



PUBLIC NOTICE

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DIRECT BROADCAST SATELLITE SERVICE LICENSES AUCTION

2 Qualified Bidders

Report No. AUC-04-52-H (Auction No. 52)

In this *Public Notice*, the Federal Communications Commission (“FCC” or “Commission”) identifies 2 applicants found to be qualified to bid in the upcoming auction for three licenses to use the Direct Broadcast Satellite (“DBS”) service allocation in the 12.2-12.7 GHz band (“Auction No. 52”). Auction No. 52 is scheduled to begin on Wednesday, July 14, 2004. In addition, this *Public Notice* contains bidding instructions and other important information regarding Auction No. 52.

Attachment A lists each of the 2 qualified bidders, their upfront payments, and maximum eligibility in bidding units.

Attachment B lists the licenses selected on each qualified bidder’s FCC Form 175.

Attachment C lists the applicants that submitted FCC Form 175 applications, but did not qualify to bid in this auction.

Attachment D describes how to participate in the mock auction.

Attachment E provides information on “How to Monitor the FCC Auctions On-line,” and round results file formats for use during the auction.

In order to participate effectively in the auction, qualified bidders should again familiarize themselves with the auction rules and other information contained in the *Auction No. 52 Procedures Public Notice* and subsequent public notices.¹ This *Public Notice* and other documents related to Auction No. 52 are available on the Commission’s auctions website, <http://wireless.fcc.gov/auctions/>. The following information provides additional guidance.

¹ See Auction of Direct Broadcast Satellite Service Licenses Rescheduled for July 14, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures, *Public Notice*, 19 FCC Rcd 21818 (2004) (“*Auction No. 52 Procedures Public Notice*”); see also Direct Broadcast Satellite Service Licenses Auction, Status of FCC Form 175 Applications to Participate in the Auction, *Public Notice*, DA 04-1638 (rel. June 7, 2004).

Registration. Qualified bidders have been automatically registered for the auction. For security reasons, the Commission will confirm registration through two separate mailings of registration materials. Both mailings will be sent to the bidder's contact person at the contact address identified in the bidder's FCC Form 175. Upon receipt of both mailings, each bidder should be in possession of the following information:

- Bidder Identification Number
- At least two SecurID cards
- Bidding System User Manual
- FCC Telephonic Bidding phone number

Qualified bidders are solely responsible for ensuring the security of their computer systems, security of their registration materials, and that only authorized bidders place bids on their behalf. The FCC assumes no responsibility or liability for these matters.

WARNING: Any unauthorized entity accessing or tampering with an FCC or other government computer will be prosecuted to the full extent of the law.

Any qualified bidder listed in Attachment A of this *Public Notice* that has not received both registration mailings **by noon on Wednesday, July 7, 2004**, must contact the Auctions Hotline directly at (717) 338-2888. Receipt of both registration mailings is critical to participating in both the mock auction and the actual auction event, and it is the responsibility of each qualified bidder to ensure that all registration information has been received.

Registration Material Replacement. Lost bidder identification numbers or SecurID cards can be replaced only by appearing in person at the FCC Headquarters, located at 445 12th Street, SW, Washington, DC. Only an authorized bidder, the contact person or the certifying official, as designated on the applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

If a bidder receives a damaged card(s), the bidder's contact person should call Technical Support to request a replacement. Technical Support will verify that the card is unusable, and a new card will be sent by Federal Express along with a self-addressed stamped envelope for returning the damaged card(s).

Bidding. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network.

Qualified bidders are permitted to bid telephonically or electronically. In either case, **each authorized bidder** must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with only one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the instructions for using them are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction. SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 52. The telephonic bidding phone number will be supplied in the first mailing along with the confidential bidder identification number.

Please note that the SecurID cards can be recycled, and we encourage bidders to return the cards to the FCC. We will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

Bidding Contingency Plan. Bidders should develop comprehensive contingency plans that can be quickly implemented if bidders experience difficulty participating in the auction. While the FCC will correct any problems within Commission-controlled facilities, bidders are solely responsible for anticipating and overcoming problems such as bidder technical failures, local telephone service interruptions, adverse local weather conditions, unavailability of authorized bidders, or the loss or breach of confidential security codes.

In their registration materials, all qualified bidders will be supplied with a telephone number for telephonic bidding. Bidders choosing to bid telephonically are required to use this telephone number to place bids. Electronic bidders may use this telephone number as an alternate method of bidding in the event they are unable to submit their bids electronically. **Telephonic bidders are reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round.**

Minimum Opening Bids. There will be a minimum opening bid for each license in Auction No. 52, calculated in accordance with the formulas previously announced.² The minimum opening bid amount is subject to reduction at the discretion of the Commission. However, bidders should be aware that the Commission will not entertain requests to lower minimum opening bids. The agency will exercise its discretion, if at all, independent of any communications from bidders.

Messages and Announcements. The FCC will post pertinent auction information as messages and announcements. Bidders should routinely check for messages and announcements each time they enter the FCC Automated Auction System, and should read this information carefully.

Bidding Schedule. The bidding schedule for Wednesday, July 14, 2004, and continuing until further notice, will be:

Bidding Period	9:00 a.m.	-	9:30 a.m. ET
Bidding Period	10:30 a.m.	-	11:00 a.m. ET
Bidding Period	12:00 p.m.	-	12:30 p.m. ET
Bidding Period	1:30 p.m.	-	2:00 p.m. ET
Bidding Period	3:00 p.m.	-	3:30 p.m. ET
Bidding Period	4:30 p.m.	-	5:00 p.m. ET

Round results will be provided approximately 10 minutes after the close of each round. The FCC will set the pace of the auction based upon its monitoring of the bidding and its assessment of the auction's progress. All subsequent schedule changes will be made by announcement during the course of the auction.

² *Auction No. 52 Procedures Public Notice*, 19 FCC Rcd 2044 (2004). Attachment A of the *Auction No. 52 Public Notice* sets forth the minimum opening bids for each license offered in Auction No. 52.

Bidder Questions during the Auction. FCC auction officials and Technical Support staff will be available during the course of the auction to answer questions from authorized bidders. Bidders should identify themselves as a bidder with time sensitive auction questions when calling any number. Help can be obtained through the following telephone numbers:

FCC Bidder Line (telephonic bidding, auction conduct questions)	Use telephonic bid number supplied in registration mailing
FCC Technical Support Hotline (all technical questions, software and hardware)	(202) 414-1250
FCC Auctions and Spectrum Access Division (legal questions)	(202) 418-0660

Monitoring Round Results. Attachment D (How to Monitor the FCC Auctions On-Line) of this *Public Notice* provides instructions for reviewing and downloading round results, as well as other material related to Auction No. 52, that will be released by the Commission during the course of the auction.

Amendments to FCC Form 175s. Applicants are responsible for maintaining the accuracy and completeness of information furnished in their FCC Form 175 and exhibits.³ Applicants should amend their applications within ten business days from the occurrence of a reportable change. Filers should make modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: auction52@fcc.gov. A separate copy of the letter should be faxed to Brian Carter, Special Counsel, Auctions and Spectrum Access Division, (202) 418-1159. Questions about other changes should be directed to Brian Carter at (202) 418-0660.

As described in the Commission's rules, applicants may make only minor corrections to their FCC Form 175 applications (*e.g.*, authorized bidder, fax number).⁴ Major modifications (*e.g.*, changing their license selections or proposed orbit location, changing control of the applicant, changing the certifying official) will not be accepted.⁵

Due Diligence. Bidders are reminded that they must operate in accordance with Appendices 30 and 30A of the ITU Radio Regulations and Part 25 of the Commission's rules.⁶ In addition, DBS licensees at the same orbit location may be required to coordinate among themselves to arrive at a mutually acceptable solution to any potential or existing interference between their operations.⁷ We therefore caution bidders in formulating their bidding strategies to investigate and consider the impact on the availability of spectrum in Auction No. 52.

Bidders also should be aware that there are matters pending with the Commission that could affect the licenses scheduled to be offered in Auction No. 52. In addition, certain judicial proceedings that may relate to particular applicants or incumbent licensees, or the licenses available in Auction No. 52, may be commenced, or may be pending, or may be subject to further review. We note that resolution of these

³ 47 C.F.R. § 1.65.

⁴ 47 C.F.R. § 1.2105(b).

⁵ *Id.*

⁶ *See* ITU Radio Regulations, Appendices 30 and 30A, and 47 C.F.R. Part 25.

⁷ Section 2 of Annex 1 to Appendix 30.

matters could have an impact on the availability of spectrum in Auction No. 52. In addition, although the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction.

Bidders may obtain information about channels and orbit locations available in Auction No. 52 on the Internet through the International Bureau filing system (“IBFS”) at <http://www.fcc.gov/ib/>. This application allows the user to search for current authorizations by call signs, current authorizations by licensee, current authorizations by file numbers, and a pending applications list. Detailed instructions on using the IBFS are available online at http://gullfoss2.fcc.gov/prod/ib/forms/getting_started.htm or by going directly to the Search Tool at <http://svartifoss2.fcc.gov/prod/ib/forms/index.html>. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. Bidders are strongly encouraged to research the ITU Space Network List and other relevant ITU databases.⁸

Bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 52. For further details regarding due diligence, please refer to *Auction No. 52 Due Diligence Public Notice*.⁹

Mock Auction. The FCC will conduct a mock auction on Friday, July 9, 2004, which will allow qualified bidders to familiarize themselves with the FCC Automated Auction System. Only qualified bidders will be permitted to participate in the mock auction. The Bureau will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders that wish to place bids telephonically should use the telephone number supplied in the Auction No. 52 registration materials.

The mock auction will include all Auction No. 52 licenses, and will follow the rules governing the actual auction. **The mock auction will be identified as Auction No. 74. The program will assume that each bidder applied for all licenses. The program will reflect the actual upfront payment submitted by the bidder, which will determine the initial (maximum) eligibility (as measured in bidding units).** The mock auction will simulate the start of the auction, and all bidders will be required to be active on 50 percent of their current bidding eligibility. A bidder not meeting this requirement will have a waiver automatically applied (if the bidder has any waivers available), or its current eligibility will be permanently reduced (if the bidder has no waivers remaining), possibly eliminating the bidder from the auction.

Electronic bidders participating in the mock auction are advised to review the Bidding System User Manual provided in the second mailing. Attachment C to this *Public Notice* provides instructions for accessing the FCC Mock Auction site.

⁸ See the Region 2 BSS and feeder-link Plans, contained in Article 10 of Appendix 30 and Article 9 of Appendix 30A of the ITU Radio Regulations, Edition of 2000. The web address for ITU Filings (ITU database) is <http://www.itu.int/sns/specquery.html>; information on accessing a “Ties Account” (required to access ITU database) can be found at <http://www.itu.int/TIES/>.

⁹ Due Diligence Announcement for the Upcoming Auction of Direct Broadcast Satellite Service Licenses Scheduled for July 14, 2004, *Public Notice*, 19 FCC Rcd 3000 (2004); see also *Auction No. 52 Procedures Public Notice*, 19 FCC Rcd at 2027.

The mock auction bidding schedule for Friday, July 9, 2004, will be:

Round 1 Bidding Period	9:00 a.m.	-	10:00 a.m. ET
Round 2 Bidding Period	11:00 a.m.	-	11:30 a.m. ET
Round 3 Bidding Period	12:00 p.m.	-	12:15 p.m. ET
Round 4 Bidding Period	12:45 p.m.	-	1:00 p.m. ET

OTHER IMPORTANT INFORMATION

Prohibition of Collusion. Applicants are reminded that Section 1.2105(c) of the Commission's rules prohibits applicants for any of the same geographic license areas from communicating with each other during the auction about bids, bidding strategies, or settlements unless they have identified each other as parties with which they have entered into agreements under Section 1.2105(a)(2)(viii).¹⁰ Because all three licenses available in Auction No. 52 have overlapping service areas, this prohibition will apply to all applicants. Thus, all applicants (unless they have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii)) must affirmatively avoid all discussions with or disclosures to each other that affect, or in their reasonable assessment have the potential to affect, bidding or bidding strategies.¹¹ For Auction No. 52, this prohibition became effective at the short-form application filing deadline on Friday, May 21, 2004, and will end on the post-auction down payment deadline, which will be announced in a future public notice.¹²

This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.¹³ For purposes of this prohibition, Section 1.2105(c)(7)(i) defines applicant as including all controlling interests in the entity submitting a short-form application to participate in the auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity.¹⁴ If parties had agreed in principle on all material terms of a bidding agreement(s), those parties must have been identified on the short-form application under Section 1.2105(c), even if the agreement had not been reduced to writing. If parties had 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 any other applicants.¹⁵

¹⁰ 47 C.F.R. § 1.2105(a)(2)(viii); 47 C.F.R. § 1.2105(c)(1). *See also Part 1 Seventh Report and Order*, 16 FCC Rcd 17546 (2001); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15297-98, ¶¶ 7-8.

¹¹ *See Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E, and F Block Bidders*, *Public Notice*, DA 96-1460, 15 FCC Rcd 6196 (1996).

¹² 47 C.F.R. § 1.2105(c)(1).

¹³ *See, e.g.*, Letter to Robert Pettit, Esquire, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 16 FCC Rcd 10080 (WTB 2000) (declining to except an applicant's controlling interest from coverage by the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

¹⁴ 47 C.F.R. § 1.2105(c)(7)(i).

¹⁵ *See "Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules," Public Notice*, 11 FCC Rcd 9645 (1995).

The Bureau has encouraged applicants not to use the same individual as an authorized bidder.¹⁶ A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm). In such a case, at a minimum, applicants should take precautionary steps to prevent communication between authorized bidders.¹⁷

Section 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.¹⁸ Thus, Section 1.65 requires auction applicants that engage in communications of bids or bidding strategies that result in a bidding agreement, arrangement or understanding not already identified on their short-form applications to promptly disclose any such agreement, arrangement or understanding to the Commission by amending their pending applications. In addition, Section 1.2105(c)(6) requires all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under Section 1.65.¹⁹ For further details regarding the prohibition against collusion, refer to Section I.B.2 of the *Auction No. 52 Procedures Public Notice*.²⁰

Applicants that are 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. Any applicant found to have violated the anti-collusion rule may be subject to sanctions.²¹ In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. If an applicant 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.²²

For additional information regarding this *Public Notice*, please contact Lisa Stover, Auctions Project Manager, at (717) 338-2888; Jeff Crooks, Auctions Analyst, at (202) 418-0660; or Brian Carter, Special Counsel, Auctions and Spectrum Access Division, at (202) 418-0660.

Technical questions about software or hardware should be directed to Technical Support at (202) 414-1250 (V) or (202) 414-1255 (TTY).

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¹⁶ See *Auction No. 52 Procedures Public Notice*, 19 FCC Rcd at 2025.

¹⁷ See *In re Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A*, *Memorandum Opinion and Order*, 13 FCC Rcd. 11973, 11977, ¶ 11 (1998) (“*Nevada Wireless*”).

¹⁸ 47 C.F.R. § 1.65.

¹⁹ 47 C.F.R. § 1.2105(c)(6); see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555, ¶ 17.

²⁰ See *Auction No. 52 Procedures Public Notice*, 18 FCC Rcd at 2024-2026.

²¹ See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

²² 47 C.F.R. § 1.2109(d).