

*DC/DE Broadcasters Association v. FCC.* The new rules reinstate the requirement that broadcast licensees file the FCC Form 396-A at the time they file applications for construction permits, or assignments or transfers of license. The new EEO rules also ensure equal employment opportunity in broadcast and multi-channel video program distributor industries through outreach to the community in recruitment and prevention of employment discrimination. While FCC Form 396-A remains almost entirely the same as the form used under the rules adopted in 2000, the Second R&O also builds in flexibility for licensees to implement a program in compliance with the new rules, *i.e.*, it allows for a range of community outreach programs to those interested in broadcast careers, and broadcasters with five or more full-time employees may list recruitment sources they plan to use.

*OMB Control Number:* 3060-0212.

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

*Title:* Section 73.2080, Equal Employment Opportunities (EEO Rule).

*Form Number:* N/A.

*Respondents:* Business or other for-profit entities; not-for-profit institutions.

*Number of Respondents:* 10,825.

*Estimated Time Per Response:* 42 hours.

*Frequency of Response:*

Recordkeeping; Annual reporting requirement.

*Total Annual Burden:* 454,650 hours.

*Total Annual Cost:* None.

*Needs and Uses:* On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98-204, FCC 02-303, 68 FR 670 (2003), which established new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association v. FCC.* The new EEO rules ensure equal employment opportunity in broadcast and multi-channel video program distributor industries through outreach to the community in recruitment and prevention of employment discrimination. Specifically, the Second R&O adopts EEO recordkeeping and reporting requirements; specifies which EEO materials must be kept in the public inspection file; and requires all broadcasters to adhere to the EEO rules' general anti-discrimination provisions. Only station employment units with five or more full-time employees are subject to the EEO program provisions. Among other requirements, broadcasters must widely distribute job vacancy information and provide full-time job vacancy information to requesting

organizations. Broadcasters must also retain records to demonstrate that they have recruited for all full-time permanent positions, *i.e.*, full-time vacancy filled, listings of recruitment sources, dated copies of advertisements, etc., and place such types of records annually in their local public inspection file.

*OMB Control Number:* 3060-0349.

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

*Title:* Equal Employment Opportunity Requirements.

*Form Number:* N/A.

*Respondents:* Business or other for-profit entities; not-for-profit institutions.

*Number of Respondents:* 2,125.

*Estimated Time Per Response:* 42 hours.

*Frequency of Response:*

Recordkeeping; Annual and five year reporting requirements.

*Total Annual Burden:* 89,250 hours.

*Total Annual Cost:* None.

*Needs and Uses:* On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98-204, FCC 02-303, 68 FR 670 (2003), which established new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association v. FCC.* Among other things, the Second R&O adopts several EEO recordkeeping and reporting requirements. It specifies which EEO materials must be kept in the public inspection file. All multi-channel video program distributor (MVPD) employment units with six or more full-time employees are subject to EEO program provisions and must disseminate employment information widely. These MVPDs must also retain records to demonstrate they have recruited for all full-time permanent positions and must place a listing of all full-time vacancies filled and recruitment sources used for each vacancy for the preceding year in their EEO records file.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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## FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-03-53D (Auction No. 53); DA 03-2354]

### Auction of Licenses in the Multichannel Video Distribution and Data Service (MVDDS) Rescheduled for January 14, 2004; 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 MVDDS licenses and announces that the auction has been rescheduled for January 14, 2004. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

**DATES:** Auction No. 53 is scheduled to begin on January 14, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Auctions and Industry Analysis Division: Legal questions: Brian Carter at (202) 418-0660, or General auction questions: Roy Knowles or Barbara Sibert at (717) 338-2888. Media Contact: Press inquiries: Chelsea Fallon at (202) 418-0660. Public Safety and Private Wireless Division: Legal questions: Jennifer Burton at (202) 418-0680, or Technical questions: Michael Pollak at (202) 418-0680 or Steve Buenzow at (717) 338-2646.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 53 Procedures Public Notice* released on August 28, 2003. The complete text of the *Auction No. 53 Procedures Public Notice*, including attachments, as well as related Commission 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. The *Auction No. 53 Procedures Public Notice* and related Commission documents 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](mailto:qualexint@aol.com). When ordering documents from Qualex, please provide the appropriate FCC document number (for example, FCC 02-116 for the *Second Report and Order*). The *Auction No. 53 Procedures Public Notice* and related documents are also

available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/53/>.

**I. General Information**

**A. Introduction**

1. The *Auction No. 53 Procedures Public Notice*, announces that the auction of licenses in the Multichannel Video Distribution and Data Service ("MVDDS") (Auction No. 53) has been rescheduled for January 14, 2004. In addition, the Wireless Telecommunications Bureau ("Bureau") announces the procedures and minimum opening bids for this auction. On January 30, 2003, in accordance with the Balanced Budget Act of 1997, the Bureau released a public notice seeking comment on reserve prices and/or minimum opening bids and the procedures to be used in Auction No. 53. The Bureau received one comment and one reply comment in response to the *Auction No. 53 Comment Public Notice*, 68 FR 6167 (February 6, 2003).

**i. Background**

2. On April 15, 2003, the Commission released the *Second Further Notice of Proposed Rule Making*, 68 FR 19486 (April 21, 2003), which sought further comment on the appropriate service area definition for MVDDS and on whether the build out requirement for this service should be modified. On July 7, 2003, the Commission released the *Third Report and Order*, 18 FCC Rcd 13468 (2003), in which it decided to license MVDDS on the basis of Designated Market Areas ("DMAs")

rather than Component Economic Areas ("CEAs") and adopted a five-year build out requirement.

3. MVDDS licensees may provide any digital fixed one-way non-broadcast service including direct-to-home/office wireless service. Mobile and aeronautical services are not authorized. Two-way services may be provided by using other spectrum or media for the return or upstream path. MVDDS providers will share the 12.2–12.7 GHz band on a co-primary basis with non-geostationary satellite orbit ("NGSO") fixed-satellite services ("FSS") and on a non-harmful interference basis with incumbent Direct Broadcast Satellite ("DBS") providers. The technical criteria for sharing established in the *MVDDS Second Report and Order*, 67 FR 43031 (June 26, 2002), ET Docket No. 98–206, released May 23, 2002, are designed to protect NGSO FSS and DBS operations from harmful interference.

**ii. Licenses To Be Auctioned**

4. Auction No. 53 will offer 214 licenses based on DMAs and FCC-defined DMA-like service areas encompassing the United States, Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, and American Samoa. The 214 service areas are based on the 210 DMAs delineated by Nielsen in its publication entitled "U.S. Television Household Estimates" dated September 2002 (which lists estimates of television households "as of January 2003" and can be found at Nielsen's Web site at <http://www.nielsenmedia.com>) plus the

following four FCC-defined service area additions: Alaska—Balance of State (all geographic areas of Alaska not included in Nielsen's three DMAs for the state: Anchorage, Fairbanks, and Juneau), Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, and American Samoa. Potential applicants should note that the boundaries of the DMA-based service areas of the 214 licenses offered in Auction No. 53 will not change, even if Nielsen alters the boundaries of its DMAs in the future, as it has in the past. Each license will authorize the use of one block of unpaired spectrum in the 12.2–12.7 GHz band.

5. Applicants should note that Nielsen owns the copyright to the DMA listing. The Commission's assignment of MVDDS licenses will not confer on applicants or licensees the right to use Nielsen's DMA mark, regions, or data, and such right must be obtained from Nielsen. In addition, the Commission does not have the right to republish DMA regions or data. Therefore, the Commission will not provide the populations, counties, or a map of DMAs to applicants for Auction No. 53 either before or during the auction. Applicants wishing to obtain such DMA data and maps will need to acquire them from Nielsen.

6. A complete list of the licenses available in Auction No. 53 is included in Attachment A of the *Auction No. 53 Procedures Public Notice*. The characteristics of these licenses are shown in the following table:

Frequencies	Bandwidth	Geographic Area Type	No. of Licenses
12.2–12.7 GHz .....	500 MHz .....	DMA .....	214

**B. Rules and Disclaimers**

**i. Relevant Authority**

7. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to MVDDS contained in title 47, part 101, of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1, of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "terms") contained in the *Auction No. 53 Procedures Public Notice*; the *Auction No. 53 Comment Public Notice*; and the *Part 1 Fifth Report and Order*, 65 FR 52323 (August 29, 2000), as well as prior and subsequent Commission proceedings

regarding competitive bidding procedures.

8. 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 our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

**ii. Prohibition of Collusion**

9. To ensure the competitiveness of the auction process, § 1.2105(c) of the Commission's rules prohibits applicants for any of the same geographic license areas from communicating with each

other during the auction about bids, bidding strategies, or settlements unless such applicants have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii). Thus, applicants for any of the same geographic license areas must affirmatively avoid all discussions with each other that affect, or in their reasonable assessment have the potential to affect, bidding or bidding strategy. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. For purposes of this prohibition, § 1.2105(c)(7)(i) defines applicant as including all controlling interests in the entity submitting a short-form application to participate in

the auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity.

10. Applicants for licenses in any of the same geographic license areas 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 applicants 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. 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.

11. The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for licenses covering the same geographic areas. In Auction No. 53, for example, the rule will apply to any applicants that apply for the same DMA-based service area. In addition, applicants that apply to bid for all markets will be precluded from communicating with all other applicants until after the down payment deadline. However, all 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 for licenses covering any of the same geographic areas. By signing their FCC

Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

12. 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.

13. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment G of the *Auction No. 53 Procedures Public Notice*.

#### iii. Interference Protection

14. Among other licensing and technical rules, MVDDS licensees must comply with the interference protection and coordination requirements set forth in §§ 101.105, 101.1421, and 101.1440 of the Commission's rules. Generally, §§ 101.105, 101.1421, and 101.1440 establish standards for protection of co-primary NGSO FSS earth stations, incumbent and adjacent area licensees and co-primary DBS earth stations. MVDDS shall be licensed on a non-harmful interference co-primary basis to existing DBS operations and on a co-primary basis with NGSO FSS stations in this band. MVDDS licensees must also protect and/or develop sharing agreements with neighboring licensees.

#### a. Incumbent Licensees

15. Terrestrial private operational fixed point-to-point stations in the 12.2–12.7 GHz band which were licensed prior to MVDDS are incumbent point-to-point stations. However, only those stations licensed as public safety must be protected from harmful interference caused by later MVDDS entrants in the 12.2–12.7 GHz band. MVDDS operators have the responsibility of resolving any harmful interference problems that their operations may cause to these public safety incumbent point-to-point operations in the 12.2–12.7 GHz band. To aid potential bidders, a list of public safety incumbents in this band can be found at Appendix I to the MVDDS *Second Report and Order*.

#### b. Canadian and Mexican Border Regions

16. MVDDS systems in the United States within 56 km (35 miles) of the Canadian and Mexican border will be granted conditional licenses, until final international agreements are approved. MVDDS systems may not cause harmful interference to stations in Canada or Mexico. No stations are allowed within 5 miles of the borders.

#### c. Quiet Zone

17. MVDDS stations must protect the radio quiet zones. Stations are cautioned that they must receive the appropriate approvals directly from the relevant quiet zone entity prior to operating.

#### iv. Due Diligence

18. Potential applicants 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. 53.

19. Potential applicants also should be aware that certain applications (including those for modification), petitions for rulemaking, requests for special temporary authority ("STA"), waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or incumbent licensees. In addition, certain judicial proceedings that may relate to particular applicants or incumbent licensees, or the licenses available in Auction No. 53, may be commenced, or may be pending, or may be subject to further review. We note that resolution of these matters could have an impact on the availability of spectrum in Auction No. 53. In addition, although 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.

20. In addition, potential applicants may research the licensing database for the Wireless Telecommunications Bureau on the Internet in order to determine which frequencies are already licensed to incumbent licensees. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. Furthermore, 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 applicants are strongly encouraged to physically inspect any sites located in, or near, the service area for which they plan to bid.

21. Licensing records for terrestrial private operational fixed point-to-point public safety are contained in the Bureau's Universal Licensing System ("ULS") and may be researched on the Internet at <http://wireless.fcc.gov/uls>. Potential applicants may query the database online and download a copy of their search results if desired. Detailed instructions on using License Search (including frequency searches and the GeoSearch capability) and downloading query results are available online by selecting the "?" button at the upper right-hand corner of the License Search screen.

22. Potential applicants should direct questions regarding the search capabilities to the FCC Technical Support hotline at (202) 414-1250 (voice) or (202) 414-1255 (TTY), or via e-mail at [ulscomm@fcc.gov](mailto:ulscomm@fcc.gov). The hotline is available to assist with questions Monday through Friday, from 8 a.m. to 6 p.m. ET. In order to provide better service to the public, *all calls to the hotline are recorded*.

#### v. Bidder Alerts

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. 53 to deceive and defraud unsuspecting investors.

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

#### vi. National Environmental Policy Act Requirements

26. 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 the licensee must comply with the Commission's NEPA rules for each such facility.

#### C. Auction Specifics

##### i. Auction Date

27. The auction will begin on Wednesday, January 14, 2004. 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 on all licenses will be conducted on each business day until bidding has stopped on all licenses.

##### ii. Auction Title

28. Auction No. 53—Multichannel Video Distribution and Data Service

##### iii. Bidding Methodology

29. The bidding methodology for Auction No. 53 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically.

##### iv. Pre-Auction Dates and Deadlines

30. The following is a list of important dates related to Auction No. 53:

Auction Seminar .....	October 29, 2003.
Short-Form Application (FCC FORM 175) Filing Window Opens .....	October 29, 2003; 12 p.m. ET.
Short-Form Application (FCC FORM 175) Filing Window Deadline .....	November 12, 2003; 6 p.m. ET.
Upfront Payments (via wire transfer) .....	December 8, 2003; 6 p.m. ET.
Mock Auction .....	January 9, 2004.
Auction Begins .....	January 14, 2004.

##### v. Requirements For Participation

31. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6:00 p.m. ET, November 12, 2003.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, December 8, 2003.
- Comply with all provisions outlined in the *Auction No. 53 Procedures Public Notice*.

#### vi. General Contact Information

32. The following is a list of general contact information related to Auction No. 53:

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, Monday through Friday.

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 and Private Wireless Division (202) 418-0680.

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

Payment Information: Wire Transfers, Refunds—FCC Auctions Accounting Branch (202) 418-0578, (202) 418-2843 (Fax).

Telephonic Bidding: Will be furnished only to qualified bidders.

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

FCC Internet Sites:

<http://www.fcc.gov>

<http://wireless.fcc.gov/auctions>

<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. 53 Procedures Public Notice*.

### A. License Selection

34. In Auction No. 53, FCC Form 175 will include a mechanism that allows an applicant to create customized lists of licenses. The applicant will select the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may apply for all the licenses in the list (by using the "Save all filtered licenses" option) or select and save individual licenses separately from the list.

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

35. All applicants must comply with the uniform part 1 ownership disclosure standards and in completing FCC Form 175 provide information required by §§ 1.2105 and 1.2112 of the Commission's rules.

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

36. 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 licenses 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, bidding strategies, or the particular licenses on which they will or will not bid.

37. 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 for licenses in the same geographic license area 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, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

### D. Eligibility

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

38. A bidding credit represents the amount by which a bidder's winning bids are 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.

39. In the *Second Report and Order*, the Commission determined that three levels of bidding credits are appropriate for MVDDS. Therefore, bidding credits will be available to entrepreneurs, small businesses, and very small businesses,

and consortia thereof, as follows for Auction No. 53:

- A bidder with attributed average annual gross revenues of not more than \$40 million for the preceding three years ("entrepreneur") will receive a 15 percent discount on its winning bids;
- A bidder with attributed average annual gross revenues of not more than \$15 million for the preceding three years ("small business") will receive a 25 percent discount on its winning bids;
- A bidder with attributed average annual gross revenues of not more than \$3 million for the preceding three years ("very small business") will receive a 35 percent discount on its winning bids.

Bidding credits are not cumulative; a qualifying applicant receives the 15 percent, 25 percent, or 35 percent bidding credit on its winning bid, but only one credit per license.

40. Bidders should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

#### ii. Tribal Land Bidding Credit

41. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. See section V.F. of the *Auction No. 53 Procedures Public Notice*.

42. *Attribution for entrepreneur, small business, and very small business eligibility.* In determining which entities qualify as entrepreneurs, small businesses, or very small business, 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.

43. Each member of a consortium of entrepreneurs, small businesses or very small businesses must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests.

#### iii. Eligibility Restrictions for Cable Operators

44. Applicants should note that § 101.1412 of the Commission's rules provide certain eligibility restrictions

for cable operators. Specifically, no cable operator, nor any entity owning an attributable interest in a cable operator, shall have an attributable interest in an MVDDS license if such cable operator's service area significantly overlaps the MVDDS license area.

#### iv. Supporting Documentation

45. 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 entrepreneurs, small businesses, or very small businesses (or consortia of entrepreneurs, small businesses, or very small businesses) for this auction. Applicants should also note that they must fulfill the certification requirements of § 101.1412(g)(2) of the Commission's rules relating to complying with the eligibility restrictions for cable operators.

46. 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.

47. *Entrepreneur, small business, or very small business eligibility (Exhibit C).* Entities applying to bid as entrepreneurs, small businesses, or very small businesses (or consortia of entrepreneurs, small businesses, 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 entrepreneurs, small

businesses, or very small businesses, this information must be provided for each consortium member.

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

48. Each applicant must certify on its FCC Form 175 application under penalty of perjury that the applicant, its controlling interests, its affiliates, and the affiliates of its controlling interests, as defined by § 1.2110, are not in default on any payment for Commission licenses (including down payments) and 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 interests, as defined by § 1.2110, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. Applicants must include this statement as Exhibit D of the FCC Form 175.

49. "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. 53, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.iii, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

*F. Installment Payments*

50. Installment payment plans will not be available in Auction No. 53.

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

51. 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. Applicants must also certify as an exhibit to their short-form application that they, and all parties to the application, will come into compliance

with § 101.1412(a) regarding eligibility restrictions for cable operators. This certification should be included as Exhibit F.

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

52. After the short-form filing deadline (6:00 p.m. ET on November 12, 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 their license selections, 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: [auction53@fcc.gov](mailto:auction53@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 53. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

53. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850.

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

54. 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. 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*

55. On Wednesday, October 29, 2003, the FCC will sponsor a free seminar for Auction No. 53 at the Federal Communications Commission, located at 445 12th Street, SW., Washington,

DC. The seminar will provide attendees with information about pre-auction procedures, auction conduct, the FCC Automated Auctions System, auction rules, and the MVDDS service rules. A registration form is attached as Attachment D of the *Auction No. 53 Procedures Public Notice*.

*B. Short-Form Application (FCC Form 175)—Due November 12, 2003*

56. 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 November 12, 2003. Late applications will not be accepted.

57. There is no application fee required when filing an FCC Form 175.

*i. Electronic Filing*

58. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon ET on October 29, 2003, until 6 p.m. ET on November 12, 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 November 12, 2003.

59. 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. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8 AM to 6 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded*.

*ii. Completion of the FCC Form 175*

60. 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. 53 Procedures Public Notice*.

*iii. Electronic Review of FCC Form 175*

61. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. There is no fee for accessing this system. See Attachment C of the *Auction No. 53 Procedures Public Notice* for details on accessing the review system.

62. 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.

*C. Application Processing and Minor Corrections*

63. 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.

*D. Upfront Payments—Due December 8, 2003*

64. 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 December 8, 2003. For specific instructions regarding upfront payments, see section III.D. of the *Auction No. 53 Procedures Public Notice*. Failure to deliver the upfront payment by the December 8, 2003, deadline will result in dismissal of the application and disqualification from participation in the auction.

*i. Making Auction Payments by Wire Transfer*

65. Wire transfer payments must be received by 6 p.m. ET on December 8, 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.

66. Applicants must fax a completed FCC Form 159 (Revised 2/03) 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. 53." In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline. Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the *Auction No. 53 Procedures Public Notice*.

*ii. 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. 53 Comment Public Notice*, we proposed that the amount of the upfront payment would determine the number of bidding units on which a bidder may place bids. In order to bid on a license, otherwise qualified bidders that applied for that license on Form 175 must have an eligibility level that meets or exceeds

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 at least one of the licenses applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

69. In the *Auction No. 53 Comment Public Notice*, the Bureau proposed upfront payments on a license-by-license basis for both CEAs and DMAs. Upfront payment calculations for DMA licenses are based upon CEA upfront payment calculations. With respect to CEAs we proposed to use the following formula: \$0.025 \* License Area Population with a minimum of \$1,000 per license. The Bureau received no comments on this issue. Therefore, the Bureau adopts its proposed upfront payments. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 53 Procedures Public Notice*.

70. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units on which it may wish to be active (bidding units associated with licenses on which the bidder has the standing high bid from the previous round and licenses on which the bidder places a bid in the current round) in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

EXAMPLE: UPFRONT PAYMENTS AND BIDDING FLEXIBILITY

Market No.	Market Name	Bidding Units	Upfront Payment
DMA001 .....	New York .....	480,000	\$480,000
DMA004 .....	Philadelphia .....	187,000	\$187,000

Note: If a bidder wishes to bid on both licenses in a round, it must have selected both on its FCC Form 175 and purchased at least 667,000 bidding units (480,000 + 187,000). If a bidder only wishes to bid on one, but not both, purchasing 480,000 bidding units would meet the requirement for either license. The bidder would be able to bid on either license, *but not both at the same time*. If the bidder purchased only 187,000 bidding units, it would have enough eligibility for the Philadelphia license but not for the New York license.

71. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase 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.

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

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

72. The Commission will use wire transfers for all Auction No. 53 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.

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 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: Gail Glasser, at (202) 418-2843 by December 8, 2003. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418-0578.

### E. Auction Registration

73. 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 at least one of the licenses for which they applied.

74. 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) and the other containing the SecurID cards, both of which are required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

75. 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, January 7, 2004, 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.

76. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing in person at the FCC 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. Remote Electronic Bidding

77. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175. In either case, each authorized bidder must have its own SecurID card, which the FCC will provide at no charge. 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. 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. 53. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number.

78. 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

79. All qualified bidders will be eligible to participate in a mock auction on Friday, January 9, 2004. 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

80. The first round of bidding for Auction No. 53 will begin on Wednesday, January 14, 2004. 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. Simultaneous Multiple Round Auction

81. In the *Auction No. 53 Comment Public Notice*, we proposed to award all licenses in Auction No. 53 in a simultaneous multiple round auction. We received no comments on this issue. We conclude that it is operationally feasible and appropriate to auction the MVDDS licenses through a 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 synergies that exist among licenses and is administratively efficient.

#### ii. Maximum Eligibility and Activity Rules

82. In the *Auction No. 53 Comment Public Notice*, we 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. We received no comments on this issue.

83. For Auction No. 53 we adopt this proposal. The amount of the upfront payment submitted by a bidder determines the initial eligibility (in bidding units) for each bidder. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids in a round. As there is no provision for increasing a bidder's eligibility after the upfront payment deadline, applicants are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

84. 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 late in the auction before participating. Bidders are required to be active on a specific percentage of their current eligibility during each round of the auction.

85. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. 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 a bid in the current round (see "Minimum Acceptable Bids and Bid Increments" in section IV.B.iii). The minimum required activity is expressed as a percentage of the bidder's current bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under "Auction Stages" in section IV.A.iii and "Stage Transitions" in section IV.A.iv), we adopt them for Auction No. 53.

### iii. Auction Stages

86. In the *Auction No. 53 Comment Public Notice*, we proposed to conduct the auction in three stages and employ an activity rule. We further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 90 percent of its current bidding eligibility. Finally, we proposed that a bidder in Stage Three, in order to maintain its current eligibility, would be required to be active on 98 percent of its current bidding eligibility. We received no comments on this proposal.

87. We adopt our proposals for the activity rules and stages. Here are the activity levels for each stage of the auction. The Bureau reserves the discretion to further alter the activity percentages before and/or during the auction.

*Stage One:* During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule

waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by five-fourths (5/4).

*Stage Two:* During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by ten-ninths (10/9).

*Stage Three:* During the third stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this final stage, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by fifty-fortyninths (50/49).

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

88. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, we adopt them for Auction No. 53.

### iv. Stage Transitions

89. In the *Auction No. 53 Comment Public Notice*, we proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 20 percent for three consecutive rounds of bidding in each

Stage. We further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction. This determination, we proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We received no comments on this issue.

90. We adopt our proposal. Thus, the auction will start in Stage One and will generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 20 percent or less of the licenses being auctioned (as measured in bidding units). In addition, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We believe that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 53.

### v. Activity Rule Waivers and Reducing Eligibility

91. 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 level. An activity rule waiver applies to an entire round of bidding and not to a particular license.

92. The FCC 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 unless: (i) there are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

93. 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 bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (see section IV.A.iii). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

94. 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 FCC Automated Auction 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 bids or withdrawals will not keep the auction open. **Note:** Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.

#### vi. Auction Stopping Rules

95. For Auction No. 53, the Bureau proposed to employ a simultaneous stopping rule. The Bureau also sought comment on a modified version of the stopping rule. The modified version of the stopping rule would 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.

96. In addition, we proposed that the Bureau reserve the right to declare that the auction will end after a designated number of additional rounds ("special stopping rule"). If the Bureau 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. We 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.

97. We adopt the proposals concerning the auction stopping rules. Auction No. 53 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule.

#### vii. Auction Delay, Suspension, or Cancellation

98. 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 conduct of competitive bidding. Because this approach has proven effective in resolving exigent circumstances in previous auctions, we adopt our proposed auction cancellation rules. 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.

#### B. Bidding Procedures

##### i. Round Structure

99. 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. Each bidding round is followed by the release of 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 qualified bidders public notice.

100. 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

101. For Auction No. 53, the Bureau proposed the following license-by-license basis for calculating minimum opening bids:  $\$0.05 * \text{License Area Population}$  with a minimum of \$1,000 per license.

102. The Bureau received no comments on this issue. Consequently, the Bureau adopts its proposed minimum opening bids for Auction No. 53. The minimum opening bids we adopt for Auction No. 53 are reducible at the discretion of the Bureau. We emphasize, however, that 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 requests to reduce the minimum opening bid on specific licenses.

103. The specific minimum opening bids for each license available in Auction No. 53 are set forth in Attachment A of the *Auction No. 53 Procedures Public Notice*.

##### iii. Minimum Acceptable Bids and Bid Increments

104. In Auction No. 53 we will use a smoothing methodology to calculate minimum acceptable bids. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum percentage based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity on a license, decreasing the time it takes for licenses receiving many bids to reach their final prices. The formula used to calculate this increment is included as Attachment F of the *Auction No. 53 Procedures Public Notice*. We will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 20% depending upon the number of bids for the license.

105. In each round, each eligible bidder will be able to place a bid on a particular license for which it applied in any of nine different amounts. The FCC Automated Auction System will list the nine bid amounts for each license.

106. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described in Attachment F of the *Auction No. 53 Procedures Public Notice*. The difference between the minimum acceptable bid and the standing high bid for each license will define the bid increment—*i.e.*, bid increment = (minimum acceptable bid) — (standing high bid). The nine acceptable bid amounts for each license 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.).

107. At the start of the auction and until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum

opening bid. Corresponding additional bid amounts will be calculated using bid increments defined as the difference between the minimum opening bid times one plus the percentage increment, rounded as described in Attachment F of the *Auction No. 53 Procedures Public Notice*, and the minimum opening bid—*i.e.*, bid increment = (minimum opening bid) (1 + percentage increment) {rounded}—(minimum opening bid). At the start of the auction and until a bid has been placed on a license, the nine acceptable bid amounts for each license consist of the minimum opening bid and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the minimum opening bid plus the bid increment, the third bid amount equals the minimum opening bid plus two times the bid increment, etc).

108. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

109. The Bureau retains the discretion to change the minimum acceptable bids and bid increments and the methodology for determining the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Automated Auction System. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant.

#### iv. High Bids

110. At the end of each bidding round, the high bids will be determined based on the highest gross bid amount received for each license. A high bid from a previous round is sometimes referred to as a “standing high bid.” A “standing high bid” will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. Bidders are reminded that standing high bids count towards bidding activity.

111. A Sybase® SQL pseudo-random number generator based on the L'Ecuyer algorithms will be used to select a high bid in the event of identical high bids on a license in a given round (*i.e.*, tied bids). The tied bid having the highest random number will become the standing high bid. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a

subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid will once again be determined on the highest gross bid amount received for the license.

#### v. Bidding

112. During a round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), 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 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. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's activity at the close of the round.

113. Please note that all bidding will take place remotely either through the FCC Automated Auction System or by telephonic bidding. Telephonic bidders are 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).

114. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (i) The licenses applied for on FCC Form 175 and (ii) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those licenses for which the bidder applied on its FCC Form 175.

115. In order to access the bidding function of the FCC Automated Auction System, bidders must be logged in during the bidding round using the bidder identification number provided in the registration materials, and the password generated by the SecurID card. Bidders are strongly encouraged to print bid confirmations for each round *after* they have completed all of their activity for that round.

116. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. For each license, the FCC 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 bid amounts. The FCC Automated Auction System also includes an import function that allows bidders to upload

text files containing bid information and a Type Bids function that allows bidders to enter specific licenses for filtering.

117. Finally, bidders are cautioned to select their bid amounts carefully because, as explained in the following section, bidders that withdraw a standing high bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

#### vi. Bid Removal and Bid Withdrawal

118. In the *Auction No. 53 Comment Public Notice*, the Bureau proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are used, we proposed, would be at the bidder's discretion. We received no comments on this issue.

119. Procedures. 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 bidding system, 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, *i.e.*, a bid that is removed does not count toward bidding activity. This procedure, about which we received no comments, will enhance bidder flexibility during the auction, and therefore we adopt these procedures for Auction No. 53.

120. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function in the FCC Automated Auction System (assuming that the bidder has not reached its withdrawal limit). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). **Note:** Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted.

121. The Bureau will limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). 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.

122. Calculation. Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single license, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s).

123. In instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

#### vii. Round Results

124. Bids placed during a round will not be made public until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, bids withdrawn, current high bids, new minimum acceptable bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 53 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

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

## V. Post-Auction Procedures

### A. Down Payments and Withdrawn Bid Payments

126. After bidding has ended, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments and any withdrawn bid payments due.

127. 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 Commission for Auction No. 53 to 20 percent of the net amount of its winning bids (gross bids less any applicable entrepreneur, small business, or very small business bidding credits). In addition, by the same deadline, all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," section IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

### B. Final Payments

128. Each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business days after the deadline for submitting down payments.

### C. Auction Discount Voucher

129. On June 8, 2000, the Commission awarded Qualcomm, Inc., a transferable Auction Discount Voucher ("ADV") in the amount of \$125,273,878.00. Subject to the terms and conditions set forth in the Commission's Order, Qualcomm or its transferee could use this ADV, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003. On April 28, 2003, the Bureau granted Qualcomm an additional year, until June 8, 2004, to use the remaining amount of its ADV. Qualcomm transferred \$10,848,000.00 of the ADV to a winning bidder in FCC Auction No. 35. The transferee used this amount to pay a portion of one of its winning bids in Auction No. 35. Qualcomm also transferred \$50,536,998.75 of the ADV to an assignee of broadband PCS licenses that used this amount to pay the unpaid principal and interest accrued on the licenses. Qualcomm also transferred \$4,020,165.65 of the ADV to an entity that made installment payments on behalf of several of the entity's affiliates, that are broadband PCS C Block licensees. On July 30, 2003, Qualcomm transferred an additional \$4,020,165.65 of the ADV to the same entity. Qualcomm also used

\$7,607,200.00 of its ADV to make its down payment on licenses it won in Auction No. 49. The remaining \$48,240,565.96 of Qualcomm's ADV could be used to adjust winning bids in another FCC Auction, including Auction No. 53.

### D. Long-Form Application (FCC Form 601)

130. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for each license won through Auction No. 53. Winning bidders that are entrepreneurs, small businesses, or very small businesses must include an exhibit demonstrating their eligibility for entrepreneur, small business, or very small business bidding credits. See 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

### E. Ownership Disclosure Information Report (FCC Form 602)

131. At the time it submits its long-form application (FCC Form 601), each winning bidder also must comply with the ownership reporting requirements as set forth in 47 CFR 1.913, 1.919, and 1.2112. We remind applicants that effective December 10, 2002, electronic filing of the Ownership Disclosure Information Report (FCC Form 602) became mandatory. Accordingly, forms filed manually will not be accepted. Winning bidders without a current Form 602 already on file with the Commission must submit a properly completed Form 602 at the time they submit their long-form applications. Further filing instructions will be provided to auction winners at the close of the auction.

### F. Tribal Land Bidding Credit

132. 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.

133. 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).

134. 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 the *Tribal Land Credits* link.

#### G. Default and Disqualification

135. 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 its 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.

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

136. All applicants that submit upfront payments but are not winning bidders for a license in Auction No. 53 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 the applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

137. 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, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction 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, 445 12th Street, SW., Room 1-C863, Washington, DC 20554.

138. 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 Gail Glasser at (202) 418-0578.

Federal Communications Commission.

**Margaret Wiener,**

*Chief, Auctions and Industry Analysis Division, WTB.*

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**BILLING CODE 6712-01-P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled: (1) Application for Consent to Exercise Trust Powers and (2) Appraisal Standards.

**DATES:** Comments must be submitted on or before December 8, 2003.

**ADDRESSES:** Interested parties are invited to submit written comments to Leneta Gregorie, Counsel (Consumer and Compliance Unit), (202) 898-3719, Legal Division, Room 3062, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number

(202) 898-3838; Internet address: [comments@fdic.gov](mailto:comments@fdic.gov).

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

#### FOR FURTHER INFORMATION CONTACT:

Leneta G. Gregorie, Counsel (Consumer and Compliance Unit) (202) 898-3719.

**SUPPLEMENTARY INFORMATION:** Proposal to renew the following currently approved collections of information:

1. *Title:* Application for Consent to Exercise Trust Powers.

*OMB Number:* 3064-0025.

*Form Number:* 6200/09.

*Frequency of Response:* On occasion.

*Affected Public:* All financial institutions.

*Estimated Number of Respondents:*

18.

*Estimated Time per Response:* 14 applications—8 hours; 4 applications—24 hours.

*Estimated Total Annual Burden:* 82,150 hours.

*General Description of Collection:*

Insured state nonmember banks submit applications to the FDIC for consent to exercise trust powers. Applications are evaluated by the FDIC to verify qualifications of bank management to administer a trust department and to ensure that the bank's financial condition will not be jeopardized as a result of trust operations.

2. *Title:* Appraisal Standards.

*OMB Number:* 3064-0103.

*Frequency of Response:* On occasion.

*Affected Public:* All financial institutions.

*Estimated Number of Respondents:* 5,346.

*Estimated Number of Responses:* 328,600.

*Estimated Time per Response:* 15 minutes.

*Estimated Annual Burden:* 82,150 hours.

*General Description of Collection:*

FIRREA directs the FDIC to prescribe appropriate standards for the performance of real estate appraisals in connection with federally related transactions under its jurisdiction. The information collection activities attributable to 12 CFR part 323 are a direct consequence of the statutory requirements and the legislative intent.

#### Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether