenses and is most administratively efficient.

###### (2) Maximum Eligibility and Activity Rules

57. For Auction No. 24, the amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured 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, as discussed under "Auction Stages" in Part IV.A.(2), *infra*.

58. 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.

59. 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 IV.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. The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases as the auction progresses. These procedures have proven

successful in maintaining the pace of previous auctions, as discussed in Parts IV.A.(4) and (5), *infra*.

### (3) Activity Rule Waivers and Reducing Eligibility

60. 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.

61. 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.

62. 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. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

63. 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 Stopping Rules

64. As proposed in the *Phase II 220 MHz Service Public Notice*, 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. In addition, however, the Bureau retains the discretion to close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

65. 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).

66. 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.

### (5) Auction Delay, Suspension, or Cancellation

67. As proposed in the *Phase II 220 MHz Service Public Notice*, 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. This approach has proven effective in resolving exigent circumstances in previous auctions. 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

68. 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.

69. 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

70. As proposed in the *Phase II 220 MHz Service Public Notice*, the following formulae will be used for calculating minimum opening bids on a license-by-license basis in Auction No. 24:

- (1) EAG Licenses:  $\$0.01 * 0.15 \text{ MHz} * \text{License Population}$  (the result rounded up to the next dollar)
- (2) EA Licenses: \$500 per license.

These amounts are reducible at the discretion of the Bureau. This will allow the Bureau flexibility to adjust the minimum opening bids if circumstances warrant. Such discretion will be exercised, if at all, sparingly and early in the auction, i.e., before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any bidder requests to reduce the minimum opening bids on specific licenses. Based on our experience in prior auctions, the Commission believes that minimum opening bids speed the course of the auction and ensure that valuable assets are not sold for nominal prices, without unduly interfering with the efficient assignment of licenses.

## (3) Minimum Accepted Bids and Bid Increments

71. As proposed in the *Phase II 220 MHz Service Public Notice* (63 FR 67685, December 8, 1998), once there is a standing high bid on a license, there will be a bid increment associated with that bid indicating the minimum amount by which the bid on that license can be raised. For the Phase II 220 MHz auction, we will use a standard exponential smoothing methodology to calculate minimum bid increments. The Bureau retains the discretion to compute the minimum bid increment through other methodologies if it determines that circumstance so dictate.

72. The exponential smoothing formula calculates the bid increment for each license based on a weighted average of the activity received on each license in 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.

73. The calculation of the percentage bid increment for each license in a given round is made at the end of the previous round. The computation is based on an activity index, which is calculated as the weighted average of the activity in that round and the activity index from the prior 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 most recent bidding round plus one minus the weighting factor times the activity index from the prior 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 0.1, and the maximum percentage increment at 0.2.

## Equations

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

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

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

$I_{i+1}$  = percentage bid increment for the next round (round  $i+1$ )

$N$  = minimum percentage increment or bid increment floor

$M$  = maximum percentage increment or bid increment ceiling

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  $I_{i+1}$  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

$$C = 0.5, N = 0.1, M = 0.2$$

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

1. Calculation of percentage increment for round 2 using exponential smoothing:

$$A_1 = (0.5 * 2) + (0.5 * 0) = 1$$

The smaller of  $I_2 = (1 + 1) * 0.1 = 0.2$  or 0.2 (the maximum percentage increment)

2. Minimum bid increment for round 2 using the percentage increment ( $I_2$  from above).

$$0.2 * \$1,000,000 = \$200,000$$

3. Minimum acceptable bid for round 2 = 1,200,000

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

1. Calculation of percentage increment for round 3 using exponential smoothing:

$$A_2 = (0.5 * 3) + (0.5 * 1) = 2$$

The smaller of  $I_3 = (1 + 2) * 0.1 = 0.3$  or 0.2 (the maximum percentage increment)

2. Minimum bid increment for round 3 using the percentage increment ( $I_3$  from above)

$$0.2 * \$2,000,000 = \$400,000$$

3. Minimum acceptable bid for round 3 = 2,400,000

Round 3 (1 new bid, high bid = 2,400,000)

1. Calculation of percentage increment for round 4 using exponential smoothing:

$$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$$

The smaller of  $I_4 = (1 + 1.5) * 0.1 = 0.25$  or 0.2 (the maximum percentage increment)

2. Minimum bid increment for round 4 using the percentage increment ( $I_4$  from above)

$$0.2 * \$2,400,000 = \$480,000$$

3. Minimum acceptable bid for round 4 = 2,880,000

## (4) High Bids

74. Each bid will be date- and time-stamped when it is entered into the FCC 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

75. During a bidding round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), 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. 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 reflects the latest time the bid was submitted.

76. 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. 24.

77. A bidder's ability to bid on specific licenses 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.

78. 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.

79. 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.

80. 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.

81. 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 in this case, 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

##### a. Procedure

82. As proposed in the *Phase II 220 MHz Service Public Notice*, 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. This procedure will enhance bidder flexibility and, we believe, may serve to expedite the course of the auction.

83. 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 CFR 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 IV.B.(4).

84. In previous auctions, we have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, i.e., reducing risk associated with efforts to secure various geographic area licenses in combination, we conclude that, for the Phase II 220 MHz Service auction, adoption of a limit on their use to two rounds is the most appropriate outcome. 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. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auction, 800 MHz SMR auction, and LMDS auction, and is in no way a reflection of our view regarding the likelihood of any speculation or "gaming" in the Phase II 220 MHz Service auction. Withdrawals will still be subject to the bid withdrawal payments specified in 47 CFR 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.

85. 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

86. 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 CFR 1.2104(g) and 1.2109. No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid.

#### (7) Round Results

87. 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.

88. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 24 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

89. 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

##### a. Inclusion of the Gulf of Mexico in Auction No. 24

90. The Commission will not designate the Gulf of Mexico as the seventh EAG and the 176th EA in the Phase II 220 MHz Service auction. This issue cannot be addressed in the context of this Public Notice, which, consistent with the Bureau's delegated authority, implements the Commission's rules pertaining to auctions procedures. The licensing regions for the 220 MHz Service were adopted by the Commission in the *220 Third Report and Order*, 62 FR 15978, April 3, 1997, and subsequently codified.

##### b. Minor Modifications to FCC Form 175 Applications

91. As noted in Section III.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 (and a courtesy copy to Anne Napoli at the same address) to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Suite 4-A760 Washington, D.C. 20554, briefly summarizing the changes. Questions about other changes should be directed to Anne Napoli of 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 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 CFR 1.2107(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 "Bid Removal and Bid Withdrawal," Part IV.B.(6), *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 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 CFR 1.2112(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 offer

the license to the next highest bidders (in descending order) at their final bids, or reauction the spectrum. 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 that submitted upfront payments but were not winning bidders for a 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 including 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, 445 12th Street, S.W., Room 1-A824, 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.

Federal Communications Commission.

**Amy J. Zoslov,**

*Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.*

[FR Doc. 99-9765 Filed 4-20-99; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2326]

### Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

April 15, 1999.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857-3800. Oppositions to these petitions must be filed by May 6, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

*Subject:* Implementation of Section 25 of the Cable Television Consumer and Competition Act of 1992, DBS Service Obligations (MM Docket No. 93-25).

*Number of Petitions Filed:* 9.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 99-9901 Filed 4-20-99; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, April 20, 1999, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider matters relating to the Corporation's corporate supervisory, and resolution activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 - 17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: April 16, 1999.