

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-02-46-C (Auction No. 46); DA 02-1871]

Auction of License in the 1670-1675 MHz Band Auction Scheduled for April 30, 2003; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of licenses in the 1670-1675 MHz band scheduled for April 30, 2003 (Auction No. 46). This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Auction No. 46 is scheduled to begin on April 30, 2003.

FOR FURTHER INFORMATION CONTACT:

Auctions and Industry Analysis Division: Francis Gutierrez, Legal Branch, or Lyle Ishida, Auctions Operations Branch, at (202) 418-0660; Lisa Stover, Auctions Operations Branch, at (717) 338-2888, *Media Contact:* Lauren Kravetz at (202) 418-7944, *Public Safety & Private Wireless Division:* Keith Fickner or Brian Marengo, Policy and Rules Branch, at (202) 418-0680.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 46 Procedures Public Notice* released on August 5, 2002. The complete text of the *Auction No. 46 Procedures Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The *Auction No. 46 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail qualexint@aol.com.

I. General Information

A. Introduction

1. By the *Auction No. 46 Procedures Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announces the procedures and minimum opening bids for the upcoming auction of one nationwide license in the 1670-1675 MHz band

scheduled for April 30, 2003 (Auction No. 46).

2. In accordance with the Balanced Budget Act of 1997, the Bureau released a public notice on May 24, 2002 seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 46. The Bureau received two comments and one reply comment in response to the *Auction No. 46 Comment Public Notice*, 67 FR 43118 (June 26, 2002). The Bureau subsequently released a second public notice on July 15, 2002, revising the license inventory, auction start date, and seeking comment on revisions to proposed auction procedures. The Bureau received one comment in response to the *Auction No. 46 Further Comment Public Notice*, 67 FR 49022 (July 29, 2002).

3. On August 5, 2002, the Bureau released the *Auction No. 46 Procedures Public Notice* that announced the procedures and minimum opening bids for the auction of one nationwide license in the 1670-1675 MHz band, scheduled to begin on October 30, 2002.

4. On September 13, 2002, the Bureau released a public notice seeking comment on a request for postponement of Auction No. 46 filed by ArrayComm, Inc. *Auction No. 46 Public Notice Seeking Comment on Postponement*, 67 FR 61104 (September 27, 2002).

5. On September 25, 2002, the Bureau released a public notice, which announced that based on the record of comments it received, Auction No. 46 is postponed until April 23, 2003. *Auction No. 46 Postponement Public Notice*, 67 FR 63095 (October 10, 2002).

i. Background of Proceeding

6. On May 24, 2002, the Commission released the *Service Rules Report & Order*, which adopted service rules to govern the licensing of 27 MHz of electromagnetic spectrum reallocated for non-Government use, including the 1670-1675 MHz band. In the *Service Rules Report & Order*, 67 FR 41847, (June 20, 2002), the Commission, among other things, established competitive bidding procedures for the 1670-1675 MHz band; decided to assign, on a nationwide basis, one license for a 5-megahertz block of contiguous unpaired spectrum in the 1670-1675 MHz band; and determined that all operations in the 1670-1675 MHz band will be generally regulated under the framework of the Commission's Part 27 technical, licensing, and operating rules. The Commission also explained that a non-government licensee in the 1670-1675 MHz band must comply with the provisions of § 1.924(g) of the Commission's rules to minimize

harmful interference to Geostationary Operations Environmental Satellite (GOES) earth stations receiving in the band 1670-1675 MHz. The GOES earth stations are located at Wallops Island, Virginia; Fairbanks, Alaska; and Greenbelt, Maryland.

ii. Licenses To Be Auctioned

7. One nationwide license consisting of a 5-megahertz block of contiguous unpaired spectrum in the 1670-1675 MHz band will be available in Auction No. 46.

B. Rules and Disclaimers

i. Relevant Authority

8. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the 1670-1675 MHz band contained in title 47, part 27 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 *Auction No. 46 Procedures Public Notice*, *Auction No. 46 Comment Public Notice*, *Auction No. 46 Further Comment Public Notice*, *Auction No. 46 Public Notice Seeking Comment on Postponement*, *Auction No. 46 Postponement Public Notice*, and the *Part 1 Fifth Report and Order* 65 FR 52401 (August 29, 2000) (as well as prior and subsequent Commission proceedings regarding competitive bidding procedures).

9. Auction participants bidding on the license in the 1670-1675 MHz spectrum band should also be familiar with the *Service Rules Report and Order*.

10. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices 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 Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554 or may be purchased from the

Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com. When ordering documents from Qualex, please provide the appropriate FCC number (for example, FCC 02-152 for the *Service Rules Report and Order*).

ii. Prohibition of Collusion

11. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. Because bidders in Auction No. 46 will be competing for the same license, they 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 or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications 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.

12. However, the Bureau 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. Applicants may enter into bidding agreements before filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants. By signing their FCC Form 175 short-form

applications, applicants are certifying their compliance with § 1.2105(c).

13. In addition, § 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, §§ 1.65 and 1.2105 require an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

14. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment G of the *Auction No. 46 Procedures Public Notice*.

iii. Due Diligence

15. Potential bidders are reminded that the 1670-1675 MHz band is being allocated for mixed use. The Commission made clear that a geographic area licensee operating in the reallocated band must protect Federal Government operations, either indefinitely or for a given period of time. These requirements may affect the ability of the geographic licensee to use certain portions of the electromagnetic spectrum or provide service to certain regions in their geographic license area.

16. Potential bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 46.

17. Accordingly, the 1670-1675 MHz licensee must protect indefinitely the Command and Data Acquisitions stations used to communicate with the GOES earth stations that are located at Wallops Island, Virginia; Fairbanks, Alaska; and Greenbelt, Maryland. The 1670-1675 MHz licensee must also comply with the Quiet Zone requirements of § 1.924 of the Commission's Rules.

18. Before planning to construct and operate a new or modified station within 100 kilometers of the Wallops Island, Virginia and Fairbanks, Alaska stations or within 65 kilometers of the Greenbelt, Maryland station, the 1670-1675 MHz licensee must notify the National Oceanic and Atmospheric Administration (NOAA) of the proposed operation. NOAA's GOES coordination web page, at <http://www.osd.noaa.gov/radio/frequency/htm>, provides the

technical parameters of the earth stations and the point-of-contact notification information. Additionally, the licensee must file an application with the Commission requesting authority to operate the new or modified station. This application should be filed through the Commission's Universal Licensing System. The application should state the date that notification to NOAA was made. After the Commission receives an application, NOAA has 20 days to comment or object to the proposed new or modified station. If NOAA objects during the 20-day period, the Commission will take whatever action is deemed appropriate. In the absence of an objection by NOAA, the Commission will grant the application if it is otherwise acceptable.

19. Potential bidders for "near the border" licenses must protect stations in Canada and Mexico from harmful interference. This will permit licensees to maximize their operations depending on the spectrum use, terrain, and other factors at the border areas, while still protecting operations across the border. However, operations in the 1670-1675 MHz band may be subject to future agreements with Canada and Mexico and therefore may be subject to further modification.

20. The Commission makes no representations or guarantees regarding the accuracy or completeness of the information concerning Federal Government incumbents that appears in the *Auction No. 46 Procedures Public Notice* or third party documents. Potential bidders who have questions regarding Federal Government use of the 1670-1675 MHz band may contact Gerald F. Hurt, Chief, Spectrum Engineering and Analysis Division, National Telecommunications and Information Administration, Room 6725, 1401 Constitution Ave., NW., Washington, DC, 20230, at (202) 482-4107, via fax at (202) 482-4595, or at ghurt@ntia.doc.gov.

21. Potential bidders also should be aware that certain applications, petitions for rulemaking, requests for special temporary authority ("STA"), waiver requests, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or incumbent Federal entities. In addition, certain judicial proceedings that may relate to particular applicants or the license available in Auction No. 46 may be commenced, or may be pending, or may be the subject to further review. Resolution of these matters could have an impact on the availability of spectrum in Auction No. 46. Some of these matters (whether

before the Commission or the courts) may not be resolved by the time of the auction.

iv. Bidder Alerts

22. 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.

23. 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 and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

24. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 46 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 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.

25. 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. 46 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

v. National Environmental Policy Act ("NEPA") Requirements

26. The licensee 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 the licensee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require, among other things, that the licensee 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). The licensee must prepare environmental assessments for 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. The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

27. The auction will begin on Wednesday, April 30, 2003. 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 the license.

ii. Auction Title

28. Auction No. 46—1670-1675 MHz Band

iii. Bidding Methodology

29. The bidding methodology for Auction No. 46 will be multiple round,

ascending auction. An ascending multiple round auction is the same as a simultaneous multiple round auction, but with only one license available for bid. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

30. Listed are important dates associated with Auction No. 46:

Auction Seminar: September 18, 2002
 Short-Form Application (FCC Form 175) Filing Window Opens: March 18, 2003
 Short-Form Application (FCC Form 175) Deadline: March 25, 2003; 6 p.m. ET
 Upfront Payments Deadline: April 11, 2003; 6 p.m. ET
 Mock Auction: April 25, 2003
 Auction Begins: April 30, 2003

v. Requirements for Participation

31. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6 p.m. ET, March 25, 2003.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, April 11, 2003.
- Comply with all provisions outlined in this public notice.

vi. General Contact Information

32. The following is a list of general contact information relating to Auction No. 46.

General Auction Information
 (General Auction Questions, Seminar Registration): FCC Auctions Hotline, (888) 225-5322, Press Option #2 or direct (717) 338-2888. Hours of service: 8 a.m.-5:30 p.m. ET.

Auction Legal Information
 (Auction Rules, Policies, Regulations): Auctions and Industry Analysis Division, Legal Branch (202) 418-0660.

Licensing Information
 (Rules, Policies, Regulations, Licensing Issues, Due Diligence, Incumbency Issues): Public Safety & Private Wireless Division, (202) 418-0680.

Technical Support
 Electronic Filing, Automated Auction System): FCC Auctions Technical Support Hotline, (202) 414-1250 (Voice), (202) 414-1255 (TTY). Hours of service: Monday through Friday 8 a.m. to 6 p.m. ET.

Payment Information

(Wire Transfers, Refunds): FCC Auctions Accounting Branch, (202) 418-1995, (202) 418-2843 (Fax).

Telephonic Bidding: Will be furnished only to qualified bidders.

FCC Copy Contractor: Qualex International.

Additional Copies of Commission Documents: Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 863-2893, (202) 863-2898 (Fax) and qualexint@aol.com (E-mail).

Press information: Meribeth McCarrick (202) 418-0654.

FCC Forms: (800) 418-3676 (outside Washington, DC), (202) 418-3676 (in the Washington Area) and <http://www.fcc.gov/formpage.html>.

FCC Internet Sites: <http://www.fcc.gov>, <http://wireless.fcc.gov/auctions> and <http://wireless.fcc.gov/uls>.

II. Short-Form (FCC Form 175) Application Requirements

33. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the *Auction No. 46 Procedures Public Notice*. The short-form application seeks the applicant's name and address, legal classification, status, small or very small business bidding credit eligibility, identification of the license sought, the authorized bidders and contact persons. 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, as discussed in section II.D (Provisions Regarding Defaulters and Former Defaulters) of the *Auction No. 46 Procedures Public Notice*, that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

A. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

34. All applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to file an "Exhibit A" providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules.

B. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)

35. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium

arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the license being auctioned, including any agreements relating to post-auction market structure.

Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, or bidding strategies. If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with applicants after the deadline. Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an "Exhibit B" to the FCC Form 175.

36. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

C. Eligibility

i. Bidding Credit Eligibility (FCC Form 175 Exhibit C)

37. Bidding credits will be available to small and very small businesses, or consortia, thereof, as defined in 47 CFR 27.906, for the 1670-1675 MHz band. A bidding credit represents the amount by which the bidder's winning bid is discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests:

- A bidder with attributed average annual gross revenues of not more than \$15 million for the preceding three years ("very small business") receives a 25 percent discount on its winning bid;
 - A bidder with attributed average annual gross revenues of not more than \$40 million for the preceding three years ("small business") receives a 15 percent discount on its winning bid;
- Bidding credits are not cumulative; a qualifying applicant receives either the 15 percent or 25 percent bidding credit on its winning bid, but not both.

ii. Tribal Land Bidding Credit

38. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. See part V.D. of the *Auction No. 46 Procedures Public Notice*.

iii. Applicability of Part 1 Attribution Rules

39. *Controlling interest standard.* On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order*, in which the Commission, *inter alia*, adopted a "controlling interest" standard for attributing to auction applicants the gross revenues of their investors and affiliates in determining small business eligibility for future auctions. The Commission observed that the rule modifications adopted in the various Part 1 orders would result in discrepancies and/or redundancies between certain of the new Part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the Part 1 proceeding. Part 1 rules that supersede inconsistent service-specific rules will control in Auction No. 46. Accordingly, the "controlling interest" standard as set forth in the Part 1 rules will be in effect for Auction No. 46.

40. *Control.* The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, ownership of at least 50.1 percent of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis. The following are some common indicia of *de facto* 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.

Attribution for small and very small business eligibility. In determining which entities qualify as small or very small businesses, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, the applicant and its affiliates, will be counted in determining small business eligibility.

41. A consortium of small or very small businesses is a "conglomerate organization formed as a joint venture between or among mutually independent business firms," each of which individually must satisfy the definition of small and very small business in §§ 1.2110(f), 27.906 of the Commission's rules. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. Although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

iv. Supporting Documentation

42. Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as small or very small businesses (or consortia of small or very small businesses) for this auction.

43. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

44. *Small or very small business eligibility (Exhibit C).* Entities applying to bid as small or very small businesses (or consortia of small or very small

businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, separately and in the aggregate, the gross revenues for the preceding three years of each of the following: (i) The applicant, (ii) its affiliates, (iii) its controlling interests, and (iv) the affiliates of its controlling interests. Certification that the average annual 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, its controlling interests, and the affiliates of its controlling interests, 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 as a consortium of small or very small businesses, this information must be provided for each consortium member.

D. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D)

45. Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interest have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, for each of its controlling interests and affiliates, and for each affiliate of its controlling interests, as defined by § 1.2110 of the Commission's rules. Applicants must include this statement as Exhibit D of the FCC Form 175. Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, 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.

46. "Former defaulters"—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-

tax delinquencies—are eligible to bid in Auction No. 46, provided that they are otherwise qualified. However, as discussed in section III.D.iii, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

E. Installment Payments

47. Installment payment plans will not be available in Auction No. 46.

F. Other Information (FCC Form 175 Exhibits E and F)

48. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so on Exhibit F (Miscellaneous Information) to the FCC Form 175.

G. Minor Modifications to Short-Form Applications (FCC Form 175)

49. After the short-form filing deadline (March 25, 2003), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change the certifying official, change control of the applicant, or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: auction46@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 46. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

50. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850. Questions about other changes should be directed to Francis Gutierrez of the Auctions and Industry Analysis Division at (202) 418-0660.

H. Maintaining Current Information in Short-Form Applications (FCC Form 175)

51. Applicants have an obligation under 47 CFR 1.65 to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

II. Pre-Auction Procedures

A. Auction Seminar

52. On Wednesday, September 18, 2002, the FCC sponsored a free seminar for Auction No. 46 at the Federal Communications Commission, located at 445 12th Street, SW., Washington, DC. The seminar provided attendees with information about pre-auction procedures, conduct of the auction, the FCC Automated Auction System, and the 1670–1675 MHz band and auction rules. The seminar also provided an opportunity for prospective bidders to ask questions of FCC staff.

B. Short-Form Application (FCC Form 175)—Due March 25, 2003

53. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. ET on March 25, 2003. Late applications will not be accepted.

54. 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.D of the *Auction No. 46 Procedures Public Notice*.

i. Electronic Filing

55. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon ET on March 18, 2003, until 6 p.m. ET on March 25, 2003. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on March 25, 2003.

56. Applicants must press the "SUBMIT Application" button on the "Submission" page of the electronic form to successfully submit their FCC Form 175s. Any form that is not

submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C of the *Auction No. 46 Procedures Public Notice*. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); the hours of service Monday through Friday, from 8:00 AM to 6:00 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded*.

57. Applicants can also contact Technical Support via e-mail. To obtain the address, click the Support tab on the Form 175 Homepage.

ii. Completion of the FCC Form 175

58. 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 D of the *Auction No. 46 Procedures Public Notice*. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D of the *Auction No. 46 Procedures Public Notice* provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

59. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. 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.

Note: Applicants should not include sensitive information (*i.e.*, TIN/EIN) on any exhibits to their FCC Form 175 applications. There is no fee for accessing this system. See Attachment C of the *Auction No. 46 Procedures Public Notice* for details on accessing the review system.

C. Application Processing and Minor Corrections

60. 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: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

61. As described more fully in the Commission's rules, after the March 25, 2003, 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 the certifying official, change control of the applicant, or change bidding credit eligibility).

D. Upfront Payments—Due April 11, 2003

62. 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). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. ET on April 11, 2003.

63. 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. 46 go to a lockbox number different from the lockboxes 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 April 11, 2003, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

64. Wire transfer payments must be received by 6 p.m. ET on April 11, 2003. 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
 BENEFICIARY: FCC/Account # 910–0180
 OBI Field: (Skip one space between each information item)
 "AUCTIONPAY"
 FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 11 and/or 21)
 PAYMENT TYPE CODE (same as FCC Form 159, block 24A: A46U)
 FCC CODE 1 (same as FCC Form 159, block 28A: "46")
 PAYOR 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.

65. Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209-6045 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. 46." Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

66. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the *Auction No. 46 Procedures Public Notice*. An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

67. In the *Part 1 Order* the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that "former defaulters," *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-"former defaulters." For purposes of this calculation, the "applicant" includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*).

68. In the *Auction No. 46 Comment Public Notice*, the Bureau proposed translating bidders' upfront payments to bidding units to define a bidder's maximum eligibility. In order to bid on the license, otherwise qualified bidders must have an eligibility level that meets the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on the license or else the applicant will not be eligible to participate in the auction.

69. In the *Auction No. 46 Comment Public Notice*, the Bureau proposed an

upfront payment of \$12,628,000 for the nationwide 1670-1675 MHz license using the following formula: $\$0.01 * \text{MHz} * \text{License Area Population}$ with a minimum of \$1,000.

ArrayComm and AeroAstro submitted comments regarding the Bureau's proposed formula for calculating the upfront payment for Auction No. 46. ArrayComm supports the Bureau's proposed upfront payment because it is appropriate given the nationwide scope of the license. AeroAstro, on the other hand, suggests that the proposed upfront payment is excessively high and may reduce potential participation and competition in the auction. AeroAstro recommends that the Commission reduce the upfront payment by a factor of ten, resulting in an upfront payment of \$1,262,800.

70. The Bureau adopts its upfront payment as proposed. Given the nationwide scope of the 1670-1675 MHz license, the Bureau believes that the proposed upfront payment, as validated by the comments of ArrayComm, is appropriate.

71. The specific upfront payments and bidding units for the nationwide 1670-1675 MHz license is set forth in Attachment A of the *Auction No. 46 Procedures Public Notice*.

72. Former defaulters should calculate their upfront payment by multiplying the number of bidding units by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

73. The Commission will use wire transfers for all Auction No. 46 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418-2843 by April 11, 2003. All refunds will be returned to the payor of record as identified on the FCC Form 159 unless the payor submits written authorization instructing otherwise. For additional information, please call (202) 418-1995. Name of Bank
ABA Number
Contact and Phone Number

Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)
Taxpayer Identification Number
Correspondent Bank (if applicable)
ABA Number
Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Part V.F. of the *Auction No. 46 Procedures Public Notice*.

E. Auction Registration

74. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on the license.

75. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) required to place bids and the other containing the SecurID cards. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

76. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, April 23, 2003, should contact the Auctions Hotline at (717) 338-2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

77. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing in person at the FCC Auction Headquarters located at 445 12th St., SW., Washington, DC 20554. 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 replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

F. Electronic Bidding

78. The Commission will conduct this auction over the Internet. Telephonic

bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically, *i.e.*, over the Internet or the FCC's Wide Area Network at \$2.30 per minute. In either case, each authorized bidder must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the FCC Automated Auction System User Manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction, therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 46. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number. Each applicant should indicate its bidding preference 'electronic or telephonic' on the FCC Form 175.

79. Please note that the SecurID cards can be recycled, and the Bureau encourages bidders to return the cards to the FCC. The Bureau will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

G. Mock Auction

80. All qualified bidders will be eligible to participate in a mock auction on Friday, April 25, 2003. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

81. The first round of bidding for Auction No. 46 will begin on Wednesday, April 30, 2003. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Ascending Multiple Round Auction

82. In the *Auction No. 46 Comment Public Notice*, the Bureau proposed to award all licenses in Auction No. 46 in

a single, simultaneous multiple round auction. The Bureau received one comment on this issue. ArrayComm agrees with the Bureau's proposal stating that the simultaneous multiple round structure is most likely to result in efficient bidding, thereby awarding the license to the party with the greatest ability to bring innovative services to consumers. An "ascending multiple round auction" is the same as a simultaneous multiple round auction, but with only one license available for bid. The Bureau concludes that it is operationally feasible and appropriate to auction the license in the 1670-1675 MHz band through a single, ascending multiple round auction. Unless otherwise announced, bids will be accepted on the license in each round of the auction.

ii. Maximum Eligibility and Activity Rules

83. In the *Auction No. 46 Comment Public Notice*, the Bureau proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. The Bureau received no comments on this issue.

84. For Auction No. 46, the Bureau will adopt its proposal that the amount of upfront payment submitted by a bidder would determine the eligibility (in bidding units) for participation in Auction No. 46. Bidders are reminded that the upfront payment is a refundable deposit made by each bidder to determine and establish eligibility to bid on the license. The upfront payment does not affect the total dollars a bidder may bid on the license.

85. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their current eligibility during each round of the auction. In the *Auction No. 46 Further Comment Public Notice*, because only one license will be available for auction, the Bureau proposed a single stage auction with each bidder required to be active on one hundred (100) percent of its bidding eligibility in each round.

86. Only one commenter addressed the Bureau's revised proposal. ArrayCom states that monitoring the bidding activity of only one license makes the evaluation and bidding process of necessity more straightforward for participants. Therefore, in order to ensure that the auction closes within a reasonable

period of time, the Bureau adopts its proposal with the following activity requirements: a bidder must either place a valid bid and/or be the standing high bidder during each round of the auction rather than wait until the end before participating. Bidders are required to be active on 100 percent of their maximum eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's bidding eligibility, thus eliminating the bidder from the auction.

iii. Activity Rule Waivers and Reducing Eligibility

87. In the *Auction No. 46 Further Comment Public Notice*, the Bureau proposed that each bidder in the auction would be provided two activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. ArrayComm agreed with the Bureau's proposal that two waivers would be appropriate in light of the auction's narrowed scope.

88. Based upon the Bureau's experience in previous auctions, it adopts its proposal that each bidder be provided two 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. The Bureau is satisfied that its practice of providing two waivers over the course of the auction provides a sufficient number of waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction.

89. The Automated 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. If there are no activity rule waivers available, the bidder's eligibility will be reduced, eliminating them from the auction.

90. 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 system) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in

which there are no new valid bids will not keep the auction open.

Note: Once a proactive waiver is placed during a round, that waiver cannot be unsubmitted.

iv. Auction Stopping Rules

91. For Auction No. 46, the Bureau proposed to employ a simultaneous stopping rule approach. The Bureau also sought comment on a modified version of the stopping rule. The modified version of the stopping rule would close the auction after the first round in which no bidder submits a proactive waiver or a new bid on the license when it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on the license for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

92. The Bureau further proposed retaining the discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted. 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 use an activity rule waiver (if it has any left) or lose bidding eligibility, thus eliminating the bidder from the auction.

93. In addition, the Bureau proposed to reserve the right to declare that the auction will end after a designated number of additional rounds ("special stopping rule"). The Bureau proposed to exercise this option only in 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 Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day and/or adjusting the amount of the minimum bid increments for the license.

94. The Bureau received no comments concerning the auction stopping rules and therefore, it adopts the proposals. Auction No. 46 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule. These stopping rules are most appropriate for Auction No. 46, because the Bureau's experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

v. Auction Delay, Suspension, or Cancellation

95. In the *Auction No. 46 Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, it 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 conduct of competitive bidding.

96. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts its proposed auction cancellation rules. 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. 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

i. Round Structure

97. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the public notice referenced herein.

98. 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 Bureau 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.

ii. Reserve Price or Minimum Opening Bid

99. *Background.* The Communications Act, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureau should consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

100. In the *Auction No. 46 Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 46. Specifically, for Auction No. 46, the Bureau proposed a minimum opening bid of \$12,628,000 for the nationwide license using the following formula: $\$0.01 * \text{MHz} * \text{License Area Population}$ with a minimum of \$1,000.

In the alternative, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price. ArrayComm and AeroAstro submitted comments regarding the Bureau's proposed formula for calculating minimum opening bids for Auction No. 46. ArrayComm supports the Bureau's proposed minimum opening bid, stating that it will ensure a successful outcome overall for the auction. AeroAstro, on the other hand, suggests that the multi-million dollar minimum opening bid for the license in the 1670–1675 MHz Band is an artificially high barrier to entry and may defeat the purpose of the auction by eliminating bidders. AeroAstro proposes the following formula for calculating minimum opening bids for the nationwide license: $\$0.002 * \text{MHz} * \text{License Area Population}$.

101. The Bureau adopts its minimum opening bid as proposed. The Bureau believes that the minimum opening bid, as adopted, is appropriate.

102. The specific minimum opening bid for the license is set forth in Attachment A of the *Auction No. 46 Procedures Public Notice*.

iii. Minimum Accepted Bids and Bid Increments

103. In the *Auction No. 46 Comment Public Notice*, the Bureau proposed to use a smoothing methodology to calculate minimum acceptable bids. The Bureau further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate.

104. ArrayComm suggests that because the license inventory for Auction No. 46 is reduced to one license, a smaller bid increment is more appropriate. It notes that while higher bid increments can maintain the pace of large-scale auctions, they are not necessary under a single-license auction event such as Auction No. 46. ArrayComm further asserts that a reduced minimum bid increment may, in fact, increase auction efficiency in this scenario.

105. The Bureau adopts its proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is included as Attachment F of the *Auction No. 46 Procedures Public Notice*.

106. Upon consideration of ArrayComm's comments, the weighting factor will be set at 0.5, the minimum percentage increment at 0.05 (5 percent), and the maximum at 0.2 (20 percent). Because only a single license is available in Auction No. 46, it is appropriate to set the minimum bid increment at 5 percent. The Bureau reiterates that it retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstance so dictate. The Bureau will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. The Bureau also retains the discretion to use alternate methodologies, such as a flat percentage increment, for Auction No. 46 if circumstances warrant.

iv. High Bid

107. At the end of each bidding round, the Automated Auction System determines the standing high bid for the license based on the gross dollar amounts of the bids received.

108. In the case of tied high bids, a random number generator will be used to determine the standing high bid. A random number will be assigned to each bid. The tie bid having the highest random number will become the standing high bid.

v. Bidding

109. During a bidding round, a bidder may submit a bid (subject to its eligibility) as well as remove a bid placed in the same bidding round. If a bidder submits multiple bids for the license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with the license for which the bidder has removed its bid do not count towards the bidder's activity at the close of the round.

110. All bidding will take place remotely either through the Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering 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. Normally, five to ten minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 46.

111. The Automated Auction System requires each bidder to be logged in during the bidding round using the bidder identification number provided in the registration materials, and the generated SecurID code. Bidders are strongly encouraged to print bid confirmations after they submit their bid.

112. In each round, eligible bidders will be able to place a bid on the license in any of nine different amounts. The Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine acceptable bid amounts.

113. Once there is a standing high bid on the license, the Automated Auction System will calculate a minimum acceptable bid for the following round. The difference between the minimum acceptable bid and the standing high bid will define the *bid increment*. The nine acceptable bid amounts consist of the minimum acceptable bid (the standing

high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

114. Until a bid has been placed on the license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded, and the minimum opening bid. Therefore, when the minimum percentage increment equals 0.05, the first additional bid amount will be approximately five percent higher than the minimum opening bid; the second, ten percent; the third, fifteen percent; etc.

115. See Attachment F of the *Auction No. 46 Procedures Public Notice* for more detail on the calculation of the various bid amounts.

vi. Bid Removal and Bid Withdrawal

116. In the *Auction No. 46 Comment Public Notice*, the Bureau proposed bid removal and bid withdrawal rules. The Bureau however revised its proposal concerning withdrawals in the *Auction No. 46 Further Comment Public Notice*. It proposed that bidders would not be permitted to withdraw bids in any round since Auction No. 46 had been limited to a single license. No commenters disagreed with the Bureau's proposal. Therefore, the Bureau will adopt its proposal and will not permit bidders to withdraw bids in any rounds during the auction.

117. Procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By using the "remove bid" function in the bidding system, a bidder may effectively "unsubmit" a bid placed within that round. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is subsequently removed does not count toward the bidder's activity requirement. Once a round closes, a bidder may no longer remove a bid.

vii. Round Results

118. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, current high bid, new minimum accepted bid, 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. 46 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.

viii. Auction Announcements

119. The FCC will use auction announcements to announce items such as schedule changes. All FCC auction announcements will be available by clicking a link on the Automated Auction System.

ix. Maintaining the Accuracy of FCC Form 175 Information

120. As noted in Part II.G. of the Auction No. 46 Procedures Public Notice, 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 certain revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division at the following address: auction46@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 46. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850. Questions about other changes should be directed to Francis Gutierrez of the Auctions and Industry Analysis Division at (202) 418-0660.

I. Post-Auction Procedures

A. Down Payments

121. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bid and bidder.

122. Within ten business days after release of the auction closing notice, the 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 bid (actual bid less any applicable small or very small business bidding credit). See 47 CFR 1.2107(b).

B. Auction Discount Voucher

123. On June 8, 2000, the Commission awarded Qualcomm, Inc. a transferable Auction Discount Voucher ("ADV") in the amount of \$125,273,878.00. This ADV may be used by Qualcomm or its transferee, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003, subject to terms and conditions set forth in the Commission's Order. Qualcomm transferred \$10,848,000.00 of the ADV to a winning bidder in FCC Auction No. 35 and the transferee used its portion of the ADV to pay a portion of one of its winning bids in Auction No. 35. The remaining portion of Qualcomm's ADV could be used to adjust winning bids in another FCC auction, including Auction No. 46.

C. Long-Form Application

124. Within ten business days after release of the auction closing notice, the winning bidder must electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for the license won through Auction No. 46. A winning bidder that is a small or very small business must include an exhibit demonstrating their eligibility for the bidding credit. See 47 CFR 1.2112(b). Further filing instructions will be provided to the auction winner at the close of the auction.

D. Tribal Land Bidding Credit

125. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally-recognized tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

126. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit after winning the auction when it files its long-form application (FCC Form 601). When filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal land bidding credit, for each market won in the auction, by checking the designated box(es). After stating its intent to seek a tribal land bidding credit, the applicant will have 90 days from the close of the long-form filing window to amend its application to select the specific tribal

lands to be served and provide the required tribal government certifications. Licensees receiving a tribal land bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f).

127. For additional information on the tribal land bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal land bidding credits and related public notices. Relevant documents can be viewed on the Commission's web site by going to <http://wireless.fcc.gov/auctions> and clicking on *Tribal Land Credits*.

E. Default and Disqualification

128. 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 or offer it to the next highest bidder (in descending order) at their final bid. 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).

F. Refund of Remaining Upfront Payment Balance

129. All applicants that submitted upfront payments but were not winning bidders for the license in Auction No. 46 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. All refunds will be returned to the payor of record, as identified on the FCC Form 159, unless the payor submits written authorization instructing otherwise.

130. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, and have no remaining bidding eligibility, must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC

Registration Number (FRN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser or Tim Dates, 445 12th Street, SW., Room 1-C863, Washington, DC 20554.

131. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418-2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates or Gail Glasser at (202) 418-1995.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 02-30701 Filed 12-3-02; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1442-DR]

Alabama; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama, (FEMA-1442-DR), dated November 14, 2002, and related determinations.

EFFECTIVE DATE: November 19, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705 or Magda.Ruiz@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 14, 2002:

Henry and Winston Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537,

Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02-30697 Filed 12-3-02; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1441-DR]

Tennessee; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee, (FEMA-1441-DR), dated November 13, 2002, and related determinations.

EFFECTIVE DATE: November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705 or Magda.Ruiz@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 13, 2002: Anderson, Bedford, Carroll, Coffee, Crockett, Cumberland, Gibson, Madison, Marshall, Morgan, Scott, and Tipton for Public Assistance (already designated for Individual Assistance).

Meigs, Roane, Van Buren, and Warren Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations;

83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02-30698 Filed 12-3-02; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1439-DR]

Texas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA-1439-DR), dated November 5, 2002, and related determinations.

EFFECTIVE DATE: November 20, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705 or Magda.Ruiz@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 5, 2002:

Jim Wells County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02-30699 Filed 12-3-02; 8:45 am]

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