

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6175-9]

Announcement of National Drinking Water Advisory Council Benefits Working Group Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under section 10(a)(2) of Pub. L. 92-423, "The Federal Advisory Committee Act," notice is hereby given that a conference call for the Benefits Working Group of the National Drinking Water Advisory Council (NDWAC) established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f et seq.), will be held on October 27, 1998 from 2:00 p.m. until 3:30 p.m. EDT. The conference call meeting location will be in the Carson Room at the Environmental Protection Agency (EPA) Education Center, 401 M Street, SW, Washington DC 20460. The meeting is open to the public but conference lines and/or seating will be limited and access will be granted on a first-come, first-served basis.

The purpose of this conference call is to review a draft report of advice and recommendations to NDWAC, based on discussions of the working group during its September 25, 1998 meeting. The meeting is open to the public to observe and statements will be taken from the public as time allows.

For more information, please contact, John Bennett, Designated Federal Officer, Benefits Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4607), 401 M Street SW, Washington, D.C. 20460. The telephone number is 202-260-0446, fax 202-260-3762, and e-mail address bennett.johnb@epamail.epa.gov.

Dated: October 6, 1998.

Charlene E. Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 98-27405 Filed 10-9-98; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION**Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission**

October 6, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other

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

DATES: Persons wishing to comment on this information collection should submit comments December 14, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection contact Les Smith at 202-418-0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:*OMB Approval Number:* 3060-0835.*Title:* Ship Inspection Certificates.*Form Numbers:* FCC 806, FCC 824, FCC 827, and FCC 829.*Type of Review:* Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, Local or Tribal government(s).

Number of Respondents: 3,730.*Estimate Time Per Response:* 5 minutes.*Frequency of Response:*

Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 313 hours.*Estimated Cost to Respondents:* \$0.

Needs and Uses: The Commission adopted Rules that privatized ship

inspections of ships subject to inspection requirements of the Communications Act or Safety Convention. The Rules require this inspection to be conducted by an FCC-licensed technician. This change reduces the administrative burden on the public and the Commission. To ensure that vessel safety is not adversely affected by this proposal, the Commission adopted Rules that private sector technicians certify that the ship passed an inspection and issue the ship a safety certificate.

The Communications Act requires that the Commission must inspect the radio installation of large cargo ships and certain passenger ships at least once a year to ensure that the radio installation is in compliance with the requirements of the Communications Act. Additionally, the Communications Act requires the inspection of small passenger ships at least one every five years. The Safety Convention (to which the United States is a signatory) also requires an annual inspection, but permits an Administration to entrust the inspections to either surveyors nominated for the purpose or to organizations recognized by it. Therefore, the United States can have other entities conduct the radio inspection of vessels for compliance with the Safety Convention. The Commission adopted rules that FCC-licensed technicians provide a summary of the results of the inspection in the ship's log and furnish the vessel with a ship inspection safety certificate.

The purpose of the information is to ensure that the inspection was successful so that passengers and crew members of certain United States ships have access to distress communications in an emergency.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98-27352 Filed 10-9-98; 8:45 am]

BILLING CODE 6712-01-U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-98-21-B (Auction No. 21); DA 98-1879]

Auction of Location and Monitoring Service Licenses; Auction Notice and Filing Requirements for 528 Multilateration Licenses Scheduled for December 15, 1998; Minimum Opening Bids and Other Auction Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On August 13, 1998, the Wireless Telecommunications Bureau ("Bureau") released a Public Notice, seeking comment on the establishment of reserve prices or minimum opening bids for the Location and Monitoring Service ("LMS") auction, in accordance with the Balanced Budget Act of 1997. In addition, the Bureau sought comment on a number of procedures to be used in the LMS auction. The Bureau received comments in response to its Public Notice. This Public Notice announces the procedures and minimum opening bids for the upcoming LMS auction. The Commission will hold an auction for 528 multilateration LMS licenses to operate in the 902–928 MHz band.

DATES: The Location and Monitoring Service auction will begin on December 15, 1998.

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

FOR FURTHER INFORMATION CONTACT: Kathy Garland or Kenneth Burnley, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660. More complete details about this auction are contained in a Bidder Information Package. To place an order for a Bidder Information Package, contact the FCC National Call Center at (888) CALL–FCC (888) 225–5322, press option #2 at the prompt).

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released on September 23, 1998, and corrected by a subsequent Public Notice released on October 7, 1998. The complete text of this Public Notice is available in its entirety, including attachments, for inspection and copying during normal business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, fax (202) 857–3805, 1231 20th Street, N.W., Washington, D.C. 20036. In addition, copies of the Public Notice may be retrieved from the FCC World Wide Web Auctions site at <http://www.fcc.gov/wtb/auctions>.

Synopsis of the Public Notice**A. Introduction**

On August 13, 1998, the Wireless Telecommunications Bureau ("Bureau") released "Location and Monitoring Service Spectrum Auction Scheduled for December 15, 1998; Comment

Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues," *Public Notice*, DA 98–1616 (rel. August 13, 1998), 63 FR 44456 (August 19, 1998) ("LMS Public Notice"), seeking comment on the establishment of reserve prices or minimum opening bids for the Location and Monitoring Service ("LMS") auction, in accordance with the Balanced Budget Act of 1997. The Bureau also sought comment on a number of procedures to be used in the LMS auction. The Bureau received comments in response to its Public Notice. By this Public Notice, the Bureau announces the procedures and minimum opening bids for the upcoming LMS auction. The Federal Communications Commission ("FCC" or "Commission") will hold an auction for 528 multilateration LMS licenses to operate in the 902–928 MHz band. Three blocks of spectrum are allocated for multilateration LMS systems:

- (1) Block A—904.000–909.750 MHz and 927.750–928.000 MHz
- (2) Block B—919.750–921.750 MHz and 927.500–927.750 MHz
- (3) Block C—921.750–927.250 MHz and 927.250–927.500 MHz

One license will be awarded for each of these three spectrum blocks in each of 176 Economic Areas (EAs) designated for LMS. The 176 EAs designated for the LMS auction comprise the following areas: (1) the continental United States, Hawaii and Alaska (Alaska to be licensed in a single area); (2) Guam and the Northern Mariana Islands (to be licensed in a single area); (3) Puerto Rico and the U.S. Virgin Islands (to be licensed in a single area); (4) American Samoa; and (5) the Gulf of Mexico.

The auction will begin on December 15, 1998. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding will be conducted on each business day until bidding has stopped on all licenses. The LMS auction will utilize simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically. The following are pertinent pre-auction deadlines:

Auction Seminar—October 30, 1998
Short Form Application (FCC Form 175)—November 16, 1998; 5:30 p.m. ET

Upfront Payments (via wire transfer)—November 30, 1998; 6:00 p.m. ET
Orders for Remote Bidding Software—December 1, 1998; 5:30 p.m. ET
Mock Auction—December 10, 1998

The following are pertinent telephone contacts:

FCC National Call Center—(888) CALL–FCC (888) 225–5322 or (717) 338–2888 (direct dial)

For Bidder Information Packages, General Auction Information, and Seminar Registration, press option #2 at the prompt. Hours of service: 8 a.m.—5:30 p.m. ET.

FCC Technical Support Hotline—(202) 414–1250 (voice), (202) 414–1255 (text telephone (TTY))

Hours of service: 8 a.m.—6 p.m. ET, Monday–Friday; 9 a.m.—5 p.m. ET, weekend of November 14–15.

List of attachments contained in the Public Notice released on September 23, 1998:

Attachment A—Summary of LMS

Licenses to be Auctioned, Upfront Payments, Minimum Opening Bids

Attachment B—Guidelines for Completion of FCC Forms 175 and 159, and Exhibits

Attachment C—Electronic Filing and Review of FCC Form 175

Attachment D—Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing Application of the Anti-Collusion Rules

3. *Due Diligence:* Potential bidders are reminded that LMS operates in the 902–928 MHz frequency band. This band is allocated for primary use by Federal Government radiolocation systems. Next in order of priority are Industrial, Scientific and Medical devices. Federal Government fixed and mobile and LMS systems are secondary to both of these uses. The remaining uses of the 902–928 MHz band include licensed amateur radio operations and unlicensed Part 15 equipment, both of which are secondary to all other uses of the band. Part 15 low power devices include, but are not limited to, those used for automatic meter reading, inventory control, package tracking and shipping control, alarm services, local area networks, Internet access, and cordless telephones. The amateur radio service is used by technically inclined private citizens to engage in self-training, information exchange, and radio experimentation. The Commission's band plan permits secondary operations across the entire band by users of unlicensed Part 15 devices and amateur licensees. At the same time, the band plan separates non-multilateration from multilateration LMS systems in all but one subband so as to avert interference. The Commission has also established limitations on LMS systems'

interconnection with the public switched network and set forth a number of technical requirements intended to ensure successful coexistence of all the services authorized to operate in the band.

4. Potential bidders should be aware that certain applications (including those for modification), waiver requests, petitions for reconsideration and applications for review are pending before the Commission that relate to particular incumbent multilateration LMS licensees. Resolution of these matters could have an impact on the availability of spectrum for EA licensees. In addition, while the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction. Licensing information is contained in the Commission's licensing database, which is available for inspection in the Wireless Telecommunications Bureau's Public Reference Rooms, located at 2025 M Street, N.W., Room 5608, Washington, D.C. 20554, and 1270 Fairfield Road, Gettysburg, PA 17325. Potential bidders may search for information regarding LMS licensees on the World Wide Web at <http://www.fcc.gov/wtb>. In particular, information can be accessed by downloading databases by selecting "WTB Database Files" (which can be accessed (<http://www.fcc.gov/wtb/databases.html>), or searching on-line by selecting "Search WTB Databases" (<http://gullfoss.fcc.gov:8080/cgi-bin/ws.exe/beta/genmen/index.htm>). Any telephone inquiries regarding accessing this data should be directed to the Technical Support Hotline at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)).

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

- Submit a short form application (FCC Form 175) by November 16, 1998;
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by November 30, 1998; and
- Comply with all provisions outlined in the Bidder Information Package.

6. *Prohibition of Collusion:* 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 with the filing of short-form applications, and ends on the down payment due date. To comply with this rule, bidders competing for the same license(s) are encouraged not to use the same individual authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm), a violation could similarly occur. In such instances, the Bureau strongly encourages applicants to certify on their applications that precautionary steps (e.g., establishing a "Chinese wall") have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. See, e.g., "Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction," *Public Notice*, 13 FCC Rcd 341 (1998); In re Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A, *Memorandum Opinion and Order*, 13 FCC Rcd 11973, 11977, para. 11 (1998) ("*Nevada Wireless*"). The Bureau, however, cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred nor will it preclude the initiation of an investigation when warranted. See *Nevada Wireless*, 13 FCC Rcd at 11978, para. 13 (1998). In the LMS auction, for example, the rule would apply to any applicants bidding for the same EA. Therefore, applicants that apply to bid for "all markets" would be precluded from communicating with all other applicants after filing the FCC Form 175. However, applicants may enter into bidding agreements *before* filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their Form 175 short-form applications. See 47 CFR 1.65. By signing their FCC Form 175 short form applications, applicants are certifying their compliance with 47 CFR 1.2105(c). 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 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

7. *Bidder Information Package:* More complete details about this auction are contained in a Bidder Information Package. The Commission will provide one copy to each company free of charge. Additional copies may be ordered at a cost of \$16.00 each, including postage, payable by Visa or Master Card, or by check payable to "Federal Communications Commission" or "FCC." To place an order, contact the FCC National Call Center at (888) CALL-FCC ((888) 225-5322, press option #2 at the prompt). Prospective bidders that have already contacted the FCC at this number expressing an interest in this auction will receive a Bidder Information Package in approximately four weeks, and need not call again unless they wish to order additional copies.

8. *Relevant Authority:* Prospective bidders must familiarize themselves thoroughly with the Commission's Rules relating to the Location and Monitoring Service, contained in Title 47, 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. In addition, prospective bidders must be thoroughly familiar with the procedures, terms and conditions contained in Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Report and Order*, PR Docket No. 93-61, 60 FR 15248 (March 23, 1995) ("*LMS Report and Order*"); Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, PR Docket No. 93-61, 62 FR 52078 (October 6, 1997) ("*Memorandum Opinion and Order and Further Notice of Proposed Rule Making*"); Amendment of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 63 FR 40659 (July 30, 1998) ("*LMS Second Report and Order*"); Part

90, Subpart M of the Commission's Rules concerning Transportation Infrastructure Radio Service; Subpart X of the Commission's Rules concerning Competitive Bidding Procedures; and Part 1, Subpart Q of the Commission's Rules concerning Competitive Bidding Proceedings.

9. The terms contained in the Commission's Rules, relevant orders, public notices and bidder information package are not negotiable. The Commission may amend or supplement the information contained in our public notices or the bidder information package at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission Rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp @ftp.fcc.gov or the FCC World Wide Web site at <http://www.fcc.gov/wtb/auctions>. Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. (ITS), at (202) 857-3800.

10. *Bidder Alerts*: All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

11. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

12. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may

attempt to use the LMS auction to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of the minimum investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific LMS proposals may also call the FCC National Call Center at (888) CALL-FCC ((888) 225-5322).

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

archaeologic sites, Indian religious sites, floodplains, and surface features. Licensees must also prepare environmental assessments for wireless facilities that include high intensity white lights in residential neighborhoods or excessive radiofrequency emission.

B. Eligibility for Small and Very Small Business Provisions

As described above, this auction offers one license for each of three spectrum blocks in each of the 176 Economic Areas (EAs) designated for LMS. Our goal in adopting special small business provisions is to promote and facilitate the participation of small businesses in the LMS auction and in the provision of this and other commercial mobile radio services.

15. *Determination of Revenues*. For purposes of determining which entities qualify as very small businesses or small businesses, the Commission will consider the gross revenues of the applicant, its controlling interests, and the affiliates of the applicant and its controlling interests. Once principals or entities with a controlling interest are determined, only the revenues of those principals or entities will be counted in determining small business eligibility. The term "controlling interest" includes both *de facto* and *de jure* control of the applicant. Typically, *de jure* control is evidenced by ownership of at least 50.1 percent of an entity's voting stock. *De facto* control is determined on a case-by-case basis. The following are some common indicia of control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

16. *Very Small or Small Business Consortiums*. A consortium of small businesses or very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which *individually* satisfies the definition of very small or small business in 47 CFR 90.1103(b)(1) or (2). Thus, each consortium member must disclose its gross revenues along with those of its affiliates, controlling interests, and controlling interests' affiliates. The Bureau notes that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for very small or small business credits, this information must

be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

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

18. *Bidding Credits.* Qualifying LMS applicants are eligible for a bidding credit that represents the amount by which a bidder's winning bids are discounted. The size of an LMS bidding credit depends on the average gross revenues for the preceding three years of the bidder and its controlling interests and affiliates:

- A bidder with average gross revenues not to exceed \$15 million for the preceding three years receives a 25 percent discount on its winning bids for LMS licenses; and,
- A bidder with average gross revenues not to exceed \$3 million for the preceding three years receives a 35 percent discount on its winning bids for LMS licenses.

Bidding credits are not cumulative: qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. The definitions of very small business and small business (or consortiums of very small or small

businesses) (including calculation of average gross revenues) are set forth in 47 CFR 90.1103(b).

19. LMS bidders should note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their licenses to an entity not qualifying for the same levels of bidding credits. Finally, LMS bidders should also note that there are no installment payment plans in the LMS auction.

C. Pre-Auction Procedures

20. *Short-Form Application (FCC Form 175)—Due November 16, 1998.* In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be received at the Commission by 5:30 p.m. ET on November 16, 1998. Late applications will not be accepted. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment.

21. *Filing Options.* Auction applicants are strongly encouraged to file their applications electronically in order to take full advantage of the greater efficiencies and convenience of electronic filing, bidding and access to bidding data. For example, electronic filing enables the applicant to: (a) receive interactive feedback while completing the application; and (b) receive immediate acknowledgment that the FCC Form 175 has been submitted for filing. In addition, only those applicants that file electronically will have the option of bidding electronically. However, manual filing (via hard copy) is also permitted. Please note that manual filers will not be permitted to bid electronically and therefore *must bid telephonically*, unless the FCC Form 175 is amended electronically prior to the resubmission date for incomplete or deficient applications. The following is a brief description of each filing method.

22. *Electronic Filing.* Applicants wishing to file electronically may generally do so on a 24-hour basis beginning October 26, 1998. The window for filing the FCC Form 175 electronically will remain open until 5:30 p.m. ET on November 16, 1998. Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline of November 16, 1998. Applicants who file electronically must press the "Submit Form 175" button on the "Submit" page of the electronic

form to successfully submit their FCC Form 175s. Information about installing and running the FCC Form 175 application software is included in Attachment C to this Public Notice. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); the hours of service are 8 a.m.–6 p.m. ET, Monday–Friday, and 9 a.m.–5 p.m. ET, the weekend of November 14–15.

23. *Manual Filing.* Auction applicants will be permitted to file their FCC Form 175 applications in hard copy. When any manually filed FCC Form 175 and 175-S exceeds five pages in length, the FCC requires that all attachments be submitted on a 3.5-inch diskette, or the entire application be filed in a microfiche version. Manual filers must use the August 1998 version of FCC Form 175 and FCC Form 175-S (if necessary). Earlier versions of the FCC Form 175 will not be accepted for filing. Copies of the FCC Form 175 can be obtained by calling the Commission's Forms Distribution Center at (800) 418-FORM ((800) 418-3676) (outside Washington, D.C.) or (202) 418-FORM ((202) 418-3676) (in the Washington area). Copies of the FCC Form 175 can also be obtained via Fax-On-Demand at (202) 418-0177 (the document retrieval number for the FCC Form 175 is 000175, and 001751 for the FCC Form 175-S), or downloaded from the Commission's World Wide Web site at <http://www.fcc.gov/formpage.html>. If applicants have any questions concerning availability of the FCC Form 175, they should call the FCC Records Management Branch at (202) 418-0210.

24. Manual applications must be submitted by hand delivery (including private "overnight" courier) or by U.S. mail (certified mail with return receipt recommended), addressed to: FCC Form 175 Filing, Auction No. 21, Federal Communications Commission, Wireless Telecommunications Bureau, Auctions & Industry Analysis Division, 1270 Fairfield Road, Gettysburg, PA 17325-7245.

Note: Manual applications delivered to any other location or applications sent via facsimile will not be accepted.

25. *Completion of the FCC Form 175.* Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175 (and Form 175-S, if applicable). Instructions for completing the FCC Form 175 are in Attachment B of this Public Notice. Note again that applicants who file electronically must press the "Submit Form 175" button on the "Submit" page to successfully submit their FCC Form 175. Failure to sign a manually filed

FCC Form 175 will result in dismissal of the application and loss of the ability to participate in the auction. Only original signatures will be accepted for manually filed applications.

26. *Electronic Review of FCC Form 175.* The FCC Form 175 review software may be used to review and print applicants' FCC Form 175 applications. In other words, applicants that file electronically may review their own completed FCC Form 175. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any Exhibits to their FCC Form 175 applications. There is a fee of \$2.30 per minute for accessing this system.

27. *Application Processing and Minor Corrections.* After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

28. As described more fully in the Commission's Rules, after the November 16, 1998, short form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections, change the certifying official or change control of the applicant). See 47 CFR 1.2105.

29. *Upfront Payments—Due November 30, 1998.* In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). Manual filers must use the July 1997 version of FCC Form 159. Electronic filers of the FCC Form 175 will have access to an electronic version of Form 159 after completing the FCC Form 175. Earlier versions of this form will not be accepted. All upfront payments must be received at Mellon Bank in Pittsburgh, PA, by 6:00 p.m. ET on November 30, 1998.

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. 21 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.

- Failure to deliver the upfront payment by the November 30, 1998 deadline will result in dismissal of the application and disqualification from participation in the auction.

30. *Making Auction Payments by Wire Transfer.* Wire transfer payments must be received by 6:00 p.m. ET on November 30, 1998. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261

Receiving Bank: Mellon Pittsburgh

BNF: FCC/AC 910-0198

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

"AUCTIONPAY"

Taxpayer Identification No. (same as FCC Form 159, block 26)

Payment Type Code (enter "ALMU")

FCC Code 1 (same as FCC Form 159, block 23A: "21")

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

Lockbox No. # 358410

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.

31. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 236-5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 21." Bidders may confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

32. *FCC Form 159.* Each upfront payment must be accompanied by a completed FCC Remittance Advice Form (FCC Form 159). Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 will be included in the Bidder Information Package.

33. *Amount of Upfront Payments.* The Bureau will reduce the proposed upfront payments per MHz-pop for the

LMS auction but retain the previously proposed floors for the upfront payments. After considering comments and subsequent discussions, the Bureau agrees with commenters that LMS is a unique and restricted niche service that will be provided to smaller segments of the population. Based on this assessment, and the Bureau's decision to reduce minimum opening bids (see paragraphs 65-66, *infra*), the Bureau believes that a reduction of the proposed upfront payments is reasonable. Further, based on information provided in these discussions, the Bureau will adopt values that are slightly lower than one commenter's (Comtrak) proposed upfront payments. Specifically, the Bureau will adopt the following levels of upfront payments for each LMS license:

(1) Block A—\$0.00075*MHz*Pop (rounded up to the next dollar and no less than \$2,850 per license)

(2) Block B—\$0.00075*MHz*Pop (rounded up to the next dollar and no less than \$2,500 per license)

(3) Block C—\$0.00075*MHz*Pop (rounded up to the next dollar and no less than \$2,800 per license)

These upfront payments represent the deposits required to qualify to bid on LMS licenses in Auction No. 21. The Bureau finds that amounts higher than these might serve as a barrier to participation in the auction, and that upfront payments lower than these might encourage frivolous auction participation and insincere bidding.

34. Please note that upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define a bidder's maximum bidding eligibility. For Auction No. 21, the amount of the upfront payment will be translated into bidding units on a one-to-one basis, e.g., a \$25,000 upfront payment provides the bidder with 25,000 bidding units. The total upfront payment defines the maximum amount of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all licenses for which the applicant has selected on FCC Form 175, but rather to cover the maximum number of bidding units that are associated with licenses the bidder wishes to place bids on and hold high bids on at any given time.

35. In order to be able to place a bid on a license, in addition to having specified that license on the FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number

of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on the FCC Form 175, or else the applicant will not be eligible to participate in the auction.

36. In calculating the upfront payment amount, an applicant should determine the *maximum* number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units. Bidders should check their calculations carefully as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

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

37. *Applicant's Wire Transfer Information for Purposes of Refunds.* Because experience with prior auctions has shown that in most cases wire transfers provide quicker and more efficient refunds than paper checks, the Commission will use wire transfers for all Auction No. 21 refunds. To avoid delays in processing refunds, applicants should include wire transfer instructions with any refund request they file; they may also provide this information in advance by faxing it to the FCC Billings and Collections Branch, ATTN: Linwood Jenkins or Geoffrey Idika, at (202) 418-2843. Please include the following information:

Name of Bank
ABA Number
Account Number to Credit
Correspondent Bank (if applicable)
ABA Number
Account Number
Contact and Phone Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in paragraph 94, *infra*.

38. *Auction Registration.* Approximately ten days before the auction, the Commission 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 that have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

39. All qualified bidders are automatically registered for the auction.

Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the applicant address listed in the FCC Form 175.

40. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, December 9, 1998 should contact the FCC National Call Center at (888) CALL-FCC ((888) 225-5322, press option #2 at the prompt). Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

41. Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 2 Massachusetts Avenue, N.E., Washington, D.C. 20002. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes.

42. *Remote Electronic Bidding Software.* Qualified bidders that file or amend the FCC Form 175 electronically are allowed to bid electronically, but must purchase remote electronic bidding software for \$175.00 by December 1, 1998. (Auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 21.) A software order form is included in the Bidder Information Package.

43. *Auction Seminar.* On October 30, 1998, the FCC will sponsor a seminar for the LMS auction at the Ana Hotel, located at 2401 M Street, N.W., Washington, D.C. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the LMS service and auction rules.

44. To register, complete the registration form to be included in the upcoming Bidder Information Package. The registration form will include details about the time and location of the seminar. Registrations are accepted on a first-come, first-served basis.

45. *Mock Auction.* All applicants whose FCC Form 175 and 175-S have been accepted for filing will be eligible to participate in a mock auction beginning December 10, 1998. The mock

auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

D. Auction Event

46. The first round of the auction will begin on December 15, 1998. The initial round schedule will be announced in a Public Notice listing the qualified bidders, to be released approximately 10 days before the start of the auction.

47. *Auction Structure—Simultaneous Multiple Round Auction.* The 528 multilateration LMS licenses will be awarded through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, the Bureau believes, allows bidders to take advantage of any synergies that exist among licenses and is most administratively efficient.

48. *Maximum Eligibility and Activity Rules.* 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 amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will initially be permitted to bid. There is no provision for increasing a bidder's maximum eligibility during the course of an auction, as described under "Auction Stages," set forth in paragraph 55, *infra*.

49. 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 maximum eligibility during each round of the auction.

50. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (see "Minimum Accepted Bids," paragraph 67, *infra*). A bidder's activity level in a round is the sum of the bidding units associated with

licenses on which the bidder is active. The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases as the auction progresses.

51. *Activity Rule Waivers and Reducing Eligibility.* Each bidder will be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license.

52. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

53. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (see paragraph 55, *infra*). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

54. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

55. *Auction Stages.* The Bureau will conduct the auction in stages and employ an activity rule. Further, in each round of Stage One, a bidder desiring to maintain its current eligibility will be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to

maintain its current eligibility will be required to be active on at least 90 percent of its current bidding eligibility. Finally, a bidder in Stage Three, in order to maintain eligibility, will be required to be active on 98 percent of its current bidding eligibility.

56. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction. The following are the proposed activity levels for each stage of the auction:

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths ($\frac{5}{4}$).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths ($\frac{10}{9}$).

Stage Three: In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty-fortyninths ($\frac{50}{49}$).

Caution: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding round 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 reverify their activity status at stage transitions. Bidders may check their activity against the required minimum activity level by using the bidding software's bidding module.

57. *Stage Transitions.* The auction will start in Stage One. Under the FCC's general guidelines it will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 10 percent or less of the licenses being auctioned (as measured in bidding units). However,

the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau believes that these stage transition rules, having proven successful in prior auctions, are appropriate for use in the LMS auction.

58. *Auction Stopping Rules.* Barring extraordinary circumstances, bidding will remain open on all licenses until bidding stops on every license. Thus, the auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid.

59. The Bureau retains the discretion, however, to keep an auction open even if no new acceptable bids or proactive waivers are submitted, and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

60. Further, in its discretion, the Bureau reserves the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the FCC invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The FCC intends to exercise this option only in extreme circumstances, such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the FCC is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity.

61. Adoption of these rules, the Bureau believes, is most appropriate for the LMS auction because our experience in prior auctions demonstrates that the simultaneous stopping rule balanced the

interests of administrative efficiency and maximum bidder participation. The substitutability between and among licenses in different geographic areas and the importance of preserving the ability of bidders to pursue backup strategies support the use of a simultaneous stopping rule.

62. *Auction Delay, Suspension, or Cancellation.* 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.

63. *Round Structure.* The initial bidding schedule will be announced by public notice at least one week before the start of the auction, and will be included in the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results.

64. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

65. *Reserve Price or Minimum Opening Bid.* The Bureau will adopt minimum opening bids for each of the licenses in the LMS auction that are reducible at the discretion of the Bureau. Commenters, however, have persuaded the Bureau that its proposed levels are significantly too high. Therefore, the Bureau will reduce the price per MHz-pop proposed in the *LMS Public Notice*, but retain the proposed floors for the minimum opening bids. Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids or reserve prices are in the public interest.

Based on the Bureau's experience in using minimum opening bids in the 800 MHz Specialized Mobile Radio and LMDS auctions, the Bureau believes that minimum opening bids speed the course of the auction and ensure that valuable assets are not sold for nominal prices, without unduly interfering with the efficient assignment of licenses. Accordingly, the Bureau adopts the following revised formulae for calculating minimum opening bids:

- (1) Block A— $\$0.0008 \times \text{MHz} \times \text{Pop}$ (rounded up to the next dollar and no less than \$2,850 per license)
- (2) Block B— $\$0.0008 \times \text{MHz} \times \text{Pop}$ (rounded up to the next dollar and no less than \$2,500 per license)
- (3) Block C— $\$0.0008 \times \text{MHz} \times \text{Pop}$ (rounded up to the next dollar and no less than \$2,800 per license)

The revised formulae presented here best meet the objectives of our auction authority in establishing reasonable minimum opening bids. The Bureau has noted in the past that the reserve price and minimum opening bid provision is not a requirement to maximize auction revenue but rather a protection against assigning licenses at unacceptably low prices. In addition, the Bureau must balance the revenue raising objective against the Bureau's other public interest objectives in setting the minimum bid level. LMS is a restricted service with unique dynamics and recognizes that LMS winning bidders are prohibited from using non-vehicular location service except where the primary purpose is to locate vehicles. In addition, LMS auction winners must share and accept interference from other services. LMS operates in the 902–928 MHz frequency band. The band is allocated for primary use by Federal Government radiolocation systems. Next in order of priority are Industrial, Scientific and Medical devices. Federal Government fixed and mobile and LMS systems are secondary to both of these uses. The remaining uses of the 902–928 MHz band include licensed amateur radio operations and unlicensed Part 15 equipment, both of which are secondary to all other uses of the band. The Commission's band plan permits secondary operations across the entire band by users of unlicensed Part 15 devices and amateur licensees. All of these facts, together with projections of the likely revenues and costs of providing multilateration LMS service, convince the Bureau that the proposed minimum opening bids should be substantially reduced. In sum, the Bureau finds that these minimum opening bids will speed the course of the auction and ensure that valuable

assets are not sold for nominal prices without unduly interfering with the efficient assignment of licenses.

66. Minimum opening bids are reducible at the discretion of the Bureau. This will allow the Bureau flexibility to adjust the minimum opening bids if circumstances warrant. 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 any bidder requests to reduce the minimum opening bid on specific licenses.

67. *Minimum Accepted Bids.* The Bureau will use an exponential smoothing methodology to calculate minimum bid increments and retains the discretion to change the minimum bid increment if circumstances so dictate. For every license that receives a bid, the bid increment for the next round for that license will be established as a percentage increment that is determined using the exponential smoothing formula.

68. *Exponential Smoothing.* The exponential smoothing formula calculates the bid increment based on a weighted average of the activity received on each license in the current and all previous rounds. This methodology will tailor the bid increment for each license based on activity, rather than setting a global increment for all licenses. For every license that receives a bid, the bid increment for the next round for that license will be established as a percentage increment that is determined using the exponential smoothing formula.

69. Using exponential smoothing, the calculation of the percentage bid increment for each license will be based on an activity index, which is calculated as the weighted average of the current activity and the activity index from the previous round. The activity index at the start of the auction (round 0) will be set at 0. The current activity index is equal to a weighting factor times the number of new bids received on the license in the current bidding period plus one minus the weighting factor times the activity index from the previous round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment.

70. In the 220 MHz Service auction the increment ranged from a minimum of 0.10 percent to a maximum of 0.20

percent. The proposal for the LMS auction follows this precedent. In addition, that increment will ensure the auction is conducted at a reasonable pace and will result in reasonable prices for LMS spectrum. Accordingly, the Bureau will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1, and the maximum percentage increment at 0.2.

Equations

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

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

Where:

A_i = activity index for the current round (round i)

C = activity weight factor

B_i = number of bids in the current round (round i)

A_{i-1} = activity index from previous round (round $i - 1$), A_0 is 0

I_i = percentage bid increment for the current round (round i)

N = minimum percentage increment

M = maximum percentage increment

Under the exponential smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the new high bid plus the dollar amount associated with the percentage increment (variable I_i from above times the high bid). This result will be rounded to the nearest thousand if it is over 10,000 or to the nearest hundred if it is under 10,000.

Examples

License 1

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

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

1. Calculation of percentage increment using exponential smoothing:

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

$$\text{The smaller of } I_1 = (1 + 1) * 0.1 = 0.2 \text{ or } 0.2 \text{ (the maximum percentage increment)}$$

2. Minimum bid increment using the percentage increment (I_1 from above)

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

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

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

1. Calculation of percentage increment using exponential smoothing:

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

$$\text{The smaller of } I_2 = (1 + 2) * 0.1 = 0.3 \text{ or } 0.2 \text{ (the maximum percentage increment)}$$

2. Minimum bid increment using the percentage increment is (I_2 from above)

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

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

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

1. Calculation of percentage increment using exponential smoothing:

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

$$\text{The smaller of } I_3 = (1 + 1.5) * 0.1 = 0.25 \text{ or } 0.2 \text{ (the maximum percentage increment)}$$

2. Minimum bid increment using the percentage increment (I_3 from above)

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

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

71. Bidding. Each bid will be date- and time-stamped when it is entered into the FCC computer system. All bidding will take place either through the automated bidding software or by telephonic bidding. There will be no on-site bidding during Auction No. 21. The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials.

72. High Bids. Each bid will be date- and time-stamped when it is entered into the FCC computer system. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which bids are received by the Commission, starting with the earliest bid. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date- and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date- and time-stamp than bids submitted later in a round.

73. Bidding. During a bidding round, a bidder may submit bids for as many licenses for which it is eligible, as well as withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round, and the date- and time-stamp of that bid reflect the latest time the bid was submitted.

74. Please note that all bidding will take place either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when handling bids placed by telephone. Telephonic bidders are therefore reminded to allow

sufficient time to bid, by placing their calls well in advance of the close of a round, because four to five minutes are necessary to complete a bid submission.)

75. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (1) the licenses applied for on FCC Form 175; and (2) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of licenses.

76. The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials. Bidders are strongly encouraged to download and print bid confirmations *after* they submit their bids.

77. The bid entry screen of the Automated Auction System software for the LMS auction allows bidders to place multiple increment bids which will let bidders increase high bids from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a license.

78. To place a bid on a license, the bidder must enter a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the high bid amount according to the following formula:

$$\text{Amount Bid} = \text{High Bid} + (\text{Bid Mult} * \text{Bid Increment})$$

Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder will enter "1" in the bid increment multiplier column and press submit.

79. For any license on which the FCC is designated as the high bidder (*i.e.*, a license that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases no increment exists for the licenses, and bidders should enter "1" in the Bid Mult field. Note that, in these cases, any whole number between 1 and 9 entered in the

multiplier column will result in a bid value at the minimum acceptable bid amount. Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

80. Bid Removal and Bid Withdrawal 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 software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed. This procedure will enhance bidder flexibility and may serve to expedite the course of the auction.

82. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the "withdraw bid" function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g) and 1.2109. The procedure for withdrawing a bid and receiving a withdrawal confirmation is essentially the same as the bidding procedure described in "High Bids" (see paragraph 72, *supra*).

82. 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 geographic area licenses in combination, the Bureau concludes that, for the LMS auction, adoption of a limit on their use to two rounds 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 its experience in prior auctions, particularly the PCS D, E and F block auction, 800 MHz SMR auction, and LMDS auction, and is in no way a reflection of the Bureau's view regarding the likelihood of any speculation or "gaming" in the LMS auction.

83. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds.

These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g) and 1.2109. Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

84. If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The FCC will serve as a "place holder" on the license until a new acceptable bid is submitted on that license.

85. Bid Removal and Bid Withdrawal Calculation. Generally, a bidder that withdraws a standing high bid during the course of an auction will be subject to a payment equal to the lower of: (1) the difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid for that license. See 47 CFR 1.2104(g) and 1.2109. No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid.

86. Round Results. The bids placed during a round are not published until the conclusion of that bidding period. After a round closes, the FCC will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

87. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 21 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.

88. Round Results and Auction Announcements. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as the Internet and the FCC Bulletin Board System.

89. Other Matters. As noted above, after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Filers should make these

changes on-line, and submit a letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, N.W., Room 5202, Washington, D.C. 20554 (and mail a separate copy to Kenneth Burnley, Auctions and Industry Analysis Division), briefly summarizing the changes. Questions about other changes should be directed to Kenneth Burnley of the FCC Auctions and Industry Analysis Division at (202) 418-0660.

E. Post-Auction Procedures

90. Down Payments and Withdrawn Bid Payments. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each license, and listing withdrawn bid payments due.

91. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credits). See 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal" (see paragraphs 80-85, *supra*). (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

92. Long-Form Application. Within ten business days after release of the auction closing notice, winning bidders must submit a properly completed long-form application and required exhibits for each LMS license won through the auction. Winning bidders that are small businesses or very small businesses must include an exhibit demonstrating their eligibility for bidding credits. See 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

93. Default and Disqualification. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals

ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. See 47 CFR 1.2109(d).

94. *Refund of Remaining Upfront Payment Balance.* All applicants that submitted upfront payments but were not winning bidders for a LMS license may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders that reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request which includes wire transfer instructions, a Taxpayer Identification Number ("TIN"), and a copy of their bidding eligibility screen print, to: Federal Communications Commission, Billings and Collections Branch, Attn: Regina Dorsey or Linwood Jenkins, 1919 M Street, N.W., Room 452, Washington, D.C. 20554.

95. Bidders can also fax their request to the Billings and Collections Branch (202) 418-2843. Once the request has been approved, a refund will be sent to the address provided on the FCC Form 159.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Linwood Jenkins or Geoffrey Idika at (202) 418-1995.

Federal Communications Commission.

Amy Zoslov,

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

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FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Uniform Interagency Trust Rating System

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC) is revising the Uniform Interagency Trust Rating System (UITRS), commonly referred to as the trust rating system. The revisions update the rating system to reflect changes that have occurred in the fiduciary services industry and in supervisory policies and procedures since the rating system was first adopted in 1978. The changes revise the definitions for the numerical ratings to conform to the language and tone of the Uniform Financial Institutions Rating System (UFIRS) rating definitions, commonly referred to as the CAMELS rating system; reformat and clarify the component rating descriptions; reorganize the account administration and conflicts of interest components into a new component addressing compliance; emphasize the quality of risk management processes in each of the rating components, particularly in the management component; add language in composite rating definitions to parallel the changes in the component rating descriptions; and explicitly identify the types of risk that are considered in assigning component ratings.

The term "financial institution" refers to those FDIC insured depository institutions whose primary Federal supervisory agency is represented on the FFIEC. Uninsured trust companies that are chartered by the OCC, members of the Federal Reserve System, or subsidiaries of registered bank holding companies or insured depository institutions are also covered by this notice. The Federal supervisory agencies participating in this notice are: the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS).

DATES: Effective October 13, 1998.

FOR FURTHER INFORMATION CONTACT:

FRB: William R. Stanley, Supervisory Trust Analyst, Specialized Activities, (202) 452-2744, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Mail Stop 175, 20th and C Streets, NW, Washington, D.C. 20551
FDIC: John F. Harvey, Trust Review Examiner, (202) 898-6762, Division of Supervision, Federal Deposit Insurance Corporation, Room F2078, 550 17th Street, NW, Washington, D.C. 20429.

OCC: Laurie A. Edlund, National Bank Examiner, (202) 874-3828, Division of Asset Management, Office of the

Comptroller of the Currency, 250 E Street, SW, Mail Stop 7-7, Washington, D.C., 20219.

OTS: Larry A. Clark, Senior Manager, Compliance and Trust Programs, (202) 906-5628, Gary C. Jackson, Program Analyst, (202) 906-5653, Compliance Policy, Office of Thrift Supervision, 1700 G Street, NW, Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

Background information

On February 17, 1998, the FFIEC published a notice in the **Federal Register** (February Notice), 63 FR 7802, requesting comment on proposed revisions to the Uniform Interagency Trust Rating System (UITRS). The UITRS is an internal supervisory examination rating system used by the Federal supervisory agencies for evaluating the administration of fiduciary activities of financial institutions and uninsured trust companies on a uniform basis and for identifying those institutions requiring special supervisory attention. The UITRS was adopted on September 21, 1978 by the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Board of Governors of the Federal Reserve System (FRB), and in 1988 by the Federal Home Loan Bank Board, predecessor agency to the Office of Thrift Supervision (OTS).

Under the UITRS, each institution is assigned a composite rating based on an evaluation and rating of essential components of an institution's fiduciary activities. The composite rating reflects the overall condition of an institution's fiduciary activities and is used by the Federal supervisory agencies to monitor aggregate trends in the overall administration of fiduciary activities. Under the former UITRS, each financial institution or trust company was assigned a composite rating based on an evaluation and rating of six essential components of an institution's fiduciary activities. These components addressed: the capability of management; the adequacy of operations, controls and audits; the management of fiduciary assets; the adequacy of account administration practices; the adequacy of practices relating to self-dealing and conflicts of interest; and the quality and level of earnings. Both the composite and component ratings are assigned on a 1 to 5 numerical scale. A 1 indicates the strongest performance and management practices, and the least degree of supervisory concern, while a 5 indicates the weakest performance and management practices and,