

accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

#### IV. What Is the General Background for This Action?

The Emergency Planning Notification (codified in 40 CFR part 355) and the Hazardous Chemical Reporting (codified in 40 CFR part 370) are mandated by the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). EPCRA established a program designed to require state and local planning and preparedness for spills or releases of hazardous substances and to provide the public and local governments with information concerning potential chemical hazards in their communities. Under EPCRA section 303, (codified in 40 CFR part 355) a facility which has present an Extremely Hazardous Substance in excess of its threshold planning quantity (TPQ) must notify the State emergency response commission and local emergency planning committee as well as participate in local emergency planning activities. Under EPCRA sections 311 and 312, (codified in 40 CFR part 370), a facility is required to submit an inventory of hazardous chemicals present at their site at or above the specified threshold quantities.

Under section 322 of EPCRA (codified in 40 CFR part 350), facilities submitting reports under sections 303, 311 and 312 of EPCRA, may be eligible to claim Trade Secret for the specific chemical identity of the extremely hazardous substance or the hazardous chemical being reported. Pursuant to 40 CFR 350.23 ("Disclosure to authorized representatives"), information entitled to trade secret or confidential treatment may not be disclosed by the Agency to the Agency's authorized representative until each affected submitter has been furnished notice of the contemplated disclosure by the EPA program office and has been afforded a period found reasonable by that office (not less than five working days) to submit its comments. Such notice shall include a description of the information to be disclosed, the identity of the contractor, subcontractor, or grantee, the contract, subcontract, or grant number, if any, and the purposes to be served by the disclosure. This notice may be published in the **Federal Register** or may be sent to individual submitters.

The contract to manage the trade secret submissions under sections 303, 311, 312 and 313 was recomputed in 1998 and was awarded to the Computer Based Systems Incorporated, now known as Titan Systems, Inc. This contract ended on January 31, 2003. The new contract was transitioned to Computer Sciences Corporation (CSC) (GSA Contract GSOOT99ALD0203) at the end of December 2002. This new facility is located in New Carrollton, MD. All trade secret submissions for sections 303, 311, 312 and 313 pursuant to 40 CFR part 350 will be managed by CSC. (See 67 FR 65566, Oct. 25, 2002, for notice authorized representative to receive claims of trade secrecy under EPCRA section 313.)

In accordance with 40 CFR 350.23, EPA has determined that CSC and their subcontractors require access to trade secret and confidential information submitted under 40 CFR part 350 in order to receive, manage, process, and safely store such information. The contractor's and subcontractor's personnel will be required to sign a "Confidentiality Agreement" prior to being permitted access to trade secret and confidential information submitted under 40 CFR part 350. All contractor and subcontractor access to trade secrets and confidential information filed for sections 303, 311, 312 and 313 of EPCRA will take place at the contractor's facility in New Carrollton, MD. The contractor will have appropriate procedures and facilities in place to safeguard these trade secrets and confidential information submissions to which the contractor and subcontractors have access during the term of this contract.

Dated: February 3, 2003.

**Deborah Y. Dietrich,**

*Director, Chemical Emergency Preparedness and Prevention Office.*

[FR Doc. 03-3062 Filed 2-5-03; 8:45 am]

**BILLING CODE 6560-50-P**

#### FEDERAL COMMUNICATIONS COMMISSION

**[Report No. AUC-02-48-B (Auction No. 48); DA 02-3560]**

#### Lower and Upper Paging Bands Auction Scheduled for May 13, 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 for the lower and upper paging bands scheduled for May 13, 2003. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

**DATES:** Auction No. 48 is scheduled to begin on May 13, 2003.

#### FOR FURTHER INFORMATION CONTACT:

*Auctions and Industry Analysis Division:* Rosemary Cabral, Legal Branch, at (202) 418-0660; Roy Knowles or Barbara Sibert, Auctions Operations Branch, at (717) 338-2888, *Media Contact:* Lauren Kravetz at (202) 418-7944, *Commercial Wireless Division:* Amal Abdallah, Policy and Rules Branch, at (202) 418-7307; Bettye Woodward or Dwain Livingston, Licensing and Technical Analysis Branch, at (202) 418-0620.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 48 Procedures Public Notice* released on December 20, 2002. The complete text of the *Auction No. 48 Procedures Public Notice*, including attachments and statements, 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. 48 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](mailto:qualexint@aol.com).

#### I. General Information

##### A. Introduction

1. By the *Auction No. 48 Procedures Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announces the procedures and minimum opening bids for the upcoming auction of licenses for the lower and upper paging bands (Auction No. 48) scheduled for May 13, 2003. In accordance with the Balanced Budget Act of 1997, the Bureau released a public notice on November 7, 2002, seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 48. The Bureau received two comments and no reply comments in response to the *Auction No. 48 Comment Public Notice*, 67 FR 72683 (December 6, 2002).

## i. Background of Proceeding

2. In the *Paging Second Report and Order*, 62 FR 11616 (March 12, 1997), the Commission adopted rules governing geographic licensing for exclusive channels in the 35 MHz, 43 MHz, 152 and 158 MHz, 454 MHz and 459 MHz, 929 MHz, and 931 MHz bands allocated for paging, and competitive bidding procedures for granting mutually exclusive applications for non-nationwide geographic area licenses in those bands. In order to facilitate geographic licensing, the Commission dismissed all pending mutually exclusive paging applications and all non-mutually exclusive paging applications filed after July 31, 1996. In part, the Commission developed a

standard methodology for providing protection to incumbent licensees from co-channel interference for the 929–930 MHz and 931–932 MHz paging bands to supplement the existing formulas for determining interference contours on other paging bands.

## ii. Licenses To Be Auctioned

3. The licenses available in Auction No. 48 include 8,874 lower paging bands (35 MHz, 43 MHz, 152 and 158 MHz, 454 MHz and 459 MHz, 929 MHz, 931 MHz bands) licenses, as well as 1,328 upper paging bands (929–931 MHz) licenses that remained unsold from a previous auction or were defaulted on by a winning bidder in a previous auction. The lower bands licenses will be offered in each of the

175 geographic areas known as Economic Areas (EAs) and the upper bands licenses will be offered in all but three of the 51 geographic areas known as Major Economic Areas (MEAs). These EAs and MEAs both encompass the United States, Guam and Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, and American Samoa. The tables contain the block/frequency cross-reference list for the paging bands. Due to the large volume of licenses in Auction No. 48, the complete list of licenses available for this auction will be provided in electronic format only, available as “Attachment A” of the *Auction No. 48 Procedures Public Notice* at <http://wireless.fcc.gov/auctions/48/>.

## 35 MHz LOWER BAND PAGING—20 KHZ PER BLOCK, UNPAIRED CHANNELS

Block	Center frequency (MHz)	Block	Center frequency (MHz)	Block	Center frequency (MHz)	Block	Center frequency (MHz)
CA	35.20	CE	35.30	CI	35.46	CM	35.58
CB	35.22	CF	35.34	CJ	35.50	CN	35.60
CC	35.24	CG	35.38	CK	35.54	CO	35.62
CD	35.26	CH	35.42	CL	35.56	CP	35.66

Each frequency listed in this chart is the center frequency of the channel to be auctioned in each block.

## 43 MHz LOWER BAND PAGING—20 KHZ PER BLOCK, UNPAIRED CHANNELS

Block	Center frequency (MHz)	Block	Center frequency (MHz)	Block	Center frequency (MHz)	Block	Center frequency (MHz)
DA	43.20	DE	43.30	DI	43.46	DM	43.58
DB	43.22	DF	43.34	DJ	43.50	DN	43.60
DC	43.24	DG	43.38	DK	43.54	DO	43.62
DD	43.26	DH	43.42	DL	43.56	DP	43.66

Each frequency listed in this chart is the center frequency of the channel to be auctioned in each block.

## 152 AND 158 MHz LOWER BANDS PAGING—20 KHZ PER BLOCK, UNPAIRED CHANNELS

Block	Center frequency (MHz)	Block	Center frequency (MHz)
EA	152.24	EC	158.10
EB	152.84	ED	158.70

Each frequency listed in this chart is the center frequency of the channel to be auctioned in each block.

## 152 AND 158 MHz LOWER BANDS PAGING—40 KHZ PER BLOCK, PAIRED 20 KHZ CHANNELS

Block	Center frequencies (MHz)	Block	Center frequencies (MHz)
FA	152.03 / 158.49	FJ	152.57 / 157.83
FB	152.06 / 158.52	FK	152.60 / 157.86
FC	152.09 / 158.55	FL	152.63 / 157.89
FD	152.12 / 158.58	FM	152.66 / 157.92
FE	152.15 / 158.61	FN	152.69 / 157.95
FF	152.18 / 158.64	FO	152.72 / 157.98
FG	152.21 / 158.67	FP	152.75 / 158.01
FH	152.51 / 157.77	FQ	152.78 / 158.04
FI	152.54 / 157.80	FR	152.81 / 158.07

Each frequency listed in this chart is the center frequency of the channels to be auctioned in each block.

## 454 MHz AND 459 MHz LOWER BANDS PAGING—40 KHZ PER BLOCK, PAIRED 20 KHZ CHANNELS

Block	Center frequencies (MHz)	Block	Center frequencies (MHz)
GA	454.025 / 459.025	GN	454.350 / 459.350
GB	454.050 / 459.050	GO	454.375 / 459.375
GC	454.075 / 459.075	GP	454.400 / 459.400
GD	454.100 / 459.100	GQ	454.425 / 459.425
GE	454.125 / 459.125	GR	454.450 / 459.450
GF	454.150 / 459.150	GS	454.475 / 459.475
GG	454.175 / 459.175	GT	454.500 / 459.500
GH	454.200 / 459.200	GU	454.525 / 459.525
GI	454.225 / 459.225	GV	454.550 / 459.550
GJ	454.250 / 459.250	GW	454.575 / 459.575
GK	454.275 / 459.275	GX	454.600 / 459.600
GL	454.300 / 459.300	GY	454.625 / 459.625
GM	454.325 / 459.325	GZ	454.650 / 459.650

Each frequency listed in this chart is the center frequency of the channels to be auctioned in each block.

## 929 MHz UPPER BAND PAGING—20 KHZ PER BLOCK, UNPAIRED CHANNELS

Block	Center frequency (MHz)	Block	Center frequency (MHz)
A	929.0125	G	929.4625
B	929.1125	H	929.6375
C	929.2375	I	929.6875
D	929.3125	J	929.7875
E	929.3875	K	929.9125
F	929.4375	L	929.9625

Each frequency listed in this chart is the center frequency of the channel to be auctioned in each block.

## 931 MHz UPPER BAND PAGING—20 KHZ PER BLOCK, UNPAIRED CHANNELS

Block	Center frequency (MHz)	Block	Center frequency (MHz)	Block	Center frequency (MHz)
AA	931.0125	AN	931.3375	BA	931.6625
AB	931.0375	AO	931.3625	BB	931.6875
AC	931.0625	AP	931.3875	BC	931.7125
AD	931.0875	AQ	931.4125	BD	931.7375
AE	931.1125	AR	931.4375	BE	931.7625
AF	931.1375	AS	931.4625	BF	931.7875
AG	931.1625	AT	931.4875	BG	931.8125
AH	931.1875	AU	931.5125	BH	931.8375
AI	931.2125	AV	931.5375	BI	931.8625
AJ	931.2375	AW	931.5625	BJ	931.9625
AK	931.2625	AX	931.5875	BK	931.9875
AL	931.2875	AY	931.6125		
AM	931.3125	AZ	931.6375		

Each frequency listed in this chart is the center frequency of the channel to be auctioned in each block.

**Note:** In Auction No. 48, for each block listed in the tables, licenses are not available in every market. The complete list of licenses available for Auction No. 48 will be provided in electronic format only, available as "Attachment A" of the *Auction No. 48 Procedures Public Notice* at <http://wireless.fcc.gov/auctions/48/>. The format of the frequency tables has been modified from the tables presented in the *Auction No. 48 Comment Public Notice*, however, the spectrum represented by the tables is the same.

### B. Rules and Disclaimers

#### i. Relevant Authority

4. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the paging services, contained in title 47, part 22 and part 90 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. 48 Procedures Public Notice*; the *Auction No. 48 Comment Public Notice*; 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); the *Paging Notice*; the *Paging First Report and Order*; the *First Paging Reconsideration Order*; the *Paging Second Report and Order*; the *Second Paging Reconsideration Order*; the *Paging Third Report and Order*; and the *Third Paging Reconsideration Order*.

5. 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 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](mailto:qualexint@aol.com). When ordering documents from Qualex, please provide the appropriate FCC number (for example, FCC 99-98 for the *Paging Third Report and Order*).

#### ii. Prohibition of Collusion

6. 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. Bidders competing for licenses in 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 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.

7. 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. 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.

Note that in Auction No. 48, applicants for licenses in overlapping EAs and MEAs will not be able to take advantage of these rule provisions, even though the licenses are not completely co-extensive. For example, assume that one applicant applies for several lower paging bands licenses, *i.e.*, licenses covering EAs, in its Auction No. 48 FCC Form 175 and that a second applicant applies for licenses in the upper paging bands, *i.e.*, licenses covering MEAs, in its Auction No. 48 FCC Form 175. If the first applicant selects licenses for EAs that are within MEAs covered by licenses selected by the second applicant, the two parties will have applied for licenses covering the same geographic areas. Consequently, unlike applicants who have applied for licenses that do not cover the same geographic areas, these two applicants will not be permitted to form a consortium or bid jointly for licenses after they file FCC Form 175. However, all applicants may enter into bidding agreements before filing FCC Form 175, as long as they disclose the existence of the agreement(s) in their FCC 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 the same geographic areas. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

8. 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.

9. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment F of the *Auction No. 48 Procedures Public Notice*.

#### iii. Incumbent Licensees

10. Incumbent (non-geographic) paging licensees operating under their existing authorizations are entitled to full protection from co-channel interference. Geographic area licensees are likewise afforded co-channel interference protection from incumbent licensees. Adjacent geographic area licensees are obligated to resolve possible interference concerns of adjacent geographic area licensees by negotiating a mutually acceptable agreement with the neighboring geographic licensee. Incumbency issues are further discussed.

#### iv. Due Diligence

11. Potential bidders are reminded that there are a number of incumbent licensees already licensed and operating on frequencies that will be subject to the upcoming auction. Geographic area licensees in accordance with the Commission's rules must protect such incumbents from harmful interference. See 47 CFR 22.503(i). These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas.

12. In addition, potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican border should be aware that the use of some or all of the channels they acquire in the auction could be restricted as a result of current or future agreements with Canada or Mexico. Licensees on the lower paging channels must submit a Form 601 to obtain authorization to operate stations north of Line A or east of Line C because these channels are subject to the *Above 30 Megacycles per Second Agreement* with Industry Canada. Although the upper paging channels do not require coordination with Canada, the *U.S.-Canada Interim Coordination Considerations for the Band 929-932 MHz, as amended*, assigns specific 929 and 931 MHz frequencies to the United States for licensing along certain longitudes above Line A, and assigns other specific 929 and 931 MHz frequencies to Canada for licensing along certain longitudes along the U.S.-Canada border. In addition, the 929 and 931 MHz frequencies assigned to Canada are unavailable for use by U.S. licensees above Line A as set out in the agreement. Also, licensees in some EAs and MEAs may be required to protect quiet zones.

13. Potential bidders should also 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, on the licenses available in Auction No. 48 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. 48. Some of these matters (whether before the Commission or the Courts) may not be resolved by the time of the auction.

14. Potential bidders are solely responsible for identifying associated risks, and 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. 48.

15. To aid potential bidders, Attachment G of the *Auction No. 48 Procedures Public Notice* lists paging matters pending before the Commission that relate to licenses or applications in the bands being auctioned. The Commission makes no representations or guarantees that the listed matters are the only pending matters that could affect spectrum availability in these bands.

16. Copies of pleadings from pending cases relating to paging matters identified in Attachment G of the *Auction No. 48 Procedures Public Notice* are available for public inspection and copying during normal reference room hours at: Office of Public Affairs (OPA), Reference Operations Division, 445 12th Street, SW., Room CY-C314, Washington, DC 20554.

17. In addition, potential bidders may research the Bureau's licensing database 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 bidders are strongly encouraged to physically inspect any sites located in, or near, the EA or MEA for which they plan to bid.

18. Licensing records for paging are contained in the Bureau's Universal Licensing System (ULS) and may be

researched on the Internet at <http://wireless.fcc.gov/uls>. Potential bidders 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.

19. Potential bidders 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 [ulscmm@fcc.gov](mailto:ulscmm@fcc.gov). The hotline is available to assist with questions Monday through Friday, from 8 a.m. to 6 p.m. e.t. In order to provide better service to the public, *all calls to the hotline are recorded*.

#### v. Bidder Alerts

20. 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.

21. 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 a 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.

22. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 48 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.

23. 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. 48 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

#### vi. National Environmental Policy Act ("NEPA") Requirements

24. 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. 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

25. The auction will begin on Tuesday, May 13, 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 on all licenses will be conducted on each business day until bidding has stopped on all licenses.

## ii. Auction Title

26. Auction No. 48—Lower and Upper Paging.

## iii. Bidding Methodology

27. The bidding methodology for Auction No. 48 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

## iv. Pre-Auction Dates and Deadlines

28. Listed are important dates associated with Auction No. 32:  
 Auction seminar: March 6, 2003.  
 Short-form application (FCC Form 175): March 21, 2003; 6 p.m. e.t.  
 Upfront payments (via wire transfer): April 14, 2003; 6 p.m. e.t.  
 Mock auction: May 8, 2003.  
 Auction begins: May 13, 2003.

## v. Requirements for Participation

29. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6 p.m. e.t., March 21, 2003.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. e.t., April 14, 2003.
- Comply with all provisions outlined in the *Auction No. 48 Procedures Public Notice*.

## vi. General Contact Information

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

*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. e.t.

*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.

Commercial Wireless Division (202) 418-0620.

*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. e.t.

*Payment Information:* Wire Transfers, Refunds.

FCC Auctions Accounting Branch, (202) 418-0578 or (202) 418-0496, (202) 418-2843 (Fax).

*Telephonic Bidding:* Will be furnished only to qualified bidders.

*FCC Copy Contractor:* Additional Copies of Commission Documents.

Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. (202) 863-2893, (202) 863-2898 (Fax), [qualexint@aol.com](mailto:qualexint@aol.com) (E-mail).

*Press Information:* Lauren Kravetz (202) 418-7944.

*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

31. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the *Auction No. 48 Procedures Public Notice*. The short-form application seeks the applicant's name and address, legal classification, status, small business bidding credit eligibility, identification of the license(s) sought, the authorized bidders and contact persons. 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.E (Provisions Regarding Defaulters and Former Defaulters), 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. License Selection

32. In Auction No. 48, Form 175 will include a mechanism that allows an applicant to filter the 10,202 licenses by paging service, frequency band, market area, and/or channel block/license suffix to create customized lists of licenses. The applicant will make

selections for one or more of 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 customized list by using the "Select All" option; select individual licenses separately from the list; or create a second customized list without selecting any of the licenses from the first list. Applicants also will be able to select licenses from one customized list and then create a second customized list to select additional licenses.

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

33. 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.

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

34. 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. As discussed, 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.

35. 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 competing 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.

#### D. Eligibility

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

36. In the *Paging Second Report and Order*, the Commission adopted small business bidding credits to promote and facilitate the participation of small businesses in competitive bidding for licenses in the paging service. In the *Second Paging Reconsideration Order*, the Commission subsequently increased the size of the bidding credits.

37. Bidding credits are available to small businesses, or consortia thereof, (as defined in 47 CFR 1.2110(c) and 22.217(a)). 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:

- A bidder with attributed average annual gross revenues of not more than \$15 million for the preceding three years receives a 25 percent discount on its winning bids for paging licenses;
- A bidder with attributed average annual gross revenues of not more than \$3 million for the preceding three years receives a 35 percent discount on its winning bids for paging licenses.

38. Bidding credits are not cumulative; a qualifying applicant receives either the 25 percent or the 35 percent bidding credit on its winning bids, but not both.

##### ii. Tribal Land Bidding Credit

39. 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. 48 Procedures Public Notice*.

##### iii. Applicability of Part 1 Attribution Rules

40. *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 superseded inconsistent service-specific rules will control in Auction No. 48. Accordingly, the "controlling interest" standard as set forth in the part 1 rules will be in effect for Auction No. 48.

41. *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.

42. *Attribution for small business eligibility.* In determining which entities qualify as 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.

43. A consortium of 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 business in

§§ 1.2110(f) and 22.223(b). 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. The Bureau notes that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for 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

44. 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 businesses (or consortia of small businesses) for this auction.

45. 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.

46. *Small business eligibility (Exhibit C).* Entities applying to bid as small businesses (or consortia of 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 businesses, this information must be provided for each consortium member.

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

47. 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, its affiliates, its controlling interests, and the 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*). 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.

48. "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. 48, 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*

49. Installment payment plans will not be available in Auction No. 48.

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

50. 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.

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

51. After the short-form filing deadline (March 21, 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 or proposed service areas, 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 must make these modifications to their FCC Form 175 electronically and should 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: [auction48@fcc.gov](mailto:auction48@fcc.gov). The electronic mail summarizing the changes should include a subject or caption referring to Auction No. 48. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

52. 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 Rosemary Cabral of the Auctions and Industry Analysis Division at (202) 418-0660.

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

53. 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.

**III. Pre-Auction Procedures**

*A. Auction Seminar*

54. On Thursday, March 6, 2003, the FCC will sponsor a free seminar for Auction No. 48 at the Federal Communications Commission, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees

with information about pre-auction procedures, conduct of the auction, the FCC Automated Auction System, and the paging and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

55. To register, complete the registration form found in Attachment B of the *Auction No. 48 Procedures Public Notice* and submit it by Tuesday, March 4, 2003. Registrations are accepted on a first-come, first-served basis.

*B. Short-Form Application (FCC Form 175)—Due March 21, 2003*

56. In order to be eligible to bid in this auction, applicants must first submit a FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. e.t. on March 21, 2003. Late applications will not be accepted.

57. 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.

*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 March 6, 2003, until 6 p.m. e.t. on March 21, 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 21, 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 of the *Auction No. 48 Procedures Public Notice*. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); hours of service Monday through Friday, from 8 a.m. to 6 p.m. e.t. In order to provide better service to the public, *all calls to the hotline are recorded*.

60. 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*

61. 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. 48 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. 48 Procedures Public Notice* provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

62. 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. 48 Procedures Public Notice* for details on accessing the review system.

*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.

64. As described more fully in the Commission's rules, after the March 21, 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 their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

*D. Upfront Payments—Due April 14, 2003*

65. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by a 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. e.t. on April 14, 2003.

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. 48 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 14, 2003, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

66. Wire transfer payments must be received by 6 p.m. e.t. on April 14, 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 # 910–1182.

*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: A48U).

*FCC Code 1* (same as FCC Form 159, block 28A: "48").

*Payer Name* (same as FCC Form 159, block 2).

*Lockbox No. #* 358415.

**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.

67. 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. 48." Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

68. 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. 48 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

69. 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*).

70. In the *Auction No. 48 Comment Public Notice*, the Bureau 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.

71. In the *Auction No. 48 Comment Public Notice*, the Bureau proposed setting upfront payments for each license equal to the license's minimum opening bid. The Bureau further proposed setting the bidding units for each license equal to the license's upfront payment on a bidding unit for dollar basis. The bidding unit level for each license will remain constant throughout the auction. The Bureau

received no comments on this issue. The Bureau adopts its proposed upfront payments. The specific upfront payments and bidding units for each license are set forth in the list of licenses available for Auction No. 48 ("Attachment A"), available with the *Auction No. 48 Procedures Public Notice* at <http://wireless.fcc.gov/auctions/48/>.

72. 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. Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

73. 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.

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

74. The Commission will use wire transfers for all Auction No. 48 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 14, 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 or Tim Dates at (202) 418-0496.

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.

#### E. Auction Registration

75. 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.

76. 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.

77. 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 Tuesday, May 6, 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.

78. 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 replacement codes. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

#### F. Electronic Bidding

79. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. Qualified bidders are permitted to bid electronically or telephonically, *i.e.*, over the Internet or the FCC's Wide Area Network. 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 less than three authorized bidders will be issued two SecurID cards, while applicants with 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. 48. 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.

80. 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.

#### a. Mock Auction

81. All qualified bidders will be eligible to participate in a mock auction on Thursday, May 8, 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

82. The first round of bidding for Auction No. 48 will begin on Tuesday, May 13, 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. Simultaneous Multiple Round Auction

83. In the *Auction No. 48 Comment Public Notice*, we proposed to award all licenses in Auction No. 48 in a

simultaneous multiple round auction. The Bureau received no comments on this issue. The Bureau concludes that it is operationally feasible and appropriate to auction the paging 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, the Bureau believes, allows bidders to take advantage of any synergies that exist among licenses and is administratively efficient.

## ii. Maximum Eligibility and Activity Rules

84. In the *Auction No. 48 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.

85. For Auction No. 48, the Bureau adopts this proposal. The amount of the upfront payment submitted by a bidder determines the number of bidding units on which a bidder may place bids. Note again that each license is assigned a specific number of bidding units equal to the upfront payment, listed in the license inventory available for Auction No. 48 ("Attachment A"), available with the *Auction No. 48 Procedures Public Notice* at <http://wireless.fcc.gov/auctions/48/>, on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids during any given round. As there is no provision for increasing a bidder's eligibility after the upfront payment deadline, prospective bidders 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.

86. 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.

87. 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 "Bid Increments and

Minimum Acceptable Bids" in Part 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 part IV.A.iii and "Stage Transitions" in part IV.A.iv), we adopt them for Auction No. 48.

## iii. Auction Stages

88. In the *Auction No. 48 Comment Public Notice*, the Bureau proposed to conduct the auction in three stages and employ an activity rule. The Bureau 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, the Bureau 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 eligibility. The Bureau received no comments on this proposal.

89. The Bureau will adopt its proposals for the activity rules. Listed are the activity levels for each stage of the auction. The FCC 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 that represent 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 ( $\frac{5}{4}$ ).

*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 ( $\frac{10}{9}$ ).

*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 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-fourth ninths ( $\frac{54}{99}$ ).

*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 level at stage transitions. Bidders may check their activity against the required activity level by using the bidding system's bidding module.

90. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, the Bureau adopts them for Auction No. 48.

## iv. Stage Transitions

91. In the *Auction No. 48 Comment Public Notice*, the Bureau 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. The Bureau further proposed that it would retain the discretion to change stages unilaterally by announcement during the auction. This determination, the Bureau 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. The Bureau received no comments on this subject.

92. The Bureau adopts its proposal. Thus, the auction will start in Stage One

and will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 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 bidding 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. The Bureau believes that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 48.

#### v. Activity Rule Waivers and Reducing Eligibility

93. In the *Auction No. 48 Comment Public Notice*, the Bureau proposed that each bidder in the auction would be provided five activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. The Bureau received no comments on this subject.

94. Based upon our experience in previous auctions, the Bureau adopts its proposal that each bidder 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. The Bureau is satisfied that its practice of providing five waivers over the course of the auction provides a sufficient number of waivers and flexibility to the bidders, while safeguarding the integrity of the auction.

95. 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 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 required activity level. 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.

96. 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* part IV.A.iii). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

97. 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 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 placed during a round, that waiver cannot be unsubmitted.

#### vi. Auction Stopping Rules

98. For Auction No. 48, 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 for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

99. The Bureau further proposed retaining the discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn in a round. 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.

100. In addition, the Bureau proposed that it 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. 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, moving the auction into the next stage (where bidders will be required to maintain a higher level of bidding activity), increasing the number of rounds per day and/or adjusting the minimum acceptable bids and bid increments for the licenses.

101. The Bureau received no comments concerning the auction stopping rules; therefore, it adopts the proposals. Auction No. 48 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule. The Bureau believes that these stopping rules are most appropriate for Auction No. 48, because its experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

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

102. In the *Auction No. 48 Comment Public Notice*, the Bureau proposed that, 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.

103. 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. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

## B. Bidding Procedures

### i. Round Structure

104. 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 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 qualified bidders public notice.

105. 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

106. *Background.* The Balanced Budget Act 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.

107. In the *Auction No. 48 Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 48 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 48, the Bureau proposed the following formula for minimum opening bids:

- For a license being auctioned by MEA, the minimum opening bid will be 20% of the average gross high bid received in Auction No. 40 in the same MEA and the same band.
- For a license being auctioned by EA, the minimum opening bid will be 20% of the average gross high bid received in Auction No. 40 in the same EA and the same band.

108. The Bureau will set a "floor" for minimum opening bids at \$500 for licenses in both the upper paging bands (929–931 MHz) and the lower paging bands (35 MHz, 43 MHz, 152 and 158 MHz, 454 MHz and 459 MHz, 929 MHz, 931 MHz).

109. 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. The Bureau received one comment regarding this issue, suggesting that there be no minimum bid on all licenses that remain unsold from a previous auction.

110. After reviewing the comment, the Bureau has concluded that it should adopt its original proposal and the minimum opening bids listed in the *Auction No. 48 Comment Paging Notice*. The Bureau believes that the use of minimum opening bids is in the public interest because parties unable or unwilling to make proposed minimum opening bids most likely will be unable or unwilling to use the licenses to provide service to the public. The Bureau has concluded that the proposed absolute minimum opening bid of \$500 will not impede any party willing and able to use the license to provide paging service. Under the Commission's current rules, the filing fee for a new paging service license or to make major modifications to an existing paging service license is \$325. This fee is waived for applicants that obtained licenses through the auction process. Finally, small businesses qualifying for a thirty-five percent (35%) bidding credit and winning a lower paging bands license for the minimum opening bid of \$500 will have to pay \$325 for the license. Thus, even absent an auction, service providers would have to meet costs comparable to the proposed absolute minimum opening bids in order to obtain a license.

111. The Bureau will adopt minimum opening bids for Auction No. 48, that are reducible at the discretion of the Bureau. The Bureau emphasizes, 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.

112. The specific minimum opening bid for each license available in Auction No. 48 is set forth in the list of licenses provided in electronic format as the *Auction No. 48 Procedures Public Notice* at <http://wireless.fcc.gov/auctions/48/>.

### iii. Minimum Acceptable Bids and Bid Increments

113. In the *Auction No. 48 Comment Public Notice*, the Bureau proposed to set the minimum acceptable bid as the minimum opening bid or the standing high bid plus the defined increment. Eligible bidders will be able to place bids on a given license in any of nine different amounts. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. In the rounds after a bid is placed on a license, the minimum acceptable bid for that license will be equal to the standing high bid plus the defined increment. With respect to calculating the defined increment, the Bureau proposed basing the defined increment on a percentage of the standing high bid or, if no standing high bid had been placed, on a percentage of the minimum opening bid. The Bureau proposed that at the outset of the auction, it would use twenty percent of the standing high bid or minimum opening bid to calculate the increment. The Bureau further proposed to retain the discretion to change the percentage used to calculate the defined increment if circumstances so dictate and to set a floor for the increment used to calculate the minimum acceptable bid at an absolute dollar amount. Finally, the Bureau proposed that it have discretion to use a smaller percentage to calculate the increment used in setting acceptable bids higher than the minimum acceptable bid. In all other respects, such as rounding, the smaller defined increment would be calculated in the same manner as the defined increment used to set the minimum acceptable bid.

114. For Auction No. 48, the Bureau proposed to use a fixed 20 percent bid increment. This means that the minimum acceptable bid for a license will be approximately 20 percent greater

than the previous standing high bid received on the license. The minimum acceptable bid amount will be calculated by multiplying the standing high bid times one plus the fixed percentage—i.e., minimum acceptable bid amount = (standing high bid) \* (1.20){rounded}. The Bureau will round the result using its standard rounding procedure for minimum acceptable bid calculations: Results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

115. 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, 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 are 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.).

*Example bid amount calculation for licenses at the start of the auction and without standing high bids:*

1st bid amount = minimum opening bid  
2nd bid amount = minimum opening bid + (bid increment)

3rd bid amount = minimum opening bid + 2(bid increment) \* \* \*

9th bid amount = minimum opening bid + 8(bid increment)

116. Once there is a standing high bid on the license, the Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described. 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.).

*Example bid amount calculation for a license with standing high bids:*

1st bid amount (minimum acceptable bid) = standing high bid + bid increment

2nd bid amount = standing high bid + 2(bid increment)

3rd bid amount = standing high bid + 3(bid increment) \* \* \*

9th bid amount = standing high bid + 9(bid increment)

117. 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 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.

118. The Bureau will adopt its proposals contained in the *Auction No. 48 Comment Public Notice*. In doing so, the Bureau will retain the discretion to set the percentages being used. Advance notice of the Bureau's decision to exercise its discretion with regard to acceptable bids in any manner will be announced via the Automated Auction System.

#### iv. High Bids

119. At the end of each bidding round, the high bids will be determined based on the highest gross bid amount of the bids received for each license.

120. In the *Auction No. 48 Comment Public Notice*, the Bureau proposed to use a random number generator to select a high bid in the event of identical high bids on a license in a given round (i.e., tied bids). A random number will be assigned to each bid. 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. The Bureau received no comments on this issue. Therefore, the Bureau adopts its proposal.

#### v. Bidding

121. 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.

122. Please note that 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 10 minutes are necessary to complete a bid submission. Due to the large number of licenses in Auction No. 48, bidders may require more time to submit their bids than in past auctions.) There will be no on-site bidding during Auction No. 48.

123. 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.

124. In order to access the bidding functions of the Automated Auction System, bidders must 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 for each round after they have completed all of their activity for that round.

125. 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 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. The Automated Auction System also includes an import function that allows bidders to upload text files containing their bid information.

126. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its

minimum opening bid. In the rounds after an acceptable bid is placed on a license, the minimum acceptable bid for that license will be equal to the standing high bid plus the defined increment.

127. As detailed, for each license in Auction No. 48, the defined increment for the minimum acceptable bid is based on a percentage of the standing high bid on the license or, if no bid has been placed on the license, a percentage of the minimum opening bid for the license. Presuming, for example, that the percentage being used is 20 percent—the initial value at the start of the auction—and the standing high bid for a license is \$10,000, the minimum acceptable bid will be \$12,000.

128. In addition, the Bureau proposed discretion to use a smaller defined increment to calculate acceptable bids higher than the minimum acceptable bid. The smaller defined increment would be calculated using a smaller percentage than the percentage used to calculate the defined increment that sets the minimum acceptable bid. For example, 20 percent might be used to calculate the defined increment for the minimum acceptable bid and 10 percent might be used to calculate the smaller defined increment used to calculate higher acceptable bids. In all other respects, the smaller defined increment would be calculated in exactly the manner described for the initial defined increment, including rounding. In this case, for the example in which the standing high bid for a license is \$10,000 and the minimum acceptable bid is \$12,000, the values for the minimum acceptable bid and higher amounts will be calculated as follows:

**Defined Increment**

$$\begin{aligned} &= (\text{Standing High Bid} * 1.2\{\text{rounded}\}) \\ &\quad - \text{Standing High Bid} \\ &= (\$10,000 * 1.2\{\text{rounded}\}) - \$10,000 \\ &= (\$12,000\{\text{rounded}\}) - \$10,000 \\ &= \$12,000 - \$10,000 \\ &= \$2,000 \end{aligned}$$

**Smaller Defined Increment**

$$\begin{aligned} &= (\text{Standing High Bid} * 1.1\{\text{rounded}\}) \\ &\quad - \text{Standing High Bid} \\ &= (\$10,000 * 1.1\{\text{rounded}\}) - \$10,000 \\ &= (\$11,000\{\text{rounded}\}) - \$10,000 \\ &= \$11,000 - \$10,000 \\ &= \$1,000 \end{aligned}$$

**Minimum Acceptable Bid**

$$\begin{aligned} &= \text{Standing High Bid} + \text{Defined Increment} \\ &= \$10,000 + \$2,000 \\ &= \$12,000 \end{aligned}$$

**One Increment Higher Than Minimum Acceptable Bid**

$$\begin{aligned} &= \text{Minimum Acceptable Bid} + \\ &\quad (\text{Smaller Defined Increment} * 1) \\ &= \$12,000 + (\$1,000 * 1) \\ &= \$12,000 + \$1,000 \end{aligned}$$

$$= \$13,000$$

**Two Increments Higher Than Minimum Acceptable Bid**

$$\begin{aligned} &= \text{Minimum Acceptable Bid} + \\ &\quad (\text{Smaller Defined Increment} * 2) \\ &= \$12,000 + (\$1,000 * 2) \\ &= \$12,000 + \$2,000 \\ &= \$14,000 \end{aligned}$$

129. This procedure would enable bidders unwilling to raise the standing high bid by twice the defined increment to place bids higher than the minimum acceptable bid. Thus, in the example, a bidder wanting to bid above the minimum acceptable bid but unwilling to raise the standing high bid of \$10,000 by twice the defined increment of \$2,000 (\$4,000 or 40 percent) would have the flexibility to bid \$13,000, raising the standing high bid by \$3,000. 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 defined increment, as stated. The Bureau will adopt these proposals for Auction No. 48.

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

**vi. Bid Removal and Bid Withdrawal**

131. In the *Auction No. 48 Comment Public Notice*, the Bureau proposed bid removal and bid withdrawal procedures. With respect to bid withdrawals, 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 utilized, the Bureau proposed, would be at the bidder's discretion. The Bureau received no comments on this issue.

132. 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 subsequently removed does not count toward the bidder's activity requirement. This procedure, about which the Bureau received no comments, will enhance bidder flexibility during the auction. Therefore, the Bureau will adopt these procedures for Auction No. 48.

133. 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 Automated Auction System (assuming that the bidder has not exhausted its withdrawal allowance). 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 placed during a round, that withdrawal cannot be unsubmitted.

134. In previous auctions, the Bureau has detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While the Bureau continues to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various licenses in combination, it concludes that, for Auction No. 48, adoption of a limit on their use to two rounds per bidder is the most appropriate outcome. By doing so the Bureau believes it strikes a reasonable compromise that will allow bidders to use withdrawals. The Bureau's decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of its view regarding the likelihood of any speculation or "gaming" in this auction.

135. The Bureau will therefore limit the number of rounds in which each bidder 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 still 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.

136. If a high bid is withdrawn, the minimum acceptable bid will equal the second highest bid received for the license, which may be less than, or equal to, in the case of tied bids, the amount of the withdrawn bid. To set the additional bid amounts, the second highest bid also will be used in place of the standing high bid in the formula used to calculate bid increments. The Commission will serve as a "place holder" high bidder on the license until a new bid is submitted on that license.

137. 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 net 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). This policy allows bidders most efficiently to allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single license for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

138. In the *Part 1 Fifth Report and Order*, the Commission modified § 1.2104(g)(1) of the rules regarding assessments of interim bid withdrawal payments. As amended, § 1.2104(g)(1) provides that 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. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. *The Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule

#### vii. Round Results

139. In the *Auction No. 48 Comment Public Notice*, the Bureau proposed disclosing all information relating to the bids during Auction No. 48 after each round of bidding closes, including all bids and withdrawals placed in each round, the identity of the bidder placing

each bid or withdrawal, and the net and gross amounts of each bid or withdrawal. Accordingly, the Bureau will adopt the proposal in the *Auction No. 48 Comment Public Notice*.

140. 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, 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 and bidder identification numbers for Auction No. 48 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

141. 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 Automated Auction System.

#### ix. Maintaining the Accuracy of FCC Form 175 Information

142. As noted in part II.H., 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 must 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: [auction48@fcc.gov](mailto:auction48@fcc.gov). The electronic mail summarizing the changes should include a subject or caption referring to Auction No. 48. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

143. 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 Rosemary Cabral of the Auctions and Industry Analysis Division at (202) 418-0660.

## V. Post-Auction Procedures

### A. Down Payments and Withdrawn Bid Payments

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

145. Within 10 business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable small business bidding credits). See 47 CFR 1.2107(b). 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," Part IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

### B. Auction Discount Voucher

146. 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. 48.

### C. Long-Form Application

147. Within 10 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. 48. Winning bidders that are small businesses must include an exhibit demonstrating their eligibility for small business bidding credits. See 47 CFR 1.2112(b), 24.709(c)(2)(i). Further filing instructions will be provided to auction winners at the close of the auction.

### D. Tribal Land Bidding Credit

148. 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.

149. 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).

150. 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.

#### *E. Default and Disqualification*

151. Any winning 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.

#### *F. Refund of Remaining Upfront Payment Balance*

152. All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 48 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC 159, unless the payer submits written authorization instructing otherwise.

153. 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 or Tim Dates, 445 12th Street, SW, Room 1-C863, Washington, DC 20554.

154. 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 at (202) 418-0496 or 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 COMMUNICATIONS COMMISSION**

[Report No. AUC-03-53-A (Auction No. 53); DA 03-286]

#### **Auction of Multichannel Video Distribution and Data Service Licenses Rescheduled for June 25, 2003; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces that the auction of licenses in the Multichannel Video Distribution and Data Service ("MVDDS") is rescheduled for June 25, 2003 and seeks comment on specific terms and conditions of this auction.

**DATES:** Comments are due on or before February 13, 2003, and reply comments are due on or before February 20, 2003.

**ADDRESSES:** Comments and reply comments must be sent by electronic mail to the following address: [auCTION53@fcc.gov](mailto:auCTION53@fcc.gov). See **SUPPLEMENTARY INFORMATION** for filing instructions.

**FOR FURTHER INFORMATION CONTACT:** For legal questions: Brian Carter (202) 418-0660. For general auction questions: Roy Knowles (717) 338-2888 or Barbara Sibert (717) 338-2888. For service rule questions: Jennifer Burton (legal), Michael Pollak (technical) at (202) 418-0680.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Auction No. 49 *Comment Public Notice* released on January 30, 2003. The complete text of the Auction No. 49 *Comment Public Notice* 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-A257, Washington, DC 20554. The Auction No. 49 *Comment 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](mailto:qualexint@aol.com).

1. By the Auction No. 49 *Comment Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announces that the auction of licenses in the MVDDS previously scheduled to commence on August 6, 2003 ("Auction No. 53") has been rescheduled for June 25, 2003. The Auction No. 49 *Comment Public Notice* seeks comment on specific terms and conditions of this auction. The key dates are listed: