

PPA. Comments should be sent to the addressee identified in this document.

Wendy L. Carney,

Acting Director, Superfund Division, Region 5.

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FEDERAL COMMUNICATIONS COMMISSION

[DA 99-266; Report No. AUC-99-23-B (Auction No. 23)]

Auction of Local Multipoint Distribution Service Spectrum; Auction Notice and Filing Requirements for 168 Local Multipoint Distribution Service Licenses Scheduled for April 27, 1999; Minimum Opening Bids and Other Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On January 29, 1999, the Wireless Telecommunications Bureau ("Bureau") released a Public Notice announcing the minimum opening bids and other auction procedures for the auction of Local Multipoint Distribution Service ("LMDS") spectrum, consisting of 168 licenses.

DATES: The LMDS auction will begin on April 27, 1998.

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

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: Kathryn Garland, Operations at (717) 338-2801; Tim Salmon, Auctions Analysis; and Arthur Lechtman, Legal Branch at (202) 418-0660. Public Safety and Private Wireless Division: Ronald Quirk or Cathy Fox at (202) 418-0680. Media Contact: Meribeth McCarrick at (202) 418-0654.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice that was released on January 29, 1999. The complete text of this Public Notice is available in its entirety, including all Attachments, for inspection and copying during normal business hours in the Wireless Telecommunications Bureau Reference Center, Room 5608, 2025 M Street N.W., 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. It is also available on the Commission's website at <http://www.fcc.gov>.

Synopsis of the Public Notice:

A. Introduction

1. This Public Notice announces the procedures and minimum opening bids for the upcoming Local Multipoint Distribution Service ("LMDS") auction. On November 6, 1998, the Wireless Telecommunications Bureau ("Bureau") released a Public Notice (See "Local Multipoint Distribution Service Spectrum Re-Auction of 168 Licenses Scheduled for April 27, 1999; Application Deadline Set for March 29, 1999; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures," *Public Notice*, DA 98-2266 (rel. November 6, 1998) ("LMDS Public Notice"), 63 FR 64502-01 (November 20, 1998), seeking comment on the establishment of reserve prices or minimum opening bids for the LMDS 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 LMDS auction. The Bureau received two comments and no replies in response to the *LMDS Public Notice*. Comments were filed on November 30, 1998, by the Wireless Communications Association International, Inc. ("WCA") and by ABS LMDS Venture, Catfish Communications, L.L.C., ENMR Telephone Cooperative, Inc., and SKSW LMDS Venture, filing jointly (collectively "ABS et al").

2. The licenses available in this auction are licenses for which there was no winning bidder in the original LMDS auction that closed on March 25, 1998, or are licenses on which the winning bidder defaulted. The three licensees in default include Baker Creek Communications, L.P., New Wave Networks, L.L.C., and Pinpoint Communications, Inc. Licenses B038-B, B144-B, B254-B, B371-B, B372-B, and B392-B are the subject of a pending waiver request filed by New Wave Networks, L.L.C. (See New Wave Networks, L.L.C. Request for Waiver of Rule Sections 101.1105(b) and 1.2109(a)-(c), filed August 13, 1998; Supplement filed September 2, 1998; Second Supplement filed September 9, 1998; Third Supplement filed December 9, 1998.) Licenses B185-B, B270-A, and B270-B are the subject of a pending Petition for Reconsideration filed by Pinpoint Communications, Inc. (See Pinpoint Communications, Application for Local Multipoint Distribution Service Licenses to Serve BTA 185, Hastings, Nebraska and BTA 270, McCook, Nebraska, Petition for Reconsideration, filed October 23, 1998.) Two blocks of spectrum are allocated for LMDS systems:

- (1) Block A (1,150 MHz): 27,500-28,350 MHz and 29,100-29,250 MHz and 31,075 -31,225 MHz
- (2) Block B (150 MHz): 31,000-31,075 MHz and 31,225-31,300 MHz

One license will be awarded for each of these spectrum blocks in each of 122 Block A Basic Trading Areas (BTAs) and 46 Block B BTAs designated for LMDS. Rand McNally is the copyright owner of the Major Trading Area (MTA) and Basic Trading Area (BTA) Listings, which list the BTAs contained in each MTA and the counties within each BTA, as embodied in Rand McNally's Trading Area System MTA/BTA Diskette, and geographically represented in the map contained in Rand McNally's Commercial Atlas & Marketing Guide. The conditional use of Rand McNally copyrighted material by interested persons is authorized under a blanket license agreement dated February 10, 1994, and covers use by LMDS applicants. This agreement requires authorized users of the material to include a legend on reproductions (as specified in the license agreement) indicating Rand McNally ownership. These licenses are listed in Attachment A to this Public Notice. The BTA licenses designated for the LMDS auction comprise various portions of the following areas: (1) continental United States and (2) Puerto Rico. Thus, there are a total of 168 LMDS licenses to be auctioned.

3. Auction Date: The auction will begin on April 27, 1999. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding will be conducted on each business day until bidding has stopped on all licenses.

4. Auction Title: The Local Multipoint Distribution Service—Auction No. 23.

5. Bidding Methodology: Simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

6. Pre-Auction Deadlines:
- Auction Seminar—March 10, 1999.
 - Short Form Application (FCC Form 175)—March 29, 1999; 5:30 p.m. ET.
 - Upfront Payments (via wire transfer)—April 12, 1999; 6:00 p.m. ET.
 - Orders for Remote Bidding Software—April 13, 1999; 5:30 p.m. ET.
 - Mock Auction April 22, 1999.

7. Telephone Contacts:

- Auctions Hotline—(888) CALL-FCC ((888) 225-5322), press Option #2 or (717) 338-2888 (direct dial).

(For Bidder Information Packages, General Auction Information, and Seminar Registration. Hours of service: 8 a.m.-5:30 p.m. ET.)

• FCC Technical Support Hotline—(202) 414-1250 (voice), (202) 414-1255 (TTY).

(For technical assistance with installing or using FCC software. Hours of service: 8 a.m.–6 p.m. ET, Monday–Friday; 9 a.m.–5 p.m. ET, weekend of March 27–28.)

8. List of Attachments:

• Attachment A—Summary of LMDS 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.

• Attachment E—Existing 28 GHz Licensee and 31 GHz Licensee.

• Attachment F—Location of NGSO–MSS Feeder Link Earth Stations in the 29.1–29.25 GHz Band.

• Attachment G—Auction Seminar Registration Form.

• Attachment H—Exponential Smoothing Formula and Example.

9. Background: In 1997, the Commission established rules to create and govern the licensing and operations for Local Multipoint Distribution Service (LMDS), a fixed, broadband, point-to-multipoint microwave service. The technology developed for use in the LMDS frequency band provides very high subscriber capacity for two-way video telecommunications. The Commission also established rules for the distribution of LMDS licenses by means of competitive bidding. The initial auction for LMDS licenses began on February 18, 1998 and closed on March 25, 1998, with 104 bidders winning 864 of the 986 available licenses.

10. Incumbent Licensees: Although LMDS operations are permitted in the 31,000–31,075 MHz and 31,225–31,300 MHz bands, incumbent city licensees and private business users operating in these two segments are entitled to protection against harmful interference from any LMDS operation in these blocks. LMDS service providers will be entitled to interference protection from any other presently-authorized primary users in the 31,075–31,225 MHz bands. More detailed information is provided in Attachment E.

11. Block A of the New York BTA is encumbered by a pre-existing licensee in the New York Primary Metropolitan Statistical Area. The incumbent licensee, Winstar Wireless Fiber Corp.,

is entitled to interference protection. See Attachment E.

12. Reminder to potential Non-geostationary Mobile Satellite Service applicants/licensees: Section 101.103(h) of the Commission's Rules requires that no more than 15 days after the release of this Public Notice, NGSO–MSS feeder link earth station complex applicants/licensees planning to operate in the 29,100–29,250 MHz band pursuant to Section 25.257 of the rules, file with the Commission a set of geographical coordinates consistent with Rule Section 101.103(h)(2). This information should be directed to the attention of: Ronald Quirk, Federal Communications Commission, Wireless Telecommunications Bureau, 1919 M Street, NW, Room 8102, Washington, D.C. 20554.

13. Other Proceedings: Currently pending before the Bureau are several Petitions for Reconsideration in the matter of Requests for Waiver of Section 101.1003(a) of the Commission's Rules Establishing Eligibility Restrictions on Incumbent LECs and Cable Operators in the Local Multipoint Distribution Service. (See *Order*, 13 FCC Rcd 18694 (1998)).

14. Due Diligence: Potential bidders are reminded that several NGSO–MSS feeder link Earth stations are located in the 29.1–29.5 GHz band. These are identified in Attachment F.

15. Potential bidders should be aware that certain licenses designated for Auction No. 23 are subject to a waiver request and petition for reconsideration that are pending before the Commission. The Bureau notes that resolution of these matters could have an impact on the availability of licenses for this auction. In addition, while the Commission will continue to act on pending requests and petitions, some of these matters may not be resolved before the auction. In the event that changes in the license inventory for Auction Event No. 23 occur before the auction, the Commission will make an announcement by Public Notice.

16. Licensing information is contained in the Commission's licensing database, which is available for inspection in the Wireless Telecommunications Bureau's Public Reference Rooms, located at 2025 M Street, N.W., Room 5608, Washington, D.C. 20554, and 1270 Fairfield Road, Gettysburg, PA 17325. In a future public notice, the Bureau will provide the new location for inspecting the Commission's licensing database in the Portals building.

17. In addition, potential bidders may search for information regarding LMDS 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 at <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)).

18. 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.

19. Participation: Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) by March 29, 1999.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by April 12, 1999.
- Comply with all provisions outlined in this Public Notice.

20. 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. Bidders competing for the same license(s) are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm), a violation could similarly occur. At a minimum, in such a case, applicants should certify 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. The Bureau, however, cautions that merely filing a certifying statement as part of an

application will not outweigh specific evidence that collusive behavior has occurred nor will it preclude the initiation of an investigation when warranted. In the LMDS auction, for example, the rule would apply to any applicants bidding for the same BTA. Therefore, applicants that apply to bid for "all markets" would be precluded from communicating with all other applicants after filing the FCC Form 175. However, applicants may enter into bidding agreements before filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their Form 175 short-form applications. By signing their FCC Form 175 short form applications, applicants are certifying their compliance with Section 1.2105(c). In addition, Section 1.65 of the Commission's Rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, Section 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

21. Bidder Information Package: No separate bidder information package will be published for this auction. However, some Commission Orders relevant to LMDS are contained in the Bidder Information Package for Auction Event No. 17, the first LMDS auction. Prospective bidders are advised not to rely upon information contained in the Bidder Information Package, other than the rulemaking Orders contained in Tab E, as it is outdated. In addition, the Commission and Bureau have released Orders concerning LMDS since the publication of the Bidder Information Package (see next section). The Commission has a limited number of Auction Event No. 17 Bidder Information Packages available. A copy may be requested by contacting the Auction Hotline at (888) CALL-FCC (888) 225-5322 and pressing Option 2 at the prompt. An electronic version of the Auction Event No. 17 Bidder Information Package can be accessed via the Commission website at www.fcc.gov/wtb/auctions.

22. Relevant Authority: Prospective bidders must familiarize themselves thoroughly with the Commission's Rules relating to LMDS, contained in Title 47, Part 101 of the Code of Federal Regulations, and those relating to

application and auction procedures, contained in Title 47, Part 1 of the Code of Federal Regulations.

23. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in the *Second Report and Order* in PP Docket No. 93-253, 9 FCC Rcd 2348 (1994); the *Second Memorandum Opinion and Order* in PP Docket No. 93-253, 9 FCC Rcd 7245 (1994); the *Erratum to the Second Memorandum Opinion and Order* in PP Docket No. 93-253 (released Oct. 19, 1994); the *First Report and Order and Fourth Notice of Proposed Rule Making* in CC Docket No. 97-297, 11 FCC Rcd 19005 (1996); the *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making* in CC Docket No. 96-297, 12 FCC Rcd 12545 (1997) ("LMDS Second R&O"); the *Second Order on Reconsideration* in CC Docket No. 97-297, 12 FCC Rcd 15082 (1997); the *Third Order on Reconsideration* in CC Docket 97-297, 13 FCC Rcd 4856; the *Fourth Report and Order* in CC Docket No. 92-297, 13 FCC Rcd 11655 (1998); *Order, Requests for Waiver of Section 101.1003(a) of the Commission's Rules Establishing Eligibility Restrictions on Incumbent LECs and Cable Operators in the Local Multipoint Distribution Service*, 13 FCC Rcd 18694 (1998) (collectively referred to as the "Relevant Orders"); and Part 1, Subpart Q of the Commission's Rules concerning Competitive Bidding Proceedings.

24. The terms contained in the Commission's Rules, relevant orders, public notices and bidder information package are not negotiable. The Commission may amend or supplement the information contained in our public notices or the bidder information package at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission Rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp @ftp.fcc.gov or the FCC World Wide Web site at <http://www.fcc.gov/wtb/auctions>. Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. (ITS), at (202) 857-3800. When ordering documents from ITS, please provide the appropriate FCC number (e.g., FCC 97-323 for the *Second Order on Reconsideration*).

25. 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.

26. 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.

27. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use the LMDS 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.

28. 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 LMDS proposals may also call the FCC National Call Center at (888) CALL-FCC ((888) 225-5322).

B. Bidder Eligibility and Small Business Provisions

29. *General Eligibility Criteria.* As described above, this auction offers one license in each of 122 Block A Basic Trading Areas (BTAs) and 46 Block B BTAs designated for LMDS. For LMDS, the Commission adopted small business provisions to promote and facilitate the participation of small businesses in the LMDS auction and in the provision of this and other commercial mobile radio services. General eligibility to provide LMDS service, subject to certain restrictions outlined below, is afforded to entities that are not precluded under 47 CFR §§ 101.7, 101.1001, and 101.1003.

30. *Eligibility Restrictions: 1,150 megahertz licenses.* ILECs and cable television companies are subject to certain restrictions on their eligibility to own an attributable interest in the 1,150 megahertz LMDS license in their authorized or franchised service areas ("in-region"). An incumbent is defined as "in-region" if its authorized service area represents 10 percent or more of the population of the BTA. A 20 percent or greater ownership level constitutes an attributable interest in a license. ILECs and cable companies are permitted to participate fully in the auction of the 1,150 megahertz LMDS licenses, but are required to divest any overlapping interests within 90 days if they win a license at the auction. The eligibility restrictions terminate on the third anniversary of the effective date of the LMDS rules. These restrictions may be extended beyond the three-year period, if, upon a review at the end of this period, the Commission determines that sufficient competition has not developed. The Commission may waive the restriction in individual cases upon a showing of good cause.

31. *150 megahertz licenses.* All entities that meet the Commission's general eligibility criteria, including ILECs and cable television companies, are eligible to own attributable interests in the 150 megahertz license in any BTA.

32. *Determination of Revenues.* For purposes of determining which entities qualify as very small businesses, small businesses, or entrepreneurs, the Commission will consider the gross revenues of the applicant, its controlling principals, and the affiliates of the applicant. Therefore, the gross revenues of all of the above entities must be disclosed *separately and in the aggregate* as Exhibit C to an applicant's FCC Form 175. The Commission does not impose specific equity requirements on controlling principals. 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 "control" 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.

33. *Entrepreneur or Very Small or Small Business Consortia.* A consortium of entrepreneurs, 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 entrepreneur or very small or small business in Section 101.1112(b), (c), or (d). Thus, each consortium member must disclose its gross revenues along with those of its affiliates, controlling principals, and controlling principals' 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.

34. *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 an entrepreneur or a very small business or small business (or consortiums of entrepreneurs, very

small, or small businesses) for this auction. Specifically, for the LMDS auction, applicants applying to bid as entrepreneurs, very small, or small businesses (or consortiums of entrepreneurs, 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 Sections 1.2105(a) and Section 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 principals; and (4) the affiliates of the applicant's controlling principals. Certification that the average gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, and its controlling principals, a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of very small or small businesses, this information must be provided for each consortium member.

35. *Bidding Credits.* Applicants that qualify under the definitions of entrepreneur, very small business, and small business (or consortia of entrepreneurs, very small, or small businesses) (including calculation of average gross revenues) as are set forth in 47 CFR § 101.1112, are eligible for a bidding credit that represents the amount by which a bidder's winning bids are discounted. The size of an LMDS bidding credit depends on the average gross revenues for the preceding three years of the bidder and its controlling principals and affiliates:

- A bidder with average gross revenues of not more than \$15 million for the preceding three years receives a 45 percent discount on its winning bids for LMDS licenses;
- A bidder with average gross revenues of more than \$15 million but not more than \$40 million for the preceding three years receives a 35 percent discount on its winning bids for LMDS licenses.
- A bidder with average gross revenues of more than \$40 million but not more than \$75 million for the preceding three years receives a 25 percent discount on its winning bids for LMDS licenses.

36. Bidding credits are not cumulative: qualifying applicants receive either the 25 percent, the 35

percent bidding credit, or the 45 percent bidding credit but not all three or any combination thereof.

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

C. Pre-Auction Procedures

38. *Short-Form Application (FCC Form 175)—Due March 29, 1999.* 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 March 29, 1999. Late applications will not be accepted.

39. 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 Paragraph 45 below.

40. *Electronic Filing.* Applicants must file their FCC Form 175 applications electronically. (See 47 CFR Section 1.2105(a).) Applications may generally be filed at any time from March 5, 1999 until 5:30 p.m. ET on March 29, 1999. Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on March 29, 1999. Applicants must press the "Submit Form 175" button on the "Submit" page of the electronic form to successfully submit their FCC Forms 175.

Information about installing and running the FCC Form 175 application software is included in Attachment C. 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 March 27-28, 1999.

41. *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.

42. *Electronic Review of FCC Form 175.* The FCC Form 175 review software may be used to review 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. 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. See Attachment C for details.

43. *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.

44. As described more fully in the Commission's Rules, after the March 29, 1999, short form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections, change the certifying official or change control of the applicant). See 47 CFR Section 1.2105.

45. *Upfront Payments—Due April 12, 1999.* In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159. If filing the Form 159 manually, the July 1997 version must be used. 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 April 12, 1999.

46. 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. 23 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 April 12, 1999 deadline will result in dismissal of the application and disqualification from participation in the auction.

47. *Making Auction Payments by Wire Transfer.* Wire transfer payments must be received by 6:00 p.m. ET on April 12, 1999. To avoid untimely payments, applicants should discuss arrangements

(including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
 Receiving Bank: Mellon Pittsburgh
 BNF: FCC/AC 910-0180
 OBI Field: (Skip one space between each information item)
 "AUCTIONPAY"
 TAXPAYER IDENTIFICATION NO.
 (same as FCC Form 159, block 26)
 PAYMENT TYPE CODE (enter "A23U")
 FCC CODE 1 (same as FCC Form 159, block 23A: "23")
 PAYER NAME (same as FCC Form 159, block 2)
 LOCKBOX NO. # 358420

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

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

49. *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 are included in Attachment B to this Public Notice.

50. *Amount of Upfront Payment.* The Bureau adopts the proposed upfront payments for the LMDS auction. Specifically, the the upfront payments adopted for Auction Event No. 23 are: (1) Block A: \$0.06 * Pops (rounded up to the next dollar)
 (2) Block B: \$0.03 * Pops (rounded up to the next dollar)

The Bureau does not share WCA's concern that these upfront payments are too low, and thus invite defaults. The Bureau believes that the default payment rule is sufficient to deter high bidders from not meeting their payment obligations. The adopted upfront payment amounts have been calculated for each license and are listed in Attachment A. These amounts represent the deposits required to qualify to bid on the LMDS licenses in Auction No. 23. 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.

51. 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. 23, 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 on which the bidder wishes to place bids and hold high bids at any given time.

52. 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.

53. 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.

54. **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.

55. *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. 23 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 114, *infra*.

56. *Auction Registration.* 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 that have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

57. 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.

58. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, April 21, 1999 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.

59. 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.

60. *Remote Electronic Bidding Software.* Qualified bidders are allowed to bid electronically or telephonically.

Those choosing to bid electronically must purchase remote electronic bidding software for \$175.00 by April 13, 1999. (Auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 23.) A software order form is included in this public notice. If bidding telephonically, the appropriate phone number will be supplied in the second Federal Express mailing of confidential login codes.

61. *Auction Seminar.* On March 10, 1999, the FCC will sponsor a seminar for the LMDS auction at the Park Hyatt Washington Hotel, located at 1201 24th 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 LMDS service and auction rules. The seminar will also provide a unique opportunity for prospective bidders to ask questions of FCC staff.

62. To register, complete the registration form included with this Public Notice and submit it by March 8, 1999. Registrations are accepted on a first-come, first-served basis.

63. *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 on April 22, 1999. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

D. Auction Event

64. The first round of the auction will begin on April 27, 1999. The initial round schedule will be announced in a Public Notice listing the qualified bidders, to be released approximately 10 days before the start of the auction.

65. *Auction Structure—Simultaneous Multiple Round Auction.* In the *LMDS Public Notice*, the Bureau proposed to award the 168 licenses in LMDS in a single, simultaneous multiple round auction. Neither commenter specifically addressed this issue, although WCA generally supported all proposals in the LMDS Public Notice. The Bureau concludes that the 168 LMDS 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.

66. *Maximum Eligibility and Activity Rules.* In the *LMDS 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 Commission received no comments on this issue.

67. For the LMDS auction the Bureau will adopt this proposal. 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. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction (as described under "Auction Stages" as set forth in Paragraph 74), prospective bidders are cautioned to calculate their upfront payments carefully.

68. 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.

69. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (see "Minimum Accepted Bids" in Paragraph 89, *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. Because these procedures have proven successful in maintaining the pace of previous auctions as set forth under "Auction Stages" in Paragraph 74 and "Stage Transitions" in Paragraph 76, *infra*, the Bureau adopts them for the LMDS auction.

70. *Activity Rule Waivers and Reducing Eligibility.* Based upon our experience in previous auctions, the Bureau adopts its proposal and 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.

71. 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.

72. 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 74 discussion below). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

73. 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.

74. *Auction Stages.* The Bureau concludes that the auction will be composed of three stages, which are each defined by an increasing activity rule. The Bureau will adopt its proposals for the activity rules. These are the same rules the Bureau will employ for the upcoming LMS auction. Below 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: 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 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 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.

75. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, the Bureau adopts them for the LMDS auction.

76. *Stage Transitions.* In the *LMDS Public Notice*, the Bureau proposed that the auction would 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 10 percent for three consecutive rounds of bidding in each Stage. However, the Bureau further proposed that the Bureau 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 Commission received no comments on this subject.

77. The Commission adopts its proposal. Thus, 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 LMDS auction.

78. *Auction Stopping Rules.* The Bureau adopts its proposals concerning the stopping rule. Thus, bidding will remain open on all licenses until bidding stops on every license (a simultaneous stopping rule). The auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid. In addition, however, the Bureau retains the discretion to close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this stopping rule procedure. The Bureau will notify bidders in advance of implementing any change to our simultaneous stopping rule.

79. 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).

80. 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.

81. Adoption of these rules, the Bureau believes, is most appropriate for the LMDS 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.

82. *Auction Delay, Suspension, or Cancellation.* In the *LMDS 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 and competitive conduct of competitive bidding. The Commission received no comments on this proposal.

83. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau will adopt 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.

84. *Bidding Procedures—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.

85. 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.

86. *Reserve Price or Minimum Opening Bid.* The Bureau will adopt the minimum opening bids proposed for each of the licenses in the LMDS auction, which are reducible at the discretion of the Bureau. Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids or reserve prices are in the public interest. Based on our experience in using minimum opening bids in the 800 MHz SMR, VHF Public Coast, and first 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 will use the following formulae for calculating minimum opening bids:

(1) Block A: $\$0.06 * \text{Pops}$ (rounded up to the next dollar)

(2) Block B: $\$0.03 * \text{Pops}$ (rounded up to the next dollar)

87. The Bureau concludes that the adopted formulae presented here best meet the objectives of our auction authority in establishing reasonable minimum opening bids. The Commission 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 and that we must balance the revenue raising objective against our other public

interest objectives in setting the minimum bid level. The Bureau further believes that when conducting second auctions for particular licenses, the public interest is best served by setting minimum opening bids that will maximize the likelihood that all licenses are distributed. The Bureau does not grant ABS *et al*'s request to use the minimum opening bids from Auction Event No. 17 for their 13 licenses. The Bureau does not believe that their arguments are persuasive. Minimum opening bids cannot reflect the amount of the bid withdrawal payment for which a winning bidder may ultimately be liable. The Commission has never indicated that it would use the same minimum opening bids for subsequent auctions of any given licenses. Each auction event is unique and the Commission establishes minimum opening bids and other auction procedures that are most appropriate for the given circumstances. Using the original minimum opening bids for licenses that were subject to bid withdrawal is impractical. For the sake of auction integrity and fairness, minimum opening bids must be set in a manner that is consistent across licenses. The commenters' proposal, if implemented, could result in similar licenses having very different valuations at the start of the auction. ABS *et al* err in claiming that the value of the licenses they withdrew from is demonstrated by the second highest bid. If that were true, another bidder would have claimed the license. Furthermore, ABS *et al* recognize that minimum opening bids might have to be reduced during the course of the auction. This illustrates that they are aware of the potential for wide variations in withdrawal payments, and that is a risk all bidders assume when they withdraw bids.

88. 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.

89. *Minimum Accepted Bids.* In the *LMDS Public Notice*, the Bureau proposed to use a smoothing methodology to calculate minimum bid increments. The Bureau further proposed to retain the discretion to change the minimum bid increment if circumstances so dictate. The

Commission received no comments on this particular issue.

90. Because these techniques have proven effective in prior auctions, the Bureau adopts its proposal for the LMDS auction. Once there is a standing high bid on a license, a bid increment will be applied to that license to establish a minimum acceptable bid for the following round. The formula used to calculate this increment is included as Attachment H. This methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. A similar methodology was used in previous auctions, including the original LMDS auction and the 220 MHz auction.

91. The Bureau adopts its proposal of initial values for the maximum of 0.2 or 20% of the license value, and a minimum of 0.1 or 10% of the license value. The Bureau retains the discretion to change the minimum bid increment if it determines that circumstances so dictate, such as raising the minimum increment toward the end of the auction to enable bids to reach their final values more quickly. The Bureau will do so by announcement in the Automated Auction System. Under its discretion the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. As an alternative approach, the Bureau may, in its discretion, adjust the minimum bid increment gradually over a number of rounds as opposed to single large changes in the minimum bid increment (*e.g.*, by raising the increment floor by one percent every round over the course of ten rounds). The Bureau also retains the discretion to use alternate methodologies for the LMDS auction if circumstances warrant.

92. *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.

93. *Bidding.* During a bidding round, a bidder may submit bids for as many licenses as it wishes, subject to its

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

94. Please note that all bidding will take place either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when handling bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid, by placing their calls well in advance of the close of a round, because four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 23.

95. 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.

96. 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.

97. The bid entry screen of the Automated Auction System software for the LMDS 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.

98. 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.

99. For any license on which the FCC is designated as the high bidder (*i.e.*, a license that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases no increment exists for the licenses, and bidders should enter "1" in the Bid Mult field. Note that in this case, any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount. Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

100. *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, about which the Commission received no comments, will enhance bidder flexibility and, the Bureau believes, may serve to expedite the course of the auction. Therefore, the Bureau will adopt these procedures for the LMDS auction.

101. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the "withdraw bid" function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g) and 1.2109. The procedure for withdrawing a bid and receiving a withdrawal confirmation is essentially the same as the bidding procedure described in "High Bids," Part 4.B.(4).

102. 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 LMDS 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. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auction, 800 MHz SMR auction, and first LMDS auction, and is in no way a reflection of our view regarding the likelihood of any speculation or "gaming" in this LMDS auction.

103. 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.

104. 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.

105. *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 Sections 1.2104(g), and 1.2109. No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid.

106. *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.

107. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 23 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.

108. *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.

109. *Other Matters.* As noted above [FLAG], 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 must 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 Arthur Lechtman, Auctions and Industry Analysis Division), briefly summarizing the changes. Questions about other changes should be directed to Arthur Lechtman of the FCC Auctions and Industry Analysis Division at (202) 418-0660.

E. Post-Auction Procedures

110. *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.

111. 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 Section 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," Paragraph 100. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

112. *Long-Form Application.* Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly

completed long-form application and required exhibits for each LMDS 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 Section 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

113. *Default and Disqualification.* Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR § 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidders (in descending order) at their final bids. See 47 CFR Section 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. See 47 CFR 1.2109(d).

114. *Refund of Remaining Upfront Payment Balance.* All applicants that submitted upfront payments but were not winning bidders for a LMDS 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.

115. 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, 445 12th Street, S.W., Room 1-A824, Washington, D.C. 20554.

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

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

Federal Communications Commission.

Mark R. Bollinger,

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

[FR Doc. 99-4053 Filed 2-18-99; 8:45 am]

BILLING CODE 6712-01-U

FEDERAL COMMUNICATIONS COMMISSION

Petition for Reconsideration and Application for Review of Action in Rulemaking Proceedings; Correction

AGENCY: Federal Communications Commission.

ACTION: Notice; correction.

SUMMARY: This document corrects the notice dated February 3, 1999, Report No. 2313. This notice was published in the **Federal Register** on February 9, 1999, (64 FR 6360) regarding Biennial Regulatory Review, Wireless Telecommunications Services. This notice clarifies that there were 13 petitions filed instead of eight.

FOR FURTHER INFORMATION CONTACT: Carolyn Bryant, Office of Public Affairs at 202-418-0295

Dated: February 12, 1999.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99-4121 Filed 2-18-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as

required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Deposit Broker Status Survey."

DATES: Comments must be submitted on or before April 20, 1999.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898-7453, Office of the Executive Secretary, Room 4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. All comments should refer to "Deposit Broker Status Survey."

Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898-3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

Title: Deposit Broker Status Survey.

OMB Number: New collection.

Frequency of Response: Occasional.

Affected Public: Deposit brokers who have notified the FDIC of their activity.

Estimated Number of Respondents: 1,200.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden: 200 hours.

General Description of Collection: The Deposit Broker Status Survey is targeted to deposit brokers who have notified the FDIC of their activity: securities and investment firms, financial institutions, financial planners, insurance agents, etc. The survey is designed to update FDIC records to ensure that brokers are active in the field, purge files of brokers no longer operating, update information on the activities of active brokers and correct addresses and contact information.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of