



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET, S.W.
WASHINGTON, D.C. 20554

News Media Information: 202-418-0500
Fax-On-Demand: 202-418-2830
Internet: <http://www.fcc.gov>
ftp: <ftp.fcc.gov>

DA 02-4
January 4, 2002

New Analog Television Stations Auction No. 82

Status of Applications to Participate in the Auction

Report No. AUC-02-82-D (Auction No. 82)

The Federal Communications Commission ("FCC") has received 28 timely filed FCC Form 175 applications to participate in Auction No. 82, which is scheduled to begin Tuesday, February 5, 2002. The auction makes available four new analog television stations for the channels and communities listed in the *Auction No. 82 Filing Window Public Notice*.¹ The applications for Auction No. 82 have been reviewed for completeness and compliance with the Commission's rules, and have been classified into the following categories:

ACCEPTED FOR FILING..... 13 Applications

INCOMPLETE..... 15 Applications

All Applicants: Although original FCC Form 175 applications were submitted manually, any updates to, or review of, applications must be done electronically. Applicants that are currently registered with the Commission Registration System ("CORES") and have an FCC Registration Number ("FRN") should use that FRN and password to log on to the FCC Auctions 175 Application System. Those applicants that are not registered with CORES and do not have an FRN number, must obtain one before attempting to log on the FCC Auctions 175 Application System. Instructions for registering in CORES are included in Attachment C.

Applicants are encouraged to review their electronic application during the resubmit filing window. Also during that time, it is recommended that applicants print their FCC Form 175 from the FCC Auctions 175 Application System. Information for reviewing and accessing the FCC Form 175 is also included in Attachment C.

¹ Auction Filing Window for New Analog Television Stations Auction No. 82, *Public Notice*, DA 01-1300 (rel. May 25, 2001) ("*Auction No. 82 Filing Window Public Notice*").

Accepted: Applications accepted for filing are listed alphabetically in Attachment A. **These applicants will become qualified bidders upon receipt of the required upfront payment due by 6:00 p.m. ET on Monday, January 14, 2002.**² With respect to the FCC Form 175 applications, once an FRN has been acquired, and the electronic application reviewed, these applicants need take no further action except as may be necessary to maintain the accuracy of their applications.³ Attachment A also includes FCC account numbers that were automatically created by the FCC software system for each applicant and indicates the construction permits selected by each applicant on their FCC Form 175 application.

Incomplete: Applications found to be incomplete are listed alphabetically in Attachment B. Applicants whose FCC Form 175 applications have been deemed incomplete will receive overnight correspondence indicating what information is required to make the applications acceptable for filing. **These applicants may become qualified bidders only if they: (1) acquire an FRN number if they do not already have one; (2) make the required upfront payments by 6:00 p.m. ET on Monday, January 14, 2002; and (3) resubmit their applications to correct the deficiencies indicated by 6:00 p.m. ET on Monday, January 14, 2002.** Applicants also must maintain the accuracy of their FCC Form 175 applications as required by the Commission's rules.⁴ Applicants are advised that Attachment B includes FCC account numbers that were automatically created by the FCC software system for each applicant.

The filing window for resubmitting FCC Form 175 applications will open at noon, Tuesday, January 8, 2002. Corrected applications must be filed no later than **6:00 p.m. ET on Monday, January 14, 2002.** This will be the only opportunity to cure FCC Form 175 defects; late resubmissions will not be accepted. In addition, if an application remains incomplete or otherwise deficient after the resubmission deadline has passed, the application will be dismissed.

UPFRONT PAYMENT DEADLINE

Upfront payments and accompanying FCC Remittance Advice ("FCC Form 159") for Auction No. 82 are due at Mellon Bank, Pittsburgh, Pennsylvania **no later than 6:00 p.m. ET on Monday, January 14, 2002. Payments must be made by wire transfer and applicants must include their Taxpayer Identification Numbers ("TIN").** No other payment method is acceptable for this auction. Applicants are reminded to use their TIN/FRN and not their FCC Account Numbers on the FCC Remittance Advice (FCC Form 159). Applicants must fax a completed FCC Form 159 (revised February 2000) to Mellon Bank at (412) 209-6045 at least one hour before placing the order for the wire transfer (but on the same business day).

Applicants that have filed applications deemed to be incomplete, as noted in this public notice, must submit timely and sufficient upfront payments before the Commission will review their resubmitted applications. If no upfront payment is made or the application remains incomplete following its resubmission, the application will be dismissed. If the applicant has provided its TIN, FRN, and wire transfer instructions, any upfront payment made prior to dismissal will be refunded automatically.

We remind applicants that to avoid untimely upfront payments they should discuss arrangements (including bank closing schedules) with their banker several days before making the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Detailed information regarding

² See 47 C.F.R. § 1.2106.

³ See 47 C.F.R. § 1.65.

⁴ *Id.*

upfront payments including additional requirements for “former defaulters” can be found in the *Auction No. 82 Procedures Public Notice* under Section III.C.⁵

Note: Applicants are reminded to submit the same FRN with all future payments.

OTHER IMPORTANT INFORMATION

Qualified Bidders: Approximately one week after the upfront payment deadline, following Commission review of resubmitted FCC Form 175 applications, and correlation of payments and applications, a public notice listing all applicants qualified to bid in the auction will be released. The same public notice will also include instructions for participating in the mock auction and a bidding schedule for the mock auction and the first day of the auction.

Due Diligence: Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the television facilities in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 82 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 82 are strongly encouraged to continue such research during the auction. For further details regarding due diligence, please refer to the *Auction No. 82 Procedures Public Notice* under Section I.B.3.

Potential bidders should note that, in November 1999, Congress enacted the Community Broadcasters Protection Act of 1999 (“CBPA”) which established a new Class A television service.⁶ In response to the enactment of the CBPA, the Commission adopted rules to establish the new Class A television service.⁷ In the *Class A Report and Order*, the Commission adopted rules to provide interference protection for eligible Class A television stations from new full power television stations.⁸ Given the Commission’s ruling in the *Class A Report and Order*, each winning bidder in Auction No. 82, upon submission of its FCC Form 301, will have to provide interference protection to qualified Class A television stations. Therefore, potential bidders are encouraged to perform engineering studies to determine the existence of Class A television stations and their effect on the ability to operate the full power television stations proposed in this auction. Information about the identity and location of Class A television stations is available from the Mass Media Bureau’s Consolidated Database System (“CDBS”) (public access available at: <http://www.fcc.gov/mmb>) and on the Mass Media Bureau’s Class A television web page: <http://www.fcc.gov/mmb/vsd/files/classa.html>.

Potential bidders are also reminded that full service television stations are in the process of converting from analog to digital operation and that stations may have pending applications to construct and operate digital television facilities, construction permits and/or licenses for such digital facilities. Bidders should investigate the impact such applications, permits and licenses may have on their ability to operate the facilities proposed in this auction.

Bidders for the Columbia, South Carolina, station on Channel 47 should note that there is pending a petition for

⁵ See Auction No. 82 Construction Permits for New Analog Television Stations Scheduled for February 5, 2002, *Public Notice*, DA 01-2882, at 5-6 (rel. December 13, 2001) (“*Auction No. 82 Procedures Public Notice*”).

⁶ Pub. L. No. 106-113, 113 Stat. 1501 (1999), codified at 47 U.S.C. § 336(f).

⁷ See Establishment of a Class A Television Service, MM Docket No. 00-10, *Report and Order*, FCC 00-115 (rel. April 4, 2000) (“*Class A Report and Order*”).

⁸ *Id.* at ¶¶ 37-38.

rulemaking to change the DTV channel for WCSC-TV, Charleston, South Carolina, from Channel 52 to Channel 47.⁹ Pending the outcome of the Channel 47 Charleston DTV rulemaking proceeding, bidders for Channel 47 at Columbia are advised that the construction permit for their facility will be conditioned on acceptance of interference from WCSC-DT, Channel 47, Charleston, South Carolina.

Prohibition of Collusion: Bidders are reminded that Section 1.2105(c) of the Commission's rules prohibits applicants for the same Mutually Exclusive (“MX”) Group from communicating with each other during the auction about bids, bidding strategies, or settlements unless they have identified each other as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii). For Auction No. 82, this prohibition became effective at the short-form application filing deadline on Friday, June 29, 2001, and will end on the post-auction down payment deadline, which will be announced in a future public notice.¹⁰ If parties agreed in principle on all material terms, those parties must be identified on the short-form application under Section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant should not have included the names of those parties on its application, and must not have continued negotiations with other applicants for the same MX Group.¹¹

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 importance to that application.¹² 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 therefore are required to make such notification to the Commission immediately upon discovery.¹³ For further details regarding the prohibition against collusion, refer to the *Auction No. 82 Procedures Public Notice* under Section I.B.2.

Winning bidders will be required to disclose in their long-form applications the specific terms, conditions and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.¹⁴ Bidders found to have violated the anti-collusion rule may be subject to sanctions.¹⁵ In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to

⁹ See Digital Television Broadcast Service; Substitution of DTV Channel 47 for Assigned DTV Channel 52 in Charleston, South Carolina; MM Docket No. 01-128, *Notice of Proposed Rulemaking*, DA 01-1465 (rel. June 25, 2001).

¹⁰ 47 C.F.R. § 1.2105(c)(1).

¹¹ See Wireless Telecommunications Bureau clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (1995).

¹² See 47 C.F.R. § 1.65.

¹³ The Commission recently amended Section 1.2105 to require auction applicants to report prohibited communications in writing to the Commission immediately, but in no case later than five business days after the communication occurs. Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, *Seventh Report and Order*, FCC 00-1270, at 10 (rel. Sept. 27, 2001).

¹⁴ Section 73.5005(a) of the Commission’s rules requires that post-auction filings include the exhibits required by 47 C.F.R. Section 1.2107(d) (concerning any bidding consortia, joint bidding arrangements or other agreements relating to the competitive bidding process); Section 1.2110(i) (concerning designated entity status, if applicable); and Section 1.2112(a) and (b) (concerning disclosure of ownership and real party in interest information.)

¹⁵ See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

prevent anti-competitive behavior in the marketplace. If a bidder is found to have violated the antitrust laws in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions.¹⁶

Auction Discount Voucher: On June 8, 2000, the Commission awarded Qualcomm, Inc. a transferable Auction Discount Voucher (“ADV”) in the amount of \$125,273,878.00.¹⁷ This ADV may be used by Qualcomm or its transferee, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003, subject to terms and conditions set forth in the Commission’s Order. The Commission has received notice from Qualcomm that it has transferred part of the ADV to a winning bidder in FCC Auction No. 35.¹⁸ The Commission has also received notice from Qualcomm’s transferee that it intends to use the portion of the ADV transferred to it to adjust one of its winning bids in Auction No. 35.¹⁹ The remaining portion of Qualcomm’s ADV could be used to adjust winning bids in another FCC auction, including Auction No. 82.

Ex Parte Rule: Applicants should also be aware that the Commission has generally exempted auction proceedings from the strict requirements of the *ex parte* rule found in Section 1.1208²⁰ of the Commission’s rules.²¹

Mock Auction: All applicants found to be qualified bidders will be eligible to participate in a mock auction on Thursday, January 31, 2002. We encourage all qualified bidders to take advantage of this mock auction to become familiar with the Internet Bidding System. In a future *Qualified Bidders Public Notice*, the Bureau will announce the bidding schedule for the mock auction and give details about participation. The mock auction will be conducted over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well.

Electronic Bidding: Applicants are reminded that qualified bidders are eligible to bid either electronically or telephonically. Applicants should specify their bidding preference on the FCC Form 175 by **6:00 p.m. ET on Monday, January 14, 2002**. All applicants will be deemed electronic, unless the telephonic bidding selection is specified.

¹⁶ 47 C.F.R. §1.2109 (d).

¹⁷ Qualcomm Incorporated Petition for Declaratory Ruling Giving Effect to the Mandate of the District of Columbia Circuit Court of Appeals, *Order*, 16 FCC Rcd 4042 (2000).

¹⁸ See Supplement to Public Notice Released August 22, 2001 By Wireless Telecommunications Bureau Announcing It Is Prepared to Grant Four C and F Block Broadband Personal Communications Services (PCS) Licenses Upon Full and Timely Payment, Auction Event No. 35, *Public Notice*, DA 01-2071 (rel. August 31, 2001).

¹⁹ *Id.* All of the terms and conditions applicable to Qualcomm’s use of the ADV shall apply to its use by a transferee, except that a transferee may not transfer the ADV to an entity other than back to Qualcomm. See *In the Matter of Qualcomm Incorporated*, *Order*, 16 FCC Rcd 4042 (2000); see also Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Veronica M. Ahern, Attorney for Qualcomm Incorporated (December 22, 2000).

²⁰ 47 C.F.R. § 1.1202(d) note (1); see also Commission Announces that Mutually Exclusive “Short-Form” Applications (Form 175) to Participate in Competitive Bidding Process (“Auctions”) Are Treated as Exempt for Ex Parte Purposes. *Public Notice*, 9 FCC Rcd 6760 (1994).

²¹ See Commission Announces that Mutually Exclusive “Short-Form” Applications (Form 175) to Participate in Competitive Bidding Process (“Auctions”) Are Treated as Exempt for Ex Parte Purposes, *Public Notice*, 9 FCC Rcd 6760 (1994).

Bidders can access the FCC Bidding System over the Internet. As a contingency, bidders can also access the FCC Bidding System over the FCC's Wide Area Network. Access to the Bidding System via the Internet requires, at a minimum, the following hardware and software:

- CPU: Pentium 133 or above
- RAM: 32 MB (64 MB recommended)
- Monitor: VGA or above
- Mouse or other pointing device
- Operating System: Microsoft® Windows™ 95™, 98™, 2000™, ME™, NT™
- Web Browser, either of the following:
 - ◆ Microsoft Internet Explorer 4.0 or higher (recommended)
 - ◆ Netscape® Communicator™ 4.0 or higher, with Java Plug-In Version 1.3.1 (available for downloading at <http://java.sun.com/products/plugin/>)

In addition, users accessing the Bidding System via the FCC's Wide Area Network will need:

- Modem: 28.8 Kbps Hayes© compatible modem or faster (56.6 Kbps recommended)
- Point-to-Point Protocol (PPP) Dialer: Use the Dial-Up Networking feature included with the operating system

Access to the FCC Bidding System via the Wide Area Network requires access to a 900 service telephone line. The first minute of connection time to the 900 number service is at no charge; however, \$2.30 will be charged for each additional minute.

Long-Form Applications: All applicants should be aware that at the long-form application stage, they will be subject to the more extensive reporting requirements contained in the Commission's Part 1 ownership disclosure rule.²²

Bidder Alert: 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.

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

* * * *

²² 47 C.F.R. § 1.2112(b)(2); *see also* 47 C.F.R § 73.5007 (new entrant bidding eligibility).

CONTACT INFORMATION

For questions about payment or instructions for wiring upfront payments, contact Gail Glasser or Tim Dates, Auctions Accounting Group, at (202) 418-1995.

For specific questions about an applicant's incomplete status, the applicant should contact the staff reviewer identified in the correspondence sent to the applicant by overnight mail.

For additional information, contact: Video Services Division: Shaun Maher at (202) 418-1600; Auctions and Industry Analysis Division: Kenneth Burnley, Auctions Legal Branch (regarding legal questions); Jeff Crooks, Analyst, Auctions Operations (regarding bidding and auction structure) at (202) 418-0660; or Linda Sanderson, Auctions Operations (regarding bidding and general filing status) at (717) 338-2888.

For technical questions regarding the electronic filing system, call FCC Auctions Technical Support Hotline at (202) 414-1250. Hours of service: Monday through Friday 7:00 a.m. to 10:00 p.m., Saturday, 8:00 a.m. to 7:00 p.m., Sunday, 12:00 p.m. to 6:00 p.m. ET.

- FCC -