

# AUCTION PROCEDURES, TERMS AND CONDITIONS

## INTRODUCTION

### *Licenses to be Auctioned:*

On Tuesday, November 28, 1995, the Federal Communications Commission (FCC or Commission) will commence a simultaneous multiple round auction for 1,020 licenses to provide 900 MHz Specialized Mobile Radio (SMR) services. The licenses to be auctioned will authorize operations throughout the 51 Major Trading Areas (MTAs) in the United States.

In each of the 51 MTAs, twenty ten-channel licenses will be offered for bid. Each ten-channel license encompasses 0.25 MHz of spectrum, with half of the channels in the 935-940 MHz band and the other half in the 896-901 MHz band. Prospective bidders should note that in some areas, 900 MHz SMR channels are already being used by incumbent SMR licensees. Incumbent licenses were originally granted in 1986 in 46 "Designated Filing Areas" (DFAs), comprised of the top 50 markets, and many incumbents have since expanded their systems beyond the DFAs. Incumbent systems are entitled to protection from co-channel interference within their 40 dBu signal strength contour by any new entrant who obtains a 900 MHz SMR MTA license at the auction (MTA license). We therefore caution prospective bidders in formulating their bidding strategies to investigate and consider the extent to which 900 MHz SMR channel blocks are occupied by incumbents. **Any discussions between prospective bidders and incumbent licensees who are applying for any of the MTA licenses must conclude by the FCC Form 175 filing deadline (October 26, 1995) in order to comply with the Commission's anti-collusion rules. Such rules prohibit communications after the FCC Form 175 deadline among applicants for the same geographic license areas when such communications concern bids, bidding strategies or settlements.** See 47 C.F.R. § 1.2105(c). Additionally, applicants may not have these conversations if there is any overlap in the MTAs for which they have applied.

A list of each incumbent licensee who holds a DFA license, the licensee's call sign, and the relevant frequency block is contained in this Bidder Information Package, along with a list of the address, phone number, and point of contact for each incumbent. Attachment A, Designated Filing Area Licensees, in this Bidder Information Package has been amended from the FCC Public Notice released on September 15, 1995, to reflect changes that have occurred in the license database since that time. This attachment is current as of September 20, 1995 and prospective bidders are strongly cautioned that many modification applications and requests for finders' preferences remain pending as of that date. These pending applications and finders' preference requests could change the frequency blocks (as associated with specific licensees) listed in this attachment as well as the licensees who held the licenses as of September 20th. **Applicants should be aware that there may be other incumbents operating in the MTAs which are not listed in the DFA licensee list. Applicants must carefully research the Commission's database and records for all incumbent information.** See *infra* for more detailed discussion. A list of the 51 MTAs, upfront payment amounts, and "activity units" (also referred to as "bidding units") (*See infra*, Part I,

Section III.A.) for each frequency block within the MTAs is also contained in this Bidder Information Package. The upfront payment amounts and activity units generally take into account the presence of incumbents in the MTAs. This information, however, may not reflect current incumbent coverage of MTAs.

Information on DFA licensees and any additional incumbent licensees entitled to interference protection is available for inspection in the Public Reference Room of the Wireless Telecommunications Licensing Division, Gettysburg, PA. The Licensing Division office is located at 1270 Fairfield Road, Gettysburg, PA 17325, Telephone (800) 322-1117 or (717) 337-1212. The licensing database, which includes information regarding incumbent licensees in the 900 MHz SMR band, is available for on-line review. Persons who would like to obtain this information through an on-line public access database should call or write Interactive Systems, Inc., 1601 North Kent St., Suite 1103, Arlington, VA 22209, Telephone (703) 812-8270, Fax Number (703) 812-8275, Customer Service Number (703) 812-8270.

The FCC does not duplicate these records, but has contracted with International Transcription Service, Inc. to provide this service. Requests for copies of these records should be addressed to International Transcription Services, Inc. (ITS, Inc.), 2100 M Street, N.W., Suite 140, Washington, DC 20037, Telephone (717) 337-1433 (Gettysburg, PA) or (202) 857-3800 (Washington, DC).

Persons who would like to obtain this information in microfiche form or magnetic tape, or who want to obtain information concerning these types of media should write or call National Technical Information Service (NTIS), Department of Commerce, Springfield, VA 22161, Telephone (703) 487-4650.

***Auction Date:***

The 900 MHz SMR auction will commence on Tuesday, November 28, 1995. The precise schedule for bidding in the first week of the auction will be announced approximately two weeks prior to the start of the auction. Bidding will be conducted on each business day, unless otherwise announced, until bidding has stopped on all MTA licenses.

***Auction Headquarters:***

The auction headquarters will be at the FCC's auction facility, 2 Massachusetts Avenue, N.E., Washington, DC, 20002 (or at an alternative site in Washington, DC to be announced later). During the auction, bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

***Pre-Auction Summary:***

Those wishing to participate in the auction must submit a "short-form" application on FCC Form 175 in accordance with the Commission's rules and instructions in this Bidder Information Package and in the Public Notice announcing the auction which was released on

Friday, September 15, 1995. **Applicants should be advised that a draft revised version of the FCC Form 175 (revised 10/95) is contained in this Bidder Information Package. Only the revised FCC Form 175 will be accepted. The FCC Form 175 must be received no later than 5:30 p.m. Eastern Time on Thursday, October 26, 1995,** and must be received either electronically or manually pursuant to the instructions set forth in this Bidder Information Package. Applicants for the 900 MHz SMR auction are strongly encouraged to file their FCC Form 175 electronically, although manual filing will be permitted (via hard copy). Electronic filing will enable an applicant to receive interactive feedback while completing its application, and immediate acknowledgement that the FCC Form 175 has been submitted for filing. **Only those applicants who file their FCC Form 175 applications electronically will be permitted to bid electronically during the auction.** When deciding whether to file electronically, and therefore preserve the option to bid electronically, applicants should keep in mind that electronic bidding offers interactive feedback (i.e., information about bidding activity levels) that may be useful in the bidding process. See Part I, Section II.B.1 *infra* for more information. Applicants who file their applications manually will be permitted to bid telephonically only. General filing information and detailed instructions regarding electronic filing are contained in Part I of these Procedures, Terms and Conditions, titled "Pre-Auction Procedures," and in the electronic filing section of this Bidder Information Package.

Each applicant whose FCC Form 175 has been accepted for filing will be required to submit an upfront payment (in U.S. dollars), in conjunction with an FCC Remittance Advice Form (FCC Form 159), to be eligible to participate in the auction. **Each applicant must submit an upfront payment sufficient to make it eligible to bid on at least one of the MTA licenses that it applied for on the FCC Form 175, or the applicant will not be eligible to participate in the auction. However, in accordance with the Commission's rules, a minimum upfront payment of \$2,500 must be submitted.** See 47 C.F.R. § 1.2106, *Second Report and Order* in PP Docket No. 93-253, 9 FCC Rcd 2348 at ¶ 180 (1994). As detailed in Part I of these Procedures, Terms and Conditions, the upfront payment must be made by wire transfer or cashier's check made payable to the "Federal Communications Commission" or "FCC" and must be received on or before Monday, November 13, 1995, at the Mellon Bank in Pittsburgh, Pennsylvania. **No other form of payment will be accepted.**

The information contained in this Bidder Information Package may be amended or supplemented. The FCC will issue Public Notices to convey the new or supplemental information to prospective bidders. It is the responsibility of all prospective bidders to maintain current information regarding all FCC rules and Public Notices pertaining to this auction. Copies of FCC documents, including Public Notices, may be obtained for a fee by calling the FCC copy contractor, International Transcription Services, Inc., at (202) 857-3800. Additionally, prospective bidders may retrieve some of these documents from the FCC Internet node via anonymous FTP@FCC.gov.

The Procedures, Terms and Conditions section of this Bidder Information Package is organized in three parts:

- Part I: Pre-Auction Procedures
- Part II: Auction Event
- Part III: Post-Auction Procedures

***Relevant Authority***

Prospective bidders must familiarize themselves thoroughly with the procedures, terms and conditions (collectively, Terms) contained in the *Second Report and Order and Second Further Notice of Proposed Rule Making* in PR Docket No. 89-553, GN Docket No. 93-252, PP Docket No. 93-253, FCC 95-159, released April 17, 1995; and the *Second Order on Reconsideration and Seventh Report and Order* in PR Docket No. 89-553, GN Docket No. 93-252, PP Docket No. 93-253, FCC 95-395, released September 14, 1995 (*Seventh Report and Order*). For additional general information on the SMR services, prospective bidders should review the *First Report and Order and Further Notice of Proposed Rule Making* in PR Docket No. 89-553, 8 FCC Rcd 1469 (1993); and the *Third Report and Order* in GN Docket No. 93-252, 9 FCC Rcd 7988 (1994).

**All inquiries regarding this auction should be made to the FCC auction contractor, Tradewinds International, Inc. at (202) 637-FCC1 (637-3221), Fax Number (703) 417-0692.**

## **PART I:**

## **PRE-AUCTION PROCEDURES**

### **I. Eligibility to Bid in the 900 MHz SMR Auction**

To be eligible to bid in this auction, bidders must (i) satisfy the Commission's eligibility requirements, (ii) submit a short-form application on the revised FCC Form 175 (and Form 175-S if necessary), and (iii) remit an upfront payment in compliance with applicable FCC rules. Both incumbents and new entrants may bid for all MTA licenses. All prospective applicants should carefully review each of the rules contained in Subparts A, H, S and U of Part 90 of the Commission's rules, as amended by the *Seventh Report and Order*, as well as Subpart Q of Part 1 of the Commission's rules.

Bidders that qualify as small businesses are eligible for reduced down payments, bidding credits (which function as a discount on the bid price eligible winning bidders are required to pay), and quarterly installment payments (which allow eligible winning bidders to pay the full amount of their winning bids in quarterly installments). There are two separate small business categories, each eligible for different bidding credit amounts and installment payment terms: (1) entities that, together with affiliates, have average gross revenues for the preceding three years of \$3 million or less; and (2) entities that, together with affiliates, have average gross revenues for the three preceding years of \$15 million or less. *See* 47 C.F.R. §§ 90.810, 90.811, 90.812 and 90.814 for eligibility criteria and other terms pertaining to reduced down payments, bidding credits and installment payments. Winning bidders claiming eligibility as small businesses should note that they will be required to file supporting documentation to establish that they qualify as small businesses. *See* 47 C.F.R. § 90.815. Winning bidders claiming status as small businesses may be subject to audits to confirm their eligibility. *See* 47 C.F.R. § 90.815(d).

Bidders that qualify as rural telephone companies (rural telcos) will be permitted to acquire partitioned 900 MHz SMR licenses by either: (1) forming bidding consortia and then partitioning the license among consortia participants; or (2) acquiring a partitioned license through private negotiations or agreements. A rural telco is defined as a local exchange carrier having 100,000 or fewer access lines, including all affiliates. Partitioned areas must conform to established geopolitical boundaries, such as county lines, and each area must include all portions of the wireline service area of the rural telco applicant that lies within the MTA geographic license area. The partitioned area must be reasonably related to the rural telco's wireline service area that lies within the MTA service area. We will presume as "reasonably related" a partitioned area that contains no more than twice the population of that portion of a rural telco's wireline service area that lies within the MTA service area. *See Seventh Report and Order* at ¶¶ 178-179.

#### **A. Special Measures for Small Businesses**

Any bidder that qualifies as a small business or as a small business consortium can benefit from the special measures summarized below. Bidders are directed to thoroughly review the relevant Commission rules. *See* 47 C.F.R. §§ 90.810-90.812 and 90.814-90.815.

The information provided in this Bidder Information Package is only a summary for informational purposes. Any unintentional conflict with the Commission's rules will not justify an applicant's failure to comply with the rules.

1. Bidding Credits. Small businesses falling under the \$3 million benchmark are eligible for a 15% bidding credit on any MTA license. The bidding credit functions as a 15% discount on the winning bid amount that the small business must actually pay. Small businesses falling under the \$15 million benchmark are eligible for a 10% bidding credit. Bidding credits for small businesses are not cumulative. Thus a small business falling under the \$3 million benchmark will be eligible for a 15% bidding credit, not a 25% credit.

2. Reduced Down Payments. A winning bidder that qualifies as a small business under either of the above definitions may make a reduced down payment equal to 10% of their net winning bid(s). Small business bidders must bring their upfront payments to 5% of the winning bid(s) (less applicable bidding credits) following the close of the auction. They must then pay the balance of the down payment (another 5% of the winning bid(s) less applicable bidding credits) within five days after the release of a Public Notice announcing that the Commission is prepared to award the license.

3. Installment Payments. A winning bidder that qualifies as a small business may elect to pay the remaining bid balance in quarterly installments over the ten year license term. Small businesses falling under the \$15 million benchmark will be able to make interest-only payments (U.S. Treasury note rate plus 2.5 percent) for the first two years of the license term (Installment Plan A), and small businesses falling under the \$3 million benchmark will be eligible to make interest-only payments (U.S. Treasury note rate) for the first five years of the license term (Installment Plan B). The remaining principal and interest will be amortized over the remainder of the license term.

4. Unjust Enrichment. Small business bidders should note that there are unjust enrichment provisions applicable to those winning bidders who utilize bidding credits and/or installment financing and subsequently assign or transfer control of their MTA licenses to an entity not meeting the same eligibility standards for bidding credits or installment payments in the first five years after the license grant. *See* 47 C.F.R. §§ 90.810 and 90.812.

#### **B. Eligibility for Small Business Special Measures**

To determine whether an applicant qualifies as a small business and is eligible for the measures described in Section I.A. above it is necessary to aggregate the average gross revenues, for the preceding three years, of the entity, together with its affiliates, persons or entities that hold attributable interests in such entity, and their affiliates. The results of this computation will determine whether the small business qualifies under the \$3 million or the \$15 million small business categories. *See* 47 C.F.R. § 90.814(b). The gross revenues of a

small business applicant and its affiliates shall be considered on a cumulative basis and aggregated for purposes of determining whether the applicant is a small business, except where the applicant is a consortium of small businesses, in which case the gross revenues of each small business that independently qualifies as a small business shall not be aggregated. *See* 47 C.F.R. § 90.814(b)(2). The definition of an affiliate is contained in 47 C.F.R. § 90.814(h). Partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity or outstanding stock of the applicant will be attributable. For purposes of determining eligibility for small business special measures, a small business consortium is defined as a conglomerate organization formed as a joint venture between mutually-independent business firms, each of which individually satisfies the definition of a small business. *See* 47 C.F.R. § 90.814(b)(3).

## **II. Short-Form Application (FCC Form 175)**

In order to be eligible to bid, applicants must submit an FCC Form 175 application to the Commission. This application **must be received by the FCC no later than 5:30 p.m. Eastern Time on Thursday, October 26, 1995. Late applications will not be accepted.** Applications may be submitted electronically, by hand delivery, by certified U.S. mail (return receipt requested) or by private courier.

### **A. Completion of Form 175**

Because of the significance of the FCC Form 175 application to the auction, it is important to take note of the following requirements. Applicants will be required to complete all the items on the FCC Form 175. **The previous version of the FCC Form 175 is no longer valid. A draft of the revised FCC Form 175 (revised 10/95) is contained in this Bidder Information Package. Only the revised FCC Form 175 will be accepted.** Applicants should carefully review §§ 1.2105(a)(2), 90.806 and 90.815 of the Commission's Rules prior to completing the FCC Form 175. In completing an FCC Form 175, applicants should note the following:

1. Applicants should apply for all licenses for which they seek bidding eligibility. Those applicants wishing to apply for more licenses than can be accommodated on the FCC Form 175 should complete a supplemental form (FCC Form 175-S) listing the additional licenses.
2. For "Auction Number," applicants filing manually or electronically should enter "7".
3. Applicants will be required to create a ten-digit FCC Account Number, which the Commission will use to identify and track applications. Applicants must create this FCC Account Number by using their taxpayer identification number (TIN) with a prefix of "0" (*i.e.*, 0123456789). If, and only if, an applicant does not have a taxpayer identification number, the applicant may use its ten-digit area code and telephone number (*i.e.*, 5552345678). Each applicant must use this same number when submitting additional information or material regarding its application, including on its FCC Form 159 (FCC

Remittance Advice) accompanying any required auction deposits or payments submitted to the Commission. This number also must be used whenever an applicant writes, telephones, or otherwise inquires about its application. Additionally, qualified bidders will need this number to participate (submit or withdraw bids) in the auction.

4. Applicants must indicate on their FCC Form 175, if applicable, their status as a small business. See 47 C.F.R. §§ 1.2110(b), 90.814(b). If applicable, applicants are requested to indicate their status as a minority-owned business or women-owned business, so that the Commission can monitor its compliance with Section 309(j) of the Communications Act. By checking the appropriate box in item #10 on the FCC Form 175 to indicate status as a small business and by filling in the applicable bidding credit (10% or 15%) and installment plan (Plan A for businesses under the \$15 million definition or Plan B for businesses under the \$3 million definition), an applicant is certifying that it is eligible for the special measures available to small businesses, *i.e.*, that, together with its affiliates, each applicant has annual average gross revenues of not more than \$3 or \$15 million, respectively, for the three preceding calendar years. If the applicant is a consortium of small businesses, each member must individually satisfy the small business definition. See 47 C.F.R. § 90.814(b). All applicants should pay particular attention to the provisions of 47 C.F.R. §§ 1.2110 and 90.814, relating to small businesses.

5. Applicants must identify on the FCC Form 175 the MTA number for each license on which they seek bidding eligibility. The market number for each MTA and the upfront payment for each frequency block in each MTA, taking into account the presence of incumbents, are listed in this Bidder Information Package. See Section III below and the *Seventh Report and Order*, in this Bidder Information Package, for detailed information about upfront payments. Pursuant to the Commission's rules, a minimum upfront payment of \$2,500 must be submitted. See 47 C.F.R. § 1.2106, *Second Report and Order* in PP Docket No. 93-253, 9 FCC Rcd 2348 at ¶ 180 (1994). MTA service areas are based on the 47 MTAs contained in Rand McNally's *1992 Commercial Atlas & Marketing Guide*, 123rd Edition, with the following exceptions and additions:

- (1) Alaska is separated from the Seattle MTA and is licensed separately.
- (2) Guam and the Northern Mariana Islands are licensed as a single MTA-like area.
- (3) Puerto Rico and the United States Virgin Islands are licensed as a single MTA-like area.
- (4) American Samoa is licensed as a single MTA-like area.

6. Applicants must list the name(s) of the person(s) authorized to represent them at the auction (up to a maximum of three). Only those individuals listed on the FCC Form 175 will be authorized to place and withdraw bids for the applicant during the auction.

7. Applicants must read the "certifications" on the FCC Form 175 carefully before submitting an application. Applicants who file their FCC Form 175 applications electronically will not be required to transmit an original or electronic signature. However, similar to a manually filed FCC Form 175, upon submission, the certifying official has made the representation that he/she is an authorized representative of the applicant for the license(s) selected, and that he/she has read the instructions and the certifications and that all



matters and things stated in the application and attachments, including exhibits, are true and correct. These certifications help to ensure a fair and competitive auction and require, among other things, disclosure of certain information on agreements or arrangements concerning the auction. **Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, MTA license forfeitures, and ineligibility to participate in future auctions, and/or criminal prosecution.**

8. If the Commission wishes to communicate with the applicant by mail, telephone or fax, such communications will be directed to the contact person identified on the FCC Form 175. A space has been provided for both a telephone and a fax number. All written communications will be directed to the contact person at the address specified on the FCC Form 175. (Applicants must provide a street address; P.O. Box addresses may not be used.)

9. Small business applicants claiming eligibility for bidding credits and installment payments must attach an exhibit listing ownership and gross revenue information verifying that they qualify as small businesses. *See* 47 C.F.R. § 90.814(b). Applicants must provide the identity of their affiliates, persons or entities that hold attributable interests in the applicant, and their affiliates, and if a consortium of small businesses, the members in the joint venture. Applicants must also compute their gross revenues and their affiliates' gross revenues to verify that they meet either of the Commission's small business definitions. *See* 47 C.F.R. §§ 90.814(b) and 90.815. Partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity or outstanding stock of the applicant will be attributable. *See* 47 C.F.R. § 90.814(g).

11. Applicants must attach an exhibit identifying all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the competitive bidding process of this auction. *See* 47 C.F.R. §§ 1.2105(a)(2)(viii) and 90.806

12. The 900 MHz SMR auction will be subject to the same regulatory safeguards as prior auctions to prevent applicants from colluding during the auction. To prevent collusion, bidders who have applied for licenses in the same MTA on their short-form applications may not cooperate, collaborate, discuss, or disclose the substance of their bids or strategies after the initial short-form filing deadline. *See* 47 C.F.R. § 1.2105(c).

13. Microfiche copies of the FCC Form 175 and 175-S are required for all manual submissions in excess of five pages. For this auction, the FCC will allow submission of a 3.5" diskette, in lieu of microfiche, which contains **ASCII text (.TXT)** files of all exhibit documentation attached to the FCC Form 175.

#### B. FCC Form 175 Filing Options

Auction applicants will have the opportunity to file their applications either electronically or manually (via hard copy paper application). Applicants for the 900 MHz SMR auction are strongly encouraged to file their FCC Form 175 electronically, although manual filing will be permitted (via hard copy). Only those applicants who file their FCC

Form 175 applications electronically will be permitted to bid electronically. Electronic filing will enable the applicant to: 1) receive interactive feedback while completing the application, and 2) receive immediate acknowledgement that the FCC Form 175 has been submitted for filing. The following is a brief description of each filing method:

1. Electronic Filing of FCC Form 175 Applications

The Commission has implemented a remote access system to allow applicants to submit their FCC Form 175 applications electronically. The remote access system for initial filing of the FCC Form 175 applications generally will be available 24 hours per day beginning at approximately the same time as the release of this Bidder Information Package. FCC Form 175 applications that are filed electronically using this remote access system must be submitted and confirmed by **5:30 p.m. Eastern Time on Thursday, October 26, 1995**. Late applications or unconfirmed submissions of electronic data will not be accepted. The electronic filing process consists of an initial filing period and a resubmission period to make minor corrections. **Applicants should be aware that only those who file electronic applications will be permitted to bid electronically.**

The remote FCC Form 175 submission software will prompt the applicant for an FCC Account Number. The FCC Account Number that is required to log into the software is the same as what is required in Item #7 of the FCC Form 175 application, as discussed under Section A (Completion of Form 175) above.

In addition, the applicant will be required to enter a self-assigned password. This password must be entered in **both** the password and the verify password fields. The applicant should be careful when entering the passwords since the data entry is **case sensitive**. The applicant will need to remember the exact spelling of the password and keep it secure. In the event that an applicant loses its password to the remote electronic filing system, the applicant must notify the FCC Technical Support Hotline at (202) 414-1260 and will be required to obtain a replacement code in person at the auction headquarters located at 2 Massachusetts Avenue, N.E. in Washington, DC. Only the certifying official or one of the applicant's authorized representatives identified on the electronic submission of the FCC Form 175 application will be able to obtain a replacement password and two forms of identification will be required (at least one must be a photo identification). To ensure the security of the filed applications, replacement passwords will not be provided over the telephone. **Further, if an applicant exits the FCC Form 175 without ever submitting the application, the password associated with that FCC Account Number and any data entered will not be saved.**

The FCC Form 175 submission software contains six main screens. The first screen is the "Profile" screen which is used to capture the general FCC Form 175 information. **The second screen is the "Licenses" screen which is used to select the licenses for which the applicant wishes to apply.** The third screen provides the "Required Certifications" as listed on the FCC Form 175. Applicants should read the "Required Certifications" prior to submitting an application. The fourth screen is used to submit the required FCC Form 175 exhibit(s). **Applicants must provide their exhibit(s) in an ASCII Text (.TXT) file format.**

The fifth screen allows the applicant to enter a free-form waiver request. The last screen provides the instructions for filing the FCC Form 175 application.

The electronic filing method will capture all of the information required on the FCC Form 175 and will electronically submit the application to the FCC when the Form 175 has been properly completed and the applicant presses the submit button. The system will provide interactive error messages to help ensure the application contains the required information. Applicants who file FCC Form 175 applications electronically through the FCC remote access system will be able to print their application. At any time during the initial filing period or resubmission filing period, but prior to the deadlines, electronic filing applicants may make modifications to their FCC Form 175 application on-line. **The Commission will prohibit submission of FCC Form 175 applications after the deadline and encourages applicants to file their applications early in order to ensure that their applications are submitted and confirmed.**

After the FCC Form 175 has been successfully submitted, the option to generate and complete the FCC Form 159 (FCC Remittance Advice Form) will be offered. Applicants may complete the FCC Form 159 at any time after the FCC Form 175 has been successfully submitted. The FCC Form 159 screen allows the applicant to complete and print its FCC Form 159 which must accompany its upfront payment to participate in the auction. Certain information will appear automatically on the screen based on the information entered on the applicant's FCC Form 175 application (*i.e.*, the name and address of the applicant, the payment type code, the FCC Code 1 (auction number), *etc.*). The FCC Form 159 should be completed, submitted and printed. The printed copy must accompany an applicant's upfront payment if the applicant is paying by cashier's check or must be faxed to Mellon Bank at (412) 236-5702 if the applicant wishes to submit its upfront payment by wire transfer.

After the initial submission period deadline, the Commission will issue a Public Notice which will identify accepted, incomplete and rejected applications and the licenses for which each applicant has applied. **All applications are still subject to FCC approval. Applicants who submit an FCC Form 175 electronically will need to check the Public Notices to verify acceptance of their application.**

During the resubmission period, applicants may make minor corrections to their FCC Form 175 applications electronically. Applicants will **not** be permitted to modify their license selection(s), change their certifying official, or change *de facto* and/or *de jure* control of the applicant. If the FCC Form 175 is initially submitted electronically, then any modifications to the form must also be submitted electronically. Applicants that initially file the FCC Form 175 manually will not be able to file corrections electronically. Further, minor modifications to FCC Form 175 applications must be submitted prior to the deadline for resubmission stated in the Public Notice that identifies the accepted, incomplete and rejected applications. Once this Public Notice is released, interested parties will be allowed to review other applicants' FCC Form 175 applications on-line.

The FCC Form 175 review software may be used to review and print applicants' FCC Form 175 applications. It also provides the ability to download other applicants' FCC Form

175s once the FCC Form 175 resubmission period has started and during the timeframe established by the FCC. Parties interested in reviewing, printing, or downloading applicants' FCC Form 175 applications should be aware that this feature will be provided via a 900 number telephone service at a cost of \$2.30 per minute.

Once the Commission releases the Public Notice that identifies the accepted, incomplete and rejected applications, the remote access system will generally be available on a 24 hour basis for resubmission of FCC Form 175 applications to make minor corrections and for the public to access FCC Form 175 filings. During certain FCC required time frames the system may not be available due to internal maintenance and processing requirements or other unforeseen technical difficulties. A message will be provided when access is denied.

Those applicants who wish to file their FCC Form 175 electronically or review other FCC Form 175 applications online will need to carefully review this Bidder Information Package and all subsequent Public Notices. **Applicants should note that previous versions of the remote FCC Form 175 software will not work. Applicants must download the version specific to this auction (file name: FCC175v4.exe). Additional instructions are contained in this Bidder Information Package.**

After the deadline for resubmitting corrected applications, the Commission will release another Public Notice announcing all applications that have been accepted for filing.

## 2. Manual Filing of FCC Form 175

Auction applicants will be permitted to file their FCC Form 175 applications in hard copy. A copy of the FCC Form 175 and FCC Form 175-S (Supplemental Form), with instructions, are located in this Bidder Information Package. For those applicants who file manually, whether mailed, hand delivered or sent by private courier, applications must be addressed to:

Office of the Secretary  
Attn: Auction 7 Short-Form Processing  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

**Applications will not be accepted if delivered to any other location. Only the revised FCC Form 175 will be accepted for filing. Additionally, applicants should be aware that if they file manually they will only be permitted to submit their bids telephonically. Electronic bidding is reserved for qualified bidders that submitted their applications electronically.**

After the initial submission period deadline, the Commission will issue a Public Notice which will identify accepted, incomplete and rejected applications and the licenses for which each applicant has applied. **All applications are still subject to FCC approval.**

**Applicants who submit an FCC Form 175 manually will need to check the Public Notices to verify acceptance of their application.**

During the resubmission period, applicants may make minor corrections to their FCC Form 175 applications. Applicants will **not** be permitted to modify their license selection(s), change their certifying official, or change *de facto* and/or *de jure* control of the applicant. Applicants that initially file the FCC Form 175 manually must file corrections manually. Further, minor modifications to FCC Form 175 applications must be submitted prior to the deadline for resubmission stated in the Public Notice that identifies the accepted, incomplete and rejected applications.

C. FCC Form 175 Application Fee

No application fee need accompany the FCC Form 175 for this auction. However, to be eligible to bid, an applicant will have to submit an upfront payment by Monday, November 13, 1995. See Section III below.

D. Procedures after FCC Form 175 Applications are Filed and Procedures for Minor Corrections

After the initial deadline for filing the FCC Form 175 applications has passed, the Commission will process all applications to determine whether they are acceptable for filing. The Commission will issue a Public Notice listing all applications which are accepted for filing, rejected, and those which have minor defects that may be corrected. The Public Notice will also announce the markets for which each applicant has applied and the deadline for filing corrected applications. **As described more fully in the Commission's 900 MHz SMR Seventh Report and Order and in the general auction rules, applicants may make minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications. Applicants will not be permitted to modify their license selection(s), change their certifying official, or change *de facto* and/or *de jure* control of the applicant. Failure to sign a manually filed FCC Form 175 will cause the application to be dismissed, and, following the applicable resubmission deadline, the applicant will be ineligible to correct the application or participate in the auction.** See 47 C.F.R. § 1.2105(b).

After the deadline for resubmitting corrected applications, the Commission will release another Public Notice announcing all applications that have been accepted for filing, including applicants who have corrected defective applications.

E. Seminar

All applicants who file an FCC Form 175 by the filing deadline, and whose applications were not rejected in the ensuing Public Notice, will be eligible to attend an auction seminar at the FCC Auction Headquarters in Washington DC on Thursday, November 9, 1995, 9 a.m. - 5 p.m., Eastern Time. This seminar will provide applicants with detailed instructions and assistance in the filing of the FCC Remittance Advice Form

(FCC Form 159), which is required with all upfront payments. Additional topics to be covered include: FCC bid submission software, available bidding options, and auction rules and procedures. If time and space allow, a bidding demonstration will also be conducted. The seminar registration form is included in this Bidder Information Package.

### **III. Upfront Payments**

In order to be eligible to bid in the auction, applicants must submit an upfront payment together with an FCC Remittance Advice Form (FCC Form 159). A sample FCC Form 159 and instructions for making upfront payments are contained in this Bidder Information Package. In accordance with the Commission's rules, the **minimum upfront payment is \$2,500**. See 47 C.F.R. § 1.2106; *Second Report and Order* in PP Docket No. 93-253, 9 FCC Rcd 2348, at ¶ 180 (1994). **Please note: Payments made by cashier's check must be received by 11:59 p.m. Eastern Time, Monday, November 13, 1995. Payments made by wire transfer must be received by 3:00 p.m. Eastern Time, Monday, November 13, 1995 in order to be recorded as received on this date. Failure to accurately complete the FCC Form 159 could delay processing the remittance.**

All payments must be made in U.S. dollars, in the form of a wire transfer or cashier's check, and must be made payable to the "Federal Communications Commission" or "FCC." No other form of payment will be accepted. Cashier's checks must be drawn on a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC).

#### **A. Upfront Payments and Activity Units**

In calculating the upfront payment amount, an applicant should determine the maximum number of activity units on which it wishes to bid in any single round and submit an upfront payment covering that number of activity units. However, in accordance with the Commission's Rules, the minimum upfront payment amount is \$2,500.

A bidder should calculate its upfront payment using the standard \$0.02 per "activity unit" formula for the largest combination of activity units upon which a bidder wishes to bid in a single round of bidding. The upfront payment submitted by each applicant is not attributed to specific licenses but instead will define the maximum amount of activity units on which the applicant will be permitted to bid in any single round of bidding. Each license in this auction will cover 0.25 MHz. In general, the activity units for each channel block in each MTA will be based on a formula that takes into account the presence of incumbent licensees. The upfront payment amounts for the licenses to be auctioned in each MTA are listed in this Bidder Information Package. The combination of activity units on which a bidder is active in a round equals the sum of the activity units associated with the MTAs on which the bidder has submitted a bid, or on which the bidder is the standing high bidder. If an applicant wants to be eligible to bid in any single bidding round on a MTA license with 1,236,437 activity units, the applicant must submit an upfront payment of \$24,728.75. That applicant could then be active in any single round on any MTA license(s) whose total activity units do not exceed 1,236,437. See *Seventh Report & Order* at ¶¶ 110-112.

Applicants should note that, if after calculating the upfront payment, the amount does not exceed \$2,500, the applicant will be required to pay the minimum upfront payment amount of \$2,500. Any applicant that is required to increase its upfront payment to \$2,500, however, will also be allocated the corresponding amount of activity units on which it may bid (*i.e.*, a minimum upfront payment of \$2,500 allows the applicant to bid on 125,000 activity units, which is derived by dividing \$2,500 by \$0.02). If a bidder does not plan to use the additional activity units associated with the minimum upfront payment and does not want to waste a waiver, it may choose to reduce its eligibility in the first round or any other round by failing to meet the required activity levels and by declining a waiver. *See infra* Part II, Section II.B and C.

**An applicant may, on its FCC Form 175, apply for every license being offered, but an applicant need not submit an upfront payment for every license for which it has applied.** The total upfront payment submitted by the applicant will determine the combinations of licenses on which the applicant will actually be permitted to be active in any single round of bidding.

Small businesses are not eligible for a reduced upfront payment.

Prior to the auction, the Commission will issue a Public Notice announcing all qualified bidders for the 900 MHz SMR auction. Qualified bidders are those whose FCC Form 175 applications have been accepted for filing and who have submitted timely upfront payments of at least \$2,500.

#### B. Making Auction Payments by Cashier's Check

Each cashier's check and corresponding FCC Remittance Advice Form (FCC Form 159) must be in a separate envelope (only one check and one FCC Form 159 is required to be submitted with the upfront payment) addressed to:

**Mellon Bank  
Attention: Auction No. 7  
P.O. Box 358850  
Pittsburgh, PA 15251-5850**

If delivering an auction payment in person or by courier, the cashier's check and FCC Remittance Advice Form (FCC Form 159) must be delivered to:

**Mellon Bank  
Attention:  
Wholesale Lockbox Shift Supervisor  
27th Floor (153-2713)  
3 Mellon Bank Center  
525 William Penn Way  
Pittsburgh, PA 15259-0001  
(Note: Please indicate on the inside envelope "Lockbox No. 358850.")**

### C. Making Auction Payments by Wire Transfer

If making an auction payment by wire transfer, an applicant must fax a completed FCC Remittance Advice Form (FCC Form 159) to Mellon Bank at (412) 236-5702 at least one hour prior to placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, the applicant should write "Wire Transfer - Auction Payment for Auction Event #7". To submit funds by wire transfer, you will need the following information:

**ABA Routing Number: 043000261**  
**Receiving Bank: Mellon Pittsburgh**  
**BNF: FCC/AC-9116106**  
**OBI Field: (Skip one space between each information item)**  
**"AUCTIONPAY"**  
**FCC ACCOUNT NO. (SAME AS FCC FORM 159, BLOCK 1)**  
**PAYMENT TYPE CODE (SAME AS FCC FORM 159, BLOCK 14)**  
**FCC CODE (SAME AS FCC FORM 159, BLOCK 17)**  
**PAYOR NAME (SAME AS FCC FORM 159, BLOCK 3)**  
**LOCKBOX NO. 358850**

**Failure to deliver the upfront payment in a timely manner will result in dismissal of the application and disqualification from participation in the auction.**

### IV. Registration for the Auction

Only qualified applicants who have submitted timely upfront payments will receive registration materials. **Registration materials will only be sent to the address and contact person identified in an applicant's FCC Form 175.** All registration will be completed prior to the auction in two separate overnight mailings. The first registration package will include the bidder's login code and login password. A second registration mail-out will include the bidder identification number, the phone number for telephonic bidding, and a schedule for bidding in the first week of the auction. At the end of the registration mail-out process, bidders should be in possession of the following information:

- FCC Account Number (self-assigned on the FCC Form 175)
- Login password
- Login code
- Bidder identification number

The auction registration process will begin after an FCC Public Notice announcing the qualified bidders is released. Any applicant who has not received both mailings should contact the FCC's auction contractor, Tradewinds International, Inc. at (202) 637-FCC1 (637-3221), Fax Number (703) 417-0692.

All applicants will be pre-registered prior to the auction event; **no on-site registration will be available. Applicants who have not received the two separate registration mail-**



**outs will not be able to submit bids. It is the applicant's responsibility to ensure that all registration information has been received.**

**V. Remote Electronic Bidding Software**

Qualified bidders who filed FCC Form 175 applications electronically may order (no later than Friday, November 17, 1995) and purchase remote electronic bidding software for \$175.00 which includes shipping and handling. The same hardware and software requirements that were necessary to file electronically are required to bid electronically. A remote bidding software order form is included in this Bidder Information Package.



## PART II:

## AUCTION EVENT

The 900 MHz SMR MTA licenses will be awarded through a simultaneous multiple round auction. The auction will begin at 9:00 a.m. Eastern Time on Tuesday, November 28, 1995. Generally, there will be two bidding rounds per day during the first three days of the auction. Each bidding round contains the following performance and review periods:

- Bid submission period
- Bid submission round results
- Bid withdrawal period
- Final round results

The specific times of the bidding periods for the first week will be included in the second registration mail-out and by Public Notice. The Commission may, however, increase or decrease the amount of time for bid submission as well as the number of rounds per day depending upon the bidding activity level and the aggregate amount of high bids.

**Bidders who filed their FCC Form 175 electronically will have the option of submitting and withdrawing bids electronically or telephonically. Bidders who filed their FCC Form 175 manually must submit and withdraw bids telephonically.** There will be no on-site bidding permitted for this auction. During the course of the auction, electronic bidders will be permitted to alternate between the remote electronic and telephonic bidding methods as necessary.

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

### **I. Auction Procedures**

Generally, bids will be accepted on all licenses in each round of the auction (*See* Section III below for specific information about stopping rules). Generally, the auction will remain open until one round passes in which there are no new valid bids on any of the MTA licenses. High bid amounts will be posted after the end of the bid submission period in each round of bidding. In addition, information regarding all valid bids submitted and all bid withdrawals in each round, as well as the minimum accepted bid for the following round, will be provided.

All bids submitted or withdrawn must be processed and confirmed during the specific bid submission and bid withdrawal periods set forth (by Public Notice prior to the auction event) and in auction announcements during the course of the auction. No bids will be

accepted after the close of the bid submission period, and no withdrawals will be accepted after the close of the bid withdrawal period in each round. Electronic bidders may print a hard copy confirmation to their local printer. Telephonic bidders will be required to provide a fax number to the bid operator and will receive an automatic fax back confirming their bid submission or high bid withdrawal.

## 1. Bid Submission

Each bidder may submit bids once in each round for as many licenses as it is eligible. Eligibility in the first round of the auction is determined by the activity units covered by the upfront payment amount deposited. The bid submission screens have been tailored for each bidder to include only those MTA licenses for which the bidder is qualified to bid.

Those bidders who have filed electronically will be permitted to place their bids electronically or by telephone. Each bidder will be required to login to the FCC auction computer system, using a login code and confidential password unique to that bidder, and must provide its FCC account number and bidder identification number in order to place or withdraw a bid.

To place a bid telephonically, bidders must call the FCC Bidding Line during the bid submission period. This telephone number will be provided to all qualified bidders in their registration materials. The bid operator will request the login code, confidential password, FCC account number, bidder identification number, authorized bidder name and fax number.

## 2. Bid Withdrawals

A high bidder who wishes to withdraw one or more of its high bids during the bid withdrawal period may do so, electronically (if permitted to bid electronically) or telephonically, subject to the bid withdrawal penalty specified in the Commission's rules, 47 C.F.R. §§ 90.805(a) and (b). Procedures to access the FCC auction system for high bid withdrawal are identical to the process for bid submission. If a high bid is withdrawn, the license will be offered (without a minimum bid increment) 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. The FCC will be identified as the high bidder on the license until a new valid bid is submitted on that license. The FCC retains the discretion to further lower the minimum accepted bid. In addition, to prevent a bidder from strategically delaying the close of the auction, the FCC also retains the discretion to limit the number of times that a bidder may re-bid on a license from which it has withdrawn a high bid.

### A. Minimum Bid Increments and Tie Bids

There will be no minimum opening bid and no minimum bid increment for any MTA license until that license has received an initial bid. Once a bid has been received on a license the minimum bid increment for that license will be: in Stage One of the auction, the greater of five (5) percent of the previous high bid or \$0.02 per activity unit; and in Stages Two and Three, the greater of five percent or \$0.01 per activity unit. The Commission

retains the discretion to vary the minimum bid increments in each round of the auction for individual licenses or groups of licenses by announcement prior to each round.

Each bid will be date and time stamped when it is entered into the 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.

B. Electronic Access to Auction Data

1. Round Results

Round results will be available after the conclusion of each period on the FCC electronic bidding system's round results viewer, on the Internet node via anonymous FTP@fcc.gov, and on the FCC Bulletin Board System in either ASCII text or DBF formats. The FCC round results viewer provides the flexibility for users to define their own file formats. Standard round results file formats will be available through Internet and the FCC Bulletin Board System and are included in this Bidder Information Package.

2. Auction Announcements

All FCC auction announcements will be available on the FCC remote electronic bidding system and through the Internet and the FCC Bulletin Board System. The FCC will announce such items as the schedule for bid submission and bid withdrawal periods. If a period is extended, the FCC will post an on-line message on the FCC remote electronic bidding system, and the time remaining clock will automatically be refreshed to reflect the change.

C. Number of Licenses that May be Acquired

The Commission has imposed no limitations on the number of MTA licenses that any one entity may acquire in the 900 MHz SMR auction. However, entities will be subject to the 45 MHz aggregate Commercial Mobile Radio Services (CMRS) spectrum cap which encompasses broadband PCS, cellular, and SMR services. *See* 47 C.F.R. § 20.6.

II. Activity Rules

In order to ensure that the auction closes within a reasonable period of time, the Commission will impose an activity rule to discourage bidders from waiting until the end of the auction before participating. The activity rule provides for three stages with increasing levels of minimum activity required in each stage if a bidder is to maintain its current eligibility.

A. Stage Transition Rule

The 900 MHz SMR auction may have three stages, and the transition from one stage to the next will be determined by the aggregate level of bidding activity, subject to

Commission discretion. The transition rule also may be defined in terms of the "auction activity level" -- the sum of the activity units of those licenses whose high bid increased in the current round, as a percentage of the total activity units of all licenses in that auction. The auction will start in Stage One and move to Stage Two when the auction activity level is below ten percent for three consecutive rounds in Stage One. The auction will move from Stage Two to Stage Three when the auction activity level is below five percent for three consecutive rounds in Stage Two. In no case can the auction revert to an earlier stage. However, the Commission retains the discretion to determine and announce during the course of an auction when, and if, to move from one auction stage to the next. These determinations will be based on a variety of measures of bidder activity including, but not limited to, the auction activity level defined above, the percentage of licenses (measured in terms of activity units) on which there are new bids, the number of new bids, and the percentage increase in revenue.

#### B. Activity Requirements

A bidder will be considered "active" on a license in the current round if it is either the high bidder at the end of the bid withdrawal period in the previous round or submits a bid in the current round which meets or exceeds the minimum accepted bid. A bidder's activity level in a round is the sum of the activity units associated with the MTA licenses on which the bidder is active. The auction will be divided into three stages and the minimum required activity levels for each stage of the auction are as follows:

**Stage One:** In each round of Stage One, a bidder who wishes to maintain its current eligibility is required to be active on MTA licenses encompassing at least one-half of the activity units for which it is currently eligible. Failure to maintain the requisite activity level will result in a reduction in the amount of activity units upon which a bidder will be eligible to bid in the next round of bidding (unless an activity rule waiver is used). During Stage One, if bidding activity is below the required minimum level, eligibility in the next round will be calculated by multiplying the current round activity by two (2).

**Stage Two:** In each round of Stage Two, a bidder who wishes to maintain its current eligibility is required to be active on at least 75 percent of the activity units for which it is eligible in the current round. During Stage Two, if activity is below the required minimum level, eligibility in the next round will be calculated by multiplying the current round activity by four thirds (4/3).

**Stage Three:** In each round of Stage Three, a bidder who wishes to maintain its current eligibility must be active on licenses encompassing at least 95 percent of the activity units for which it is eligible in the current round. In Stage Three, if activity in the current round is below 95 percent of current eligibility, eligibility in the next round will be calculated by multiplying the current round activity by twenty nineteenth (20/19).

**As stated above, activity requirements increase in each auction stage; therefore, it is especially important for bidders to check current activity during the bid submission period in the first round following a stage transition. Bidders who do not wish to submit**

any new bids in that round may confirm their current activity level (measured in terms of their standing high bids) telephonically or electronically through the FCC bidding system by entering the bid submission module and comparing their current activity to their required activity.

### C. Activity Rule Waivers

**Bidders will be provided five activity rule waivers that may be used in any round during the course of the auction.** If a bidder's activity level is below the required activity level, a waiver will be applied automatically, assuming the bidder still has waivers remaining and does not submit an automatic waiver override. That is, if a bidder fails to submit a bid in a round or does not submit an automatic waiver override, and its activity level from any standing high bids (high bids at the end of the bid withdrawal period in the previous round) falls below its required activity level, a waiver will be applied automatically, if any waivers remain. A waiver will preserve the bidder's current eligibility in the next round. An activity rule waiver applies to an entire round of bidding and not to a particular MTA license. **An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open.**

Bidders will be afforded an opportunity to override the automatic waiver mechanism if they wish to intentionally reduce their eligibility and do not want to use a waiver to retain their eligibility at its current level. If a bidder overrides the automatic waiver mechanism, its eligibility will be permanently reduced and it will not be permitted to regain its bidding eligibility from a previous round. *See Part I, Section III.A.*

Bidders will have the option of proactively entering an activity rule waiver during the bid submission period. If a bidder submits a proactive waiver in a round in which no other bidding activity occurs, **the auction will remain open.** Therefore in the later rounds of the auction, if a bidder does not intend to bid but wants to ensure that the auction does not close, it should enter a proactive waiver in place of a bid. The submission of a proactive waiver will prevent the auction from closing.

### III. Auction Stopping Rules

Bidding will normally remain open on all licenses until bidding stops on every license. The auction will close after one round passes in which no new bids or proactive waivers are submitted. The Commission retains the discretion, however, to keep an auction open even if no new valid bids and no proactive waivers are submitted. In the event the Commission exercises this discretion, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, if a bidder has any activity rule waivers left, an automatic waiver will be applied if its activity from standing high bids does not meet its required activity level. Bidders whose activity from the standing high bids does not meet their required activity level and that have no activity rule waivers remaining will have their maximum eligibility reduced according to the activity rules as described above.

The Commission may also declare at any time after 40 rounds that the auction will end after a specified number of additional rounds. If the Commission invokes this 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 three rounds. The Commission also retains the discretion to close bidding on a particular license(s). In the unlikely event that we use such a license-by-license stopping rule, we would anticipate doing so only after 40 rounds, applying it first to the largest MTAs, and only if three or more rounds have passed without any bids on these licenses.

The Commission does not intend to exercise these options except in extreme circumstances, such as where the auction is proceeding very slowly, there is minimal overall bidding activity and it appears unlikely that the auction will close within a reasonable period of time. Before exercising these options, however, the Commission would first attempt to increase the pace of the auction by announcing that the auction will move into the next stage, where bidders would be required to maintain a higher level of bidding activity. Under these circumstances, the Commission may also first increase the number of bidding rounds per day and increase the amount of the minimum bid increments for those limited number of licenses where there is still a high level of bidding activity.

#### **IV. Additional Auction Information**

##### **A. Collusion**

To prevent collusion, the Commission's rules prohibit communications during the course of the auction among applicants for the same geographic license areas when such communications concern bids, bidding strategies or settlements. *See* 47 C.F.R. § 1.2105(c).

##### **B. Delay, Suspension or Cancellation of the Auction**

The Commission may, by Public Notice or by announcement during the auction, delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Commission may, in its sole discretion, resume the auction starting from the beginning of the current or some previous round or cancel the auction in its entirety. Network failure at the auction may cause the Commission to delay or suspend the auction.

##### **C. Bid Withdrawal Penalties**

Any high bidder who withdraws a high bid during the course of an auction will be subject to a payment equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid. This payment will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission. *See* 47 C.F.R. § 90.805(b).



D. Releasing Bidder Identities

Bidders' identities, FCC Account Numbers, and the licenses for which they have applied will be disclosed prior to the auction. Thus, bidders will know in advance of the auction the identities of the bidders against whom they are bidding. During the course of the auction, bidder identities and all bids submitted and withdrawn will be disclosed during the round results period.



## **PART III:**

## **POST-AUCTION PROCEDURES**

### **I. Down Payment**

The winning bidder for each MTA license must submit an FCC Remittance Advice Form (FCC Form 159) along with sufficient additional funds (a "down payment") to bring the amount of money on deposit with the government to 20% of its winning bid within five business days after bidding is declared closed and the high bidders are announced by Public Notice. In the event that a bidder has withdrawn a bid or bids and is subject to a bid withdrawal penalty or penalties, the bidder's upfront payment (and down payment if required) will first be applied to satisfy such bid withdrawal penalty before being applied toward its down payment on the licenses it has won.

A winning bidder that is a small business or small business consortium eligible for installment payments will be required to bring its total deposit to only 10% of its winning bid (less any applicable bidding credits)- 5% within five business days after bidding is declared closed and the high bidders are announced by Public Notice and the remaining 5% of the applicant's net winning bid within five business days following the Public Notice announcing that its MTA license is ready to be issued. *See* 47 C.F.R. § 90.811. As stated above, if applicable, the bidder's bid withdrawal penalties will first be satisfied by the upfront payment (and down payment if required), which will reduce the amount a winning bidder can apply toward the down payment.

The submission instructions for cashier's checks and/or wire transfers are identical to those presented in the Pre-Auction Procedures Upfront Payments Section contained in this Bidder Information Package. Bidders should also refer to the FCC Form 159 instructions in this Bidder Information Package for further down payment and installment payment instructions.

### **II. Full Payment**

#### **A. Non-small business winning bidders**

Each winning bidder will be required to make full payment of the balance of its winning bid prior to the issuance of its MTA license. The Commission will, when a MTA license is ready to be issued, release a Public Notice stating that fact. The auction winner for that MTA will be required to make full payment of the balance of its winning bid within five business days following this Public Notice. The Commission will issue the MTA license to the auction winner within ten business days following notification of receipt of full payment. *See* 47 C.F.R. § 90.807(b).

#### **B. Small business winning bidders**

A small business or a small business consortium may elect to pay the balance of its net winning bid (less any bidding credits) in quarterly installments. The Commission will

issue the MTA license to a small business winning bidder within ten business days following notification of receipt of the remainder of the down payment, as set forth in Section I above.

Upon issuance of an MTA license to a winning bidder eligible for installment payments, the Commission will notify such eligible MTA license holder of the terms of its installment payment plan. Such an installment payment plan will: (i) allow quarterly installment payments for a ten-year period running from the date that the MTA license is issued; (ii) for small businesses under the \$15 million benchmark, begin with interest-only (Treasury note rate at the time of license grant plus 2.5%) payments for the first two years (Installment Payment Plan A); (iii) for small businesses under the \$3 million benchmark, begin with interest-only payments (Treasury note rate at the time of license grant) for the first five years (Installment Payment Plan B); and (iv) amortize principal and interest (Treasury note rate at the time of license grant plus 2.5%) over the remainder of the license term. An MTA license issued to an eligible small business that elects installment payments will be conditioned on the full and timely performance of the license holder's quarterly payments. *See* 47 C.F.R. § 90.812.

### **III. Submission of Long-Form Applications and Awarding of MTA Licenses**

Within 10 days of being notified of its status as a winning bidder by Public Notice, the winning bidder for each license will be required to submit a completed long-form application (FCC Form 600), along with any required exhibits. An FCC Form 600 is attached in this Bidder Information Package.

Winning bidders qualifying as small businesses must also include, as an exhibit to the long-form application, the following: (i) computations in accordance with 47 C.F.R. § 90.814, of gross revenues of the applicant, applicant's affiliates, applicant's attributable investors, affiliates of its attributable investors, and, if a consortium of small businesses, the members of the joint venture; (ii) lists and summaries of all agreements that support the applicant's eligibility as a small business, including the establishment of *de facto* and *de jure* control (e.g., articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, and any other relevant agreements); and (iii) lists and summaries of any investor protection agreements, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees. *See* 47 C.F.R. § 90.815(b).

All winning bidders qualifying as small businesses must also maintain at their principal place of business an updated file of ownership and revenue information, including any documents necessary to establish eligibility as a small business. Licensees must maintain the files for the term of the license. *See* 47 C.F.R. § 90.815(c).

Each completed long-form application (FCC Form 600), must be sent manually or electronically to the Wireless Telecommunications Bureau Licensing Division, 1270 Fairfield Road, Gettysburg, PA 17325, Telephone: (800) 322-1117, (717) 337-1212. *See Seventh Report & Order* at ¶ 125.

Once a winning bidder has submitted its down payment and an acceptable FCC Form 600, the Commission will release a Public Notice announcing the acceptability of the long-form application, triggering the 30-day filing window for petitions to deny. After resolving any petitions to deny, and if it is otherwise satisfied that the applicant is qualified, the Commission will issue the MTA license, assuming that the auction winner (except for a small business making quarterly installment payments) has made full payment of its winning bid amount. See 47 C.F.R. §§ 90.807, 90.808 and 90.812(a).

#### **IV. Default and Disqualification**

After bidding closes, a defaulting auction winner (*i.e.*, a winner who fails to remit the required down payment within the prescribed period of time, fails to submit a long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the penalties set forth in 47 C.F.R. § 90.805(c). In addition, if a default or disqualification involves gross misconduct, misrepresentation or bad faith by an applicant, the Commission may also declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it may deem necessary, including institution of proceedings to revoke any existing licenses held by the applicant. See *Competitive Bidding Second Report and Order* in PP Docket No. 93-253, 9 FCC Rcd 2348 (1994) at ¶ 198.

#### **V. Refund of Upfront Money**

All applicants who submitted upfront payments, yet were not winning bidders for any MTA licenses, may be entitled to a refund of their upfront payments after the conclusion of the auction. Any refund will be conditioned upon there being excess funds on deposit after any applicable bid withdrawal penalties have been paid. After the close of the auction, a refund package will be delivered, via Federal Express, to these applicants at the address provided in the payor blocks 4 through 7 of the Remittance Advice Form, FCC Form 159. The package will include a cover letter which outlines the procedures for processing a refund, and an FCC Form SF-3881 (ACH Vendor/Miscellaneous Payment Enrollment Form).

Applicants are expected to complete their section of the SF-3881 and forward the form to their financial institution for final completion. Once the SF-3881 has been properly completed, it must be transmitted by facsimile to the Billings and Collections Branch, Federal Communications Commission, ATTN: William Koch. The fax number is (202) 418-2843. The original SF-3881 must also be mailed to the following address:

Federal Communications Commission  
ATTN: William Koch  
1919 M Street, N.W., Room 452  
Washington, DC 20554

Bidders who drop out of the auction may also be eligible for a refund of upfront payments prior to the close of the auction. Qualified bidders who wish to obtain a refund, prior to the close of the auction, must have exhausted all of their activity rule waivers and

have no remaining bidding unit eligibility. These bidders must forward a written request for refund, along with a copy of their bidding eligibility screen print, to Regina Dorsey or William Koch to the address listed above. Additionally, a copy of the refund request and the bidding eligibility screen print should also be transmitted by fax number (202) 418-2843. Once your request has been approved, a refund package will be forwarded to the address provided on the FCC Form 159.

Refund processing generally takes up to two weeks to complete. Bidders with questions regarding the refund process or completion of the SF-3881 should contact either Regina Dorsey or William Koch at (202) 418-1995.

## **VI. Bidder Alert**

### **A. Applicant Certification Requirements**

**The terms contained in the Commission's Report and Orders, Public Notices, and in the Bidder Information Package are not negotiable. Prospective bidders should review these auction documents thoroughly prior to the auction to make certain that they understand all of the provisions and are willing to be bound by all of the terms before making any bid.**

**All applicants must certify under penalty of perjury on their FCC Form 175 applications that they are legally, technically, financially, and otherwise qualified. 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, MTA license revocations, prohibitions against participation in future auctions, and/or criminal prosecutions.**

### **B. A Note on Possible Deceptive Solicitations**

As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use the 900 MHz SMR auction to deceive and defraud unsuspecting investors. According to the Securities and Exchange Commission (SEC), common warning signals of such fraud include the following: the first contact is a "cold call" from a telemarketer or made in response to an inquiry prompted by a television or radio infomercial; the offering materials used to invest in the venture appear to be targeted at IRA funds by, for example, including all documents and papers needed for the transfer of funds maintained in IRA accounts; the amount of the minimum investment is less than \$20,000; the sales representative makes verbal representations that (1) the IRS, FTC, SEC, FCC, or some other government agency has approved the investment; (2) the investment is not subject to state or federal securities laws; (3) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include actual copies of FCC releases, or quotes from Commission personnel, giving the appearance of FCC approval or knowledge of the solicitation.

The Commission does not approve any individual investment proposal, nor does it provide a warranty with respect to any MTA license being auctioned. Potential applicants or investors are reminded that winning a license in the 900 MHz SMR auction is not a guarantee of success in the marketplace. Furthermore, winning an MTA license is not a passive investment. Licensees in this service are directly responsible for system construction, and operation and meeting any coverage requirements. If any of these requirements are not met, the license and any associated investments are forfeited.

Information about deceptive telemarketing investment schemes is available from the Federal Trade Commission (FTC) at (202) 326-2222 and from the Securities and Exchange Commission (SEC) at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the National Fraud Information Center at 1 (800) 876-7060, the FTC or the SEC. Consumers who have concerns about specific 900 MHz SMR investment proposals, or previous SMR investments, may also call the FCC Auction Hotline at (202) 418-1400.

